

NMIT Board Meeting - 12 February - Open

NMIT Marlborough Campus



12 February 2021 10:00 AM - 03:00 PM

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MEETING TIMETABLE

Time:	9.15 – 9.45am	Marlborough Campus Tour
	10.00am	Karakia
	10.00 – 10.10am	Board Only Time
	10.10 – 10.30pm	Open Board meeting discussions
	10.30 – 12 noon	In Committee Board discussions
	12.00 – 12.30pm	MRC Development Opportunities Gerald Hope – Chief Executive Bernie Rowe – Chair MRC Trust Board Edwin Pitts – Trustee Ivan Sutherland – Trustee John Patterson – MRC Associate Susan Foster – Office & Account manager MRC Pam Wood, Carole Crawford – NMIT Marlborough TBC
	12.30 – 1.00pm	LUNCH – NMIT Board and also Marlborough Research Centre NMIT Wayne Jackson, Grant Kerr, Olivia Hall, Brian Johnston, Carole Crawford, Elizabeth Bean TBC
	1.00 – 3.00pm	In Committee Board discussions continue
	3.00pm	Conclusion of meeting
	3.00 – 4.00pm	Board Function TBC



BOARD OF DIRECTORS REGISTER OF INTERESTS	
Daryl Wehner	<ul style="list-style-type: none"> • Port Nelson Ltd, Chief Financial Officer • Tasman Bay Stevedoring Co. Ltd, Director
Tracy Johnston	<ul style="list-style-type: none"> • TRC Tourism, Consultant • Dayvinleigh Limited, Executive Director • Wine Marlborough Ltd, Deputy Chair • Institute of Directors, Nelson/Marlborough Committee Member • Eastern Institute of Technology, Board Director • Marlborough Local Advisory Committee Fire and Emergency, Deputy Chair
Judene Edgar	<ul style="list-style-type: none"> • Nelson City Council, Deputy Mayor • Nelson Regional Transport Committee, Deputy Chair • Nelson Tasman Regional Landfill Business Unit, Chair • Network Tasman Ltd, Shareholder • Network Tasman Trust, Trustee • Network Tasman Charitable Trust, Trustee • NTT Investments Ltd, Director/Shareholder • Encompass Strategic Services Ltd, Director/Shareholder • David Verhagen Consulting Ltd, Director/Shareholder • Nelson Airport Ltd, Shareholder • Nelson Port Ltd, Shareholder • Tasman Bays Heritage Trust, Shareholder • Nelmac Ltd, Shareholder • Nelson Regional Development Agency, Shareholder • Bishop Suter Trust, Shareholder • City of Nelson Civic Trust, Shareholder • Nelson Municipal Band Trust, Shareholder
Toni Grant	<ul style="list-style-type: none"> • Rata Foundation Ltd, Director • Canterbury Direct Investments Ltd, Director • Canterbury Trust House Ltd, Director • Tama Asset Holding Company Ltd, Director • Kotato Ltd, Director • Tui GP Ltd, Chair • Central Districts Cricket Assn Inc, Director • The Basketball Development Nelson Trust, Trustee • Waikato 1B Ltd, Executive Director • Waikato 1C Ltd, Executive Director • Waikato 1D Ltd, Executive Director • Puramakau 2L Ltd, Executive Director • Puramakau 2M Ltd, Executive Director • Puramakau 2N Ltd, Executive Director • Puramakau 2O Ltd, Executive Director • Te Kumara 3L Ltd, Executive Director • Chatham Is Quota Holding Co Ltd, Director • Tasman District Council Port Tarohe Governance Steering Group, Member

As at 2 February 2021



BOARD OF DIRECTORS REGISTER OF INTERESTS	
	<ul style="list-style-type: none"> Wakatu Incorporation: Tamariki Shareholding, Trustee Iwi Affiliation <ul style="list-style-type: none"> Ngāti Rarua and Ngāti Rarua Atiawa Iwi Trust, Tamariki beneficiaries
Kathy Grant	<ul style="list-style-type: none"> Dunedin City Holdings Ltd, Deputy Chair Dunedin City Treasury Ltd, Deputy Chair Dunedin Stadium Property Ltd, Deputy Chair Whitireia Community Polytechnic Ltd, Director Wellington Institute of Technology Ltd, Director Te Pūkenga, Council Member Trustee of various private trusts (former clients) Dunedin Railway Limited, Director
Charles Newton	<ul style="list-style-type: none"> Charles Newton Consulting Ltd: Director
Joanie Wilson	<ul style="list-style-type: none"> Ngāti Koata Trust, Chair Ministry of Education NMWC Region, Strategic Advisor, Maori Te Tau Ihu Intergenerational Strategy, Iwi Steering Group Member Possible Conflict of Interest: <ul style="list-style-type: none"> A family member on Staff at NMIT
Patrick Smith	<ul style="list-style-type: none"> Patrick Smith Human Resources Ltd, Managing Director Nelson Marlborough Health's Iwi Health Board, Ngāti Apa ki te Rā Tō representative Board of Te Piki Oranga – Maori Health provider across Te Tauihu, Ngāti Apa ki te Rā Tō representative
<p><i>All Directors – remuneration rates (directors fees) as set by Te Pūkenga.</i></p> <p><i>As allowed by the Company's Constitution, NMIT Ltd has arranged policies of Directors' Liability Insurance which together with a Deed of Indemnity ensure that the Directors will incur no monetary loss as a result of actions undertaken by them as Directors provided that they operate within the law.</i></p>	
EXECUTIVE TEAM REGISTER OF INTERESTS	
Wayne Jackson	<ul style="list-style-type: none"> Director, Aquatx Ltd Director, Aquatx USA Ltd Director, Aquatx Holdings Ltd Director, Aquatx Distribution Corporation Ltd Director, ModPod Ltd Trustee, Wayne Jackson Family Trust Trustee, Marion Jackson Family Trust Trustee Jackson Investment Trust
Grant Kerr	<ul style="list-style-type: none"> G & K Kerr Limited, Director and shareholder
Sue Smart	<ul style="list-style-type: none"> Sorrento Enterprises Ltd, Director NZIST Academic Board
Carol Crawford	<ul style="list-style-type: none"> Director, Singer Solutions Ltd
Marja Kneepkens	<ul style="list-style-type: none"> None

As at 2 February 2021



BOARD OF DIRECTORS REGISTER OF INTERESTS	
Olivia Hall	<ul style="list-style-type: none"> • Te Rūnanga o Ngāti Rārua, Chair • Tasman Bays Heritage Trust (Nelson Provincial Museum), Chair • Board Member NMDHB • Wakatu Inc, Shareholder • National iwi Chairs Forum, Member • Mātauranga Iwi Leaders Group, Chair • Nelson Marlborough Health's Iwi Health Board, NMHB representative
Brian Johnston	<ul style="list-style-type: none"> • None
Susannah Roddick	<ul style="list-style-type: none"> • None
Tony Macfarlane	<ul style="list-style-type: none"> • None

As at 2 February 2021



OPEN

Nelson Marlborough Institute of Technology Limited
(the Company)

Minutes of a meeting of the Board of Directors
(Board)

23 November 2020 at 1.15pm

Minutes

These are the minutes of a meeting of the Board of the Company held on 23 November 2020 at NMIT Nelson campus.

Present

Directors present: Tracy Johnston (Acting Chair), Toni Grant, Patrick Smith, Charles Newton, Kathy Grant, Judene Edgar, Joanie Wilson.

Other attendees present: Wayne Jackson (Chief Executive), Elizabeth Bean (Board Secretary), Grant Kerr (Executive Director (part)).

Apologies

Daryl Wehner.

Welcome

P Smith opened the meeting with a karakia.

T Johnston welcomed W Jackson to his first NMIT Board meeting as permanent Chief Executive.

Declaration of Interests and Disclosures Register

No conflicts were declared in relation to the open agenda.

The following additions/updates were provided for the register of interests:

- T Johnston: Wine Marlborough, Deputy Chair
- T Johnston: EIT, Board Director
- J Wilson: Wakatau Inc, shareholder
- P Smith: Ngāti Apa ki te Rā Tō representative on Nelson Marlborough Health Iwi Board
- P Smith: Ngāti Apa ki te Rā Tō representative on the Board of Te Piki Oranga – Maori Health provider across Te Taihū
- All Directors: Remuneration rates (directors fees) as set by Te Pūkenga. Liability insurance (Deed of Indemnity) is underwritten by Marsh as a collective under Te Pūkenga as per resolutions signed 3 April 2020 by all Directors.

Minutes of NMIT Board Meeting 12 October 2020 – Open

Resolved:

That the minutes of the meeting held on 12 October 2020, as circulated and read by members, be confirmed.

Action Items of NMIT Board Meeting 12 October 2020 – Open

W Jackson provided an update on action items.

Items not on the Agenda

There were no items arising other than those included on the agenda.

Risk Management

Safety, Health and Wellbeing

W Jackson provided an update on activity for the period since the Board last met on 12 October 2020. He noted that there has been slippage on a number of KPIs and that, at the recent Health and Safety Committee meeting, a decision was made to undertake a full review of health and safety practices and processes.

Directors asked questions about culture of contractors and also around event learning and improvement.

Resolved:

That the Board receive the safety, health and wellbeing report September – October 2020 for information.

Domestic and International Fees

K Grant reported that while the setting of the level of the fees (domestic and international) should be approved by the Board, approval of operational matters should remain with management.

Resolved:

That the Board resolve to approve the policies for Fees, Charges and Refunds with the amendments as proposed by the Audit & Risk Committee.

Performance Reporting

Chief Executive Report

W Jackson provided an update on the report provided in the Board agenda papers. Of particular note was that 2021 enrolments are up 11% compared with this time in 2019, which is encouraging.

Resolved:

That the Board receives the CEO Report to 23 November 2020.

Financial Statements and EFTS Reports to 31 October

W Jackson provided an update on the September and October reports. NMIT has a \$2.6m YTD surplus at the end of October and is expecting to have a surplus of \$1.3m for year end. While capital expenditure is currently lagging, this is being mostly driven by timing of delivery of major projects. At year-end capital expenditure is expected to be 75% spent with the balance carried forward to complete the capital projects.

K Grant reported that the Audit & Risk committee had reviewed the EFTS and Financial Reports to 31 October and noted the effect of absence of the TEC clawback of \$2.5m in the 2020 YTD and year-end surplus.

Resolved:

That the Board receives the Financial and EFTS updates to 30 September 2020 and 31 October 2020.

Key Performance Indicators

W Jackson reported that all performance panels will be completed by the end of 2020.

The current strategic analysis has a heavy focus on Maori/Pacifica and this reflects the TES and Te Pae Tawhiti. W Jackson observed that while programme withdrawals for 2020 have decreased 11%, further analysis is being undertaken on the detail that sits below this for Maori Pacifica learners.

Directors requested changes to future KPI reports to provide further insight and benchmarking.

Resolved:

That the Board notes the current performance levels in the report to October 2020.

Common Seal Usage

Resolved:

That the Board receives the Common Seal Usage reports for 1 – 31 October 2020.

Meeting Dates for 2021

In late January 2021, a Board strategy workshop will be held. The Board meeting dates for 2021 are:

- 12 Feb 2021
- 15 March 2021
- 17 May 2021
- 28 June 2021
- 16 August 2021
- 11 October 2021
- 22 November 2021

For Information

Directors noted the following papers for information:

- SANITI Report to November 2020: Directors commended SANITI on hosting 11 student leaders from other ITPs. In 2021, the Board would appreciate the opportunity to meet with SANITI as part of their meetings or at lunch.
- TTAf Enrolment Update: Directors requested further analysis of the TTAf enrolments including further analysis of NMIT and whether NMIT was capturing all potential students.
- Application to Enrolment Conversion: Directors requested further analysis on the reasons for applications not converting to enrolments. W Jackson reported that work is underway to identify the reasons for this and what 'no longer wishes to study' means.
- Academic Committee Meetings: The minutes are available in the Resource Centre.

Resolved:

That the Board receives information items that are contained in the agenda for 23 November 2020.

In Committee

Resolved:

1. *That members of the public and press be excluded from the remainder of the meeting and that the NMIT Board move In-committee.*
2. *That the Chief Executive and Board Secretary and invited executives be permitted to remain at the meeting, after the public has been excluded, because of their knowledge in relation to specific agenda items. This knowledge, which will be of assistance in relation to the matters to*

be discussed, is relevant to those matters because they have assisted in the preparation of such matters.

Resolutions will be made in reliance on section 48(1) of the Local Government Official Information and Meetings Act 1987 (**LGOIMA**) and the particular interests protected by section 9 of the Official Information Act 1982 which would be prejudiced by the holding of the relevant parts of the proceedings of the meeting in public.

The general subject of each matter to be considered while the public is excluded, the reason for passing the resolution in relation to each matter and the specific grounds under section 48(1) of LGOIMA for the passing of the resolution are as follows:

General subject of each matter considered	Reason for passing resolution in relation to each matter	Grounds under section 48(1) for the passing of the resolution
Minutes from public excluded part of previous meeting on 29 June 2020	Section 9(2)(g)(i) of the Official Information Act – maintain the effective conduct of public affairs through the free and frank expression of opinion by or between members of any organisation or employees of any organisation in the course of their duty Section 9(2)(b)(ii) of the Official Information Act - protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information	That the public conduct of this item would be likely to result in the disclosure of information for which good reason for withholding would exist under section 9 (noting the Board is specified, in Schedule 2 of LGOIMA, as a body to which LGOIMA applies).
Strategy Items for Approval Performance Reporting	Section 9(2)(g)(i) of the Official Information Act – maintain the effective conduct of public affairs through the free and frank expression of opinion by or between members of any organisation or employees of any organisation in the course of their duty Section 9(2)(i) of the Official Information Act – enable the organisation holding the information to carry out, without prejudice or disadvantage, commercial activities Section 9(2)(b)(ii) of the Official Information Act - protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information	That the public conduct of this item would be likely to result in the disclosure of information for which good reason for withholding would exist under section 9 (noting the Board is specified, in Schedule 2 of LGOIMA, as a body to which LGOIMA applies).

Closure

There being no further business, the Chairperson declared the meeting closed at 5.18pm.

P Smith closed the meeting with a karakia whakamutunga.

Dated:

Signed as a correct record

Chairperson



OPEN

ACTION ITEMS FROM NMIT BOARD MEETING – 23 NOVEMBER 2020

Acting Chair: Tracy Johnston

ACTION ITEMS FROM 23 NOVEMBER MEETING

TASK	RESPONSIBLE	DEADLINE	STATUS UPDATE
<i>Safety, Health and Wellbeing</i> Report on outcomes of health and safety review	G Kerr	Feb 2021	See February agenda papers.
<i>Key Performance Indicators: Learners</i> Reasons for differences between Maori / Pacific learners and non-Maori / Pacific learners.	W Jackson/ O Hall	Dec 2020	See NMIT response to Te Pae Tawhiti framework
<i>Key Performance Indicators</i> 1. Review presentation of KPI reporting in agenda papers. 2. Provide further insights and benchmarking. 3. TTAF enrolments: analysis of whether NMIT is capturing all potential students. 4. Application/Enrolment Conversion: Reasons why students choosing not to study at NMIT; and what 'no longer wishes to study' means.	S Smart	Feb 2021	Benchmarking of NMIT KPIs against other ITPs is available annually as part of the EPI reporting. Other changes captured in February 2021 report.
<i>Code of Conduct</i> Review content in draft and align with IOD guidelines. Circulate to Directors for comment and then for approval in Feb 2020.	T Johnston	Feb 2021	See February Board papers.
<i>Fees Policy (Domestic and International)</i> Update policy with amendments including that the fee setting component of policy to come to NMIT Board.	B Johnston	Dec 2021	Complete.
<i>Board Function</i> Organise function for directors either the night before or after the Nelson graduation.	E Bean	Dec 2020	Complete.
<i>SANITI</i> 1. Provide thanks on behalf of Board to the President for his role. 2. Provide the opportunity for SANITI President to meet with the Board at each meeting from Feb 2021.	W Jackson	Dec 2020	Complete. Discussions underway about interactions during 2021.



Te Kaupapa: Safety Health and Wellbeing Report November to December 2020

1. PURPOSE:

Function:	For Information
Nā:	Olivia Hall, Executive Director Ōritetanga, People, Culture and Learner Services
Te rā:	12 February 2021
Purpose:	<p>The purpose of this paper is:</p> <p>To provide the Board with an update on Safety, Health and Wellbeing (SHW) performance for the current reporting period 1 November – 31 December 2020.</p>
Recommendation(s):	It is recommended that the NMIT Board receives this report for their information.

2. EXECUTIVE SUMMARY

This report provides a dashboard and commentary analysis on lead and lag indicators. Key points to note are:

- There was no serious near misses reported during this period.
- There was one notifiable event and five injuries requiring medical treatment during this period. There is no change to the Critical Risk profile.
- The following trends are found when 2020 is compared to 2019:
 - During the November to December 2020 period, 21 events reported compared to 17 for this period 2019. However, YTD is 118 compared to 179 last year. This is mostly be attributed to the COVID-19 lockdown and the reduction in face-to-face activities, ans well as possible under-reporting.
 - YTD Injuries and ill-health requiring medical treatment increased to 28 compared to 18 last year. This accounts for 26% of total events in 2020 compared to 9% in 2019.
 - Safety observations logged were 30 compared to 19 last year. YTD figures are 179 compared to 194 last year.

KEY PERFORMANCE INDICATORS

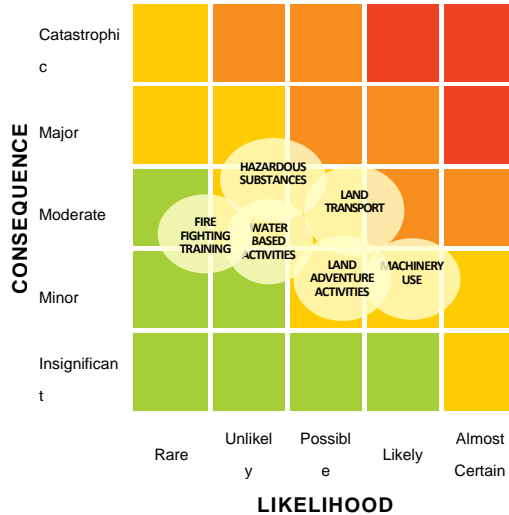
Key health and safety performance measures for NMIT for the second quarter (1 October to 31 December 2020). Trends compare to the previous quarter.

Area of Interest	Data	Variation on last quarter	Key	Commentary
% of new work risks eliminated or minimised by implementing controls	75%	↑ +34	Yellow	Good progress to resolve issues.
Area inspections completed (<i>target 15 per quarter</i>)	3	↓ -8	Red	HSC to run campaign in February to promote area inspections.
% notifiable events notified to WorkSafe as soon as practicable after becoming aware of event	100%	n/a	Green	WorkSafe notified within one hour of confirmation of injury.
% of events investigated within 2 weeks of being reported (accident, near miss, pain & discomfort)	43%	↑ +15	Yellow	Improving timeliness and only 2 investigations remain active.
% of completed job/site specific H&S inductions for new NMIT team members	29%	↓ -27	Red	Reviewing process to simplify inductions for short-term staff to improve completion rates without compromising safety.
Fire drills conducted within the last six months for Nelson, Marlborough and Woodbourne campuses	3	↑ +1	Green	All fire drills successfully conducted during semester 2.
% of regular maintenance contractors working on Nelson Campus registered on SiteWise or other prequalification accredited system	65%	↑ +3	Yellow	Planning underway to get SiteSafe to run workshop for relevant contractors on SiteWise prequalification system.
Quarterly H&S meetings held with key stakeholder partners on Nelson Campus	1	same	Green	
Wellbeing activities/initiatives available to staff (<i>target at least 1 per month February to November</i>)	5	↑ +2	Green	Achieved 2 more than target.
Wellbeing activities/initiatives available to students as per annual SANITI calendar	15	↓ -7	Green	Achieved 4 more than target.
Monthly H&S committee meetings held (<i>February to November</i>)	2	↓ -1	Green	HSC terms of reference does not require meeting in December.
H&S Representative (HSR) coverage across NMIT (<i>11 work areas</i>)	11	same	Green	All work areas have at least one HSR
Internal audits completed by H&S Advisor (<i>target one per quarter</i>)	0	same	Red	No internal audits were completed by H&S Advisor due to other work priorities.
Institute of Directors' 'diagnostic questions' discussed at SHW Leadership meetings (<i>target 2 per meeting</i>)	2	↓ -2	Green	Only one meeting held this quarter
Safety, health and wellbeing (SHW) walks completed (<i>target 4 per quarter</i>)	5	↑ +3	Green	Achieved target in this quarter by coordinating SHW walks to coincide with board meetings.

Key: ■ Meets standard ■ Working towards standard ■ Below standard ■ Not started/Developing/ n/a

RISK PROFILE

No serious emerging risks have been identified during this period.



CRITICAL RISKS

The following table only shows critical risks where there is new information to report.

Risk	Description	Management Overview	Level of assurance	Issues/Comments
Water based activities	Vessel handling and fast rescue boat training, kayaking, white water rafting, water sampling.	Maritime Transport Operator Plan approved by Maritime NZ. Basic boat handling training pre-requisite for advanced training. Supervision by approved qualified Skippers. Hazard registers maintained and reviewed. Risk assessments and Intentions forms prior to activity.		Student injured collateral ligament in knee whilst rafting. See Event Learning and Improvement details.

Key: High Satisfactory Low

AUDITS AND INSPECTIONS

Type	Nov	Dec	YTD	YTD (last year)
Area Inspection	3	0	275	6
Audit - External	0	0	0	0
Audit - Internal	0	6	6	4
Emergency Drills	1	0	5	6
SHW Walks	1	0	9	21
Total	5	6	295	37

SAFETY OBSERVATIONS

Type	Nov	Dec	YTD	YTD (last year)
Safe Practice	1	0	3	1
Unsafe Practice	5	7	75	105
Unsafe Conditions	6	9	70	53
Suggestion	0	2	31	35
Total	12	18	179	194

CONTRACTOR SAFETY MANAGEMENT

Type	Nov	Dec	YTD	Contractor monitoring findings
Inductions*	14	13	211	<p>Stopped contractor drilling holes in asbestos cladding. Contractor didn't realise holes from previous door access system didn't line up with new access system until unit removed. NMIT did not know contractor would need to drill new holes.</p> <p>Identified contractors on site that hadn't signed onto NMIT system. App contractors used to sign in wasn't working but didn't inform NMIT. Issue with app was fixed as soon as became aware of problem.</p> <p>Several contractors working on campus had not provided NMIT with their job safety analysis or task analysis prior to starting work.</p>
Worker sign ins*	124	226	1,838	
No. of workers*	54	66	240	
No. of organisations*	22	27	67	
Permit to work issued	1	3	12	
Task Analysis reviewed	1	3	30	

* Nelson Campus only (excludes cleaners)

LEADERSHIP

Action	Findings/outcomes/ issues raised
Safety, Health and Wellbeing Walks	<p>Learner Services, Library Learning Centre – Area consistently tidy whenever visiting. 24/7 pastoral care provided. Staff recently commenced daily wellbeing initiatives. Plans for upgrade to LED lighting and lighting sensors in rooms to reduce power. Replace books with ebooks when sensible to do so. Area for improvement – install overhead power services to eliminate cords on floor.</p>
SHW Leadership Group	<p>Meeting held on 9 November.</p> <p>Health and Safety Committee (HSC) – Recommendation that summary of HSC meetings and activities be reinstated into SHW report to NMIT. This will be considered as part of a review of information being provided to the board. Concern was raised at the lack of administration support for the H&S Advisor. Resourcing of H&S team reduced by 20 hours per week in 2018. See Director's checklist answer below.</p> <p>General Business – Group received the SHW report and no changes required before Board submission. Agreed to initiate a review of H&S at NMIT to address concerns about declining reporting and increase in people being injured.</p> <p>H&S Advisor provided an update on Nelson K Block refurbishment and Richmond Carpentry development projects.</p> <p>Directors Health and Safety checklist:</p> <p><i>How do you ensure that the organisation's risks are assessed and appropriate mitigation measures are put in place?</i></p> <p>Contractor's task analysis are reviewed and logged in Assura. NZQA approval requires risk assessment for off-site practical work in specific sites. Adventure Tourism risk assessments (safe operating procedures) reviewed internally at least annually by external outdoor safety auditing service every 3 years. An opportunity for improvement is to log risk assessments for education activities in Assura to enable better oversight.</p> <p><i>Does the organisation have sufficient resources (people, equipment, systems and budget) for its health and safety programme?</i></p> <p>The group agreed there may not be sufficient resources and the H&S review would provide a better view. Suggested that the group should have better oversight of H&S budgets. Safe365 software could fill a systems gap.</p> <p>Other Business – The group discussed whether to allow alcohol at the graduation. There are health and safety and pastoral care issues to consider.</p>

ACTIONS FROM PREVIOUS REPORTS

MEETING DATE	TASK	RESPONSIBLE	DUE DATE	STATUS
23/11/2020	Investigation into event where team member received minor scratch on elbow from exposed edge of aircraft which became infected.	Programme Lead Specialist	13/11/2020	Investigation complete. Similar activities to have pre-work inspections prior to starting activity.

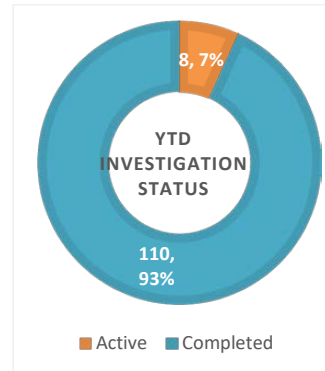
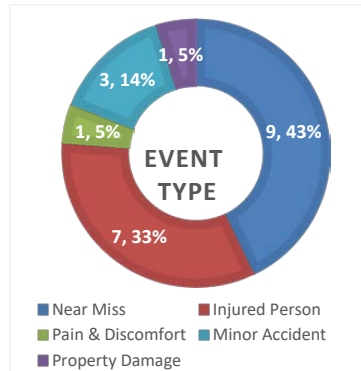
LAG INDICATORS

DASHBOARD

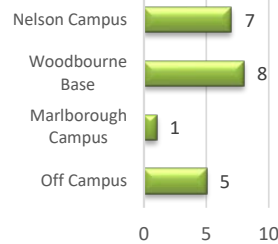
Events

#Reported
21 (17)
#Investigated
33 (32)
#Notifiable
1 (0)

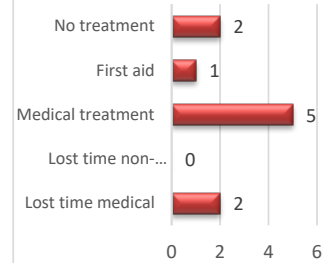
Key: (same period previous year)



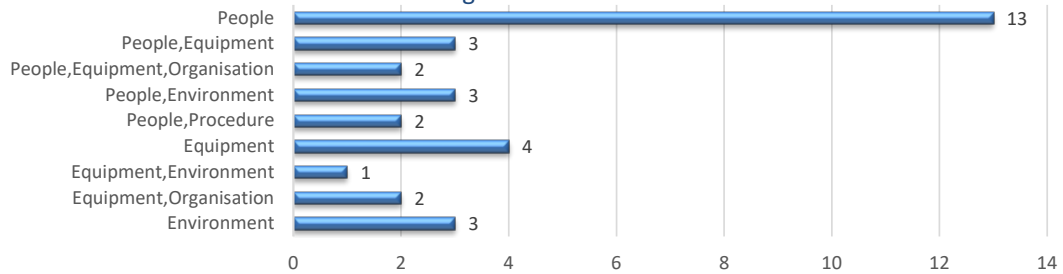
Location



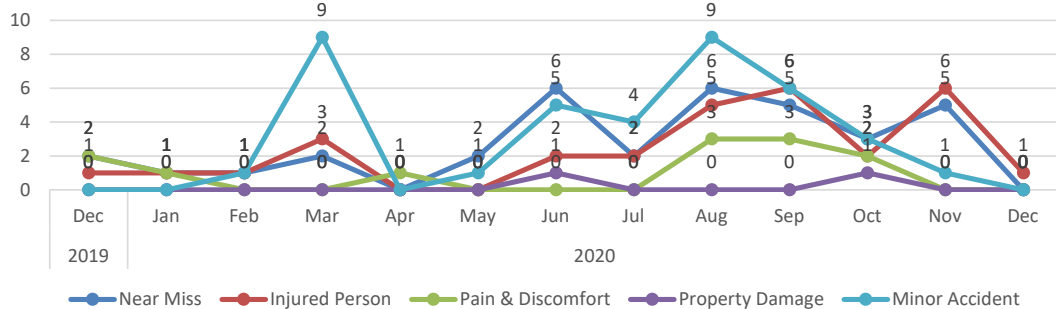
Injury Consequence








Investigated Causal Factors



Health and Safety Events by Type



EVENT LEARNING AND IMPROVEMENT

Summary*	Findings/Action taken following investigation	Level of assurance
Notifiable event - While kicking around soccer ball at beach, ball came towards tutor above waist height. Was walking backwards and lifted leg to stop ball. Tutor fell backwards awkwardly onto sand and fractured T12 vertebrae. WorkSafe were notified and have since closed the case. They found no serious work-related risk involved and event was very unfortunate.	Main contributing factors were: <ul style="list-style-type: none"> • Uneven ground in natural beach environment • Unfortunate awkward landing Recommendations: <ul style="list-style-type: none"> • No actions were identified that could have prevented this incident occurring – risk assessment was completed prior to field trip as per procedures. • Rehabilitation following injury 	
Student twisted knee falling out of raft when it came to abrupt stop entering an eddy (referred to as a 'partial eddy slam'). Injured collateral ligament in knee.	Main contributing factors were: <ul style="list-style-type: none"> • Inexperience and body position in raft Recommendations: <ul style="list-style-type: none"> • More practice of body positioning in pre-trip briefing 	
Student sprained wrist falling off chair. Put on her wrist brace and went to A&E to get it checked out.	Main contributing factors were: <ul style="list-style-type: none"> • Horseplay and pre-existing wrist injury Recommendations: <ul style="list-style-type: none"> • Reinforced need to maintain safe classroom environment 	
Student carrying chisel and craft knife back to tool tote. Craft knife and chisel slipped out of hand, caught knife but chisel cut into left thumb. Received several stitches at A&E.	Main contributing factors were: <ul style="list-style-type: none"> • Lack of concentration • Natural instinct to catch something falling Recommendations: <ul style="list-style-type: none"> • No further action 	
Team member experiencing pain in lower back after bending down to pull weeds. Diagnosed with lumbar sprain.	Main contributing factors were: <ul style="list-style-type: none"> • Weaken muscles supporting spine Recommendations: <ul style="list-style-type: none"> • Time off work and muscle strengthening exercises • Assessing lift capacity and requesting assistance when needed 	

* Excludes medical events unrelated to NMIT activities

Key:  High  Satisfactory  Low

HEALTH AND WELLBEING REPORT

In November and December 2020,

The **NMIT Learner Services Team** continued to increase their capability and services to support NMIT students' wellbeing and learning. Counselling services provided by the NMIT Wellbeing Team on campus, and OCP continue to be used at higher rates than pre-COVID-19. CallCare continue to provide excellent initial response to 24/7 Wellbeing Support via phone for domestic and international students.

Reporting of staff EAP use and a wellbeing will be included in Board reports in the future.

INDEPENDENT REVIEW UPDATE

An independent review was undertaken during the month of December and the draft findings indicates that NMIT has a good level of focus on safety and a desire to improve this, but there is little overall understanding of risk management, risk appetite and systemic management of safety and risk, including potential safety issues not identified.

The recommendations of the report need to be reviewed in light of Te Pūkenga activity and the tertiary sector, insuring that we don't over capitalise in a framework and resourcing that will become redundant or require changing in the near future.

A full report with recommendations will be presented at the next Board meeting.



Te Kaupapa: Academic Statute 2021

1. PURPOSE:

Function:	For Approval
Nā:	Wayne Jackson, Chief Executive
Te rā:	12 February 2021
Purpose:	<p>The purpose of this paper is:</p> <p>To seek NMIT Board approval for the Academic Statute 2021. The Statute has been reviewed and updated, then endorsed by Academic Standards & Quality committee on Monday 18th January, and Approved at Academic Committee on Wednesday 27th January 2021. This policy applies to all NMIT programmes, whether they are delivered at NMIT, in conjunction with another provider or by distance.</p>
Recommendation(s):	<p>It is recommended that the NMIT Board resolve to:</p> <p>Approve the NMIT Academic Statute 2021.</p>

2. ATTACHMENT

The changes made are captured on the Policy Coversheet (attached), and links take Directors to the Word documents for viewing each of the following Sections:

[Section 1 – Introduction](#)

[Section 2 – Definitions](#)

[Section 3 – Academic Regulations](#)

[Section 4 – Awards](#)

[Section 5 – Special Awards](#)

[Section 6 – Academic Committee \(terms of reference\)](#)

[Section 7 – Course Result Grade Keys](#)

2021 ACADEMIC STATUTE – Sections 1 – 7

Section 1 Introduction

Section 2 Definitions

Section 3 Academic Regulations

Section 4 Awards

Section 5 Special Honour and Recognition Awards *

Section 6 Academic Committee Terms of Reference

Section 7 Course Result Keys

Responsibility: Executive Director: Programmes and Delivery	Owner: Sue Smart	Approval body: NMIT Board
*Responsibility: CE	Owner: Wayne Jackson	Approval body: NMIT Board

Background:

11 November 2020 – 11 January 2021

Staff consulted:

Academic Integrity Team leader (Kim Davies)
ebs administrator (Jeremy D'Herville)
Manager – Learner Services (Julie Bytheway)
SANITI Manager – Alison Hart
Manager – Information and Enrolments (Angela Scott)
Director Māori (Olivia Hall)
Curriculum Director (Susannah Roddick)
Quality Enhancement Manager (Darcy Liddell)

Changes made (throughout all sections, where referred to):

~~Treaty of Waitangi~~ -> **Te Tiriti o Waitangi / The Treaty of Waitangi**

~~Education Act 1989~~ -> **Education and Training Act 2020**

~~Council~~ -> **The NMIT Board**

~~Academic Board~~ -> **Academic Committee**

~~Academic Committee~~ -> **Academic Standards and Quality Committee**

~~Academic Board Appeals Committee~~ -> **Academic Committee (Appeals)**

~~Academic Board Nominations Committee~~ -> **Academic Committee (Nominations)**

~~Executive Director – Learning Teaching and Innovation~~ -> **Executive Director: Programmes and Delivery**

~~Executive Director – Finance, Compliance and Business Intelligence (ED – FCB)~~ -> **Executive Director: Finance and Campus Services / appropriate Executive Director**

~~Executive Director – Customer Experience and Excellence~~ -> **Executive Director: Programmes and Delivery**

~~Director – Māori~~ -> **Executive Director: People and Culture, Ōritetanga, Learner Services (or delegate)**

Links to NMIT Policies – now **permalinks**

~~TANZ~~ -> **eCampus**

Specific changes:

SECTION 1

1:02 Academic Statute list of Sections: deleted from this section.

Moved to **Inside Front Cover**.

Section 1:03 TE TIRITI O WATANGI

updated and added to Section 1 (moved from SECTION 3)

1:05 CONSISTENCY REVIEWS

Added:

NZQA's Consistency Review process is intended to assure stakeholders that even though graduates have completed their qualifications through different programmes they are all achieving the same outcomes at an equivalent standard.

The quality assurance process used applies to New Zealand qualifications at levels 1-6 listed on the New Zealand Qualifications Framework (NZQF).

1.06 REFERENCES

- Education and Training Act 2020
- Privacy Act
- Public Records Act 2005
- Copyright Act 1994
- Health and Safety at Work Act 2015 and associated Regulations
- Principles of Natural Justice – NZ Bill of Rights Act 1990 Section 27(1)
- New Zealand Qualifications Authority - <http://www.nzqa.govt.nz/>
- Ministry of Education - <http://www.education.govt.nz/>
- Tertiary Education Commission - <http://www.tec.govt.nz/>

SECTION 2

Kupu integrated into main section, and words not used in Statute removed.

ALNAT

Deleted: replaced with LNAAT

Cross Credit

The granting of academic credit for a course/courses towards a qualification delivered by NMIT, from outcomes achieved through formal study with at least 80% of comparable learning outcomes, and 100% for competency-based courses. The granting of academic credit from a similar course successfully completed as part of another approved qualification from NMIT or another institution.

eCampus	<p>eCampus NZ Aotearoa</p> <p>A flexible online learning service that works with students' lifestyle to help them achieve their study goals. Programmes are currently offered on the eCampus platform by:</p> <ul style="list-style-type: none"> • Ara Institute of Canterbury (Ara) • Otago Polytechnic (OP) • Universal College of Learning (UCOL) • Nelson Marlborough Institute of Technology (NMIT) • Eastern Institute of Technology (EIT) • Toi Ohomai Institute of Technology • NorthTec
Institute	See Subsidiary An educational institute constituted under the Education Act. [def. TANZ]
ITO	See Transitional ITO
ITP	See Te Pūkenga – NZIST Subsidiary
LNAAT	Literacy and Numeracy for Adults Assessment Tool
Micro-credential	<p>An award that certifies achievement of a coherent set of skills and knowledge; and has a statement of purpose, learning outcomes, and strong evidence of need from industry, employers, iwi and/or the community. They are 5 – 40 credits in size and require Academic Committee approval. [def NZQA]</p> <p>Refer to 'Training Scheme Rules 2012 (Amended 2020) and Guidelines for applying for a training scheme or micro-credential'</p>
Rangatiratanga	The value of treating people with fairness and equity, acknowledging all communities and heritage. To commit to honesty, transparency, fairness and clear boundaries in all interactions
Recognition of Prior Learning (RPL)	<p>Formal assessment and recognition of a students' relevant and current knowledge and skills (achieved through prior learning) to determine achievement of learning outcomes of courses leading to a qualification with the purpose of awarding the learner credit towards that qualification, with at least 80% of comparable learning outcomes per course, and 100% for competency-based courses.</p> <p>RPL leads to credit being awarded for existing skills, knowledge, and attributes acquired without regard for the length, place or method of learning. A process that involves formal assessment of a student's relevant and current knowledge and skills (gained through prior learning) to determine achievement of learning outcomes of a qualification for the purpose of awarding credit towards that qualification. RPL does not include credit recognition and transfer. [def. TANZ].</p> <p>Also referred to as Assessment of Prior Learning (APL)</p>

Standard-Setting Body (SSB)	<p>A collective term that covers Transitional Industry Training Organisations, Workforce Development Councils and advisory groups. These organisations are recognised as the national body that represents a particular field and its experts. For that area, they list qualifications on the New Zealand Qualifications Framework and the following on the Directory of Assessment Standards:</p> <ul style="list-style-type: none"> • Assessment standards • Consent and Moderation Requirements <p>Collectively, the developers of assessment standards are known as standard-setting bodies (SSBs). [def. NZQA] [def. NZQA]</p>
Self-Assessment Report (SAR)	An annual report written by the Curriculum or Business Support team, based on discussion and reflection within that team
Te Pūkenga	The national tertiary education and skills training partner for firms and industries.
TES	Tertiary Education Strategy: a statutory document enabled by the Education and Training Act 2020 that sets out the Government's priorities for education. The TES sets the direction for tertiary education.
Transitional ITO (TITO)	<p>Transitional Industry Training Organisation</p> <p>As defined in clause 52(1) of Part 10 of Schedule 1 of the Education and Training Act 2020 recognised as having transitional responsibility for setting standards and arranging delivery of training for the specific industry sector they represent.</p> <p>They are not education providers but can assess against unit standards within specified fields of the Directory of Assessment Standards [def NZQA]</p>
Workforce Development Council (WDC)	<p>Established under section 363 of the Education and Training Act 2020</p> <p>The functions in relation to the specified industries covered by it are:</p> <ul style="list-style-type: none"> (a) to provide skills and workforce leadership (b) to develop and set standards, capstone assessments and qualifications for specified (c) to provide an advisory and representative role <p>They must work collaboratively with providers, other workforce development councils, NZQA and any relevant regulatory bodies</p>

SECTION 3

3:02 ADMISSIONS AND ENROLMENT

Admission of students to enrol and study at NMIT shall be in accordance with the relevant programme and/or course specific regulations and with [Section 255 of the Education and Training Act 2020](#).

Entry requirements, as published for each programme or course, shall be based on the standard required to successfully complete the course, or qualification **in alignment with the NMIT Entry Requirements Standards and Exceptions**. They will comply with any requirements set by other parties and by law, and shall not constitute an unreasonable barrier to entry.

3.02.1 ~~SPECIAL~~ **ALTERNATIVE ENTRY**

~~In exceptional circumstances applicants who do not meet the academic entry requirements may be granted entry onto a course or programme where they supply documentary evidence to the Curriculum Manager or delegate to satisfy the Academic Committee of their ability to succeed on the course or programme, and where literacy and numeracy skills are sufficient to meet health and safety requirements.~~ **Applicants (including those over 20 years of age) who are unable to evidence that they meet Academic entry requirements, but who can demonstrate acquired skills for tertiary study gained through study, work and/or life experience, may be approved for alternative entry by the appropriate Curriculum Manager (or delegate)**

3.02.8 CANCELLATION OF COURSE OR PROGRAMME

Where it appears to the **Chief Executive and the Executive Management Team** that the number of students enrolled is insufficient to justify delivery of a course or programme, then it may be cancelled, notwithstanding that enrolments have been accepted. In such cases all fees and charges shall be refunded in full.

3.03.1 TRANSFER OF ENROLMENT

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Transfers shall not be approved outside of the dates within which transfers are available for the course or programme except in exceptional circumstances by the ~~Director~~ **Manager** responsible for the Curriculum Area.

~~3.05 TE TIRITI O WAITANGI –~~

moved to Section 1, para 1.03

3.11.7 DISTINCTION OR MERIT FOR QUALIFICATIONS

Clarification: In cases where a student has been awarded one or more course results through Cross Credit or RPL, and where any of these courses are being used to meet the completion requirements for the qualification, if the student has achieved all passes in the B grade range or above, with the exception of **a maximum of one Cross Credit or RPL result (equivalent to 15 credits)** and a minimum of one pass in the A grade range (**equivalent to 15 credits**), this combination can also be used to meet the requirements for Merit.

3.12 RECOGNITION OF ACADEMIC CREDIT

Updated as per updated RAC Policy and Procedure (see working docs for full edits)

3.18.1 LEARNER SERVICES

wellbeing added

Support services table updated to:

LEARNER SERVICES	
Learning Support	<ul style="list-style-type: none"> • Academic writing • Referencing • Research skills • Numeracy and literacy • Study skills • Assessment preparation • Digital and computer skills
Wellbeing and Pastoral Support and Referrals	<ul style="list-style-type: none"> • Health services • Counselling • Accommodation • Managing stress • Managing finances • Culture shock and homesickness • Settling into the local regions
Equity Support	<ul style="list-style-type: none"> • Adapted learning materials Reader/Writer services • Case-by-case support • Assistive Technology • NZ Sign Language Interpreters • Disability Car Parking • Evacuation planning

SANITI's services updated to:

Independent Support and Advocacy	<ul style="list-style-type: none"> • Hardship support • Financial advice • StudyLink assistance • Academic issues • Problem resolution • Wellbeing support
Events	<ul style="list-style-type: none"> • Campus Culture • Student orientations • Social and graduation functions • International Activities
Employment	<ul style="list-style-type: none"> • CV and cover letter preparation • Online profile assistance • Interview coaching and preparation

	<ul style="list-style-type: none"> Career and pathway information
Representation	<ul style="list-style-type: none"> Student focus groups Programme Representatives Student Executive Student President

3.20 THE LEARNER VOICE

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NMIT and SANITI engage and respond to the needs of students. The coordination and administration of all formal NMIT and SANITI Student Surveys is managed centrally to ensure the independence and standardisation of the process. Student satisfaction ratings are reported in the NMIT and SANITI Annual Reports. The response rates and information gathered from these surveys are used by Programme Areas, Business Support Areas and SANITI to evidence best practice or to inform and give direction to areas for improvement.

Section 4

Committee names updated.

p. 4

Students are able to graduate from a Programme under the Programme Regulations, which were in force at the time of their enrolment or from subsequent Programme Regulation versions where they meet all completion requirements.

p. 5

Non-Formal Awards include:

- Record of Participation
- Record of Achievement Learning
- Training Schemes
- Micro-credentials

p.6

Training Schemes and Micro-credentials will be approved by the Academic Board Committee under delegated authority from the Council NMIT Board and by NZQA

Section 5

In accordance with the QMS policy, this document was reviewed and updated by the NMIT Board secretary (Elizabeth Bean) and the Chief Executive. (Wayne Jackson).

To reflect the changes following the creation of Te Pūkenga and the abolition of the NMIT Council, the following changes were made:

~~Academic Board Nominations Committee~~ -> Academic Committee (Nominations)

The NMIT Board does not have an executive committee: therefore

AWARD	APPROVING AUTHORITY
Honorary Fellow	NMIT Board on the recommendation of the Chief Executive or the Executive Committee of Council NMIT Board

Section 6

All Committee names updated since creation of NMIT Ltd. (1.04.2020) and memberships changed to:
Academic Committee

MEMBERSHIP

STANDING MEMBERS:

- ~~Chief Executive~~
- Executive Director: Programmes and Delivery (Chair)
- Director – Marlborough
- Curriculum Directors (2)
- Executive Director – People & Culture, Ōritetanga, Learner Services (or delegate)
- Curriculum & Academic Registry Team Leader
- Curriculum Managers (2)
- Quality Enhancement Manager
- Academic Integrity Team Leader
- Academic Advisors (non-voting)
- Academic and Quality Administrator (Secretary, non-voting)

APPOINTED MEMBERS:

- At least two Academic Staff Members
- Two NMIT Students

Academic Standards and Quality

MEMBERSHIP

- Standing Members:
 - ~~Chief Executive~~
 - Executive Director: Programmes and Delivery (Chair)

- **Executive Director: People & Culture, Ōritetanga, Learner Services (or delegate)**
- Two Curriculum Directors, or delegate
- Ten (10) Curriculum Managers or designated delegates e.g. PASM, SASM or Programme Coordinator
- Academic Integrity Team Leader
- Quality Enhancement Manager
- Business Support Representative
- Student Advocate (SANITI) or Student Representative
- Academic and Quality Administrator (Secretary; non-voting member)

Co-opted members as required

Section 7

Reviewed and updated by ebs administrator (Jeremy D’Herville) and Academic Integrity Leader (Kim Davies)

TANZ = **eCampus New Zealand – previously** Tertiary Accord of New Zealand eCampus . . .

Throughout:

CC	Cross Credit -Course credited awarded on the basis of a <u>similar</u> course already completed as part of another approved qualification from NMIT or other institution
CT	Credit Transfer - Course credited awarded on the basis of the <u>same</u> course already completed in another qualification at another institution
RPL	Pass - Recognition of Prior Learning - Course awarded on the basis of existing skills, knowledge and attributes

~~CO-NMIT-02~~ **deleted. last used on old Aviation and Business Administration programmes**

CO-NMIT-05

CO-WINT-01

CO-ARA-01- ~~This Course Result Key is used in the following programme: Bachelor of Nursing~~

CO-UCOL-01 ~~This Course Result Key is used in the following programmes:~~
~~National Certificate in Engineering – Fabrication (Level 4)~~
~~National Certificate in Mechanical Engineering (Level 4)~~

CO-TANZ-01

CO-TANZ-02

Achievement ARA 01 / AC-ARA-01

~~AC-NMIT-01~~, deleted. No longer used

~~AC-NMIT-02~~, deleted. No longer used

~~AC-NMIT-03~~, deleted. No longer used

~~AC-NMIT-04~~, deleted. No longer used.

AC-NMIT-05

AC-NMIT-06

~~AC-NMIT-07~~ deleted. last used on old fitness programmes

AC-NMIT-09

AC-NMIT-10 This Course Result Key is used in the following programme:
Diploma in Marine Engineering Class 3 and Class 4

AC-NMIT-11

W	Withdrawn from course
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AC-NMIT-12 This Course Result Key is used in the following programmes:
~~New Zealand Certificate in Business (Administration and Technology) Level 3~~
~~New Zealand Certificate in Business (Administration and Technology) Level 4~~

AC-NMIT-13 This Course Result Key is used in the following programmes:
~~Certificate in Nursing (Competence Assessment Programme) (Level 7)~~

~~NZBED 02~~ / AC-NZDE-02

AC-ARA-01

~~AC-NZQA-01~~ deleted. last used on old NZ Dip Business

AC-TANZ-01

AC-TANZ-02

Implementation Plan: Following amendment, the policy will be made available on the NMIT intranet and the NMIT website. All staff will be advised.



Te Kaupapa: Remuneration & Appointments Committee Terms of Reference

1. PURPOSE:

Function:	For Approval
Nā:	Patrick Smith, Chair Remuneration & Appointments Committee
Te rā:	12 February 2021
Purpose:	<p>The purpose of this paper is</p> <p>To seek NMIT Board approval for the Terms of Reference for the Remuneration & Appointments Committee.</p>
Recommendation(s):	<p>It is recommended that the NMIT Board resolve to:</p> <p>Approve the Terms of Reference for the Remuneration & Appointments Committee.</p>

2. ATTACHMENT

Terms of Reference: Remuneration & Appointments Committee.



NELSON MARLBOROUGH INSTITUTE OF TECHNOLOGY LIMITED REMUNERATION & APPOINTMENTS COMMITTEE TERMS OF REFERENCE

1. Constitution

The Constitution of Nelson Marlborough Institute of Technology Limited ("NMIT") endorses the Remuneration & Appointments Committee.

2. Purpose

The purpose of the Remuneration & Appointments Committee is to;

- a. Determine and review the Company's policy on remuneration.
- b. Review and approve the policies on professional development, performance management and succession planning of the CEO.
- c. Recommend and oversee the CEO's appointment.

3. Responsibilities

The responsibilities of the Remuneration & Appointments Committee are to determine and agree with the Board the framework or broad policy for the remuneration of the Employees in consultation with Te Pūkenga. Remuneration specifics will be determined by the CEO.

The Remuneration & Appointments Committee shall determine, review and make a recommendation to the Board (unless exceptional circumstances apply) annually following the end of each financial year the remuneration of the CEO within the terms of the agreed policy.

The Remuneration & Appointments Committee shall also consider such other topics as directed to by the Board.

4. Membership

The members of the Remuneration & Appointments Committee will be Directors and be appointed and removed by the Board.

The Remuneration & Appointments Committee will comprise at least three Directors.

The chairperson of the Remuneration & Appointments Committee will be appointed by the Board and will not be the same as the Chairperson of the Board.

5. Meetings

A quorum of members of the Remuneration & Appointments Committee shall be all or at least two members.

All or any of the members of the Remuneration & Appointments Committee may participate in a meeting of the Committee by means of telephone conference or any communication equipment which allows all persons participating in the meeting to hear each other. A person so participating shall be deemed to be present in person at the meeting and shall be entitled to vote.

If a member of the Remuneration & Appointments Committee is not available for a critical meeting the Committee may co-opt another Director for that particular meeting.

The Remuneration & Appointments Committee may have in attendance such members of management and such other persons, including external advisers, as it considers necessary to provide appropriate information and advice as may be invited from time to time.



Reasonable notice of meetings and the business to be conducted shall be given to the members of the Remuneration & Appointments Committee and all other members of the Board and such other persons as the Board directs.

The Remuneration & Appointments Committee will meet at least twice per year having regard for the CEO's remuneration and performance review matters. A meeting of the Remuneration & Appointments Committee may be requested by the chairperson of the Committee or the Board at any time if they consider it necessary.

6. Authorities

The Remuneration & Appointments Committee is authorised to investigate any activity covered by these terms of reference. The Remuneration & Appointments Committee members may communicate with any relevant Senior Manager, with the knowledge of the CEO, to seek any information they require in order for the Remuneration & Appointments Committee to carry out its role.

The Remuneration & Appointments Committee is authorised to obtain, at the Company's expense, outside legal or other independent information and professional advice (including independent remuneration consultants, market surveys and reports), and to consult with such management and executive search consultants and other outside advisers and organisations with relevant experience and expertise, as it thinks necessary for carrying out its responsibilities.

7. Reporting

After each Remuneration & Appointments Committee meeting the chairperson of the Remuneration & Appointments Committee will report the Remuneration & Appointments Committee's findings and recommendations to the Board.

The minutes of all Remuneration & Appointments Committee meetings will be prepared and circulated to members of the Remuneration & Appointments Committee and other members of the Board. Minutes shall include the proceedings and resolutions of each meeting including the names of all those present. Extracts from the minutes may be made available to such other persons as the Board directs, as may be necessary to enable them to properly carry out their functions.

The chairperson of the Remuneration & Appointments Committee will present an annual report to the Board summarising the Remuneration & Appointments Committee's activities during the year and any related significant results and findings.

8. Accountability

The Board reviews annually the Remuneration & Appointments Committee's performance against these terms of reference. The Board reviews annually these terms of reference.

Approved by NMIT Board by resolution on

.....
Chairperson



Te Kaupapa: NMIT Board Code of Conduct

1. PURPOSE:

Function:	For Approval
Nā:	Tracy Johnston, Deputy Chair
Te rā:	12 February 2021
Purpose:	<p>The purpose of this paper is:</p> <p>To seek NMIT Board approval for the NMIT Board Code of Conduct. This Code has been that this is adapted from the Te Pūkenga Council Code of Conduct. It is intended to provide a framework for the Board to carry out its roles and responsibilities to a standard consistent with good practice within public entities, and to set the tone for behaviour within NMIT.</p>
Recommendation(s):	<p>It is recommended that the NMIT Board resolve to:</p> <p>Approve the NMIT Board Code of Conduct.</p>

2. ATTACHMENT

NMIT Board Code of Conduct.



NELSON MARLBOROUGH INSTITUTE OF TECHNOLOGY LIMITED BOARD CODE OF CONDUCT

1. Purpose

As representatives of Nelson Marlborough Institute of Technology (NMIT), how Board members behave is important. Board members must act with a spirit of service to the community and meet the same high standards of integrity and conduct in everything they do.

This policy provides a framework for Board and Board members to carry out their roles and responsibilities to a standard consistent with good practice within public entities, and to provide a framework that “sets the tone from the top” within NMIT.

2. Scope

This policy applies to all Directors of NMIT as a subsidiary company of Te Pūkenga.

3. Principles and Expectations

The principles in this policy should guide Board members' behaviour in performing their roles.

4. Honesty, integrity and transparency

- Act with honesty and integrity in approaching their roles and responsibilities.
- Conduct the business of NMIT with appropriate openness and transparency.
- Undertake Board duties and responsibilities in a manner that respects other Board members and the staff of NMIT.
- Ensure that actions taken in the performance of Board duties do not discredit themselves, any other Board member or staff at NMIT, NMIT as a tertiary institute or the parent Te Pūkenga.
- Ensure that fees and expenses are claimed in accordance with the Cabinet Office Fees Framework and Te Pūkenga Council Fees and Expenses Guide.

Act in the best interests of NMIT

- Diligently prepare for, and attend, Board meetings.
- Maintain a good level of competence and knowledge, including remaining familiar with NMIT activities and its operating environment to undertake the roles and responsibilities of a Board member.
- Apply their knowledge, skill and experience with reasonable care and diligence.
- Not engage in activities which could affect their judgement or objectivity as a Board member, nor engage in any activities that could damage the integrity and reputation of NMIT or Te Pūkenga.
- Support the Chief Executive in the management and operation of NMIT in accordance with NMIT's functions and charter, current statement of intent and current statement of performance expectations, and as expressed in any investment and/or strategic plan and budget.

5. Act fairly and impartially

- Observe independence and objectivity in carrying out the roles and responsibilities of the Board.
- Avoid business connections, affiliations and personal connections that could impact negatively on involvement in Board discussions and decisions.
- Declare and manage any conflicts of interest in accordance with the Education Act 1989, NMIT's Related parties and Conflicts of Interest Policy and the mitigation strategies determined by the Board.



- Not be present during any deliberation, nor take part in any decision, of the Board with respect to a matter in which the Board member has an interest, unless the Board otherwise decides.

6. Use Council information and Council position appropriately

- Respect the confidentiality of information received as a Board member and use it only for proper purposes.
- Decline gifts, benefits and positions that may compromise independence or create perceived obligations.
- Comply with NMIT's Fraud, Media and Social Media Policies.
- Accept responsibility for the decisions and actions of the Board even if they are contrary to a personal view.

7. Exercise due care and diligence

- Work to improve the performance and efficiency of NMIT and use its resources carefully and only for intended purposes.
- Properly manage and utilise the funding available to NMIT and make decisions in line with Te Pūkenga expectations (NZIST Letter of Expectations 1 April 2020).
- Exercise due care and diligence when considering issues and making decisions by understanding the educational, financial and strategic implications.
- Understand and enquire into the financial and other information provided to the Board.

8. Compliance with laws and policies

- Comply with all applicable laws, including the Education Act 1989 and Crown Entities Act 2004, and public accountability obligations.
- Ensure NMIT operates in a manner that is consistent with its functions and charter, current statement of intent and current statement of performance expectations.

9. Board and Chief Executive expectations

Chief Executive's expectations of the Board

Board members:

- Demonstrate respect, trust, and openness in relationships.
- Set clear expectations of the Chief Executive articulated primarily through a position description and annual performance agreement.
- Conduct regular performance progress reviews of the Chief Executive and provide feedback against the performance agreement.
- Constructively challenge and "stretch" the Chief Executive and act as the "critical friend" of the Chief Executive.
- Are accessible and available to the Chief Executive and for NMIT activities.
- Act with a no surprises, no ambushes policy.
- Are willing to clarify matters outside of Council meetings.
- Provide the Chief Executive with a clear understanding of the scope and responsibilities of the Board's governance roles.
- Board members consider the interests of the institution of primary importance and leave personal interests outside of meetings.
- Are informed and committed in a way that ensures the Chair and Board "add value".
- Implement and abide by good meeting processes.



Council's expectations of Chief Executive

The Chief Executive:

- Demonstrates respect, trust, and openness in relationships.
- Provides relevant information in a timely, accurate and understandable way that enables robust Board discussion and decision making.
- Informs the Board of situations that may involve non-compliance with Board policy or involve legal conflict/dispute relating to NMIT.
- Informs the Board of significant trends, issues and their implications that may impact on Board policies, decisions and required actions.
- Includes the Board in key initiatives/decisions and ensures that proposals are fully explained and supported by objective analysis and alternative perspectives.
- Demonstrates approachability and accessibility (open door) to staff, stakeholders and Board members.
- Supports the Chair to create a structure and environment that enables effective governance to occur.
- Provides induction/orientation of Board members and ongoing support and guidance for Board members.
- Interacts with the Chair in a similar manner to that which the Chief Executive expects from direct reports.
- Demonstrates behaviour that mirrors NMIT values and a strong commitment to NMIT's functions and charter, current statement of intent and current statement of performance expectations, and any strategic directions and Investment Plan of NMIT.
- Supports the Chair to identify skill gaps around the Board table and to proactively address these.
- Demonstrates absolute integrity and professionalism in all activities and actions as Chief Executive.

Approved by NMIT Board by resolution on 12 February 2021.

.....
Chairperson

Policy Owner: CE
Policy Section Governance
Policy Review frequency: Annually
Last Reviewed:



Te Kaupapa: Te Pūkenga Group Debt Financing

Function:	For Approval
Nā:	Daryl Wehner, Chair
Te rā:	12 February 2021
Purpose:	<p>The purpose of this paper is:</p> <ol style="list-style-type: none"> 1. To provide the NMIT Board with background on group debt financing arrangements. 2. To provide the NMIT Board with the necessary documents and transactions for approval.
Recommendation(s):	It is recommended that the NMIT Board pass resolutions, which provide for the approval (by its board) of NMIT entering into the proposed transactions and documents.

Overview and Summary

Te Pūkenga expects that the new arrangements with the new lender will take effect on 1 March 2021. This means that transactions and documents will need to be approved by each Te Pūkenga Subsidiary Board and signed on behalf of each Te Pūkenga Subsidiary on or before 26 February 2021. The following documents are attached.

#	Document
Briefing paper	
AA.1	Bell Gully Explanatory Note
Draft transactional documentation <i>(NB: still subject to negotiation with the Lender)</i>	
A.1	Senior Facility Agreement
A.2	Group overdraft and set-off agreement
A.3	Master intragroup loan agreement
Corporate authorisations	
B.1	Shareholder's resolution and entitled person's consent (signed on behalf of Te Pūkenga on 5 February 2021)
B.2	Template Subsidiary Board Resolutions
B.3	Draft form of director's certificate
Te Pūkenga Group documents	
C.1	Group Treasury Policy
C.2	Draft OFP Direction
C.3	Intragroup borrowing consent

Explanatory note

The pack includes an explanatory note prepared by Bell Gully (legal advisers to Te Pūkenga) on the Financing and Banking Arrangements. We recommend that you read this note first, as it summarises the proposed arrangements and outlines the documentation that each Te Pūkenga Subsidiary will be entering into as part of the transactions. It also sets out the timetable (for negotiation and finalisation of documents) and addresses certain questions that directors of Subsidiaries may have in relation to the Financing and Banking Arrangements.

Template written board resolutions

Also included in the pack are template written board resolutions, which provide for the approval (by its board) of each Te Pūkenga Subsidiary entering into the proposed transactions and documents. These written resolutions will include an authorisation for any two directors to approve and execute the final form financing documentation on behalf of the Te Pūkenga Subsidiary. The form of the resolutions reflect particular provisions of a certificate that will need to be provided to the Lender by a director of each Te Pūkenga Subsidiary.

Next steps

Once each board has considered the pack of materials, to proceed with the transactions, all of the directors of each Te Pūkenga Subsidiary will need to sign the written board resolutions. Once the written board resolutions have been signed by all directors, you will need to confirm to Bell Gully that those resolutions have been executed, ideally by **16 February 2021**. Please send your confirmations to josephine.fok@bellgully.com and Luke.Higgins@bellgully.com.

Once the financing documentation is in a final form, each Te Pūkenga Subsidiary will be provided with a second pack of documents (prior to the end of February). This will include execution versions of the financing documents and director's certificate required to be executed on behalf of each Te Pūkenga Subsidiary.

Further information and queries

Te Pūkenga will be holding a workshop for Te Pūkenga Subsidiary CFOs on 9 February, so they can be briefed on the proposed Financing and Banking Arrangements and have an opportunity to ask questions. The Interim Director Finance will also be attending the Te Pūkenga Subsidiary Chairs' Meeting on 9 February to brief them on the arrangements. If you have any further questions in relation to the Financing and Banking Arrangements, please send them to Phillip.Jacques@tepukenga.ac.nz. If there is sufficient interest from Subsidiary directors, an online workshop will be held to address queries.

MEMORANDUM

BELL GULLY

TO **Te Pūkenga**

FROM **Josephine Fok / Amon Nunns / Hugh Kettle**

COPY TO **Boards of Te Pūkenga Subsidiaries**

MATTER NO. 403-9567

DATE 6 February 2021

Te Pūkenga - Group Debt Financing and Transactional Banking 2021 Arrangements

1. Introduction

- 1.1 Te Pūkenga is planning to enter into group-wide debt financing and transactional banking arrangements as part of its establishment of a central treasury function. At this stage, Te Pūkenga expects that the new arrangements with a new lender will take effect on 1 March 2021.
- 1.2 Bell Gully has been engaged by Te Pūkenga to assist with the preparation and negotiation of the financing and transactional banking arrangements and associated documents. This note summarises the proposed arrangements and outlines the documentation that each Te Pūkenga subsidiary (**Subsidiary**) will be entering into on or before 26 February 2021. It also sets out the timetable and addresses certain questions that directors of Subsidiaries may have in relation to the documentation.
- 1.3 As part of the arrangements, it is proposed that Te Pūkenga and each Subsidiary will adopt a new Group Treasury Policy. Under that policy, new approval thresholds and delegations will apply to each member of the Group in relation to finance functions. To align the group-wide delegations, it is anticipated that Te Pūkenga will issue a new Operational and Financial Parameters Direction (**OFD Direction**) and update its Delegations Policy. Each Subsidiary's internal delegations policy will also need to be updated accordingly.

2. Summary of financing and transactional banking arrangements

- 2.1 On 18 November 2020, Te Pūkenga released a Request for Proposals in relation to the appointment of a new lender to provide debt financing and transactional banking services to Te Pūkenga and its Subsidiaries (the **Financing and Banking Arrangements**). Following that procurement process, Westpac has been approved by the Te Pūkenga Council as the new lender (**Lender**). The proposed commencement date of the new Financing and Banking Arrangements is 1 March 2021 (**Commencement Date**).
- 2.2 The proposed Financing and Banking Arrangements are summarised below.

Debt financing

- 2.3 Te Pūkenga will establish an internal group funding structure as part of its central treasury function. This approach means Te Pūkenga, as borrower, will raise external finance (under a Senior Facility Agreement with the new Lender) and then provide financing to relevant Subsidiaries under intragroup loan arrangements. Subject to agreement with Westpac, it is proposed that Crown debt will be retained, but any external financial debt with third party financiers currently held by Subsidiaries will be repaid within 90 days of the Commencement Date, through borrowings under the new intragroup loan arrangements. This is still being negotiated with Westpac.

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- 2.4 The Senior Facility Agreement provides a NZ\$150,000,000 revolving facility to Te Pūkenga, to be used for liquidity management, working capital and general group borrowing purposes.
- 2.5 A cross guarantee and a negative pledge (i.e., a commitment that security interests will not be granted over material assets) from each Subsidiary will support the new Senior Facility Agreement and financing arrangements. No security is required to be provided by Te Pūkenga or any Subsidiaries under the Financing and Banking Arrangements.
- 2.6 Under cash pooling and intra-group loan arrangements, the cash holdings of Subsidiaries (other than "Ring-Fenced Amounts") will be pooled. These funds will be invested with Te Pūkenga, with the intention of receiving interest, but to be used as a source of intragroup funding to offset in part external borrowing requirements. Interest will be paid by Te Pūkenga to the 'investor' Subsidiaries and interest will be received (along with debt repayments) from the 'borrower' Subsidiaries.
- 2.7 Ring-Fenced Amounts will sit outside of this structure. These are legacy cash holdings from the predecessor ITP structure and in accordance with the Ring-Fencing Policy, are only used for projects and capital expenditure in the relevant region. In accordance with the Ring-Fencing Policy, these funds may be held by either Te Pūkenga or the specific Subsidiary.

Transactional banking services

- 2.8 The intention is to transition each of the Subsidiaries to a single transactional banking platform for the Te Pūkenga group, on or after the Commencement Date. Day-to-day cash and working capital management will remain the responsibility of the Subsidiaries, whereby Subsidiaries receive fee income and pay operating costs such as staff payroll. Further detail on responsibility for treasury functions and finance decision making as it relates to each Subsidiary is set out in the new Group Treasury Policy, which has been adopted by Te Pūkenga at the 2 February Council meeting, effective on and from the Commencement Date.

3. Consents, approvals and legislative compliance

Consents required under the Education and Training Act 2020

- 3.1 Section 282(4) of the Education and Training Act 2020 (ETA) provides that an "institution" (including Te Pūkenga), may not exercise any of the following powers without the written consent of the Secretary for Education (unless the consent of the Secretary is not required under s 282(5)):
 - (a) the power to borrow, issue debentures, or otherwise raise money; and
 - (b) the power to mortgage or otherwise charge assets or interests in assets.¹
- 3.2 Section 328 of the ETA specifically provides that unless s 282(5) applies, a Te Pūkenga Subsidiary may not exercise any of the powers in s 282(4) unless it has first notified Te Pūkenga and Te Pūkenga has obtained the consent of the Secretary. This restriction is reflected in the Constitution for each Subsidiary and the OFP Direction.

¹ Section 282(5) of the ETA provides that an "institution" may sell or otherwise dispose of, or mortgage or otherwise charge, an asset or an interest in an asset, within certain thresholds set by the Minister, and borrow, issue debentures, or otherwise raise money, where the amount to be borrowed, the amount of the debentures, or the amount to be raised, is within certain thresholds set by the Minister.

- 3.3 Te Pūkenga has applied for the consent of the Secretary for Education for Te Pūkenga to exercise the power to borrow money pursuant to section 282(4) of the ETA, with respect to the entry of Te Pūkenga as borrower under the Senior Facility Agreement (**New Borrowing Consent**). TEC has confirmed that it will work with the Ministry of Education to progress the New Borrowing Consent, noting the proposed commencement date of 1 March 2020. First drawdown under the new facility agreement will be conditional upon obtaining the New Borrowing Consent.
- 3.4 Under the section 284(4) consent granted by the Secretary for Education on 9 September 2020 (**Intra-group Borrowing Consent**), the Secretary consents to Te Pūkenga and its subsidiaries exercising powers under s 282(4), “where the exercise of those powers does not affect the overall balance sheet of the group comprising NZIST and its subsidiaries.” Subject to compliance with those terms, this consent permits transactions under the proposed intragroup loan arrangements without needing to apply for Secretary consent for each separate transaction. A copy of this consent has been provided to you alongside this explanatory note as part of the “First Subsidiary Pack”.
- 3.5 Schedule 4 of the Crown Entities Act 2004 (**CEA**) sets out:
- (a) at Part 1, provisions of the CEA that apply to all tertiary education institutions; and
 - (b) at Part 2, additional provisions that apply to Te Pūkenga.
- Notably, sections 159 to 164 of the CEA, which set out provisions relating to the acquisition of financial products, borrowing, guarantees, indemnities and derivatives, are not applied by schedule 4 of the CEA. It is likely that this is to avoid overlap with section 284 of the ETA.
- 3.6 In our view, the entry of each Te Pūkenga Subsidiary into the financing documents complies with all relevant requirements of the CEA and the ETA.
- 3.7 For completeness, it is also noted that Te Pūkenga does not have a current statement of intent. On 4 February 2021, it provided a draft statement of intent to its responsible Minister in accordance with the process set out in section 146 of the Crown Entities Act 2004.

Subsidiary governance framework consents

- 3.8 The constitution adopted by each Te Pūkenga Subsidiary (**Constitution**) provides at clause 4 that each Subsidiary must, to the extent practicable, give effect to:
- (a) the charter of Te Pūkenga (which is set out at Schedule 13 of the ETA); and
 - (b) the functions of Te Pūkenga (see section 315 of the ETA).
- 3.9 The board of each Subsidiary will need to consider whether the entry of the Te Pūkenga Subsidiaries into the financing documents:
- (a) is for the purpose of performing, or assisting Te Pūkenga to perform, the functions of Te Pūkenga; and
 - (b) is undertaken as part of giving effect to the charter of Te Pūkenga.
- 3.10 The Constitution provides at clause 7.1 that each Reserved Matter set out in Schedule 2 of the Constitution requires the prior written approval of Te Pūkenga. Clause 7.2 provides that

Te Pūkenga may issue from time to time an OFP Direction that specifies, amongst other things:

- the applicable thresholds or financial limits for categories of transactions, or actions, which require approval by Te Pūkenga as Reserved Matters; and
- restrictions or parameters applicable to the Subsidiary in respect of operational matters.

- 3.11 Schedule 2 of the Constitutions and the current OFP Direction provide that each Te Pūkenga Subsidiary must obtain the consent of Te Pūkenga for certain Reserved Matters. Most relevantly, these include:

Reserved Matter under schedule 2 of Subsidiary Constitution requiring Te Pūkenga approval	OFP Direction threshold
New borrowings: the incurring by the Company of any new borrowing or any other indebtedness or liability in the nature of borrowing (including entering into any finance leases) in excess of the thresholds and/or financial limits specified in its current OFP Direction.	Zero (for borrowing or any other indebtedness or liability in the nature of borrowing which is not a finance lease)
Drawdown on existing debt facilities: drawing-down from any debt or borrowing facilities (in a transaction, or series of related transactions) in excess of the thresholds and/or financial limits, or in advance of the budgeted draw-downs, in each case as specified in its current OFP Direction.	Any amount that would result in budgeted debt draw-downs for the financial year being equal to or greater than 105% of budgeted debt draw down-downs for the financial year
Borrowing limits: the approval of new borrowing limits in relation to any existing debt or borrowing facilities.	No threshold (i.e. must obtain Te Pūkenga approval)

- 3.12 At the Council meeting of 2 February 2021, the Council of Te Pūkenga has approved (as required by the Constitution of each Subsidiary and the OFP Direction) the entry of the Te Pūkenga Subsidiaries into the financing documents. This approval is to be confirmed in a shareholder's resolution and entitled person's consent issued by Te Pūkenga to each Subsidiary. On this basis, in our view the entry of the Te Pūkenga Subsidiaries into the financing documents will comply with the requirements of the Constitution of each Subsidiary and the OFP Direction.

4. **Process for execution of documents by Te Pūkenga Subsidiaries and Indicative Timetable**

- 4.1 The Council of Te Pūkenga has approved the Financing and Banking Arrangements at the Council meeting on 2 February. The Council was also provided the most recent advanced draft versions of the financing documents for their consideration (to the extent available). Te Pūkenga and Westpac will be negotiating and finalising the form of the financing documents over the next few weeks, as set out in the indicative timetable below. As the final form financing documents will need to be executed by Te Pūkenga prior to the next Council meeting in March 2021, the Council of Te Pūkenga has authorised two Council members to approve the final form of the financing documents and sign those documents on behalf Te Pūkenga. The final signed versions of the financing documents will be tabled and noted at the March Council meeting.
- 4.2 As the timetabling of the February board meeting for each Te Pūkenga Subsidiary may not align with the timetable for the finalisation of the financing documents, a similar process is proposed for the approval of the financing documents by the board of each Subsidiary. It is proposed that the board of each Subsidiary will approve the entry of each Subsidiary into the

Financing and Banking Arrangements and the specified financing documents by written resolution and authorise two directors to approve the final form of the financing documents and sign those documents on behalf that Te Pūkenga Subsidiary.

4.3 Further detail is set out in the following timetable:

Date	Item and BG comments
Tues 2 February 2021	Te Pūkenga Council meeting.
Wed 3 February to Fri 6 February	<p>First pack of documents to be provided to Subsidiaries (First Subsidiary Pack). This will include:</p> <ul style="list-style-type: none"> • This explanatory note on financing arrangements • Drafts of financing documentation, where available (see table in section 5) • Draft director's certificate • Shareholder's resolution and entitled person's consent • Template written resolutions of the Subsidiary board • The Intra-group Borrowing Consent <p>Please see section 5 of this note for further detail on these documents.</p>
Mon 8 February to Tues 16 February 2021	<p>Subsidiary boards to execute written resolutions provided in First Subsidiary Pack.</p> <p><i>(NB: We recommend using written resolutions, with pdf counterparts to be circulated by email and signed by directors (either by wet-ink or by the authorised application of each director's electronic signature). In this case, written resolutions would be preferable to holding a physical board meeting, or a board meeting using audio-visual means, as those board meetings would need to be notified in accordance with the requirements of the Local Government Official Information and Meetings Act 1987. We think this approach will be easiest, as we understand that not all Subsidiaries are planning to hold a board meeting in early February).</i></p> <p>The written resolutions will include an authorisation for any two directors to approve and execute the final form financing documentation on behalf of the Te Pūkenga Subsidiary.</p> <p>Each Te Pūkenga Subsidiary to confirm to Bell Gully that the written board resolutions have been signed by all directors.</p> <p>Note: The written board resolutions must be signed before the relevant Te Pūkenga Subsidiary can enter into the Financing Documents.</p>

Date	Item and BG comments
Tues 16 February 2021	Target date for financing documents to be in agreed form. Note that this date is dependent on the finalisation of documents with the Lender.
Wed 17 February to Thurs 25 February 2021	<p>Once the financing documents are in agreed form, Bell Gully to send out second pack of documents to Te Pūkenga Subsidiaries (Second Subsidiary Pack). This will include:</p> <ul style="list-style-type: none"> • Execution versions of financing documents • Execution versions of director's certificate • Marked versions of those documents, to show any changes made since the First Subsidiary pack. <p>To the extent that additional board resolutions are required to reflect the final form of the Financing Documents negotiated with the Lender, we will provide supplementary written board resolutions.</p> <p>The financing documents and director's certificate need to be executed by 2 directors from each Subsidiary, so the Subsidiary should ensure that at least 2 directors are available during this period to execute documents.</p> <p>All executed documents to be returned to Bell Gully.</p>
Fri 26 February 2021	<p>All financing documents must be executed by Te Pūkenga and Subsidiaries by this date and provided to legal counsel for the Lender.</p> <p>Lender to execute financing documents, following issue of an opinion from their legal counsel.</p>
1 March 2021	Commencement Date – first drawdown by Te Pūkenga under new debt facility.
March 2021	Execution of finalised financing documentation to be noted at Subsidiary Board meetings and Council meeting.

5. **Draft Financing Documentation and Te Pūkenga Group Documentation**

- 5.1 The table below sets out the Financing Documents and Corporate Authorisations that the Te Pūkenga Subsidiaries will be a party to, together with a brief summary of each document and comments from Bell Gully. The middle column indicates whether drafts of those documents are included in the First Subsidiary Pack for review by the boards of the Te Pūkenga Subsidiaries. Please note that the draft versions provided are still subject to negotiation with the Lender.

#	Document	Draft included in First Subsidiary Pack	Summary and comments from BG
A. Financing Documents			
1.	Senior Facility Agreement (including cross-guarantee and negative pledge provisions), including supplemental deed for Subsidiaries	✓	<ul style="list-style-type: none"> This document sets out the details and terms of the senior loan provided by the Lender to Te Pūkenga. The proceeds of this loan will (in-part) be on-lent to each Subsidiary via an Intragroup Loan Agreement (see below). Each Subsidiary will only sign a supplemental deed, to accede to the Senior Facility Agreement as a new guarantor. Please see section 6 below for further detail on the effect of the cross-guarantee and negative pledge.
2.	Overdraft and Set-off Agreement	✓	<ul style="list-style-type: none"> This agreement provides for the combination of the notional or physical cash credit and debit positions of Subsidiaries' into one account, allowing Te Pūkenga to deploy cash to the best possible effect across the group. This document may include a cross-guarantee from the Subsidiaries.
3.	Intragroup Loan Agreement	✓	<p>There are 2 documents governing the terms of each intragroup loan under the new arrangements: the Master Intragroup Loan Agreement (the MILA) and a Specific Terms Letter relating to a particular loan advance.</p> <p>MILA</p> <ul style="list-style-type: none"> Te Pūkenga and each Subsidiary will be parties to the MILA. The MILA sets out the common terms upon which each loan will be provided by Te Pūkenga to a Subsidiary. <p>Specific Terms Letter</p> <ul style="list-style-type: none"> A Subsidiary may request a loan from Te Pūkenga by providing Te Pūkenga a completed copy of a Specific Terms Letter. The Specific Terms Letter sets out the details of the requested loan, such as loan amount, interest rate and maturity date. The only parties to a Specific Terms Letter will be Te Pūkenga and the relevant Subsidiary. The Specific Terms Letters are not shared across the group.

#	Document	Draft included in First Subsidiary Pack	Summary and comments from BG
			<ul style="list-style-type: none"> The form of the Specific Terms Letter is set out in Schedule 2 of the MILA. The maximum aggregate borrowing limit for each Subsidiary under the Intragroup Loan Agreement was separately approved by Council.
4.	Westpac's transactional banking documentation	✗	<ul style="list-style-type: none"> The transactional banking documentation will set out the terms on which the Lender will provide day-to-day transactional banking services to each Subsidiary. This documentation will be prepared and provided by Westpac. We understand it includes an account opening form, a Letter of Accession, Service Orders and various forms for online access, individual credit card holder applications and merchant forms. Subsidiaries will be able to select transactional banking products based on their requirements.
B. Corporate Authorisations			
5.	Draft director's certificate	✓	<ul style="list-style-type: none"> A director's certificate in a customary form, signed by a Director of each Subsidiary, confirming that all consents and authorisations have been obtained to allow the relevant Subsidiary to enter into the applicable transaction documents. Please refer to section 3 of this explanatory note regarding some of the confirmations set out in that certificate regarding compliance with legislation and the Subsidiary's governing documents. This certificate is required to be provided to the Lender and its legal counsel.
6.	Template written resolutions of the Subsidiary boards	✓	<ul style="list-style-type: none"> Each Subsidiary's board will pass written board resolutions: <ul style="list-style-type: none"> approving the Subsidiary's entry into the applicable transaction documents; authorising two directors to finalise and execute the financing documentation on behalf of the Subsidiary; adopting the Group Treasury Policy, with effect from 1 March 2021; and authorising the Subsidiary to open a new bank account and a new transactional banking account..

#	Document	Draft included in First Subsidiary Pack	Summary and comments from BG
7.	Written shareholder's resolution (to be signed by Te Pūkenga)	✓	<ul style="list-style-type: none"> Te Pūkenga has passed a shareholder's resolution and entitled person's consent approving each Te Pūkenga Subsidiary's entry into the applicable transaction documents. This includes the approvals required under the Constitution and OFP Direction.
C. Te Pūkenga Group documentation			
8.	Group Treasury Policy	✓	<ul style="list-style-type: none"> This Group Treasury Policy, which applies to Te Pūkenga and all Te Pūkenga Subsidiaries, was adopted by Te Pūkenga at the 2 February Council meeting, with effect from the Commencement Date. The written board resolutions in the First Subsidiary Pack contemplate that each Te Pūkenga Subsidiary will adopt this policy, with effect from 1 March 2021. Section 4 of the Group Treasury Policy sets out particular delegations in relation to Treasury Functions. The internal delegations policy of each Subsidiary will need to be updated to reflect the Group Treasury Policy.
9.	Draft form of Operational and Financial Parameters Direction (OFP Direction)	✓	<ul style="list-style-type: none"> Council has approved the draft form of OFP Direction at the 2 February Council meeting. The changes against the current OFP Direction are marked. The final form of the amended OFP Direction will be issued by Te Pūkenga later in February and will take effect from 1 March 2021.
10.	Intragroup Borrowing Consent	✓	<ul style="list-style-type: none"> Section 282(4) consent of the Secretary for Education in relation to intra-group borrowings within the Te Pūkenga group.

6. **FAQ's on financing documentation**

6.1 ***What is a negative pledge?***

A negative pledge is an undertaking to one party not to grant a security interest in favour of another party. The effect of a negative pledge clause is to preserve the equal ranking of all unsecured creditors' claims on a debtor's assets.

6.2 ***Effect of cross-guarantee***

A cross guarantee is a guarantee given by two or more entities, where each guarantor guarantees the indebtedness of the Borrower and each other guarantor to the Lender under

the Senior Facility Agreement and/or the other financing documents. The effect of a cross guarantee is that it enables the Lender to turn to any one of the guarantors to answer for the debts of all or any of the Borrower and the other guarantors in relation to the Senior Facility Agreement and/or other financing documents.

6.3 *Do the cross-guarantee provisions result in one subsidiary being liable for the indebtedness of another subsidiary to Te Pūkenga under the intra-group loan arrangements?*

The answer to the scenario above is no. This is because the cross guarantee provided by the subsidiaries is contained within the senior facility agreement (**SFA**) and is being given in favour of Westpac not Te Pūkenga.

The intra-group loan agreement sets out the terms of a loan from Te Pūkenga to a subsidiary and does not contain a cross-guarantee provision.

It is important to note that a Subsidiary will have liability for:

- all of Te Pūkenga's indebtedness to Westpac (for example under the SFA or the group overdraft and set off agreement);
- all indebtedness of another subsidiary to Westpac (for example under a transactional banking arrangement), in each case if that indebtedness is not repaid in accordance with its terms.

As previously noted, Westpac requires the benefit of the cross guarantee to give them the ability to turn to any one of the guarantors (i.e. Te Pūkenga and each subsidiary) to answer for the debts of all or any of the guarantors to Westpac.

Where a subsidiary makes a payment to Westpac under the cross guarantee, it will have rights to claim the amount paid back from Te Pūkenga. In a scenario where Te Pūkenga cannot repay the amounts paid by subsidiary guarantors, subsidiaries may also have rights (as between them and other subsidiaries) to 'equalise' the guarantee payment so the loss is borne equally between group members.

6.4 *How does the cross-guarantee work in practice?*

Under the SFA, Westpac may make demand on any or all guarantors if:

- (i) Any amount due and payable by Te Pūkenga to Westpac is not paid; or
- (ii) Westpac accelerates repayment of the loan due to a default.

In practical terms (for a loan of this nature) Westpac would inevitably seek to negotiate revised terms with Te Pūkenga if there was a credit or other issue that delayed payment. Formal demand on the guarantors would be a last resort if a restructure could not be completed. This would not 'sneak up' on guarantors – it would only occur where Te Pūkenga was in long term financial distress.

6.5 *Do ring-fenced amounts need to be invested with Westpac?*

No. We note that all ring-fenced cash reserves are to be held in specific identified bank accounts that will be disclosed to Westpac prior to the Commencement Date. Westpac will have no recourse to these ring-fenced cash reserves.

6.6 ***Will Westpac have recourse to ring-fenced amounts if they are not invested with Westpac?***

No. Westpac will not have recourse to any ring-fenced amounts, whether or not they are invested with Westpac.

6.7 ***What are the consequences for the group-debt arrangements if any subsidiary is unable to obtain board approval for the arrangements by 26 February?***

If the board of a subsidiary does not approve the entry of the subsidiary into the Financing and Banking Arrangements (including acceding to the SFA as a guarantor), Te Pūkenga will not be able to satisfy all of Westpac's conditions to lending. Te Pūkenga will not be able to draw down funds under the facility until all 16 Te Pūkenga Subsidiaries have entered into the relevant Financing Documents and provided the required director's certificates.

6.8 ***Under the SFA, each Subsidiary must provide a representation to the Lender that "it is solvent and able to pay its indebtedness as it falls due". At paragraph 7 of the Director's Certificate, the certifying director provides certifications regarding the solvency of the Subsidiary.***

Given that these solvency representations and certificates need to be provided, what should the Subsidiary Board consider before authorising the Subsidiary's entry into the Financing Documents and authorising a director to sign the Director's Certificate?

The certifications contained in paragraph 7 of the Director's Certificate are principally aimed at providing comfort that to the Lender that the Financing and Banking Arrangements can be entered into without being at risk of challenge as insolvent transactions, as set out in the Companies Act 1993 (**Companies Act**).

While the solvency of each Subsidiary will depend on their factual circumstances, we note that each director is already subject to the following director's duties under the Companies Act:

- **Section 136 (Insolvent trading):** A director must not allow the company to incur an obligation (including a debt) unless the director believes on reasonable grounds that the company will be able to perform the obligation when it is required to do so.
- **Section 135 (Reckless trading):** A director must not agree to or cause or allow the business of the company to be carried on in a manner likely to create a substantial risk of serious loss to the company's creditors.

The focus is on cash flow rather than balance sheet solvency (as the relevant legal tests are included to ensure companies do not enter into debts that they have no ability to pay). Subsidiary boards can and should take into account:

- Each Subsidiary's own cash, assets and liabilities position;
- Parent support (e.g. letters of support or similar from Te Pūkenga) and;
- In the case of entry into the guarantees, the overall group financial position (because the full resources of the group, and not just an individual guarantor, are relevant here).

6.9 Other director's considerations

The provision of the cross-guarantee and negative pledge by each Subsidiary is required by the Lender in order for it to lend funds to Te Pūkenga under the Senior Facility Agreement and is common for group financing arrangements.

In entering into the proposed transactions, the board of each Te Pūkenga Subsidiary will need to be satisfied that entry into the Financing and Banking Arrangements, including the cross guarantee, is in the best interests of that Te Pūkenga Subsidiary, or in the best interests of Te Pūkenga (as the holding company of the Te Pūkenga Subsidiary). Reasons might include:

- (a) under the Senior Facility Agreement, the Te Pūkenga Group will have greater access to cash. The enhanced financial reserves available to Te Pūkenga places it in a stronger position to support the Te Pūkenga Subsidiary, including through the intra-group loan facility and as required, under the Letter of Support issued on 1 April 2020;
- (b) the proposed arrangements allow the Te Pūkenga Group to access debt upon more competitive lending terms than the Te Pūkenga Subsidiary would be able to obtain itself. Entry into the large scale financing arrangement on a negative pledge basis can provide an opportunity for the Te Pūkenga Subsidiary to access finance on more attractive terms than would be available to it on a stand-alone basis; and
- (c) a condition of access to the intragroup funding is that each Te Pūkenga Subsidiary becomes a guarantor under the Senior Facility Agreement and/or the other financing documents.

These considerations are referred to in the template written board resolutions set out in the First Subsidiary Pack.

It is also noted that:

- (d) the Constitutions of each of the Te Pūkenga Subsidiaries provide at clause 12.4 that for as long as the relevant Te Pūkenga Subsidiary is a wholly owned subsidiary of Te Pūkenga, any director of that Subsidiary may, when exercising powers or performing duties as a director, act in a manner which he or she believes is in the best interests of Te Pūkenga, even though it may not be in the best interests of the applicable Te Pūkenga Subsidiary; and
- (e) at the Council meeting on 2 February 2021, the Council of Te Pūkenga approved the entry of Te Pūkenga into the Financing and Banking Arrangements and the Financing Documents. The Council also resolved that the entry of each Te Pūkenga Subsidiary into the Financing and Banking Arrangements and the Financing Documents is in the best interests of Te Pūkenga, even though it may not be in the best interests of each Te Pūkenga Subsidiary. This is noted in the signed shareholder's resolution.

6.10 What are the key changes to the OFP Direction?

The proposed changes to the OFP Direction include:

- (a) updating references to refer to "Te Pūkenga – New Zealand Institute of Skills and Technology" to reflect the Education (Name Change for NZIST) Order 2020, as enacted on 21 September 2020; and

- (b) inserting new sub-clause (k) of clause 2 to give effect to the requirements of the Group Treasury Policy, with any decision relating to the Subsidiary's entry into risk management facilities requiring the prior written consent of Te Pūkenga.

If there are any further changes to the OFP Direction prior to the Commencement Date, these will be notified to the Te Pūkenga Subsidiaries.

7. Next steps

- 7.1 Please arrange for the execution of the written board resolutions included in the First Subsidiary Pack and confirm to Bell Gully those resolutions have been executed by **16 February 2021**.
- 7.2 We recommend that each Te Pūkenga Subsidiary undertakes a review of its internal delegations policy, to ensure it is updated to reflect the Group Treasury Policy and to the extent applicable, the new OFP Direction.
- 7.3 Please do not hesitate to contact us if you have any questions.

**Ngā mihi
Bell Gully**

Senior Facility Agreement

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relating to

a facility of NZ\$150,000,000

Te Pūkenga - New Zealand Institute of Skills and Technology

Borrower

and

Each party listed in Schedule 1

Guarantors

and

Westpac New Zealand Limited

Lender and Transactional Bank

and

Westpac Banking Corporation

Hedge Counterparty

Date

BELL GULLY

AUCKLAND VERO CENTRE 48 SHORTLAND STREET
PO BOX 4199, AUCKLAND 1140, DX CP20509, NEW ZEALAND
TEL 64 9 916 8800 FAX 64 9 916 8801

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This **Senior Facility Agreement** is made on 2020

- between** 1. Te Pūkenga - New Zealand Institute of Skills and Technology (the **Borrower**)
- and** 2. Each party listed in Schedule 1 (each a **Guarantor**, together, the **Guarantors**)
- and** 3. Westpac New Zealand Limited (the **Lender** and **Transactional Bank**)
- and** 4. Westpac Banking Corporation (the **Hedge Counterparty**)

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Introduction

The Lender is willing to make available to the Borrower a loan facility of up to \$150,000,000 on the terms of this Agreement.

It is agreed

Section A - Interpretation

1. Interpretation

1.1 Definitions

In this Agreement, unless the context otherwise requires:

Affiliate means in relation to any person, a subsidiary of that person or a holding company of that person or any other subsidiary of that holding company;

AML/CFT Law means:

- (a) the Financial Transactions Reporting Act 1996, the Terrorism Suppression Act 2002 and the Anti-Money Laundering and Countering Financing of Terrorism Act 2009;
- (b) any other anti-money laundering, counter-terrorism financing, economic or trade sanctions laws or regulations including without limitation, any laws or regulations imposing "know your customer" or other identification checks or procedures, that apply in any jurisdiction; and
- (c) any economic or trade sanctions or restrictive measures enacted, administered, imposed or enforced by the US Department of the Treasury's Office of Foreign Assets Control, the US Department of State, the United Nations Security Council and/or the European Union and/or the French Republic and/or Her Majesty's Treasury, or other relevant sanctions authority;

Amount Outstanding means, at any time, the aggregate principal amount of each Drawing outstanding at that time, together with any accrued and unpaid interest, fees and all costs and other amounts then due and payable by the Borrower to the Lender;

Authorisation means:

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- (a) an authorisation, consent, approval, resolution, licence, exemption, filing or registration; or
- (b) in relation to anything which will be fully or partly prohibited or restricted by law if a Governmental Agency intervenes or acts in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without intervention or action;

Availability Period means the period starting on Financial Close and ending on the earlier of:

- (a) the date one business day prior to the Termination Date; and
- (b) the date that the Facility is cancelled under this Agreement;

Available Facility means, at any time, the amount of the Facility less:

- (a) the amount of the Facility that has been cancelled; and
- (b) the aggregate amount of all Drawings that are outstanding at that time;

Base Rate means, in relation to a Drawing and an Interest Period:

- (a) in relation to an Interest Period of 1-29 days the rate calculated by the Lender to be the cost of funding the Drawing for that period;
- (b) in relation to an Interest Period of one to three months, the Base Rate shall be deemed to be the applicable rate per annum in respect of a 3 month Interest Period, determined by the Lender in accordance with the paragraphs below;
- (c) in relation to an Interest Period of 4, 5, or 6 months:
 - (i) the New Zealand bank bill reference rate (bid) administered by the New Zealand Financial Markets Association (or any other person who takes over the administration of that rate) (rounded, to the nearest four decimal places) for the relevant period displayed on page BKBM of the Thomson Reuters screen (or any replacement Thomson Reuters page that displays that rate) or on the appropriate page of such other information service that publishes that rate from time to time in place of Thomson Reuters as of 11am (New Zealand time) for NZ\$ and for a period equal in length to the Interest Period of the Drawing. If such page or service ceases to be available, the Lender may specify another page or service, displaying the relevant rate after consultation with the Borrower; or
 - (ii) if there is no such rate displayed for bank accepted bills having a term approximately equal to that period, then the average of the rates (rounded, to the nearest four decimal places) quoted by the Reference Banks as being their respective buy rates for such bank accepted bills at or about 11am (New Zealand time) on that date; or
 - (iii) if BKBM cannot be determined in accordance with subparagraphs (i) or (ii) above, the rate notified by the Lender to be the cost of funding the relevant Drawing for that period,

provided that if the Base Rate is otherwise less than zero, it shall be deemed to be zero;

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Cash Pooling Agreement means the cash pooling agreement between [the Borrower and the Lender]. **[Drafting Note: details to be updated once Cash Pooling Agreement is finalised]**

Code means the US Internal Revenue Code of 1986;

Consent to Borrow means the consent to borrow given to the Borrower by the Secretary for Education pursuant to sections 282(4)(d) and 282(7) of the Education Act;

Consolidated Group means, at any time, the group comprised of the Borrower and its subsidiaries at that time;

Dollars and the symbol **NZ\$** and **\$** means the lawful currency for the time being of New Zealand;

Drawing means each principal amount advanced (or to be advanced) to the Borrower under the Facility in accordance with the terms of this Agreement;

Drawing Date means, in relation to a Drawing, the date on which it is (or is to be) advanced, which must be a business day during the Availability Period;

Drawing Notice means a drawing notice substantially in the form set out in Schedule 3;

EBIT means, in respect of any period and a Group, the consolidated net profit after tax of the relevant Group for that period, as would be disclosed in the financial statements of the relevant Group if prepared in accordance with NZ GAAP for that period, adjusted by:

- (a) adding an amount equal to the aggregate of:
 - (i) Total Interest Costs;
 - (ii) losses of an unusual, abnormal or non-recurring nature (but only to the extent that they are non-cash);
 - (iii) the income tax expense as set out in the statement of financial performance for that period;
 - (iv) unrealised exchange losses;
 - (v) any reduction during that period in the non-cash mark to market value of financial derivatives entered into by a Group Member as required by NZ GAAP; and
 - (vi) losses of a capital nature or that relate to unrealised revaluation losses, in each case for that period;
- (b) deducting an amount equal to the aggregate of:
 - (i) gains of an unusual, abnormal or non-recurring nature (but only to the extent that they are non-cash);
 - (ii) unrealised exchange gains for that period;
 - (iii) any increase during that period in the non-cash mark to market value of financial derivatives entered into by a Group Member as required by NZ GAAP; and

- (iv) profits of a capital nature or that relate to unrealised revaluation gains, in each case for that period,

as adjusted to remove earnings of any Group Member that have been included in the earnings of the Group but that are attributable to any third party (not being a Group Member);

EBITDA means, in respect of any period and a Group, the sum of:

- (a) EBIT for that Group for that period; and
- (b) depreciation and amortisation on fixed and other property of the relevant Group during that period,

which would be disclosed by consolidated financial statements of the relevant Group if they were prepared in accordance with NZ GAAP as at the last day of that period;

Education Act means the Education and Training Act 2020;

Environmental Law means any law relating to the environment, land or water use, noise, smell, pollution or contamination, toxic or hazardous substances, waste disposal or conservation (including the Resource Management Act 1991) and any consent or notice under any such law;

Event of Default means any event specified in clause 20.1 (Events of Default) and any other event agreed in writing from time to time by the Lender and the Borrower to constitute an Event of Default;

Event of Review means an event specified in clause 20.4 (Event of Review) and any other event agreed in writing from time to time between the Lender and the Borrower to constitute an Event of Review;

Facility means the revolving credit facility of a maximum aggregate principal amount of \$150,000,000 (as reduced from time to time in accordance with this Agreement), to be made available on the terms of this Agreement;

FATCA means:

- (a) sections 1471 to 1474 of the Code or any associated regulations;
- (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or
- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction;

FATCA Deduction means a deduction or withholding from a payment under a Finance Document required by FATCA;

FATCA Exempt Party means a party to this Agreement that is entitled to receive payments free from any FATCA Deduction;

Finance Debt means any indebtedness in respect of money borrowed or raised or any other financial accommodation whatever in the nature of, or having a similar economic effect to,

borrowing or raising money, including indebtedness under or in respect of a negotiable or other financial instrument, guarantee, interest, currency exchange or commodity hedge or other arrangement of any kind (calculated on a marked-to-market basis), redeemable share, share the subject of a guarantee, discounting arrangement, the principal amount of any finance or capital lease, hire purchase, deferred purchase price of an asset or service (other than where the relevant transaction is entered into in the ordinary course of business and the purchase price is paid within 90 days of supply) or an obligation to deliver goods or other property or provision of services paid for in advance by a financier or in relation to another financing transaction;

Finance Documents means:

- (a) this Agreement;
- (b) each Hedge Agreement;
- (c) each Supplemental Deed;
- (d) the Cash Pooling Agreement; and
- (e) each Transactional Banking Document,

and each other agreement (present or future), required or contemplated by, or relating to, this Agreement;

Financial Close means the date on which the Lender confirms in writing to the Obligors that the conditions precedent specified in Schedule 2 (Conditions Precedent) have been satisfied in the sole discretion of the Lender;

Fixed Establishment has the meaning given to it in section YA 1 of the Income Tax Act;

Governmental Agency means any government (including local or central government) or any governmental, semi-governmental or judicial entity or authority (including any self regulatory organisation established under statute or any stock exchange);

Group means the Consolidated Group or the Guaranteeing Group, as the context requires;

Group Member means any member of the Consolidated Group;

GST Act means the Goods and Services Tax Act 1985;

Guaranteed Indebtedness means all indebtedness of the Obligors to the Lender;

Guaranteeing Group means, at any time, the group of companies comprised of the Guarantors at that time;

Guaranteeing Group Ratio means on any Reporting Date, the ratio of:

- (a) Total Equity of the Guaranteeing Group; to
- (b) Total Equity;

Guarantor means the persons recorded as such in this Agreement, and any New Guarantor;

Hedge Agreement means each agreement pursuant to which the Borrower enters into a Treasury Transaction with the Hedge Counterparty;

Income Tax Act means the Income Tax Act 2007;

Indirect Tax means any goods and services tax, consumption tax, value added tax or any tax of a similar nature;

Interest Cover Ratio means, on any Reporting Date, the ratio of:

- (a) EBITDA for the Reporting Period ending on that date; to
- (b) Total Interest Costs for the Reporting Period ending on that date;

Interest Period means each period by reference to which an interest rate applicable to a Drawing or another sum is determined in accordance with this Agreement;

Interest Rate means the Base Rate plus the Margin;

Intra-group Loan Agreement means each agreement documenting a loan between Guaranteeing Group members;

IP means, in respect of a person, all trademarks, service marks, trade names, domain names, logos, get-up, patents, inventions, registered and unregistered design rights, copyrights, topography rights, database rights, rights in confidential information and know how, and any associated or similar rights anywhere in the world, which it now or in the future owns or (to the extent of its interests) in which it now or in the future has an interest (in each case whether registered or unregistered and including any related licenses and sub-licenses of the same granted by it or to it, applications and rights to apply for the same);

Leverage Ratio means on any Reporting Date, the ratio of:

- (a) Net Total Debt; to
- (b) Net Total Debt and Total Equity;

Line Fee Rate means:

- (a) from Financial Close up to, but excluding, the date falling one year after Financial Close, 0.25 per cent; and
- (b) thereafter, 0.325 per cent,

per annum of the amount of the Facility;

Margin means 0.975 per cent per annum;

Net Total Debt means, at any time:

- (a) the Total Debt at that time; less
- (b) the aggregate amount of cash and deposits which are current assets held by the Consolidated Group at that time (excluding Ring Fenced Cash Reserves);

New Equity means the proceeds of any form of equity contribution to an Obligor where the equity contribution is received from a person who is not an Obligor.

New Guarantor has the meaning given to it in clause 22.2 (Additional Guarantors);

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NZ Borrower means the Borrower, where it is resident in New Zealand for the purposes of the Income Tax Act or is engaged in business in New Zealand through a Fixed Establishment to which the Facility is attributable;

NZ GAAP means generally accepted accounting practice, as defined in section 8 of the Financial Reporting Act 2013;

NZ Protected Party means a Protected Party that is:

- (a) resident in New Zealand for the purposes of the Income Tax Act;
- (b) not resident in New Zealand for the purposes of the Income Tax Act and engaged in business in New Zealand through a Fixed Establishment in New Zealand where amounts advanced by it under the Finance Documents are advanced for the purposes of that Fixed Establishment; or
- (c) not resident in New Zealand for the purposes of the Income Tax Act and is a "registered bank" (as defined in section 2 of the Reserve Bank of New Zealand Act 1989) and engaged in business in New Zealand through a Fixed Establishment in New Zealand and is not associated with the Obligors;

Obligor means the Borrower and each Guarantor;

Permitted Acquisition means:

- (a) an acquisition made for fair value in the ordinary course of business;
- (b) an acquisition that is the purchase of an asset by one Obligor from another Obligor; or
- (c) an acquisition that occurs with the prior written approval of the Lender;

Permitted Disposal means a disposal:

- (a) in respect of which the Lender has given its prior written consent;
- (b) of inventory made in the ordinary course of business of the disposing entity;
- (c) of property for fair market value on commercial arms' length terms;
- (d) of obsolete or redundant vehicles, plant and equipment for cash;
- (e) of property from one Obligor to another Obligor; and
- (f) expressly permitted under a Finance Document;

Permitted Financial Accommodation means, in relation to an Obligor, financial accommodation provided by that Obligor:

- (a) pursuant to an Intra-group Loan Agreement;
- (b) pursuant to the Finance Documents;
- (c) to another Obligor;
- (d) to another Group Member (with aggregate Financial Accommodation to all Group Members who are not Obligors not to exceed \$[•]); or

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- (e) with the prior written consent of the Lender;

Permitted Financial Indebtedness means, in relation to the Obligors:

- (a) any indebtedness of the Guaranteeing Group not exceeding \$2,000,000 in aggregate;
- (b) indebtedness of an Obligor to a third party financier to which the Lender has consented to in writing prior to Financial Close;
- (c) the following indebtedness, provided the same is repaid in full within 90 days after Financial Close:
 - (i) [•];
 - (ii) [•];
- (d) indebtedness under a Finance Document;
- (e) indebtedness owed to another Obligor; and
- (f) any Subordinated Debt;

Permitted Security means:

- (a) a security interest that secures Finance Debt comprising Permitted Financial Indebtedness;
- (b) a security interest granted by an Obligor in respect of the Ring-fenced Cash Reserves or any part of the Ring-fenced Cash Reserves;
- (c) a lien or other security interest arising solely by operation of law securing an obligation that is not yet overdue or is being contested in good faith by appropriate proceedings;
- (d) a security interest taken in collateral by a seller to the extent it secures the obligation to pay all or part of the purchase price of that collateral, where that collateral is purchased in the ordinary course of business of the buyer and the purchase price is paid within 60 days of supply;
- (e) a security interest in respect of which the Lender has given its prior written consent;
- (f) a security interest granted by one Obligor in favour of another Obligor;
- (g) a security interest in relation to personal property that is created or provided for by:
 - (i) a transfer of an account receivable or chattel paper;
 - (ii) a lease for a term of more than one year; or
 - (iii) a commercial consignment,
 that does not secure payment or performance of an obligation;
- (h) a security interest arising out of any netting or set-off arrangement entered into by an Obligor with another Obligor in the course of its banking arrangements for the purpose of netting debit and credit balances of Group Members, provided that such arrangement does not:

- (i) permit credit balances of an Obligor to be netted or set-off against debit balances of a Group Member that is not an Obligor; and
- (ii) give rise to a security interest over property of an Obligor in support of liabilities of a Group Member that is not an Obligor;
- (i) a security interest that arises as a result of legal proceedings discharged within 30 days or otherwise being contested in good faith and not otherwise constituting an Event of Default; and
- (j) a security interest that is expressly permitted under a Finance Document;

Potential Event of Default means any event or circumstance that, with the giving of notice, lapse of time or fulfilment of another requirement, would constitute an Event of Default;

PPSA means the Personal Property Securities Act 1999;

Protected Party means the Lender if it is or will be, for or on account of tax, subject to any liability, or required to make any payment, for or on account of tax in relation to a sum received or receivable (or any sum deemed for the purposes of tax to be received or receivable) under a Finance Document;

Reference Banks means ANZ Bank New Zealand Limited, Bank of New Zealand and Commonwealth Bank of Australia;

Relevant Party means each Obligor and each other party to a Finance Document (other than the Lender);

Reporting Date means the last day of March and September in each year;

Reporting Period means, on any Reporting Date, the 12 month period ending on that Reporting Date;

Ring Fenced Cash Reserves means the Obligors' capped, non-refreshing cash-reserves held in specific identified bank accounts, as disclosed to the Lender prior to Financial Close. **[Drafting Note: Definition to be updated to include reference to specific accounts. Te Pūkenga to provide relevant account details]**

RWT has the meaning given to it in section YA 1 of the Income Tax Act;

RWT Exempt Status means RWT-exempt status as defined in section YA 1 of the Income Tax Act;

RWT Rules has the meaning given to it in section YA 1 of the Income Tax Act;

Stamp Duties Act means the Stamp and Cheque Duties Act 1971;

Subordinated Debt means Finance Debt which is fully subordinated to all amounts owed under the Finance Documents on terms satisfactory to the Lender in a manner satisfactory to the Lender;

Supplemental Deed means a supplemental deed in the form of Schedule 5 (Form of Supplemental Deed for New Guarantor);

Termination Date means the date falling 3 years following the date of this Agreement;

Total Debt means, as at each Reporting Date, the aggregate of all Financial Debt of the Consolidated Group at that Reporting Date;

Total Equity means, on any date, the aggregate value of all property of the Consolidated Group, except:

- (a) Ring Fenced Cash Reserves; and
- (b) items that, according to NZ GAAP, should be regarded as intangible assets, in any such case calculated as at that date on a basis consistent with the basis that the most recent financial statements for the Consolidated Group were prepared;

Total Interest Cost means, for a Group for a period, the gross amount of all interest and financing costs incurred by the Group over that period, calculated on a consolidated basis in accordance with NZ GAAP, after taking into account all realised losses and profits on foreign currency borrowings and financing transactions (other than amounts transferred to foreign currency transaction reserves), including:

- (a) the amount of all discounts and similar allowances on the issue or disposal of debt instruments;
- (b) all finance charges under finance leases and hire purchase agreements;
- (c) the amount of all dividends paid or payable on redeemable shares issued by any member of the Group; and
- (d) all other expenses and amounts that are required by NZ GAAP to be treated as interest or financing costs,

but excluding interest and financing costs on money borrowed or raised to acquire, develop or improve fixed assets, to the extent that they have been capitalised in the accounts of the Group and excluding:

- (e) any realised costs of closing out a Treasury Transaction that are incurred in connection with the acquisition or disposal of a subsidiary or business after the date of this agreement;
- (f) any dividends paid on redeemable shares and any other interest and financing costs paid by one member of the Group to another Group Member; and
- (g) any non-cash items included in interest in the most recent financial statements of the Group;

Transactional Banking Document means any document entered into from time to time between an Obligor and the Transactional Bank under which one or more Transactional Banking Facilities are made available to any member of the Group;

Transactional Banking Facilities means any day to day banking facilities or arrangements made available to an Obligor by the Transactional Bank in connection with its ordinary course of business;

Treasury Policy means the approved Treasury Policy of the Group that is approved by the Lender, or any amended version that is subsequently approved in writing by the Lender;

Treasury Transaction means any foreign exchange agreement, currency or interest purchase, interest rate swap, cap or collar agreement, currency swap agreement, currency and interest rate future or option contract, commodity swap, option, cap, collar, floor or

swaption or other similar agreement (whether entered into before, on, or after the date of this Agreement); and

US means the United States of America.

1.2 Construction

In this Agreement, unless the context otherwise requires:

an **agreement** includes a contract, deed, licence, undertaking and other document or legally enforceable arrangement (in each case, whether or not in writing, present and future), and includes that document as amended, assigned, novated or substituted from time to time;

a **business day** means a day (other than a Saturday or Sunday) on which registered banks are open for general banking business in Auckland;

compromise includes a compromise as defined in section 227 of the Companies Act 1993;

a **consent** includes an approval, authorisation, exemption, filing, licence, order, permit, recording or registration;

one person being **controlled** by another means that the other person (whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise):

- (a) has the power to appoint and/or remove the majority of the members of the governing body of that person;
- (b) has the power to appoint a member or members of the governing body of that person who is or are in a position to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a meeting of the governing body; or
- (c) otherwise controls or has the power to control the affairs and policies of that person;

costs incurred by a person include all commissions, charges, losses, expenses (including legal fees on a solicitor and own client basis), liabilities and taxes incurred by that person;

a **directive** includes a present and future directive, regulation and requirement (in each case, whether or not having the force of law but, if not having the force of law, the compliance with which is in accordance with the general practice of persons to whom the directive is addressed);

disposing of property includes:

- (a) selling, assigning, novating, leasing, lending, exchanging, transferring, granting a concession, surrendering, licensing, reserving, waiving, compromising, releasing, dealing, subordinating, varying the terms of, parting with possession of, granting an option, right or interest in respect of, or otherwise dealing with that property;
- (b) the payment of money (including a distribution by way of dividend); and
- (c) an agreement for any of these,

but excludes the creation of a security interest;

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distribution is defined in section 2 of the Companies Act 1993, and includes any reduction of capital (including a redemption by a company of its own shares), any acquisition by a company of any share in itself or in its holding company, and any financial assistance provided by a company to enable another person to acquire any such share;

financial statements has the meaning specified in section 6 of the Financial Reporting Act 2013;

group financial statements has the meaning specified in section 7 of the Financial Reporting Act 2013;

a **guarantee** includes an indemnity, letter of credit, legally binding letter of comfort, suretyship and other agreement, the economic effect of which is to provide security, or otherwise assume responsibility, for the indebtedness or obligations of another person;

a **holding company** of a person includes a holding company as defined in section 5 of the Companies Act 1993;

indebtedness includes any obligation relating to the payment of money:

- (a) whether present or future, actual or contingent;
- (b) whether incurred alone, jointly, severally, or jointly and severally and as principal, surety or otherwise;
- (c) whether due to the lender alone, or with another person, and whether the lender is entitled for its own account or for the account of another person;
- (d) whether arising from a banker and customer relationship or another relationship;
- (e) whether originally contemplated by the debtor or the lender or not;
- (f) whether the lender is the original person the amount was owed to, or an assignee and, if the lender is an assignee:
 - (i) whether or not the debtor consented to, or was aware of the assignment; and
 - (ii) regardless of when the assignment occurred; and
- (g) if determined pursuant to any award, order, judgment or decree against the debtor, whether or not the debtor was party to the court proceedings, arbitration or other dispute resolution process in which that award, order, judgment or decree was made,

including any such obligation arising under derivative or similar products;

a **law** includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, directive, by-law, the rules of any stock exchange, statute, treaty or other legislative measure, in each case of any jurisdiction whatever;

the **liquidation** of a person includes the dissolution, administration, winding-up and bankruptcy of that person and any analogous procedure under the law of any jurisdiction in which that person is incorporated, domiciled, carries on business or has property;

loss includes loss of profit and loss of margin;

something having a **material adverse effect** on a person is a reference to it having, in the reasonable opinion of the Lender, a material adverse effect on:

- (a) that person's financial condition or operations or on the consolidated financial condition or operations of it and its subsidiaries; or
- (b) its ability to comply with its payment obligations under any Finance Document and/or its obligations pursuant to any financial undertakings set out in a Finance Document; or
- (c) the validity or enforceability of, or the effectiveness or ranking of any security interest created under or in connection with a Finance Document or the rights and remedies of the Lender, under any Finance Document,

and references to **material adverse change** shall be construed accordingly;

obligations include covenants, conditions, stipulations, representations, warranties, guarantees, undertakings, assurances and agreements;

a **person** includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a state, an agency of a state and any other entity (in each case, whether or not having separate legal personality);

property includes:

- (a) anything that is capable of being owned, whether it is real or personal property, and whether it is tangible or intangible; and
- (b) the whole and any part of the relevant person's business, assets (including leased assets), undertaking, revenues, benefits and rights (in each case, present and future), and reference to any property includes any legal or equitable interest in it;

related person means:

- (a) any related company (as defined in section 2(3) of the Companies Act 1993, but as if the word "subsidiary" in that section had the same meaning as "subsidiary" in this Agreement) of an Obligor;
- (b) any person that is treated as an associated company of an Obligor in terms of NZ GAAP;
- (c) any person who beneficially owns (or together with its related persons, determined on the same basis as set out in paragraphs (a) and (b) above, beneficially owns) whether directly or indirectly, 20% or more of the equity share capital in an Obligor;
- (d) any related entity (determined on the same basis as set out in paragraphs (a) and (b) above) of any person referred to in paragraph (c) above; and
- (e) the beneficiary of a trust under which a trustee of the trust is a related entity in terms of paragraphs (a) to (d) above;

rights includes authorities, consents, discretions, remedies, powers and causes of action;

a **security interest** includes:

- (a) a mortgage, pledge, charge, lien, hypothecation, encumbrance, deferred purchase, title retention, finance lease, contractual right of set-off, flawed asset arrangement, sale-and-repurchase and sale-and-leaseback arrangement, order and other arrangement of any kind, the economic effect of which is to secure a creditor; and

- (b) a "security interest" as defined in section 17(1)(a) of the PPSA in respect of which the relevant person is the debtor;

a **subsidiary** of a person includes:

- (a) a subsidiary as defined in section 5 of the Companies Act 1993 (as if the term "company" in those sections includes entities incorporated in a jurisdiction other than New Zealand); and
- (b) an "in substance" subsidiary and any other person treated as a subsidiary under NZ GAAP; and
- (c) a person controlled (whether directly or indirectly and whether by ownership of share capital, possession of voting power, contract or otherwise) by that person;

tax(es) includes any present or future tax, levy, impost, deduction, charge, rate, fee, stamp or other duty and any other charge, deduction or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay, or any delay in paying, any of the same);

writing includes a facsimile transmission, an email communication and any means of reproducing words in a tangible and permanently visible form;

an agreement, representation or undertaking given by an Obligor in favour of two or more persons is for the benefit of them jointly and each of them severally;

an Event of Default or Potential Event of Default is **continuing** until it has been waived in writing by, or remedied to the satisfaction of, the Lender;

if the Lender considers that an amount paid by an Obligor under a Finance Document is capable of being avoided or otherwise set aside on the liquidation of an Obligor or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of the Finance Documents;

a reference to a **party, clause, schedule or annexure** is a reference to a party to, clause of, schedule to or annexure to, this Agreement;

examples and the use of the word "**including**" and similar expressions do not limit what else may be included;

a gender includes each other gender;

the singular includes the plural and vice versa;

where a word or phrase is defined, its other grammatical forms have a corresponding meaning;

any legislation includes a modification and re-enactment of, legislation enacted in substitution for, and a regulation, order-in-council and other instrument from time to time issued or made under, that legislation; and

a party to this Agreement or another agreement includes its successors and its permitted assignees, novatees and transferees.

Headings and the table of contents are to be ignored in construing this Agreement.

1.3 Joint and several liability

The liability of, and obligations on, each Obligor under this Agreement are joint and several.

References in this Agreement to **Guarantor** are to each Guarantor individually, and to all Guarantors together.

Any New Guarantor is jointly and severally liable with any existing Guarantor under this Agreement. References in this Agreement to "**Guarantor**" are to each Guarantor individually, and to all Guarantors together.

1.4 PPSA

The terms "collateral" and "debtor" in the definition of "security interest" above have the meanings given to them in the PPSA.

Section B - The Facility

2. Facility

2.1 Availability

The Lender agrees to make the Facility available to the Borrower on the terms of this Agreement. The Facility will be made available by Drawings.

2.2 Purpose

The Borrower will use the net proceeds of each Drawing for liquidity management, working capital, general Group borrowing purposes and to refinance existing Group facilities.

2.3 Drawdown

The Lender will advance a Drawing to the Borrower on any business day during the Availability Period nominated by the Borrower if:

(a) Drawing Notice

the Lender has received from the Borrower a Drawing Notice not later than 10.00 am on the business day before the proposed Drawing Date, which notice will be irrevocable and must specify:

- (i) the proposed Drawing Date;
- (ii) the requested length of the Interest Period applicable to the Drawing; and
- (iii) the bank and account to which the Drawing is to be disbursed.

(b) Available Facility

the Drawing would not cause the maximum amount of the Facility to be exceeded on the Drawing Date;

(c) **Conditions precedent**

in respect of the first Drawing, the Lender has received and found satisfactory the documents specified in Schedule 2 (Conditions Precedent);

(d) **No Event of Default**

no Event of Default or Potential Event of Default has occurred, or will occur, as a result of the Drawing;

(e) **Base Rate determined**

the Lender is able to determine, to its satisfaction, the Base Rate applicable to the Drawing;

(f) **Representations**

the representations made in, or in connection with, the Finance Documents are true, accurate and complied with in all material respects on the Drawing Date as if repeated on that date by reference to the facts and circumstances then existing;

(g) **Maximum number of Drawings**

the requested Drawing would not cause there to be more than [10] Drawings outstanding at the same time;

(h) **Same day Drawings**

in the case of a notice or notices being given on any day requesting more than one Drawing to be made on the same Drawing Date, the provisions of this clause are satisfied in relation to those Drawings when added together;

(i) **Unusual circumstances**

none of the events contemplated by clause 12 (Increased costs) subsist, or are reasonably likely to subsist, on the Drawing Date;

(j) **Amount**

Unless otherwise agreed by the Lender, the amount of each Drawing shall be at least \$100,000; and

(k) **Consent to Borrow**

the Drawing would not cause any borrowing limit approved under the Consent to Borrow to be exceeded on the Drawing Date,

failing which the Lender may discontinue the requested drawdown of the Drawing.

2.4 **Application on re-drawing**

So long as no Event of Default has occurred and is continuing, all or part of a Drawing may, if the Borrower so requests in the relevant Drawing Notice and the Lender agrees, be applied by the Lender in or towards repayment of a Drawing to be repaid on that Drawing Date, so that only the net amount is payable on that day. Nothing in this sub-clause affects the obligation of the Borrower to make timely repayment of a Drawing in full if, for any reason

other than (where the Lender has agreed to apply the Drawing as set out above) default of the Lender in so applying the new Drawing, such application is not made.

Section C - Repayment, illegality, prepayment and cancellation

3. Repayment

The Borrower will repay each Drawing on the date of expiry of its Interest Period and will repay all outstanding Drawings on the Termination Date, in each case, together with all interest, costs and other amounts payable under the Finance Documents. Amounts repaid under this clause may be re-drawn.

4. Illegality

If, at any time, the Lender determines that it is, or may be, or will become, unlawful, impractical or contrary to any law, treaty or directive of any agency of state or other regulatory, monetary or accounting authority to make, fund or allow to remain outstanding all or part of the Facility, or a Drawing, or to charge or receive interest at any applicable rate, or to comply with any of its obligations or exercise any of its rights under a Finance Document, then, on the Lender notifying the Borrower accordingly:

- (a) the obligation of the Lender to make the Facility, or a Drawing available will be cancelled; and
- (b) where the Facility or part of it has been made available, the Borrower will repay the Amount Outstanding either immediately or, if permitted by law, treaty or directive, on the expiry of each current Interest Period relating to it.

5. Prepayment

5.1 Permitted prepayment

The Borrower may prepay a Drawing in full (or any part of it being not less than \$100,000) on the Borrower giving the Lender not less than two business days' notice of its intention to do so, specifying the date and the amount of the prepayment. That notice will be irrevocable and will bind the Borrower to make the prepayment specified in it. On the date of prepayment, the Borrower will prepay the relevant Drawing (or part of it) together with accrued interest on that Drawing (or part of it) and any amount due under clause 13 (Indemnities).

5.2 Re-drawing

Amounts prepaid under this clause may be re-drawn.

6. Cancellation

The Borrower may cancel the Facility (or any part of it being not less than \$1,000,000 and a multiple of \$250,000) by the Borrower giving the Lender not less than two business days written notice of its intention to do so. That notice will be irrevocable and will specify the effective cancellation date. The amount of the Facility cancelled may not exceed the Available Facility on the cancellation date. Any part of the Facility cancelled will no longer be available to the Borrower and the Facility Limit will be reduced accordingly.

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Section D - Interest and fees

7. Interest

The Borrower will pay interest on each Drawing in arrears on the last day of its Interest Period at the Interest Rate and, in the case of an Interest Period longer than three months, on each date during that period that falls at three monthly intervals from the first day of that period. The Lender will notify the Borrower of each determination of the Interest Rate and of each amount of interest payable under this clause but failure to do so will not relieve the Borrower of its obligation to pay interest.

8. Interest Periods

Each Interest Period will be a period commencing on the applicable Drawing Date of 1-29 days or one, two, three, four, five or six months as the Borrower may nominate in the relevant Drawing Notice (or such other period as the Lender may agree in writing) except that:

- (a) an Interest Period that commences on a day for which there is no numerically corresponding day in the month that Interest Period expires will end on the last business day of that month;
- (b) if an Interest Period would otherwise end on a day that is not a business day, that Interest Period will be extended to end on the next succeeding business day, unless the result of that extension would be to carry the Interest Period over into the next calendar month, in which case the relevant Interest Period will expire on the previous business day;
- (c) no Interest Period will extend beyond the Termination Date; and
- (d) if the Borrower fails to nominate the length of an Interest Period, the Lender will determine its length and such determination will be binding on the Borrower,

and if (a) or (b) apply, the following Interest Period will end on the day it would have ended if the previous Interest Period had not been extended or shortened.

9. Default interest

If an Obligor does not pay, when due, an amount payable under a Finance Document then, without prejudice to its other obligations, the Obligors will pay interest on that overdue amount (including interest payable under this clause) calculated from its due date to the date of its receipt by the Lender (after as well as before judgment), compounded and payable at intervals selected by the Lender at its discretion (each a Default Interest Period). This obligation to pay default interest arises without the need for a notice or demand. The rate of default interest will be the aggregate of:

- (a) the Base Rate on the first day of the relevant Default Interest Period;
- (b) the Margin; and
- (c) 2 per cent per annum.

10. Fees

10.1 Arrangement fee

The Borrower will pay to the Lender, on the date of Financial Close, an arrangement fee of 0.06 per cent of the amount of the Facility.

10.2 Line fee

The Borrower will pay to the Lender a line fee calculated on a daily basis at the applicable Line Fee Rate:

- (a) quarterly in arrears during the Availability Period;
- (b) on the last day of the Availability Period; and
- (c) on the day the Facility is cancelled in full under clauses 4 (Illegality) or 6 (Cancellation),

with the first payment due on the date which is three months after Financial Close.

10.3 No refund

No fee payable by the Borrower is refundable in any circumstance, even where payable in advance.

Section E - Additional payment obligations

11. Taxes

11.1 Gross up

Each Obligor will make all payments to be made by it under the Finance Documents without any deduction or withholding on account of tax, unless such deduction or withholding is required by law.

If:

- (a) an Obligor or a person on its behalf is required by law to make a deduction or withholding for or on account of tax from any amount paid or payable by it under a Finance Document; or
- (b) the Lender or a person on its behalf is required by law to make any payment for or on account of tax (other than tax on overall net income of the Lender) or otherwise on or in relation to any amount received or receivable by it under a Finance Document,

then the relevant Obligor will:

- (c) ensure that any such deduction or withholding does not exceed the legal minimum and shall pay the amount required to be deducted, withheld or paid to the relevant authority before the date any penalty begins to accrue; and

- (d) increase the actual amount paid to the Lender to the extent necessary to ensure that after any deduction, withholding or payment is made, the Lender actually receives and retains on the due date (free from any liability in respect of any such deduction, withholding or payment, and ignoring any amount that is deemed to have been received by reason of any legislation) a net amount equal to the amount that it would have received and so retained had no such deduction, withholding or payment been required to be made.

11.2 Tax indemnity

- (a) The Borrower will (within three business days of demand by the Lender) pay to the Lender an amount equal to the loss, liability or cost which the Lender determines will be or has been (directly or indirectly) suffered for or on account of tax by the Lender in respect of a Finance Document or a transaction or payment under it.
- (b) Paragraph (a) shall not apply:
 - (i) with respect to any tax assessed on the Lender if that tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by the Lender:
 - (A) under the law of the jurisdiction in which the Lender is incorporated or, if different, the jurisdiction (or jurisdictions) in which the Lender is treated as resident for tax purposes; or
 - (B) under the law of the jurisdiction in which the facility office of the Lender is located in respect of amounts received or receivable in that jurisdiction; or
 - (ii) to the extent the relevant loss, liability or cost is compensated for by an increased payment under clause 11.1 (Gross up).

11.3 Tax credit

If the Lender receives the benefit of a final tax refund or credit resulting from an Obligor having made a deduction or withholding referred to in clause 11.1 (Gross up), or a payment under clause 11.2 (Tax indemnity), it will pay to the relevant Obligor such part of that benefit as, in the Lender's reasonable opinion, will leave it in a no less favourable position (after that payment, and taking account of any additional payment made to it under clause 11.1 (Gross up) or clause 11.2 (Tax indemnity) and any tax payable by it on that additional payment) than it would have been in if no deduction or withholding had been required. In doing so, the Lender:

- (a) will be the sole judge of the amount of any such benefit and the date on which it is received and paid;
- (b) has absolute discretion as to the order and manner in which it employs or claims tax credits and allowances available to it and is under no obligation to claim relief from any of its tax liabilities in respect of any such deduction or withholding in priority to any other claims, credits or deductions available to it; and
- (c) has no obligation to disclose to the Obligor any information regarding its tax affairs or computations.

11.4 New Zealand Withholding Tax

Where the Lender is a NZ Protected Party and it makes a Drawing available to the NZ Borrower, it:

(a) **RWT Exempt Status**

confirms to the NZ Borrower that, as at the date of this Agreement (or, if later, as at the date it becomes party to this Agreement), it is a person of the type listed in section 32E(2)(a) to (h) of the Tax Administration Act 1994, and has RWT Exempt Status for the purposes of the RWT Rules;

(b) **Undertaking to maintain RWT Exempt Status**

provided it is lawfully able to do so, undertakes to the NZ Borrower to maintain its RWT Exempt Status, until the Termination Date; and

(c) **Obligation to notify**

agrees to notify the NZ Borrower promptly if it ceases to have RWT Exempt Status, following which the NZ Protected Party and the NZ Borrower shall negotiate in good faith for a period not exceeding 30 days with a view to agreeing upon an arrangement that will ensure, so far as possible, that the NZ Borrower is not disadvantaged, and the NZ Protected Party is not advantaged, by reason of the loss of RWT Exempt Status. If no such arrangement is agreed within the 30 day period, clause 11.1 (Gross up) will continue to apply.

11.5 Indirect Tax

(a) All payments to be made by an Obligor under or in connection with any Finance Document have been calculated without regard to Indirect Tax. If all or part of any such payment is the consideration for a taxable supply or chargeable with Indirect Tax then, when the Obligor makes the payment:

- (i) it must pay to the Lender an additional amount equal to that payment (or part) multiplied by the appropriate rate of Indirect Tax; and
- (ii) the Lender will promptly provide to the Obligor a tax invoice complying with the relevant law relating to that Indirect Tax.

(b) Where a Finance Document requires an Obligor to reimburse or indemnify the Lender for any costs, the Obligor shall also at the same time pay and indemnify the Lender against all Indirect Tax incurred by the Lender in respect of the costs, except to the extent that the Lender is entitled to repayment or credit in respect of the Indirect Tax. The Lender will promptly provide to the Obligor a tax invoice complying with the relevant law relating to that Indirect Tax. Unless notified by the Lender, the Obligor must assume that the Lender is not entitled to any input tax credit for that Indirect Tax.

11.6 FATCA information

(a) Subject to paragraph (c) below, each party shall, within ten business days of a reasonable request by another party:

- (i) confirm to that other party whether it is or is not a FATCA Exempt Party;
- (ii) supply to that other party such forms, documentation and other information relating to its status under FATCA as that other party reasonably requests for the purposes of that other party's compliance with FATCA;
- (iii) supply to that other party such forms, documentation and other information relating to its status as that other party reasonably requests for the purposes of

that other party's compliance with any other law, regulation, or exchange of information regime.

- (b) If a party confirms to another party pursuant to paragraph (a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not, or has ceased to be a FATCA Exempt Party, that party shall notify that other party reasonably promptly.
- (c) Paragraph (a) above shall not oblige the Lender to do anything, and paragraph (a)(iii) above shall not oblige any other party to do anything, that would or might in its reasonable opinion constitute a breach of:
 - (i) any law or regulation;
 - (ii) any fiduciary duty; or
 - (iii) any duty of confidentiality.
- (d) If a party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraph (a)(i) or (ii) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the party in question provides the requested confirmation, forms, documentation or other information.

11.7 FATCA Deduction

- (a) Each party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.
- (b) Each party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction), notify the party to whom it is making the payment and, in addition, shall notify the Obligor and the Lender.

11.8 GST

If any supply by the Lender to the Borrower in relation to any Finance Document will, at the time of supply, be subject to goods and services tax under the GST Act, the Borrower will pay to the Lender an amount equal to the applicable goods and services tax in addition to the consideration for that supply.

11.9 Notice of legal requirements

If a party is required to make a deduction, withholding or payment for or on account of tax or on another account, it shall promptly notify each other party immediately.

11.10 Timely payment to tax authority

If an Obligor is required to make a deduction, withholding or payment for or on account of tax or on another account, it will account to the appropriate tax or other authority for the relevant amount within the time allowed, without incurring a penalty for late payment.

11.11 Tax receipts

Promptly after the making by an Obligor of a deduction, withholding or payment, the Borrower will deliver to the Lender a receipt or other documentation satisfactory to the Lender evidencing the deduction, withholding or payment.

12. Increased costs

12.1 Increased costs

If, at any time, as a result of:

- (a) the introduction of, or a change in, a law, treaty or directive of an agency of state or other regulatory, monetary or accounting authority, or in its interpretation by the agency or authority charged with its administration, or by a court of competent jurisdiction (including the implementation or application of, or compliance with, any document that forms part of the international capital or regulatory framework for banks published by the Basel Committee on Banking Supervision); or
- (b) compliance by the Lender or by a person with whom the Lender may have a loan, swap or other funding or participation arrangement with a directive of an agency of state or other regulatory, monetary or accounting authority,

the Lender determines that:

- (c) the cost to it of making, funding or maintaining the Facility, or a Drawing or any other amount under a Finance Document, or all or any of the amounts comprised in a class of advances formed by or including the Facility, or a Drawing or any other amount is increased; or
- (d) an amount payable to it or its effective return under a Finance Document is reduced; or
- (e) there is a reduction in the effective rate of return on its overall capital that, in its view, is attributable to either of paragraphs (a) or (b) above applying in relation to its obligations under a Finance Document or to any class of obligations of which they form part; or
- (f) it makes a payment or forgoes any interest or other return on or calculated by reference to a sum received or receivable by it from a Relevant Party under a Finance Document in an amount that the Lender considers material,

then, and in each case (whether or not the Lender is aware at the date of this Agreement that any such introduction, change or directive will subsequently take effect):

- (g) the Lender will notify the Borrower;
- (h) on demand from time to time by the Lender, the Borrower will pay to the Lender, the amount certified by the Lender to be necessary to compensate it (and except to the extent that the Borrower is already liable to compensate it under this Agreement) for that increased cost, reduction, payment or forgone interest or other return (or that portion of it as in the Lender's opinion, is attributable to the Facility, or a Drawing or the Lender's obligations under a Finance Document) (if requested by the Borrower, this certificate will provide reasonable details of the composition of this amount); and

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- (i) without prejudice to its obligation to make an additional payment under paragraph (h) above, the Borrower may, at any time by not less than 14 days prior written notice from the Borrower to the Lender (which will be irrevocable), cancel the Facility.

12.2 Minimisation

If the Lender has acted in good faith, an amount certified under sub-clause 12.1 (Increased costs) above will be payable regardless of whether an increased cost, reduction, payment or forgone interest or other return referred to in that clause could have been avoided.

12.3 Survival of obligations

The obligations of the Borrower under sub-clause 12.1 (Increased costs) above are to survive termination of the Facility and payment of all other indebtedness due under any Finance Document.

12.4 Changes in market conditions

If, by reason of circumstances affecting any relevant interbank market generally, it is or may be impossible for the Lender to obtain the relevant currency in that market (and accordingly it is impossible for it to make, fund or maintain the Facility or a Drawing or any other amount under a Finance Document, or all or any of the amounts comprised in a class of advances formed by or including the Facility or a Drawing) for any period, the Lender is to notify the Borrower promptly and:

- (a) if the Drawing has not been advanced, the obligation of the Lender to make the Drawing available will be cancelled or suspended as the Lender may elect; and
- (b) if the Drawing has been advanced, the Borrower will repay the Drawing and all other indebtedness of the Borrower and the Relevant Parties under each Finance Document either immediately or, as the Lender elects, on the next date for payment of interest.

Without prejudice to the Borrower's obligations to repay, the Borrower and the Lender are to negotiate in good faith with a view to agreeing terms for making the Facility, or Drawing available from another source. However, the Lender is under no obligation to agree to terms or to continue those negotiations if terms are not agreed promptly.

12.5 Market disruption

If a Market Disruption Event occurs in relation to the Facility or a Drawing for any Interest Period for which the Base Rate was to have been selected by reference to the screen rate referred to in paragraph (a) or (c)(ii) of the definition of Base Rate (the "**Screen Rate**"), then the rate of interest on that Drawing for the relevant Interest Period shall be the rate per annum that is the sum of:

- (a) the Margin; and
- (b) the rate notified to the Borrower by the Lender as soon as practicable and in any event before interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate per annum the cost to the Lender of funding that Drawing from whatever source it may reasonably select.

In this Agreement, "**Market Disruption Event**" means before close of business on the first day of the relevant Interest Period, the Lender notifies the Borrower that the cost to the Lender of funding the relevant Drawing exceeds the Screen Rate.

12.6 Alternative basis of interest or funding

- (a) If a Market Disruption Event occurs and the Lender or the Borrower so require, the Lender and the Borrower will enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest.
- (b) Any alternative basis agreed pursuant to paragraph (a) above shall only apply with the prior consent of the Lender and the Borrower, and then shall be binding on all parties.

12.7 Confidentiality

- (a) Subject to paragraph (b) below, the Obligors shall keep confidential and not disclose to any other person any information described in clause 12.5 (Market disruption) above.
- (b) However, the Obligors or their officers or employees may disclose such information:
 - (i) to the extent required by any applicable law or regulation; or
 - (ii) to the extent it reasonably deems necessary in conjunction with any actual or contemplated proceedings or a claim with respect to clauses 12.5 or 12.6.

13. Indemnities

13.1 General indemnity

Subject to any mandatory law, each Obligor will indemnify the Lender against each cost incurred by it and any other person appointed under this Agreement as a result of:

- (a) the occurrence or continuance of an Event of Default; or
- (b) an amount payable by an Obligor under a Finance Document not being paid when due, whether by prepayment, acceleration or otherwise (but, so far as appropriate, credit is to be given for amounts, if any, of default interest paid under the Finance Document); or
- (c) the preparation, negotiation, execution, stamping and registration of the Finance Documents, and the satisfaction of any conditions precedent; or
- (d) an amendment to, or a consent, approval, waiver, release or discharge of or under, a Finance Document;
- (e) the administration of, and any actual or attempted preservation or enforcement of a right under, the Finance Documents; or
- (f) a repayment of a Drawing being made or becoming due, or another amount being paid or becoming due, otherwise than on the last day of an Interest Period relating to it (whether or not that payment is permitted or required under the Finance Documents); or
- (g) a Drawing not being advanced on the requested Drawing Date; or
- (h) reliance by the Lender on any communication made to it via electronic mail,

by payment on demand to the Lender of the amount and in the currency that the Lender certifies is required to compensate it for that cost, including each cost incurred in liquidating or re-employing:

- (i) deposits or other funds acquired or arranged to fund or maintain a Drawing or any part of it; and
- (j) any transaction entered into in anticipation of drawdown and/or disbursement of a Drawing.

13.2 Currency indemnity

If an amount due from a Relevant Party under a Finance Document or under a suit, action or proceeding has to be converted from the currency (the **first currency**) in which it is payable into another currency (the **second currency**) for the purposes of:

- (a) making or filing a claim or proof against a Relevant Party; or
- (b) obtaining an order or judgment in any court; or
- (c) enforcing an order or judgment,

then the Obligors will indemnify the Lender by payment on demand in immediately available funds, in the currency stipulated by the Lender, against each cost incurred by the Lender as a result of any discrepancy between:

- (d) the rate of exchange used for that purpose to convert the sum in question from the first currency into the second currency; and
- (e) the rate of exchange at which the Lender may, in the ordinary course of business, purchase the first currency with the second currency.

Each amount due under this clause will be due as a separate debt and will not be affected by, or merged into, a judgment obtained for other sums due.

13.3 Indemnities irrevocable

The above indemnities are unconditional and irrevocable, and will survive both termination of this Agreement and payment of all other indebtedness due under the Finance Documents.

14. Costs

The Borrower will pay each cost incurred by the Lender in connection with:

- (a) the preparation, negotiation, entry into and release of each Finance Document;
- (b) each amendment to, waiver in respect of, or discharge of, a Finance Document;
- (c) the exercise, protection, investigation or enforcement of the Lender's rights under a Finance Document; and
- (d) the administration of the Facility and the Finance Documents by the Lender,

in each case, on demand and on a full indemnity basis.

Section F – Guarantee, Negative Pledge and Ring Fenced Cash Reserves

15. Cross guarantee

15.1 Guarantee

Each Obligor unconditionally jointly and severally and irrevocably guarantees to the Lender due payment by each other Obligor (in this clause, referred to as the Debtor), of the Guaranteed Indebtedness.

15.2 Payment

Each Obligor undertakes to the Lender that if, for any reason, a Debtor does not pay when due (whether by acceleration or otherwise) any Guaranteed Indebtedness, it will pay the relevant amount to the Lender immediately on demand.

15.3 Unenforceability of obligations

As a separate and continuing undertaking, each Obligor unconditionally and irrevocably undertakes to the Lender that, should any Guaranteed Indebtedness not be recoverable from an Obligor under any Finance Document for any reason, including a provision of any Finance Document or an obligation (or purported obligation) of an Obligor to pay any Guaranteed Indebtedness being or becoming void, voidable, unenforceable or otherwise invalid or illegal, and whether or not that reason is or was known to the Lender, and whether or not that reason is:

- (a) a defect in or lack of powers of that Obligor or the Debtor or any other person, or the irregular exercise of those powers; or
- (b) a defect in or lack of authority by a person purporting to act on behalf of that Obligor or the Debtor or any other person; or
- (c) a legal or other limitation (whether under the Limitation Act 2010 or otherwise), disability or incapacity of that Obligor or the Debtor; or
- (d) the liquidation, administration, amalgamation, change in status, constitution or control, reconstruction or reorganisation of that Obligor or the Debtor (or the commencement of steps to effect the same),

the Obligors will, as a primary and independent obligation, pay to the Lender on demand the amount that the Lender would otherwise have been able to recover (on a full indemnity basis). The expression "Guaranteed Indebtedness" includes any indebtedness that would have been included in that expression but for anything referred to in this clause as well as amounts due that result from anything referred to in this clause.

15.4 Suspense account

All amounts from time to time received by the Lender in respect of the Guaranteed Indebtedness of a Debtor from or on account of an Obligor may be placed in a suspense account (the **Suspense Account**) with a view to preserving the rights of the Lender, to the extent permitted by law, to prove for the whole of the Guaranteed Indebtedness of the Debtor in the event of any proceeding in, or analogous to, liquidation, administration, amalgamation, change in status, constitution or control, reconstruction or reorganisation of

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the Debtor or any other Relevant Party. Any interest paid on the amount for the time being in the Suspense Account shall not be payable by the Lender to any Obligor.

15.5 **Liability as sole principal debtor**

As between each Obligor and the Lender (but without affecting the obligations of a Debtor) each Obligor is liable under this clause in relation to the Guaranteed Indebtedness as a sole and principal debtor and not as a surety.

15.6 **No discharge**

- (a) No Obligor is discharged, nor are its obligations affected, by:
- (i) any time, indulgence, waiver or consent at any time given to a Relevant Party or another person; or
 - (ii) an amendment (however fundamental) to, or replacement of, a Finance Document or to another security interest, guarantee or other agreement (whether or not that amendment increases the liability of the Obligor and including any change in the purposes of the Facility, any extension of or increase in the Facility or the addition of a new facility under the Finance Documents); or
 - (iii) the existence, validity or enforceability of, or the enforcement of or failure to enforce, or the release of any person or property from any Finance Document or other security interest, guarantee or agreement; or
 - (iv) the liquidation, insolvency, amalgamation, change in status, constitution or control, reconstruction or reorganisation of any Relevant Party or another person or composition or arrangement with any creditor of any Obligor (or any similar or analogous event or the commencement of steps to effect any of these); or
 - (v) a person named as a Guarantor in this Agreement, or who was intended to enter into this Agreement or otherwise become a guarantor of the Guaranteed Indebtedness, not having done so, or not having done so effectively; or
 - (vi) any set-off, combination of accounts or counterclaim; or
 - (vii) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person; or
 - (viii) this Agreement or any other Finance Document not being executed by or binding against any other Obligor or any other party; or
 - (ix) anything else whatever.

The Lender is not liable to any Obligor in respect of any of these matters, even though the Obligors' rights in subrogation or otherwise may be prejudiced as a result.

- (b) Each Obligor acknowledges and accepts that:
- (i) the Lender may release one or more Obligor's obligations under this Agreement without the release of each other Obligor;
 - (ii) release by the Lender of one Obligor from its obligations under this Agreement does not constitute release of the obligations of any other Obligor; and

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- (iii) in any case where an Obligor is released by the Lender from its obligations under this Agreement, the Lender's rights and remedies against each remaining Obligor are preserved.

15.7 Continuing guarantee

This guarantee and each Obligor's obligations under this Agreement:

- (a) are a continuing security, notwithstanding intermediate payments, settlement of accounts or payments or anything else;
- (b) are in addition to, and not to be merged in, any security interest, guarantee or other agreement, whenever in existence, in favour of any person; and
- (c) will remain in full force and effect until the execution by the Lender of an unconditional discharge of each Obligor's obligations under this Agreement.

15.8 Reinstatement

If any payment to or any discharge, release or arrangement given or entered into by the Lender (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is avoided or reduced for any reason (including as a result of insolvency, breach of fiduciary or statutory duties or any similar event) in whole or in part, then the liability of each Obligor under this clause 15 (Cross guarantee) will continue or be reinstated as if the discharge, releases or arrangements had not occurred and any relevant security will be reinstated.

15.9 No competition

No Obligor will, without the written consent of the Lender:

- (a) take, accept or hold a security interest from another Obligor or, in relation to Guaranteed Indebtedness, from another person; or
- (b) take steps to recover (whether directly or by set-off, counterclaim or otherwise) or accept money or other property, or exercise or enforce rights in respect of, any indebtedness of another Obligor to that Obligor arising in any way or, in relation to Guaranteed Indebtedness, indebtedness of another person to that Obligor; or
- (c) claim, prove or accept payment in composition by, or a liquidation of, another Obligor or, in relation to Guaranteed Indebtedness, another person,

and until such time as the Guaranteed Indebtedness has been fully paid, each Obligor waives all rights of subrogation to which it would otherwise be entitled by reason of performance of its obligations under the guarantee in this clause or any other guarantee given in respect of indebtedness of an Obligor. If, notwithstanding this sub-clause, an Obligor holds or receives any such security interest, money or property, that Obligor will pay or transfer it to the Lender immediately and, pending that payment or transfer, will hold it on trust for the Lender.

15.10 Immediate recourse

Each Obligor waives any right it may have of first requiring the Lender to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Obligor under this clause 15 (Cross guarantee). This waiver applies irrespective of any law or provision of a Finance Document to the contrary.

15.11 Appropriations

Until all amounts that may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full, the Lender may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received or recovered (by set-off or otherwise) by it in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Obligor shall be entitled to the benefit of the same; and
- (b) without limiting paragraph (a) above, refrain from applying any moneys received or recovered (by set-off or otherwise) from any Obligor or on account of any Obligor's liability under this clause 15 (Cross guarantee) in discharge of that liability and claim or prove against anyone in respect of the full amount owing by the Obligors.

15.12 Release

A Debtor (other than the Borrower) may be released from its obligations under this clause if in the reasonable opinion of the Lender:

- (a) the Guaranteed Indebtedness of that Debtor (other than contingent indebtedness arising solely as a result of the guarantee in this clause) and any indebtedness of the Borrower under this Agreement have each been repaid in full;
- (b) the Debtor has performed all of its obligations to the Lender under this clause (other than obligations to pay money);
- (c) the Lender is not required to make available any further financial accommodation available to that Debtor; and
- (d) no Event of Default is continuing and the Obligors will be in compliance with any financial undertakings set out in this Agreement immediately after the release takes effect.

All documents that are necessary in connection with this release are to be in the form the Lender reasonably requires.

16. Negative Pledge

Each Obligor covenants with the Lender that it will not create or permit to subsist any security over the whole or any part of its assets, except:

- (a) a Permitted Security Interest; or
- (b) a security over the assets of any company which becomes an Obligor after the date of this Agreement if:
 - (i) that security is in existence, or the relevant company is contractually obliged to create that security, at the time the relevant company becomes an Obligor; and
 - (ii) that security or contractual obligation was not entered into in contemplation of the relevant company becoming an Obligor,

provided that:

- (iii) the principal amount secured by the security may not be increased beyond the amount outstanding at the date that the relevant company becomes an Obligor, unless that increase is within an agreed overall limit applying to the relevant liability at that date; and
- (iv) the security is released within 6 months from the date on which that company became a Subsidiary of the Borrower; and
- (v) in respect of any Obligor, security consisting of leases or bailment of goods leased, sold or supplied to that Obligor in the ordinary course of its core business.

17. Ring Fenced Cash Reserves

The Lender will have no recourse whatsoever to the Ring Fenced Cash Reserves, and waives any right, to:

- (a) any claim against the Ring Fenced Cash Reserves; or
- (b) in respect of any account with the Lender holding Ring Fenced Cash Reserves, set-off any credit balance, combine accounts or to any lien,

that is available to it under a Finance Document, or at law (including on the liquidator of an Obligor) in respect of the Ring Fenced Cash Reserves.

Section G - Representations and undertakings

18. Representations

18.1 Representations of Obligors

Each Obligor represents that:

- (a) **Status, power and authority**
 - (i) in respect of the Borrower, it is a Crown Entity and is treated as a statutory entity for the purposes of applying Part 2 of Schedule 4 of the Crown entities Act 2004; and
 - (ii) in respect of each other Obligor, it is duly incorporated,

is validly existing under the laws of its jurisdiction or incorporation, has full power to enter into and comply with its obligations under the Finance Documents and the transactions contemplated by them and has taken all corporate and other action and obtained all consents needed to enable it to do so;

- (b) **Obligations enforceable**

its obligations under the Finance Documents are legal, valid, binding and enforceable in accordance with their respective terms, subject to equitable principles and insolvency laws of general application;

(c) **No default**

it is not in default under:

- (i) any agreement relating to indebtedness; or
- (ii) any guarantee; or
- (iii) any other agreement,

to an extent or in a manner that has, or might have, a material adverse effect;

(d) **Compliance with laws**

its entry into the Finance Documents and the exercise of its rights and obligations under and in connection with the Finance Documents does not:

- (i) contravene any law to which it is subject;
- (ii) conflict with or result in a breach of, any agreement to which it is a party where such breach or conflict would have a material adverse effect;
- (iii) conflict with or result in a breach of any of the documents constituting it; or
- (iv) limit any of its powers or any right or ability of its directors to exercise its powers;

(e) **Solvency**

it is solvent and able to pay its indebtedness as it falls due;

(f) **No security interest**

except any Permitted Security Interest or except as disclosed to and accepted in writing by the Lender, no security interest exists over or affects, nor is there any agreement to give or permit to exist, any security interest over or affecting, any of its property;

(g) **Financial indebtedness**

it has no financial indebtedness outstanding other than Permitted Financial Indebtedness;

(h) **Financial statements**

its latest financial statements as delivered to the Lender:

- (i) include those most recently prepared for the last period and as at the last date for which financial statements have been prepared, and include copies of all documents required by law to accompany them;
- (ii) were prepared in accordance with NZ GAAP;
- (iii) give a true and fair view of its financial position and, in relation to that period, the consolidated financial position of the Consolidated Group as at the date and for the period to which they relate;

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- (iv) disclose or reserve against all liabilities (contingent or otherwise) as at that date and all unrealised or anticipated costs from any commitment entered into by the relevant person(s) and that existed on that date;
- (v) include a true and complete copy of any auditor's report; and
- (vi) are signed by two directors (or one, if there is only one director);
- (i) **No material adverse change**
 there has been no material adverse change in respect of it since the last date as at which any of the financial statements referred to in the preceding sub-clause were made up;
- (j) **Litigation**
 - (i) no litigation, arbitration or administrative proceeding is current or pending or, to its knowledge, threatened that has or could have a material adverse effect on it or on the Lender's ability to exercise or enforce its rights under any Finance Document; and
 - (ii) no judgment or order of a court of tribunal or any order or sanction of any Governmental Agency that is reasonably likely to have a material adverse effect on it or on the Lender's ability to exercise or enforce its rights under any Finance Document has (to the best of its knowledge and belief) been made against it or any of its subsidiaries;
- (k) **Information**
 - (i) all information provided by it or any other person on its behalf to the Lender in connection with the Finance Documents was true in all material respects as at the date that information was provided, and remains so;
 - (ii) there are no facts or circumstances that have not been disclosed to the Lender that would make that information untrue or misleading in any material respect; and
 - (iii) it has disclosed to the Lender all information that would be material to assessment by the Lender of the risks to be assumed by the Lender under the Facility;
- (l) **Group**
 the group structure chart most recently provided to the Lender is a complete and accurate description of all entities that are members of the Consolidated Group and of the ownership relationships between each of them;
- (m) **No Event of Default**
 no Event of Default has occurred and is continuing or might reasonably be expected to result from the making of a Drawing or entry into, performance of, or transaction contemplated by, any Finance Document;
- (n) **Finance Documents**
 each representation in the Finance Documents is true in all material respects;

(o) **Ranking of obligations**

its liabilities under each Finance Document to which it is a party will at all times rank at least pari passu with the claims of all of its other creditors, except where such claims are preferred solely by operation of law or are secured pursuant to a Permitted Security;

(p) **Not trustee**

it is not a trustee of any trust;

(q) **Environment**

it is:

- (i) not in breach of any Environmental Laws and no environmental claims have been made against it, and no act or omission has occurred and there are no circumstances relating to its assets or its business that has given rise or may give rise to a requirement of substantial expenditure by it or requirement that it ceases or substantially alters an activity under any Environmental Law, in each case which would be likely to have a material adverse effect; and
- (ii) in compliance in all respects with all applicable consents and other requirements (including any certificates of compliance, resource and building consents and orders) under all environmental laws and directives in relation to its real property where failure to do so would be likely to have a material adverse effect;

(r) **Ownership of property**

it is the sole beneficial owner, or is entitled to use, all property necessary for the conduct of its business, except as may be subject to a Permitted Security;

(s) **Tax**

- (i) it is not materially overdue (taking into account any extension or grace period) in filing its tax returns to an extent which would be likely to have a material adverse effect;
- (ii) it has paid all taxes when due and payable where a failure to do so has, or is likely to have, a material adverse effect other than any tax being contested in good faith provided sufficient reserves or undrawn credit lines have been set aside and such taxes are paid promptly on final determination or settlement of the contest; and
- (iii) it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority or that any stamp, registration or similar tax be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents;

(t) **Immunity from suit**

it does not, nor do any of its assets, enjoy immunity from any suit or execution in relation to its obligations under any Finance Document;

(u) **IP**

to the best of its information, knowledge and belief after having made due enquiry, it owns or has licensed to it on arm's length terms, or otherwise has available to it, all IP rights necessary for the conduct of its business and all software necessary for the conduct of its business, in each case where failure to do so has or would be likely to have a material adverse effect; and

(v) **Constitution**

it has not amended its constitution in a manner that would or could reasonably be expected to have a material adverse effect;

(w) **Non-conflict with other obligations**

The entry into and performance by it of and the transactions contemplated by, the Finance Documents do not and will not:

- (i) conflict with any law or regulation applicable to it or to which its assets is subject;
- (ii) conflict with its or any other member of the Group's constitutional documents;
- (iii) cause any limitation on any of its powers, or on the right or ability of its directors to exercise those powers, to be exceeded; or
- (iv) conflict with any agreement or instrument binding upon it or any other member of the Group or any of its or any other member of the Group's assets in any material respect,

nor (except as provided in any Finance Document) result in the existence of, or oblige it to create, any Security Interest over any of its assets.

(x) **Authorisations**

All Authorisations required:

- (i) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party;
- (ii) to make the Finance Documents to which it is a party admissible in evidence; and
- (iii) for it and each other member of the Group to carry on their business (including in accordance with all applicable Environmental Laws),

have been obtained or effected and are in full force and effect; and

(y) **Guaranteeing Subsidiaries**

All wholly owned subsidiaries of the Borrower that beneficially own any assets are Obligors.

18.2 Timing of representations

Each of the representations in this clause will be deemed to be repeated on the date of this Agreement and on the date of each Drawing Notice, each Drawing Date and on each Reporting Date and on the date of each Supplemental Deed, by reference to the facts and circumstances then existing, except that each reference to financial statements will be construed as a reference to the latest available financial statements of the relevant person.

18.3 Reliance on representations

Each Obligor acknowledges that the Lender has been induced to enter into this Agreement and will be induced to make the Facility available in reliance on the representations in this clause.

18.4 No representations to Obligors

Each Obligor acknowledges and accepts that it has not relied and will not rely on any statement made by or on behalf of the Lender in deciding to enter into any Finance Document or to exercise any right or perform any obligation under any Finance Document.

19. Undertakings

19.1 General undertakings

Each Obligor undertakes that it will:

(a) Events of Default

notify the Lender:

- (i) of the occurrence of any Event of Default, Potential Event of Default or Event of Review;
- (ii) of any event or circumstance that may have a material adverse effect on it; and
- (iii) if an order is made, resolution passed or other step taken by a person in connection with the voluntary administration of an Obligor,

immediately upon becoming aware of it, giving full details of it and of any action taken (or to be taken) as a result;

(b) Use of Drawings

use each Drawing solely for the purposes set out in this Agreement (failing which the relevant amounts will be held on trust for the Lender);

(c) Conduct of business

- (i) pay all its indebtedness when due; and
- (ii) comply with all consents and all obligations binding on it by law, contract or otherwise,

where failure to do so would have a material adverse effect;

(d) **Maintenance of corporate existence**

do all things necessary to maintain its corporate existence and the corporate existence of each other Obligor, where failure to do so would have a material adverse effect;

(e) **Authorisations**

promptly:

(i) obtain, comply with and do all that is necessary to maintain in full force and effect; and

(ii) on demand supply certified copies to the Lender of,

any Authorisation required to perform its obligations under the Finance Documents and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of any Finance Document, and any Authorisation or field agreement required for it to carry on its business (including under Environmental Law);

(f) **Maintain consents**

maintain in full effect all consents required to enable it to comply with its obligations under the Finance Documents, where failure to do so would have a material adverse effect;

(g) **Compliance with laws**

duly and promptly comply with all laws, directives and consents applicable to it, the non-compliance with which might give rise to a security interest or have a material adverse effect, or that may adversely affect the rights or security of the Lender under a Finance Document;

(h) **Pay taxes and other outgoings**

file all tax returns as required by law, and pay and discharge all taxes, assessments, governmental charges and other outgoings payable by it or on its property prior to the date that penalties become payable, except only to the extent that those taxes, assessments, governmental charges or other outgoings are being contested in good faith by appropriate proceedings and adequate reserves are set aside for their payment, where failure to do so would have a material adverse effect;

(i) **Further assurance**

promptly, and at its own cost, execute and deliver to the Lender all information, transfers, assignments, novations and other agreements and do all acts and things in respect of a Finance Document as the Lender (acting reasonably) may deem necessary or desirable to secure the full benefit of its rights under any Finance Document, including to register or otherwise perfect any security interest;

(j) **Information to be true**

(i) ensure that all information provided by it or any other person on its behalf to the Lender in connection with the Finance Documents after the date of this Agreement is true in all material respects as at the date that information is provided; and

- (ii) not omit to state any fact or circumstance that would make that information untrue or misleading in any material respect; and
 - (iii) ensure that all projections and forecasts made by it will be prepared in good faith based upon recent historical information and what it believes to be reasonable assumptions it being understood that such forecasts and projections are subject to significant uncertainties and contingencies, many of which are beyond its control and it can give no assurance that the projections and forecasts will be realised;
- (k) **Insurance**
- (i) insure its business and property (and maintain such insurance), with reputable insurers against any risks and liabilities to which it is exposed (including, without limitation, material damage, business interruption and public liability coverage) in accordance with good commercial practice having regard to the risks and liabilities applicable to the business of the Group and current practice in the industry in which the Group operates, in such amounts and on such terms from time to time approved by the Lender acting reasonably;
 - (ii) ensure that the interest of the Lender is noted on all policies of insurance undertaken in accordance with this clause (the **policies**) (where to do so is in accordance with usual market practice, and not including product liability insurance policies and directors' and officers' insurance) and the Lender is included as a loss payee and co-insured (in the manner reasonably required by the Lender) on all policies, and will, as soon as practicable after becoming aware of the same, ensure that the Lender is notified of any single claim in excess of NZ\$2,000,000;
 - (iii) promptly:
 - (A) provide the Lender with particulars or copies of all policies; and
 - (B) notify the Lender of:
 - (aa) notice received that any of the policies are to be, or are unilaterally cancelled by the insurers; or
 - (bb) other occurrence that is likely to materially prejudice the rights of an Obligor or the Lender under the policies;
 - (iv) ensure that any matter, thing or circumstance that is likely to materially prejudice any of the policies is immediately rectified;
 - (v) ensure that all premiums in respect of the policies are paid on time;
 - (vi) ensure that copies of any receipts for those premiums and the certificates of currency are delivered to the Lender at the same time as the certificate referred to in sub-paragraph (viii) below;
 - (vii) after the occurrence of an Event of Default, hold money recovered by it under any policies on trust for the Lender until applied at the option of the Lender in reinstatement of damaged assets or in reduction of any amount outstanding under this Agreement;
 - (viii) other than as contemplated by this Agreement, it will ensure that all claim proceeds are applied in replacement, repair or reinstatement of the relevant property, reinvested in the business, applied to discharge the relevant liability or

make good the relevant loss covered (as applicable). While an Event of Default is continuing, the Lender may require insurance proceeds be applied in repayment of the Facility;

- (ix) at any time, on the reasonable request of the Lender, provide to the Lender a certificate of a director or other appropriate authorised officer of an Obligor confirming that to the best of his or her knowledge and belief the Obligor is complying with this clause (and, if not, stating any exceptions) and otherwise providing details relating to that insurance as the Lender may reasonably request; and
- (x) it will not do anything or permit anything to be done, or not done, that would prejudice any of the policies to be effected in accordance with the Finance Documents in a manner that would have, or would be likely to have, a material adverse effect;

(l) **Environmental Laws**

- (i) comply (and has complied with) all Environmental Laws affecting its operation or its property, where failure to do so would have a material adverse effect;
- (ii) inform the Lender of any material breach of an Environmental Law, or any notice or order received by it under an Environmental Law, that could affect it or its property or that results in a breach of a representation in a Finance Document;
- (iii) provide the Lender on request (which shall only be made if the Lender has reasonable grounds to believe that there has been material non-compliance with an Environmental Law), but at the Borrower's sole cost, with environmental audits and reports in respect of its property, in a form and from an independent consultant acceptable to the Lender; and
- (iv) indemnify the Lender against all liabilities and costs arising out of any act or omission of it in respect of any circumstance that breaches, or might breach, any Environmental Law;

(m) **Ranking**

ensure that the claims of the Lender will at all times rank in right and priority of to the claims of its unsecured and unsubordinated creditors subject to Permitted Security, preferential claims and any necessary stamping and registration, equitable principles, statute of limitations and laws affecting creditors' rights generally;

(n) **Access**

on reasonable notice being given by the Lender, while an Event of Default or Potential Event of Default is continuing, procure that any employee, agent or professional adviser of the Lender is allowed (at the risk and expense of the Lender but subject to compliance with all laws, regulations and health and safety policies of the Obligors) to enter any land or buildings owned or occupied by any member of the Guaranteeing Group and to have access on reasonable notice during normal business hours to the property, books and records of each member of the Guaranteeing Group and to inspect the same in each case for the purposes of monitoring compliance with the Finance Documents;

(o) **Maintenance of property**

- (i) keep its property in a good state of repair and in good working order allowing for fair wear and tear;
- (ii) remedy (within such timeframe as would be usual for a similar business as the business of the Obligors) every material defect in its title to any part of its property promptly after becoming aware of it; and
- (iii) keep its property valid and subsisting and free from liability to forfeiture, cancellation, avoidance or loss,

where failure to do so would have a material adverse effect on it; and

(p) **IP**

- (i) register and pay all fees to keep its IP rights in force;
- (ii) ensure that it owns or has licence to all software necessary to carry on its business; and
- (iii) not permit any IP right to be cancelled,

in each case where doing so or failure to do so has or would be likely to have a material adverse effect.

19.2 Reporting undertakings

Each Obligor undertakes that it will:

(a) **Annual accounts**

as soon as the same become available, but in any event within 90 days after the end of each of its financial years, deliver to the Lender its audited financial statements and its audited Consolidated Group financial statements as at the end of and for that financial year;

(b) **Semi-annual accounts**

as soon as the same become available, but in any event within 90 days after the end of each of its financial half-years, deliver to the Lender its unaudited financial statements and its unaudited Consolidated Group financial statements as at the end of and for that financial half-year; and

(c) **Compliance certificate**

at the same time annual accounts and semi-annual accounts are delivered to the Lender in accordance with clauses (a) and (b) above, deliver to the Lender a certificate substantially in the form set out a Schedule 6 (Form of compliance certificate) signed by either the chief executive, chief financial officer or a council member of the Borrower confirming compliance with the financial undertakings set out in this Agreement; and

(d) **Other information**

promptly deliver to the Lender:

- (i) copies of any financial and/or operational reports issued by an Obligor to the Tertiary Education Commission;
- (ii) details of any amendments to, or waivers given in respect of, the Consent to Borrow, including, but not limited to, any changes made to its borrowing limits or financial covenants (however defined);
- (iii) details of any litigation, arbitration or administrative proceeding in respect of an amount in excess of \$1,000,000 or its equivalent in other currencies that, if it had been current, pending or, to its knowledge, threatened against it, would render the relevant representation in this Agreement incorrect if repeated;
- (iv) within 30 days of the start of the financial year, a consolidated annual budget for each financial year, broken down on a monthly basis and incorporating a profit and loss statement, balance sheet and cash flow forecast;
- (v) any document or information sent to its shareholders or creditors generally (or any class of them), at the same time as sent to them;
- (vi) upon request, any information reasonably required by the Lender in order for the Lender to comply with any applicable AML/CFT Law, sanctions law or international protocol;
- (vii) upon becoming aware that an Event of Default, Potential Event of Default or Event of Review has occurred and is continuing, notice that occurrence and details of the steps (if any) being taken to remedy it; and
- (viii) within seven days of request, any other information that the Lender reasonably requests with respect to its business or financial condition.

19.3 Financial undertakings

(a) Interest Cover Ratio

The Borrower will ensure that the Interest Cover Ratio is not less than 2.5 times, on each Reporting Date.

(b) Leverage Ratio

The Borrower will ensure that the Leverage Ratio is no greater than 50 per cent, on each Reporting Date.

(c) Guaranteeing Group

The Borrower will ensure that:

- (i) the Guaranteeing Group Ratio is no less than 90 per cent, on each Reporting Date; and
- (ii) the EBITDA of the Guaranteeing Group will not be less than 90 per cent of the EBITDA of the Consolidated Group.

19.4 Testing of financial undertakings

The Borrower's compliance with each undertaking in clause 19.3 (Financial undertakings) shall be tested on each Reporting Date in respect of the immediately preceding Reporting Period.

19.5 Changes to NZ GAAP

If, in the reasonable opinion of the Lender or the Borrower, any changes to NZ GAAP materially alter the effect of any undertaking in clause 19.3 (Financial undertakings), or any defined term used in any such undertakings, the Lender and the Borrower will negotiate in good faith to amend the relevant undertakings and definitions so that they have an effect comparable to the effect of the undertakings in clause 19.3 (Financial undertakings) at the date of this Agreement. If amendments are not agreed within 30 days (or any longer period agreed in writing between the Lender and the Borrower), then the Borrower will provide, with the financial statements and other information required under clause 19.2 (Reporting undertakings) any reconciliation statements (audited, where applicable) necessary to enable calculations based on NZ GAAP as it was before such changes, and the changes will be ignored for the purposes of this clause.

19.6 Negative undertakings

Each Obligor undertakes that it will not, and will ensure that no Group Member will, without the prior written consent of the Lender:

(a) Disposals

either by a single transaction or series of transactions, whether related or not and whether voluntary or involuntary, dispose of any of its property, other than:

- (i) a Permitted Disposal; or
- (ii) where the aggregate value of all such disposals in any 12 month period does not exceed five per cent of Total Equity of the Guaranteeing Group; or

(b) Indebtedness

incur any Finance Debt, except:

- (i) Permitted Financial Indebtedness; or
- (ii) indebtedness that is fully subordinated to all amounts owed under the Finance Documents on terms satisfactory to the Lender; or

(c) Distributions

make any distribution except:

- (i) to another Obligor; or
- (ii) by way of dividends out of its profit after tax,

and provided in each case that no Event of Default or Potential Event of Default has occurred or would occur as a result of making that distribution; or

(d) **Transactions with related persons**

either by a single transaction or a series of transactions, whether related or not and whether voluntary or involuntary:

- (i) dispose of any of its property to, or purchase any property from;
- (ii) provide services to, or accept services from;
- (iii) provide financial accommodation to, or accept indebtedness from; or
- (iv) enter into any other transaction, with, or for the benefit of,
any related person, other than:
- (v) pursuant to an Intra-group Loan Agreement or the Cash Pooling Agreement; or
- (vi) where such transaction is entered into for fair market value on commercial arms' length terms; or
- (vii) where such transaction is expressly permitted by a Finance Document; or

(e) **Financial accommodation**

be a creditor or guarantor in respect of any Finance Debt except for Permitted Financial Accommodation; or

(f) **Change of business**

make a substantial change in the nature or scope of its business as presently conducted; or

(g) **Administrator**

(without the prior written consent of the Lender) appoint an administrator;

(h) **Merger**

enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction other than between the Obligors, except with the prior written approval of the Lender; or [**Drafting Note: to consider planned future merger**]

(i) **Acquisition**

purchase or subscribe for shares or securities in another company or acquire a business or an undertaking or any property (or, in each case, any interest in any of them) unless:

- (i) no Event of Default has occurred and is continuing or would occur as a result of such acquisition; and
- (ii) the acquisition is a Permitted Acquisition; or

(j) **Transfer jurisdiction of incorporation**

transfer its jurisdiction of incorporation or place of domicile for tax purposes without the prior written consent of the Lender, where failure to do so would have a material adverse effect; or

(k) **Trustee**

become a trustee of any trust; or

(l) **Transactional Banking Facilities**

permit a liability under the Transactional Banking Facilities to remain outstanding after it becomes due and owing; or

(m) **Limitation on investment in securities**

At any time hold any securities other than shares in another member of the Group; or

(n) **Outstanding**

That the principal amount of all outstanding loans under the Finance Documents, does not exceed any borrowing limit approved under the Consent to Borrow; or

19.7 **Authority to auditors**

Each Obligor authorises the Lender to discuss its financial statements and financial affairs at any time with the Obligors' auditors and financial advisers, and irrevocably authorises and requests its auditors and financial advisers to participate in those discussions and to provide any information the Lender requests.

19.8 **Appointment of investigator**

(a) **Power to appoint**

Where the Lender believes that a breach of a Finance Document has occurred or may be likely to occur, the Lender may appoint a person or persons (whether jointly, severally or jointly and severally) to act as an investigator (the **Investigator**) of the Obligors, in each case including before and after an Event of Default has occurred, to make whatever investigations into the financial condition of the Obligors and otherwise that it deems are necessary to determine whether or not a breach has in fact occurred or is likely to occur, provided that the Lender may only make such an appointment or appointments a maximum of two times in any year. The Lender may remove an Investigator or may appoint a new Investigator in addition to, or in place of, an Investigator.

(b) **Remuneration**

The Lender may fix the remuneration of an Investigator at an amount or on a basis agreed with the Investigator or, failing agreement, as determined by the Lender. All remuneration payable to an Investigator will be payable by the Obligors on demand, and shall form part of the Amount Outstanding.

(c) **Investigator agent of Obligors**

An Investigator is the agent of the Obligors. The Lender is not responsible for an Investigator's actions, including the misconduct, negligence or default of an Investigator.

(d) **Powers of Investigator**

An Investigator has a right to investigate the affairs of the Obligors in such manner as the Investigator thinks fit, including the right to:

- (i) enter, without notice, any real property of the Obligors;
- (ii) make enquiries of any person (including any director, officer, employee, professional advisor or business associate of the Obligors) regarding the financial condition, business, operations or other affairs of the Obligors; and
- (iii) inspect and take copies of, or extracts from, any records or agreements relating to the financial condition, business, operations or other affairs of the Obligors, whether those documents are held by the Obligors, a professional advisor or another person.

(e) **Obligors to assist Investigator**

The Obligors will do everything reasonably requested by the Investigator to enable the Investigator to properly exercise its rights.

Section H - Events of Default

20. Events of Default

20.1 Events of Default

An Event of Default occurs if, at any time and for any reason, whether or not within the control of a party:

(a) **Non-payment**

an Obligor fails to pay on its due date any principal or, within two business days of its due date, any interest or other amount payable under any Finance Document; or

(b) **Breach of undertaking**

- (i) an Obligor does not comply with any of its obligations under any of the undertakings set out in the Finance Documents; or
- (ii) an undertaking given to the Lender or its solicitors by an Obligor or its solicitors or another person in connection with a Finance Document is not complied with; or

(c) **Breach of other obligations**

an Obligor fails to comply with any of its other obligations under a Finance Document in any respect that the Lender considers material and, in the case of a failure that is

capable of remedy, that failure is not remedied to the satisfaction of the Lender within 10 business days after notice of that failure has been given to the Borrower by the Lender; or

(d) **Breach of representation**

a representation or statement by an Obligor in or in connection with a Finance Document is not true in all material respects, or is or proves to have been untrue or misleading in any material respect, when made or repeated and, in any case where the underlying failure causing the breach of representation is capable of remedy, that failure is not remedied to the satisfaction of the Lender within 20 business days after notice of that failure has been given to the Borrower by the Lender; or

(e) **Avoidance or repudiation**

- (i) a Finance Document ceases to be in full force and effect or its validity or enforceability is contested by a person other than the Lender; or
- (ii) a person (other than the Lender) repudiates, or does anything evidencing an intention to repudiate, a Finance Document; or

(f) **Insolvency**

an Obligor:

- (i) is insolvent or unable to pay its indebtedness as it falls due, or is deemed to be so under any law; or
- (ii) stops or suspends payment of any of its indebtedness or threatens to do so; or
- (iii) makes, or proposes to make, a compromise with, or for the benefit of, its creditors; or

(g) **Enforcement**

a distress, attachment, execution or other legal process for a sum exceeding \$1,000,000 is levied against property of an Obligor and is not discharged or stayed within five days or a receiver, trustee, manager, administrator or similar officer is appointed in respect of it or any of its property; or

(h) **Amalgamation**

the board of an Obligor passes a resolution for, or in contemplation of, an amalgamation of the Obligor with another company (other than in circumstances where such amalgamation would be permitted under clause 19.6 (i) (Merger)); or

(i) **Liquidation**

an order is made, resolution passed or other step taken by a person for the liquidation of an Obligor, except for the purpose of, and followed by, a reconstruction or reorganisation (not involving or arising out of insolvency) on terms approved by the Lender before that step is taken; or

(j) **Pooling of debts**

an order is made against an Obligor for an amount not less than \$1,000,000 requiring it to pay the whole or any part of claims made against another company that is in liquidation; or

(k) **Corporations (Investigation and Management) Act 1989**

an Obligor is declared at risk pursuant to the Corporations (Investigation and Management) Act 1989, or a statutory manager is appointed or any step taken with a view to any such appointment in respect of it under that Act, or any such equivalent declaration or step is taken under the Education Act; or

(l) **Cessation of business**

an Obligor ceases, or threatens to cease, to conduct all or a substantial part of its business; or

(m) **Enforcement of security**

a security interest in property of an Obligor for an amount not less than \$1,000,000 becomes enforceable; or

(n) **Cross default**

any indebtedness of an Obligor for an amount not less than \$1,000,000 is not paid within 10 business days after its due date; or

(o) **Illegality**

it is, or will become, unlawful for an Obligor to comply with any of its obligations under a Finance Document in any material respect; or

(p) **Finance Documents**

an event of default or termination event (however described) occurs under another Finance Document; or

(q) **Meeting to consider default action**

a meeting of directors or shareholders is called for the purpose of considering and, if thought fit, passing, a resolution, the passing or the performance of which would cause an Event of Default or a Potential Event of Default; or

(r) **Notice of default**

an Obligor fails to give any notice of an Event of Default required to be provided by clause 19.1(a)1.1(a); or

(s) **Litigation**

an Obligor is or becomes party to any litigation or arbitration proceedings before or of any court, tribunal, arbitrator, or to any dispute with any government, Governmental Agency or authority, which, if adversely determined, would be likely to, in the reasonable opinion of the Lender, result in an Obligor becoming liable to a claim or penalty in excess in aggregate of \$5,000,000 (or its equivalent in any other currency or currencies), except for frivolous or vexatious claims where the Lender is satisfied

that the relevant Obligor is contesting the same in good faith by appropriate proceedings; or

(t) **Constitution**

any material amendment is made to the constitutive documents of any member of the Group or such documents are revoked, without the prior written consent of the Lender; or

(u) **Authorisations**

an authorisation which is material to the performance by any member of the Group or to the validity and enforceability of any Finance Document or to the business of any member of the Group is repealed, revoked or terminated or expires or is modified or amended or conditions are attached to it in a manner unacceptable to the Lender, and is not replaced by another authorisation acceptable to the Lender: or

(v) **Receiver**

a receiver is appointed to an Obligor.

20.2 **Consequences**

On and after the occurrence of an Event of Default, the Lender may, at any time, by notice to the Borrower:

- (a) cancel the Facility; and/or
- (b) declare any or all of the Drawings and any other indebtedness of the Borrower under the Finance Documents to be, and those Drawings and that indebtedness will be, due and payable either immediately or on demand or at such later date as the Lender may specify.

20.3 **Power to take proceedings and make claims**

If an Event of Default is continuing, the Lender, an attorney has full power to:

- (a) make, enforce, settle, compromise, sue on and discharge all claims; and
- (b) recover and receive all amounts payable in respect of any claim under any insurance policy.

20.4 **Event of Review**

It will be an Event of Review if:

(a) **Breach of financial undertaking**

a breach of a financial undertaking set out in clause 19.3 (Financial undertakings) occurs which (where applicable) is not waived or remedied in accordance with clause 20.5 (Equity cure);

(b) **Change of control**

there is a change in the control of an Obligor other than as permitted under this Agreement;

(c) **Material adverse change**

an event occurs that, in the reasonable opinion of the Lender, will, or is reasonably likely to, have a material adverse effect; or

(d) **Education Act**

- (i) the Borrower ceases to be regulated by the Tertiary Education Commission under the Education Act; or
- (ii) the Facility ceases to be approved by the Secretary for Education under section 282(4)(d) of the Education Act.

20.5 Equity Cure

Notwithstanding clauses 20.1(b) (Events of default) and 20.4(a) (Event of review), no breach of the financial undertakings in clause 19.3 shall be deemed to occur if:

- (a) within 5 Business Days of the date of delivery of a compliance certificate evidencing such a breach, the Borrower notifies the Lender that it intends to cure the breach by New Equity, Subordinated Debt or Permitted Financial Indebtedness being provided to an Obligor and immediately applied in the reduction of the amounts outstanding under the Facility such that had that reduction of the relevant amount outstanding been made at the beginning of the Reporting Period no breach of the relevant clause would have occurred; and
- (b) within 20 business days of the date of delivery of such compliance certificate, the Borrower cures such breach in the manner set out in paragraph (a) above.

20.6 Consequences of Event of Review

If requested by the Lender at any time after the occurrence of an Event of Review, the Borrower will, within 10 business days of a notice from the Lender, meet with the Lender to negotiate in good faith (each acting reasonably) to agree the basis on which the Lender will continue to provide the Facility. If no agreement satisfactory to the Lender is reached after a period of 30 business days then the Lender may, at any time, by notice to the Borrower:

- (a) cancel the Facility; and/or
- (b) declare any or all of the Drawings and any other indebtedness of the Borrower under the Finance Documents to be, and those Drawings and that indebtedness will be, due and payable either immediately or on demand or at such date as the Lender may specify.

20.7 Enforcement despite earlier payment

This Agreement may be enforced:

- (a) regardless of whether the Lender has accepted a payment of interest or other amount after the occurrence of an Event of Default; and
- (b) without the need for any notice to, or for the consent or agreement of, the Obligors or another person.

Section I - Changes to the parties

21. Changes to the Lender

21.1 Assignment by Lender, Transactional Bank and Hedge Counterparty

The Lender, the Transactional Bank and the Hedge Counterparty may assign, transfer or novate any of its rights and obligations under the Finance Documents without the prior consent of the Borrower if any such assignment, transfer or novation is:

- (a) to an Affiliate of the Lender, the Transactional Bank or the Hedge Counterparty (as applicable); or
- (b) being made while Event of Default or Event of Review has occurred and is continuing; or
- (c) is to a securitisation or funding vehicle where the Lender remains the lender of record,

in each case, the Borrower will be deemed to have given consent such assignment, transfer or novation if the Lender, the Transactional Bank or the Hedge Counterparty (as applicable) has not received written notice of the Borrower's express refusal within 5 business days of receipt by the Borrower of written notice from the Lender of such assignment, transfer or novation.

21.2 Conditions of assignment

Other than an assignment, transfer or novation in accordance with clause 21.1, the Lender, the Transactional Bank and the Hedge Counterparty may only assign, transfer or novate any of its rights and obligations under the Finance Documents subject to:

- (a) the prior consent of the Borrower, which consent:
 - (i) shall not be unreasonably withheld; and
 - (ii) will be deemed to have been given if no response is received by the Lender, the Transactional Bank or the Hedge Counterparty (as applicable) within 30 days of request for that consent;
- (b) any necessary authorisations being obtained;
- (c) no assignment or transfer taking effect while a Drawing Notice is in effect; and
- (d) the provisions of sub-clause 21.3 (No Increased Costs).

21.3 No increased costs

Notwithstanding anything to the contrary in this Agreement, if (other than at the request of the Borrower, the Lender, the Transactional Bank or the Hedge Counterparty (as applicable) assigns or novates its rights under this Agreement, the Obligors will not be required to pay any net increase in the aggregate amount payable under this Agreement that is a direct consequence of that assignment, or novation and which the Lender or its assignee or novatee was aware, or ought reasonably to have been aware, on the date of that assignment, novation or change of office.

21.4 Disclosure of information

The Lender, the Transactional Bank or the Hedge Counterparty (as applicable) may disclose, on a confidential basis, to a potential assignee, novatee, transferee or other person with whom contractual relations in connection with this Agreement are contemplated, any information about the Obligors or another Group Member, whether or not that information was obtained in confidence and whether or not that information is publicly available.

22. Changes to the Obligors

22.1 Assignment by Obligors

The Obligors may not assign, novate or transfer any of their rights or obligations under a Finance Document without the prior written consent of the Lender, the Transactional Bank or the Hedge Counterparty (as applicable).

22.2 Additional Guarantors

If an additional Group Member is to become a Guarantor (in this clause, the **New Guarantor**) such New Guarantor will execute a Supplemental Deed and deliver to the Lender:

- (a) a certificate of a director of the New Guarantor, in the form of Schedule 4 (Form of certificate);
- (b) a legal opinion in form and substance, and from solicitors, acceptable to the Lender; and
- (c) all other information and documentation requested by the Lender.

22.3 Lender's acceptance

When the Lender is satisfied in all respects with the information and documentation provided to it under clause 22.2 (Additional Guarantors), it will:

- (a) countersign the Supplemental Deed on behalf of itself, and all other parties to this Agreement; and
- (b) retain one counterpart to the Supplemental Deed and deliver the other counterpart to the Borrower.

Each other party to this Agreement irrevocably authorises the Lender to sign each Supplemental Deed on its behalf.

On the Lender's execution of the Supplemental Deed, the New Guarantor will be bound by the Finance Documents as if it were an original party to them and named as a Guarantor.

Section J - Administration

23. Payment mechanics

23.1 Business days

Where a payment under this Agreement is due on a day that is not a business day, the due date will be the next business day (unless the next business day falls in another calendar month, in which case the due date will be the previous business day).

23.2 Mode

- (a) Each payment to the Lender under a Finance Document is to be made on the due date by 2.00pm in immediately available freely transferable funds in the manner and to the account at the bank that the Lender, by notice to the Borrower, specifies from time to time. If a payment is made on the due date but after the specified time, the Borrower will pay to the Lender, on request, interest on the amount paid until the next business day (as if the payment were made on the later day).
- (b) Each payment due by the Obligors under this Agreement is to be made to the Lender.

23.3 Payments to be free and clear

Each payment by an Obligor to the Lender under a Finance Document will be made:

- (a) free of any restriction or condition; and
- (b) free and clear of and (except to the extent required by law) without any deduction or withholding for or on account of tax or on any other account, whether by way of set-off, counterclaim or otherwise.

23.4 Reinstatement

If:

- (a) a payment made by an Obligor pursuant to a Finance Document is or may be reasonably expected to be avoided by law; or
- (b) the Lender considers that an amount paid by an Obligor pursuant to a Finance Document is capable of being avoided or otherwise set aside on the liquidation of an Obligor or otherwise,

then:

- (c) that payment will be deemed not to have discharged or affected the relevant obligation of the Obligors;
- (d) the Lender and the Obligors will be deemed to be restored to the position in which each would have been if that payment had not been made; and
- (e) the Lender will be entitled to exercise all rights it would have been entitled to exercise if such payment had not been made.

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24. Set-off and deposits

24.1 Set-off

Other than in respect of the Ring Fenced Cash Reserves, each Obligor authorises the Lender to apply (without prior notice or demand) any credit balance of that Obligor and each other Obligor on any account in any currency and at any of its offices in or towards satisfaction of any indebtedness then due to it under a Finance Document and unpaid. If, at any time following an Event of Default an amount is contingently due, or an amount due is not quantified, the Lender may retain and withhold repayment of any such credit balance and the payment of interest or other money pending that amount becoming due and/or being quantified, and may set-off the maximum liability that may at any time be owing to it by an Obligor. The Lender:

- (a) may use any credit balance to buy other currencies and may break any term deposit to effect that application; and
- (b) need not exercise its rights under this sub-clause, which are without prejudice and in addition to its rights under each Finance Document and any other right of set-off, combination of accounts, lien or other right to which it is at any time otherwise entitled (by law or contract).

24.2 Contractual rights

The rights of the Lender under this clause are contractual rights affecting the terms on which a credit balance is held and the creation of those rights does not constitute the creation of a security interest in that credit balance.

24.3 Deposits with Lender

Other than in respect of the Ring Fenced Cash Reserves, any moneys that, pursuant to a Finance Document, are to be deposited at any time by an Obligor with the Lender (or withheld by the Lender from a payment to an Obligor and retained on deposit with it) will, unless otherwise provided, be held on the following basis:

- (a) the Lender may exercise the rights referred to in sub-clause 24.1 (Set-off);
- (b) each deposit and all rights of an Obligor relating to it will be incapable of assignment or novation by an Obligor or of being the subject of a security interest except:
 - (i) in favour of the Lender; or
 - (ii) with the prior written consent of the Lender; and
- (c) the Obligors will have no right to withdraw moneys from a deposit until all obligations of the Relevant Parties under the Finance Documents (present and future, direct and contingent) have been performed and complied with, except:
 - (i) as expressly permitted by the terms of the Finance Document under which that deposit was made; or
 - (ii) for the purposes of complying with its obligations under the Finance Documents; or
 - (iii) with the prior written consent of the Lender.

Nothing in this Agreement requires the Lender to segregate funds in such a deposit from funds deposited with it generally, or to account to the Obligors for profit earned by it in relation to such a deposit.

24.4 Interest

Each amount deposited with the Lender in accordance with sub-clause 24.3 (Deposits with Lender) will (unless otherwise agreed) bear interest calculated by reference to successive deposit periods of a duration agreed by the Lender and the Borrower (or, in the absence of agreement, as the Lender nominates). The rate of interest applicable to a deposit period will be as agreed by the Lender and the Borrower (or, in the absence of agreement, as the Lender certifies as applicable to deposits of comparable size and maturity placed with it by customers of comparable standing). So long as no Event of Default has occurred (in which case interest will be added to the deposit) and (subject to sub-clause 24.1 (Set-off), that interest will be paid to the relevant Obligor or as it may direct.

24.5 Broken deposit

If the Lender applies any money deposited with it otherwise than on the last day of an applicable deposit period, it may deduct (for its own account) such amount as, in its opinion, will compensate it for breaking such deposit.

25. Calculations and evidence

25.1 Basis of calculation

All interest will accrue from day to day and will be calculated on the basis of the number of days elapsed and a 365 day year.

Interest in respect of each Interest Period will accrue from (and including) its first day to (but excluding) its last.

25.2 Accounts

The entries made in the accounts maintained by the Lender are conclusive evidence of the existence and amounts of the obligations of the Obligors recorded in them.

25.3 Certificates conclusive

A certificate by the Lender of an interest rate, exchange rate or amount payable under this Agreement is conclusive evidence for all purposes, including for any proceedings.

26. Remedies and waivers

26.1 Exercise of rights and waivers

Time is of the essence in respect of all dates and times for compliance by the Relevant Parties with their obligations under each Finance Document. However, no failure to exercise, and no delay in exercising, a right of the Lender under a Finance Document will operate as a waiver of that right, nor will a single or partial exercise of a right preclude another or further exercise of that right or the exercise of another right. No waiver by the Lender of its rights under a Finance Document is effective unless it is in writing signed by the Lender.

26.2 Remedies cumulative

The rights of the Lender under the Finance Documents are cumulative and not exclusive of any rights provided by law.

27. Notices

27.1 General

In connection with any notice or other communication (a **Communication**) made by an Obligor to the Lender under any Finance Document, the Lender:

- (a) may take the Communication at face value, and has no obligation to take any steps to ensure it was sent by the person it was purported to be sent by;
- (b) has no obligation to act on any incorrect or incomplete Communication, or any Communication that does not comply with any agreed process; and
- (c) is authorised to accept any electronic mail address, facsimile number or personal delivery address advised to it from time to time by an authorised signatory of an Obligor.

27.2 Addresses

Each notice or other communication under this Agreement will be made in writing and sent by electronic mail, facsimile, personal delivery or by post to the addressee at the electronic mail address, facsimile number or address, and marked for the attention of the person or office holder (if any), from time to time designated for the purpose by the addressee to the other party. The initial electronic mail address, facsimile number, address and relevant person or office holder of each party is set out under its name at the end of this Agreement.

27.3 Delivery

(a) General

No communication will be effective until received. A communication to the Obligors is, however, deemed to be received:

- (i) in the case of a letter, on the third business day after posting;
- (ii) in the case of a facsimile, on the business day on which it is despatched or, if despatched after 5.00 p.m. (in the place of receipt) on a business day or on a non-business day, on the next business day after the date of despatch; and
- (iii) in the case of an electronic mail, when it is actually received in readable form.

A communication to the Obligors, or any of them, is deemed to be received when it is deemed to be received by the Borrower in accordance with this clause.

(b) Electronic mail

Electronic mail to the Lender must:

- (i) be sent from a contact of the relevant Obligor authorised by the Lender to communicate by electronic mail;

- (ii) be sent to the exact electronic mail address specified by the Lender from time to time; and
- (iii) in the case of a Drawing Notice, attach a pdf copy of the original Drawing Notice, signed by an authorised signatory of the relevant Obligor.

All parties acknowledge the risk of receiving non-encrypted electronic mail containing confidential information that may also be privileged and accept that:

- (iv) the Lender will not be responsible for unauthorised access and/or alteration to any electronic mail, nor for the consequences arising as a result of use of information that may have been illegitimately accessed or altered, except in the case of gross negligence or wilful misconduct of the Lender; and
- (v) the Lender has no obligation to look behind an instruction to check that it was sent by the person it was purported to be sent by, or to act on incorrect or incomplete instructions.

27.4 Borrower

- (a) By signing this Agreement, or a Supplemental Deed, each Obligor irrevocably appoints the Borrower to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises:
 - (i) the Borrower on its behalf to:
 - (A) supply all information concerning itself contemplated by the Finance Documents to the Lender; and
 - (B) give all communications, notices and instructions to the Lender without further reference to the consent of that Obligor; and
 - (ii) the Lender to give any notice, demand or other communication to that Obligor pursuant to the Finance Documents to the Borrower,

and in each case the Obligor shall be bound as though the Obligor itself had given the notices and instructions, and received the relevant notices, demands or other communications.

- (b) In the event of any conflict between any notices or other communications of the Borrower and any other Obligor, those of the Borrower will prevail.

28. Miscellaneous

28.1 Impossibility

The Lender will not be liable for any failure to perform or comply with its obligations under this Agreement resulting directly or indirectly from the action or inaction of a governmental or local authority, strike, labour disturbance (whether of its employees, officers or otherwise) or any other cause that is beyond its control.

28.2 Anti-money laundering

- (a) The Borrower agrees that the Lender may delay, block or refuse to process any transaction without incurring any liability if it is suspected that:

- (i) the transaction may breach any laws or regulations in New Zealand or any other country;
 - (ii) the transaction involves any person (natural, corporate or governmental) that is itself sanctioned or is connected, directly or indirectly, to any person that is sanctioned under economic and trade sanctions imposed by the United States, the United Nations, the European Union or any country; or
 - (iii) the transaction may directly or indirectly involve the proceeds of, or be applied for the purposes of, conduct that is unlawful in New Zealand or any other country.
- (b) Each Obligor must provide all information to the Lender that the Lender reasonably requires in order to manage its money-laundering, terrorism-financing or economic and trade sanctions risk or to comply with any laws or regulations in New Zealand or any other country. The Obligors agree that the Lender may disclose any information concerning each Obligor to any law enforcement, regulatory agency or court where required by any such law or regulation in New Zealand or elsewhere.

28.3 Benefit and burden of this Agreement

This Agreement is binding on and enures for the benefit of the parties and their respective successors and their permitted assignees, novatees and transferees.

28.4 Amendments

No amendment to this Agreement is effective unless it is in writing signed by all the parties.

28.5 Partial invalidity

The illegality, invalidity or unenforceability of a provision of this Agreement under any law will not affect the legality, validity or enforceability of that provision under another law or the legality, validity or enforceability of another provision.

28.6 Conflict of interests

The Lender may exercise or agree to exercise a right given by this Agreement or by law, even though that person may have a conflict of interest in exercising such right.

28.7 Consents

Unless otherwise specified in this Agreement or expressly stated otherwise in a Finance Document, the Lender may give or withhold any approval or consent in that person's absolute discretion, and either conditionally or unconditionally.

28.8 Contract and Commercial Law Act 2017

For the purposes of Part 2, Subpart 1, of the Contract and Commercial Law Act 2017, each attorney is entitled to enforce against each Obligor each provision of this Agreement that confers a benefit on an attorney (as the case may be). However, no attorney needs to consent to any amendment made to this Agreement.

28.9 Counterparts

This Agreement may be signed in any number of counterparts all of which, when taken together, will constitute one and the same instrument. A party may enter into this Agreement

BELL GULLY

by executing any counterpart. Each party consents to this Agreement (including any counterpart of it) being signed and delivered in electronic form in accordance with the Contract and Commercial Law Act 2017.

28.10 Inconsistency

In the event of any inconsistency between the provisions of this Agreement and the provisions of any other Finance Document, the provisions of this Agreement will prevail.

28.11 Entire Agreement

This Agreement, together with each other agreement made in writing signed by all the parties, constitutes the entire agreement between the parties.

28.12 Effective date

The parties agree that the effective date of this Agreement shall be the date the Obligors sign, notwithstanding the other parties may sign the Agreement at a later date.

29. Governing law

This Agreement is governed by, and is to be construed in accordance with, New Zealand law.

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Execution

Executed as a Deed

SIGNED on behalf of Te Pūkenga - New Zealand
Institute of Skills and Technology by:

**[Drafting Note: BG to insert appropriate
execution block for signing as a deed]**

Address for notices to the Borrower:

Address:

[Drafting Note: BG to insert notice details]

Facsimile Number: [insert]

Email Address: [insert]

Attention: [insert]

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SIGNED on behalf of **Westpac New Zealand Limited** by its attorney in the presence of

Witness Signature

Attorney

Print Name

Print Name

Occupation

Address

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Address for notices to the Lender:

Address:

[Drafting Note: Lender's solicitor to insert notice details]

Facsimile Number:[insert]

Email Address: [insert]

Attention: [insert]

BELL GULLY

SIGNED on behalf of **Westpac Banking Corporation** by its attorney in the presence of

Witness Signature

Attorney

Print Name

Print Name

Occupation

Address

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Address for notices to the Hedge Counterparty:

Address:

[Drafting Note: Lender's solicitor to insert notice details]

Facsimile Number:[insert]

Email Address: [insert]

Attention: [insert]

Schedule 1. Initial Guarantors

1. Te Pūkenga - New Zealand Institute of Skills and Technology
2. Ara Institute of Canterbury Limited
3. Eastern Institute of Technology Limited
4. Manukau Institute of Technology Limited
5. Nelson Marlborough Institute of Technology Limited
6. Northland Polytechnic Limited
7. Otago Polytechnic Limited
8. Southern Institute of Technology Limited
9. Tai Poutini Polytechnic Limited
10. The Open Polytechnic of New Zealand Limited
11. Toi Ohomai Institute of Technology Limited
12. Unitec Institute of Technology Limited
13. Universal College of Learning Limited
14. Waikato Institute of Technology Limited
15. Wellington Institute of Technology Limited
16. Western Institute of Technology at Taranaki Limited
17. Whitireia Community Polytechnic Limited

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Schedule 2. Conditions precedent

Documents to be delivered to the Lender on or before giving the first Drawing Notice

1. A certificate of a director of each of the Relevant Parties attaching the documents referred to in that certificate in substantially the form set out in Schedule 4 (Form of certificate).
2. A certificate, in customary form, of Te Pūkenga - New Zealand Institute of Skills and Technology.
3. The Finance Documents, duly executed by all parties and registered as may be necessary or desirable under any law (or evidence that registration will be effected within any applicable time limit).
4. A Supplemental Deed for each Initial Guarantor;
5. A legal opinion, dated not earlier than two business days previously, from the solicitors to the Lender.
6. Satisfactory customary searches, in relation to the Obligors:
 - (a) on the Companies Office website;
 - (b) at the High Court of New Zealand;
 - (c) on the New Zealand Personal Property Securities Register;
 - (d) at Land Information New Zealand;
7. Evidence that the insurance policies of the Group will satisfy clause 19.1(k) of this agreement.
8. A copy of any licence, consent or Authorisation or other document, opinion or assurance which the Lender considers to be necessary or desirable (if it has notified the Borrower accordingly) in connection with:
 - (a) the entry into and performance of the transactions contemplated by this agreement or any Finance Document; or
 - (b) for the validity and enforceability of this agreement or other Finance Document,
9. Payment of all fees and other costs and expenses payable by the Borrower, or confirmation that appropriate arrangements have been made for such payment.
10. All documentation reasonably required by the Lender in order to carry out "know your customer" or similar checks under applicable laws relating to anti money laundering, terrorist financing and economic and trade sanctions in connection with the transactions contemplated by this agreement.
11. A certified true and correct structure chart in respect of the Group as at Financial Close.
12. A certified true and correct copy of the constitutional documents of each Obligor.
13. A certified true and correct copy of the Treasury Policy.

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BELL GULLY

14. Evidence that all existing Group debt facilities have been cancelled, or will be cancelled following the initial Drawing of the Facility other than comprising Permitted Financial Indebtedness.
15. Evidence of the Consent to Borrow.

Each document and certification shall be in a form and substance satisfactory to the Lender.

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Schedule 3. Form of Drawing Notice

To

Attention:

We refer to the Senior Facility Agreement (the **Agreement**) dated [insert] made between Te Pūkenga - New Zealand Institute of Skills and Technology (the **Borrower**) and Westpac New Zealand Limited (the **Lender**) in respect of a loan facility of \$150,000,000.

We wish to make a Drawing on [*Drawing Date*].

The amount of the Drawing is to be \$[insert].

The Interest Period is to be [insert] months.

Please pay the proceeds of the Drawing to the following account:

[account details]

We confirm that no Event of Default or Potential Event of Default has occurred and that the representations made in the Agreement remain true and accurate as if made on and as of today's date.

Words defined in the Agreement have the same meaning where used in this Drawing Notice.

Yours faithfully,

Signed for and on behalf of the Borrower

by:

Dated

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Schedule 4. Form of certificate

DIRECTOR'S CERTIFICATE

To: TO BE CONFIRMED Limited

and: Bell Gully

I, [name of director], a director of [name of company] (the **Company**) certify as follows:

1. Board resolutions

- 1.1 The board of directors of the Company (the **Board**) has passed all necessary resolutions (the **Resolutions**):
- (a) approving the transactions (the **Transactions**) contemplated by the documents listed in the [first] schedule (the **Documents**) and the Documents themselves; and
 - (b) authorising execution of the Documents by the Company in the manner in which they have actually been executed; and
 - (c) *authorising the persons specified in the second schedule to give any notices and other communications under or in connection with the Documents on behalf of the Company[, including authorising additional persons to give notices and other communications under the Documents].*
- 1.2 The Resolutions were duly passed in writing and signed by all of the directors of the Company entitled to receive notice of a meeting of the Board.

OR

The Resolutions were duly passed at a meeting of the Board:

- (a) which was properly convened; and
 - (b) in which all quorum requirements were duly observed.
- 1.3 The Resolutions remain in full force and effect and have not been superseded or revoked.

2. Directors' self interested transactions

- 2.1 To the best of my knowledge and belief and having made due enquiry of all directors (as defined in section 126 of the Companies Act 1993 (the **Act**)) of the Company, no director has an interest (as that term is defined in section 139 of the Act) in the Transactions.

OR

To the best of my knowledge and belief and having made due enquiry of all directors (as defined in section 126 of the Companies Act 1993 (the **Act**)) of the Company, it has been determined that one or more of the directors of the Company is, or may be, interested (as that term is defined in section 139 of the Act), in the Transactions.

- 2.2 All of the Company's entitled persons have agreed in writing (under section 107(3) of the Act) to the Company's entry into and performance of the Documents and the Transactions (so that nothing in sections 140 and 141 of the Act shall apply to the Transactions). A true and

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complete copy of the entitled person['s/s'] agreement is attached.

- 2.3 In approving the Documents and the Transactions, after taking into account all relevant factors, [*the Board*] consider[s] that the Company is receiving or will receive fair value from its entry into, and performance of, the Documents and the Transactions.

3. **Corporate Benefit**

In approving the Documents and the Transactions the Board has, after due consideration and taking into account all relevant factors [*including an express provision in the Company's constitution*], resolved that the Company's entry into and performance of the Documents and the Transactions is in the best interests of the Company['s holding company].

4. **Shareholder Action**

- 4.1 The shareholder[s] of the Company [have/has] unanimously confirmed, ratified and approved the resolutions of the Board after full disclosure by the director[s] of the Company of all relevant interests.

- 4.2 It has been determined that the Documents and the Transactions do not constitute a "major transaction" (as defined in section 129 of the Act).

OR

It has been determined that the Documents and the Transactions constitute a "major transaction" (as defined in section 129 of the Act). Accordingly, the Company's entry into the Documents and the Transactions has been approved by a special resolution of [*all of*] the Company's shareholders (a true and complete copy of which is **attached**).

- 4.3 The shareholders' special resolution remains in full force and effect and has not been superseded or revoked.

5. **Financial Assistance**

The Transactions do not include or involve any provision by the Company (directly or indirectly) of financial assistance in connection with the purchase of a share issued or to be issued by the Company or the Company's holding company.

OR

The Transactions [*may*] include or involve the provision of financial assistance by the Company (directly or indirectly) in connection with the purchase of shares issued or to be issued by [*the Company*][*the Company's holding company*]. All the requirements of sections [76 to 81/107(1)(e) and 108] of the Act have been complied with. A true and complete copy of the relevant shareholder and entitled person['s/s'] consent and directors' solvency certificate are **attached**.

6. **Due Execution**

Each of the Documents has been properly executed by the Company in compliance with its constitution and section 180(1)[*or 181*] of the Act. Each Document that is a deed has been properly executed and delivered in accordance with section 9 and section 13 of the Property Law Act 2007.

7. **Solvency**

- 7.1 I am not aware of any formal step having been taken to appoint a receiver to the Company, nor of any liquidation or voluntary administration proceedings that have been commenced by any person against the Company, or that are intended or anticipated by the Company.
- 7.2 Having taken into account all relevant factors, *[(including, in the case of a guarantee, all rights of contribution and subrogation to which the Company would be entitled if called upon to perform its obligations. and the solvency of the guaranteed parties)]*, the Board is satisfied that the value of the consideration or benefit received, or to be received, by the Company is not less than the value of the consideration provided, or to be provided, by the Company.
- 7.3 The Company:
- (a) is able to pay its due debts *[and, to the extent applicable, is able to do so from assets other than the property disposed of or to be disposed of in connection with the Documents and the Transactions]*;
 - (b) is not about to incur debts beyond its ability to pay;
 - (c) will not become unable to pay its due debts as a result of the Documents and the Transactions;
 - (d) is not engaged, or about to engage, in a business or transaction for which the remaining assets of the Company are unreasonably small, given the nature of the business or transaction; and
 - (e) has, by entering into the Documents and the Transactions, no intention to prejudice a creditor (within the meaning of subpart 6 of Part 6 of the Property Law Act 2007).

8. **Authorised Signatories**

Attached as the second schedule are the true signatures of the persons who have been authorised (*[any one of them acting alone][any two of them acting together]*) to:

- (a) give any notices and other communications under or in connection with the Documents on behalf of the Company, including authorising additional persons to give notices and other communications under the Documents;
- (b) negotiate, approve, make, agree and/or execute any amendments, supplements and variations to any Document as that Authorised Signatory may (in *[his or her][their]* absolute discretion) think fit, the execution of any Document by an Authorised Signatory being conclusive evidence of the due authorisation by the Company of the execution (and, where appropriate, delivery) on the Company's behalf, of that Document, as amended;
- (c) take such action and make such filings as are required under applicable law;
- (d) authorise the Company's accountants, solicitors and other professional advisers to enter final details and dates into the Documents; and
- (e) do all other acts and things as *[he or she][they]* may consider necessary or desirable in connection with the Transactions contemplated by the Documents.

9. **Consents**

Except for any consent or approval previously referred to in this certificate (and other than any consent which, under New Zealand law, would be applicable to companies generally), no consents or approvals are required by the Company in connection with the entry into,

BELL GULLY

execution and performance of the Documents and the Transactions.

OR

All consents and approvals required by the Company in connection with the entry into, execution and performance of the Documents and the Transactions have been obtained on an unconditional and unqualified basis.

10. **Proper Purpose**

The director[s] ha[s][ve] acted for a proper purpose in approving the Transactions and the Documents.

11. **Constitutional Documents**

The Company does not have a Constitution.

OR

The copy of the Certificate of Incorporation and the Constitution of the Company (incorporating all amendments) held on its records as maintained at the relevant office of the Registrar of Companies in New Zealand as at the date of this certificate is complete, correct and includes all alterations to date.

12. **Entry into Documents**

I am not aware that the Company's entry into the Documents will cause any existing borrowing, guarantee, security or similar limit binding on the Company to be exceeded.

Signed By

[Name], Director

Date:

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Schedule of Documents

1. [*Describe document, date, and parties*];
2. [*etc...*]; and
3. any other document contemplated by, or considered necessary, advisable or expedient in connection with, or incidental to, the above documents or the Transactions.

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BELL GULLY**Schedule of Authorised Signatories**

The following are the true signatures of the persons who have been authorised (*[any one of them acting alone][any two of them acting together]*) to:

- (a) give any notices and other communications under or in connection with the Documents on behalf of the Company *[and to appoint additional persons as authorised signatories for the purposes of giving notices and other communications under the Documents]*;
- (b) negotiate, approve, make, agree and/or execute any amendments, supplements and variations to any Document as that Authorised Signatory may (in [his or her][their] absolute discretion) think fit, the execution of any Document by an Authorised Signatory being conclusive evidence of the due authorisation by the Company of the execution (and, where appropriate, delivery) on the Company's behalf, of that Document, as amended;
- (c) take such action and make such filings as are required under applicable law;
- (d) authorise the Company's accountants, solicitors and other professional advisers to enter final details and dates into the Documents; and
- (e) do all other acts and things as [he or she][they] may consider necessary or desirable in connection with the Transactions contemplated by the Documents.

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Name	Position	Signature

Schedule 5. Form of Supplemental Deed for New Guarantor

THIS SUPPLEMENTAL DEED

is made on [insert] by

1. [insert], (the **New Guarantor**) in favour of
2. TO BE CONFIRMED Limited (the Lender).

BACKGROUND

- A. The New Guarantor is a wholly-owned subsidiary of [insert].
- B. The Borrower and certain other companies entered into a Senior Facility Agreement dated [●] (the **Agreement**).
- C. The New Guarantor wishes to execute this Supplemental Deed (being a deed supplemental to the Agreement) in order to become a Guarantor as defined in the Agreement.

OPERATIVE PROVISIONS

1. Definitions

Unless the context otherwise requires, terms defined in the Agreement have the same meaning in this Supplemental Agreement.

2. Company

The New Guarantor declares, for the benefit of the Lender, that it is a Guarantor and will be deemed to be a party under the Agreement, which shall apply to the New Guarantor as a Guarantor.

3. Provisions of Agreement to apply

Each provision of the Agreement relating to or affecting the Guarantors is deemed to be incorporated in this Supplemental Deed in the same manner and to the same extent as if set out in full and made applicable to the New Guarantor. The New Guarantor undertakes to the Lender to punctually comply with all the undertakings imposed on it under this Supplemental Deed and agrees that it is bound by all the terms and conditions of the Agreement as if it were an original party to the Agreement with the rights and obligations of a Guarantor under the Agreement.

4. Property Law Act

The parties agree that this Supplemental Deed is supplementary to the Agreement, in terms of section 14 of the Property Law Act 2007.

5. Notices

The New Guarantor's initial details for notices are care of the Borrower, as follows:

Type of organisation: Company

Incorporation number:

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Address:

Facsimile No:

Email Address:

Full name of person acting on

behalf of the New Guarantor's, street

address (if different from above)

and e-mail address:

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6. **Governing law**

This Supplemental Deed is governed by, and is to be construed in accordance with, New Zealand law.

EXECUTED as a deed

[NEW GUARANTOR]

by:

Director_____

Director_____

[insert]

by:_____

Schedule 6. Form of compliance certificate

To: Westpac New Zealand Limited

From: Te Pūkenga - New Zealand Institute of Skills and Technology

Dated:

Attention:

Te Pūkenga - New Zealand Institute of Skills and Technology – Senior Facility Agreement

1. We refer to the Facility Agreement (the **Agreement**) dated *[insert]* made between, among others, Te Pūkenga - New Zealand Institute of Skills and Technology and Westpac New Zealand Limited (the **Lender**) in respect of a loan facility of \$150,000,000.
2. This is a Compliance Certificate. Terms defined in the Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
3. We confirm that as at []:
 - (a) the Interest Cover Ratio was []
 - (b) the Leverage Ratio was []
 - (c) the Guaranteeing Group Ratio was []

The calculations supporting the statements in this paragraph are **attached**.
4. [We confirm that no Default [and no Event of Review] is continuing.]*

For and on behalf of

Te Pūkenga - New Zealand Institute of Skills and Technology by:

Name of [Chief Executive/Financial Officer/Council member]

Signature of [Chief Executive/Financial Officer/Council member]

*If this statement cannot be made, the certificate should identify any Default or Event of Review that is continuing and the steps, if any, being taken to remedy it.

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Draft: 4 Feb. 21

Dated

2021

TE PŪKENGĀ - NEW ZEALAND INSTITUTE OF SKILLS AND TECHNOLOGY

AND

THE COMPANIES LISTED IN SCHEDULE 1 TO THIS DEED

AND

WESTPAC NEW ZEALAND LIMITED

**GROUP OVERDRAFT AND SET OFF
AGREEMENT**

Draft: 4 Feb. 21

AGREEMENT the _____ day of _____ 2021

BETWEEN

- (1) **TE PŪKENGĀ - NEW ZEALAND INSTITUTE OF SKILLS AND TECHNOLOGY (Te Pūkenga)**
- (2) the companies listed in the first schedule (together with Te Pūkenga called the **Original Group Members**)
- (3) **WESTPAC NEW ZEALAND LIMITED** (company number 1763882, NZBN 9429034324622) (**Westpac**)

Introduction

The Group Members have requested that Westpac:

- A.** provide overdraft facilities to the Group Members; and
- B.** calculate the interest accruing on the Group Accounts on a net basis, by amalgamating the balances in the Group Accounts for the purposes of the interest calculation,

which Westpac is willing to do so on the terms and conditions of this agreement.

1. Definitions and interpretation

1.1 Definitions

In this agreement::

Additional Group Account means a bank account of a Group Member with Westpac that is to become a Group Account in accordance with clause 12 (*Changes To The Group Accounts*).

Additional Group Member means a company that becomes a Group Member in accordance with clause 11 (*Changes to the Group Members*).

Credit Rate means OCR provided that if the Credit Rate so calculated is less than zero, the Credit Rate shall be zero.

Debit Rate means at any time OCR plus a margin of 1.25% per annum.

Differential Rate means 0.00% per annum.

Drawing means any utilisation of any Group Account, however that occurs.

Excess Rate means the Debit Rate plus 2.00% per annum.

Facility Agreement means:

- (a) the Senior Facility Agreement; and
- (b) each other agreement between Westpac and a Group Member (whether alone or with others) which set out the terms upon which any facilities are made available to a Group Member or any Group Account is to be operated.

Gross Credit means the aggregate amount of the balances at any time in such of the Group Accounts as are at that time in credit.

Gross Indebtedness means at any time the aggregate amount of the balances of the Group Accounts as are at that time in debit.

Gross Indebtedness Limit means twenty five million New Zealand dollars (NZ\$25,000,000). **Group Account** means each of the Original Group Accounts and each Additional Group Account, unless it has ceased to be a Group Account in accordance with clause 12 (*Changes to the Group Accounts*).

Group Member means an Original Group Member or an Additional Group Member, unless it has ceased to be a Group Member in accordance with clause 11 (*Changes to the Group Members*).

Marginal Rate means the Debit Rate plus 2.00% per annum.

Net Credit at any time means the amount obtained by deducting the Gross Indebtedness from the Gross Credit at that time, provided that if the Net Credit so calculated is less than zero, the Net Credit shall be zero.

Net Indebtedness at any time means the amount obtained by deducting the Gross Credit from the Gross Indebtedness at that time, provided that if the Net Indebtedness so calculated is less than zero, the Net Indebtedness shall be zero.

Net Indebtedness Limit means twenty five million New Zealand dollars (NZ\$25,000,000). **Nominated Account** means the account of Te Pūkenga numbered 03-0502-0542221-00.

OCR means the Official Cash Rate set by the Reserve Bank of New Zealand from time to time.

Overdraft Facility means the overdraft facility provided by Westpac to the Group Members pursuant to clause 3 (*Overdraft*) (as may be amended from time to time) or as the context requires the sums outstanding under it.

Original Group Accounts means the bank accounts listed in schedule 2 (*Original Group Accounts*).

Senior Facility Agreement means the senior facility agreement dated on or about the date of this Agreement between (among others) Te Pūkenga as borrower, each Original Group Member as guarantors and Westpac as lender and transactional bank.

1.2 Interpretation

- (a) References to:
 - (i) "balances" include capitalised interest and charges; and
 - (ii) "dishonour" include reversal.
- (b) Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- (c) Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- (d) The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
- (e) A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.
- (f) Any words following the terms "*including*", "*include*", "*in particular*", "*for example*" or any similar expression shall be construed as illustrative; shall not limit the sense of the words, description, definition, phrase or term preceding those terms and shall be construed as if followed by the phrase "without limitation".

2. Intraday Overdraft Limits

- 2.1 This agreement is subject to any intraday overdraft agreements between Westpac and a Group Member relating to any Group Account.

3. Overdraft

- 3.1 Westpac grants to each of the Group Members an overdraft facility, which in aggregate shall not exceed the Net Indebtedness Limit.
- 3.2 The Overdraft Facility is only available to the Group Members in respect of the Group Accounts.

- 3.3 The Overdraft Facility is repayable on demand and may be cancelled or reduced (as the case may be) by Westpac at any time. If cancelled all sums outstanding under the Overdraft Facility shall be immediately due and payable. If reduced all sums outstanding under the Overdraft Facility in excess of the revised facility limit shall be immediately due and payable.
- 3.4 Interest in respect of the Overdraft Facility shall be calculated and paid in accordance with clause 6 (*Interest*) of this agreement.
- 3.5 A line of credit charge of 0.35% per annum shall be payable by Te Pūkenga monthly, calculated on the greater of:
- (a) the Net Indebtedness Limit; and
 - (b) the highest daily balance of Net Indebtedness outstanding during such month,
- 3.6 and shall be charged to the Nominated Account on the last banking day of each month. Each Group Member shall also pay all other fees and charges relating to the Overdraft Facility charged or chargeable by Westpac according to its usual practice from time to time.

4. Obligations of the Group Members

- 4.1 Each of the Group Members shall ensure that:
- (a) the Gross Indebtedness does not exceed the Gross Indebtedness Limit; and
 - (b) the Net Indebtedness does not exceed the Net Indebtedness Limit,
- in each case at any time.
- 4.2 No Group Member shall create, or permit to arise or subsist, any security interest (as that term is defined in, or used in the context of, the Personal Property Securities Act 1999) over or in respect of any Group Account or in any balance in any Group Account, except to the extent that Westpac has consented to the creation of such security interest in advance.

5. Rights of Westpac

- 5.1 Without prejudice to any other rights or remedies, Westpac may in its discretion, at any time and from time to time without notice to any Group Member dishonour any Drawing where the Drawing would cause a breach of clause 4 (*Obligations of the Group Members*) to occur.
- 5.2 Without limiting the provisions of clause 5.1, that rights may be exercised irrespective of:
- (a) the nature or title or purpose of the account upon which the Drawing is requested;
 - (b) whether or not, at the time of the dishonour of a Drawing, the account upon which the Drawing is made is in credit in an amount equal to or greater than the amount of that Drawing;
 - (c) the amounts of the debit and/or credit balances in any accounts, not being Group Accounts, held with Westpac by any Group Member (either alone or jointly);
 - (d) whether, at the time of the dishonour of the Drawing, the Gross Indebtedness is already in excess of the Gross Indebtedness Limit and/or the Net Indebtedness is already in excess of the Net Indebtedness Limit; and
 - (e) any previous forbearance on the part of Westpac from exercising its rights and powers pursuant to this agreement and any other previous waiver by Westpac of any breach of this agreement by any Group Member.

6. Interest

- 6.1 Interest in respect of each Group Account shall accrue on a daily basis, unless otherwise expressly stated in the Facility Agreement relating to the Group Account when the provisions of that Facility Agreement shall prevail in respect of that Group Account.
- 6.2 Where the Gross Indebtedness exceeds the Gross Credit, interest shall accrue to Westpac as follows:
- (a) on the Net Indebtedness amount up to the Net Indebtedness Limit at the Debit Rate;

- (b) on the Net Indebtedness amount (if any) that is in excess of the Net Indebtedness Limit (**NI Excess**) at the Excess Rate;
 - (c) if the Gross Indebtedness exceeds the Gross Indebtedness Limit by an amount (**GI Excess**) which is greater than the NI Excess, on the difference between the GI Excess and the NI Excess at the Marginal Rate; and
 - (d) on the amount by which Gross Indebtedness exceeds Net Indebtedness at the Differential Rate.
- 6.3 Where the Gross Indebtedness is equal to or less than the Gross Credit, interest shall accrue as follows:
- (a) to the Group Members on any Net Credit at the Credit Rate;
 - (b) to Westpac on the Gross Indebtedness at the Differential Rate; and
 - (c) if the Gross Indebtedness is greater than the Gross Indebtedness Limit, to Westpac on the GI Excess at the Marginal Rate.
- 6.4 Each Group Member irrevocably directs that:
- (a) interest due to Westpac shall be debited from the Nominated Account by Westpac; and
 - (b) interest due from Westpac shall be credited to the Nominated Account.
- 7. Guarantee**
- 7.1 Each Group Member's liability to Westpac in respect of the guarantee in this clause 7 (*Guarantee*) is limited to an amount equal to the Gross Indebtedness at the time demand is made for payment under it by Westpac.
- 7.2 In this clause 7 (*Guarantee*), **Obligation** means all amounts of any nature which each Group Member is or may at any time become liable to pay or deliver to Westpac:
- (a) whether such sums are due at the time of demand under this guarantee or may become due in the future;
 - (b) whether such sums are actually or contingently due; and
 - (c) whether such sums are the liability of the Group Member alone, or jointly or jointly and severally with any other person (whether or not a Group Member).
- 7.3 Each Group Member jointly and severally, unconditionally and irrevocably:
- (a) guarantees to Westpac the due payment or delivery by each other Group Member of each Obligation;
 - (b) undertakes with Westpac that whenever another Group Member does not pay or discharge any Obligation when due it shall immediately on demand pay that amount or discharge that obligation as if it was the principal obligor;
 - (c) agrees with Westpac that if any Obligation is or becomes unenforceable, invalid or illegal, it will, as an independent and primary liability, indemnify Westpac immediately on demand against any cost, loss or liability it incurs as a result of a Group Member not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it to Westpac on the date when it would have been due, provided that the amount payable under this indemnity will not exceed the amount it would have had to pay under this Clause 7.3(a) if the amount claimed had been recoverable on the basis of a guarantee;
 - (d) confirms the guarantee in this clause 7 (*Guarantee*) is a continuing guarantee and shall operate irrespective of any intermediate payment or discharge in whole or in part;
 - (e) waives any right or entitlement to any demand and all that Group Member's other rights (including rights of subrogation, contribution and marshalling) against Westpac, each other Group Member and any other person so far as is necessary to give effect to its guarantee;

- (f) confirms these provisions are in addition to and not in substitution for, are collateral to, and shall not prejudicially affect or be prejudicially affected by, any other security or right which Westpac may have in respect of any amounts guaranteed under this clause 7 (*Guarantee*); and
- (g) acknowledges and confirms that its liability under this clause will not be affected by an act, omission, matter or thing which, but for this sub-clause, would reduce, release or prejudice any of its obligations under this clause 7 (*Guarantee*) (whether or not known to it or Westpac) including:
 - (i) any time, waiver or consent granted to, or composition with, any Group Member or other person;
 - (ii) the release of any other Group Member or any other person under the terms of any composition or arrangement with any creditor;
 - (iii) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Group Member or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
 - (iv) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any Group Member or any other person;
 - (v) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of this agreement, the Overdraft Facility, any Facility Agreement or any other document or security including any change in the purpose of, any extension of or any increase in any facility or the grant of any new facility to any Group Member;
 - (vi) any unenforceability, illegality or invalidity of any obligation of any person under any Facility Agreement or any other document or security; or
 - (vii) any insolvency or similar proceedings.

8. Facility Agreements continue

The provisions of clause 6 (*Interest*) do not in any way affect each Group Member's obligations:

- 8.1 under the Facility Agreements to which it is a party;
- 8.2 to pay any fees or charges arising in respect of the Group Accounts; or
- 8.3 to repay any debit balances in any Group Account when called upon by Westpac to do so.
- 8.4 Set-off Each Group Member authorises Westpac to apply (without prior notice or demand) any credit balance of that Group Member on any account (including any which is not a Group Account) in any currency and at any of its offices in or towards satisfaction of any indebtedness then due to Westpac by that or any other Group Member and unpaid.
- 8.5 If at any time following the occurrence of an event of default or a breach by any Group Member under the terms of any Facility Agreement or other arrangement with Westpac, any amount is contingently due to a Group Member from Westpac or any amount due to a Group Member from Westpac is not quantified (an **Amount**), Westpac may retain and withhold repayment of any credit balance of any Group Member on any account (including any which is not a Group Account) and the payment of any interest or other moneys thereon pending the Amount becoming due and/or being quantified and may set off against the Amount the aggregate liability which may be or become owing to it by the Group Members.
- 8.6 For the purposes of this clause 8.4 (*Set-off*) Westpac:
- 8.7 is authorised to break any term deposit; and

- 8.8 may use all or any part of any credit balance in any currency to buy such other currencies as may be necessary to effect such applications.
- 8.9 The rights of Westpac under this clause:
- 8.10 are contractual rights affecting the terms upon which any credit balance of any Group Member is held with Westpac and the creation of those rights does not constitute the creation of any charge or other proprietary interest in any such credit balance; and
- 8.11 are without prejudice and in addition to any other rights under any other agreement between Westpac and the Group Members (or any of them) and any right of set-off, combination of accounts, lien or other right to which it is at any time otherwise entitled (whether by operation of law, contract or otherwise).
- 8.12 Nothing obliges Westpac to exercise any of the rights conferred by this clause 8.4 (*Set-off*).

9. Release of Liability

- 9.1 Subject to clause 9.2, each Group Member releases and discharges Westpac and its officers, employees and assigns from any and all liability in respect of any loss, damage, costs, charges and expenses incurred or sustained by any Group Member by reason of or relating to:
 - (a) the entry into and performance of this agreement by any Group Member; and
 - (b) any breach of this agreement by Westpac.
- 9.2 Clause 9.1 shall not release or discharge Westpac from any loss, damage or costs, charges and expenses incurred or sustained by a Group Member by reason of Westpac's deliberate breach of this agreement.
- 9.3 The parties intend clause 9.1 to be enforceable by the officers, employees and assigns of Westpac.

10. Continuation

The arrangements recorded in this agreement may be terminated by Westpac in its absolute discretion at any time without any prior notice being given and upon such termination all the provisions of each Facility Agreement shall have full force and effect irrespective of the provisions of this agreement.

11. Changes to the Group Members

- 11.1 No Group Member may assign any of its rights or transfer any of its rights or obligations under this agreement.
- 11.2 Te Pūkenga shall promptly notify Westpac if any Group Member ceases to be a related company within the meaning given to that phrase in the Companies Act 1993.
- 11.3 Subject to the delivery by Te Pūkenga of any documentation, information or evidence required to enable Westpac to satisfy its obligations in relation to the prevention or detection of money laundering or the financing of terrorism, Te Pūkenga may at any time request that a wholly owned subsidiary of Te Pūkenga become a party to this agreement.
- 11.4 If Westpac, in its sole discretion, agrees to such request, the wholly owned subsidiary of Te Pūkenga so nominated shall become a Group Member by executing and delivering to Westpac an accession agreement in the form set out in the Third Schedule.
- 11.5 Each accession agreement must be consented to and executed by each Group Member. Each Group Member severally and irrevocably appoints Te Pūkenga as its attorney for this purpose.
- 11.6 Subject to clause 11.7, Te Pūkenga may at any time request that a Group Member cease to be a Group Member. If Westpac, in its sole discretion, agrees to such request, the nominated Group Member shall cease to be a Group Member from the date of such agreement and shall have no further rights or obligations under this agreement.

11.7 The conditions in clause 11.6 are:

- (a) the nominated Group Member is not Te Pūkenga;
- (b) no default under this agreement has occurred and is continuing, or would result from the nominated Group Member ceasing to be a Group Member; and
- (c) no sums are due from the Group Member to Westpac under this agreement at the date of the request and the date the nominated Group Member ceases to be a Group Member.

12. Changes to the Group Accounts

12.1 Te Pūkenga may request that an account of any Group Member with Westpac:

- (a) be added as a Group Account; or
- (b) cease to be a Group Account,
by the delivery to Westpac of a request for addition or deletion of account in the form set out in the Third Schedule.

12.2 Te Pūkenga may request that the Nominated Account be changed to any other account of Te Pūkenga with Westpac.

12.3 Westpac has an absolute discretion whether to permit:

- (a) the addition of an account as a Group Account;
- (b) a Group Account to cease to be a Group Account; or
- (c) a change to the account designated as the Nominated Account.

12.4 Any request for the addition of an account as a Group Account; for any Group Account to cease to be a Group Account or for a change to the account designated as the Nominated Account must be executed by each Group Member. Each Group Member severally and irrevocably appoints Te Pūkenga as its attorney for this purpose.

13. Changes to facilities

13.1 Each Group Member expressly confirms that it intends that this agreement shall continue in full force and effect notwithstanding that from time to time Westpac may:

- (a) extend, vary, increase, decrease or cancel any existing banking facilities or other financial accommodation enjoyed by any Group Member (including the Overdraft Facility); or
- (b) enter into any new banking facilities or other financial accommodation with any Group Member; or
- (c) permit any company to become or cease to be a Group Member; or
- (d) permit any bank account to become or cease to be a Group Account.

13.2 Each Group Member irrevocably waives any right it might have to consent to any of the matters referred to in clause 13.1, regardless of any increase in its liability under this agreement as a result.

14. Representations

Each Group Member represents to Westpac on each day that it is a Group Member that:

- 14.1 it holds RWT-exempt status as described in section RE27 of the Income Tax Act 2007; it is a related company of each other Group Member within the meaning given to that phrase in the Companies Act 1993;
- 14.2 no mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect (including any "security interest" as defined in the Personal Property Securities Act 1999) exists over the Group Accounts held by it and it will not create or permit to subsist any such interest over those Group Accounts; and

14.3 it is the sole beneficial owner of the sums in the Group Accounts held by it.

15. Gross up

15.1 All payments by a Group Member under this agreement shall be made without any deduction and free and clear of and without deduction or withholding for or on account of any taxes, except to the extent that a Group Member is required by law to make payment subject to any taxes.

15.2 If any tax or amounts in respect of tax (not being a tax imposed on overall net income of Westpac) must be deducted or withheld, or any other deductions or withholdings must be made, from any amounts payable or paid by a Group Member under this agreement, then that Group Member shall pay such additional amounts as may be necessary to ensure that Westpac receives a net amount (after the payment of any taxes in respect of those additional amounts) equal to the full amount which it would have received had payment not been made subject to tax.

15.3 Each Group Member shall forthwith on demand pay to Westpac and hereby indemnifies Westpac in respect of, any additional amount of New Zealand resident withholding tax (including, without limitation, any interest, penalties and additions thereto) that any New Zealand tax authority requires Westpac to pay to it arising from the calculation or payment of interest pursuant to this agreement.

16. Amendments to agreement

16.1 Any amendment to this agreement shall, as regards a Group Member, only take effect when agreed to in writing by that Group Member.

16.2 Each Group Member severally appoints Te Pūkenga as its attorney for the purpose of agreeing to any amendment to this agreement and executing any documentation to give effect to such amendment.

16.3 Each Group Member acknowledges that any amendment to this agreement shall bind it when agreed to in writing by it, notwithstanding that another Group Member or Group Members may fail to agree to such amendment.

17. Calculations and Certificates

17.1 In any litigation or arbitration proceedings arising out of or in connection with this agreement, the entries made in the accounts maintained by Westpac are *prima facie* evidence of the matters to which they relate.

17.2 Any certification or determination by Westpac of a rate or amount under this agreement is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

17.3 Any interest, commission or fee accruing under this agreement will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 365 days.

18. Partial Invalidity

If, at any time, any provision of this agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

19. Remedies and Waivers

19.1 No failure to exercise, nor any delay in exercising, on the part of Westpac, any right or remedy under this agreement shall operate as a waiver of any such right or remedy or constitute an election to affirm this agreement.

19.2 No single or partial exercise of any right or remedy by Westpac shall prevent any further or other exercise or the exercise of any other right or remedy under this agreement.

19.3 The rights and remedies provided in this agreement are cumulative and not exclusive of any rights or remedies provided by law.

20. Notices

Each Group Member other than Te Pūkenga irrevocably appoints Te Pūkenga as its agent for the service of all notices under this agreement and the service of process in relation to any proceedings in connection with this agreement.

21. Counterpart Execution

This agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this agreement.

22. Governing Law

This agreement and any non-contractual obligations arising out of or in connection with it are governed by the laws of New Zealand.

23. Delivery

For the purposes of section 9 of the Property Law Act 2007, and without limiting any other mode of delivery, this agreement will be delivered by Te Pūkenga and each Original Group Member (each a "Delivering Party") immediately on the earlier of:

- 23.1 physical delivery of an original of this agreement, executed by the relevant Delivering Party, into the custody of Westpac or Westpac's solicitors; or
- 23.2 transmission by the relevant Delivering Party or its solicitors (or any other person authorised in writing by the relevant Delivering Party) of a facsimile, photocopied or scanned copy of an original of this agreement, executed by the relevant Delivering Party, to Westpac or Westpac's solicitors.

24. Effective Date

This agreement is only effective once signed by each of the parties to it and a legal opinion has been provided by Westpac's external legal counsel regarding due execution, authorisation and capacity of each of the Original Group Members.

25. Finance Document

The parties agree that this is a Finance Document.

EXECUTED as a deed

First Schedule

Original Group Members

FIRST SCHEDULE
Original Group Members

Name	NZBN	Company number
Te Pūkenga - New Zealand Institute of Skills and Technology		
Ara Institute of Canterbury Limited	9429048037112	7925549
Eastern Institute of Technology Limited	9429048037266	7925938
Manukau Institute of Technology Limited	9429048037396	7925977
Nelson Marlborough Institute of Technology Limited	9429048038409	7926556
Northland Polytechnic Limited	9429048038522	7926596
Otago Polytechnic Limited	9429048041898	7926677
Southern Institute of Technology Limited	9429048042079	7926415
Tai Poutini Polytechnic Limited	9429048069519	7926718
The Open Polytechnic of New Zealand Limited	9429048038751	7926597
Toi Ohomai Institute of Technology Limited	9429048038997	7926861
Unitec New Zealand Limited	9429048039437	7927097
Universal College of Learning Limited	9429048039093	7926865
Waikato Institute of Technology Limited	9429048040839	7929496
Wellington Institute of Technology Limited	9429048040488	7927156
Western Institute of Technology at Taranaki Limited	9429048041775	7929596
Whitireia Community Polytechnic Limited	9429048040594	7929304

[Drafting Note: Original Group Members to be confirmed]

Second Schedule

Original Group Accounts

SECOND SCHEDULE*Original Group Accounts*

Account Holder	Account Number
Te Pūkenga - New Zealand Institute of Skills and Technology Limited	03-0502-0542221-00
Ara Institute of Canterbury Limited	03-1592-0561016-00
Eastern Institute of Technology Limited	03-0631-0007233-00
Manukau Institute of Technology Limited	[•]
Nelson Marlborough Institute of Technology Limited	03-0703-0052894-00
Northland Polytechnic Limited	03-0104-0981085-00
Otago Polytechnic Limited	03-0883-0134810-00
Southern Institute of Technology Limited	03-1750-0488257-20
Tai Poutini Polytechnic Limited	
Toi Ohomai Institute of Technology Limited	03-0435-0470124-00
The Open Polytechnic of New Zealand Limited	[•]
Unitec New Zealand Limited	[•]
Universal College of Learning Limited	[•]
Waikato Institute of Technology Limited	[•]
Wellington Institute of Technology Limited	[•]
Western Institute of Technology at Taranaki Limited	[•]
Whitireia Community Polytechnic Limited	[•]

[Drafting note: Original Group Accounts to be confirmed]

[Drafting Note: We assume that each Group Member will have an account set up prior to the date of this document and this table can be updated accordingly. WP to advise if this is not the case.]

THIRD SCHEDULE ACCESSION AGREEMENT

Dated: _____ day of _____ 20____

To: WESTPAC NEW ZEALAND LIMITED (company number 1763882, NZBN 9429034324622)
(Westpac)

From:

Company **TE PŪKENGĀ - NEW ZEALAND INSTITUTE OF SKILLS AND TECHNOLOGY (Te Pūkenga)**

Applicant: **[NAME OF INCOMING GROUP MEMBER] LIMITED**

1. We refer to the Group Overdraft and Set Off agreement previously entered into between Westpac, Te Pūkenga and the Original Group Members (as defined in it) dated [date of set off agreement] (Agreement). The Applicant wishes to accede to the Agreement and to become a Group Member. Terms defined in the Agreement shall have the same meaning in this document. The rules of interpretation set out in the Agreement shall apply to this document.
2. The NZBN of the Applicant is [insert NZBN].
3. The Applicant agrees to become an Additional Group Member and to be bound by the terms of the Agreement as a Group Member.
4. The Applicant agrees all the covenants and provisions of the Agreement shall apply to the Applicant as though it had executed the Agreement as an Original Group Member. The Applicant covenants and agrees with Westpac that it will perform, observe and be bound by such covenants and provisions, jointly and severally with each Group Member (other than itself).
5. The Applicant agrees the following bank accounts are to be Additional Group Accounts:

Account Name	Account Number	Branch
[•]	[•]	[•]

6. The Applicant irrevocably appoints Te Pūkenga as its attorney for the purposes of:
 - 6.1 agreeing to any amendment to the Agreement;
 - 6.2 consenting to:
 - (a) the accession of any Additional Group Member;
 - (b) the resignation of any Group Member;
 - (c) the addition of any bank account as a Group Account;
 - (d) the removal of any bank account from being a Group Account;
 - (e) any changes to the Nominated Account; and
 - 6.3 executing any documentation (including any deed) to give effect to such matters.
7. Te Pūkenga confirms:
 - 7.1 that there is no breach of the Agreement that is continuing or would occur as a result of the Applicant becoming a Group Member; and
 - 7.2 that it has not received any notice of revocation of the power of attorney granted to it by each of the Group Members.
8. Each Group Member consents to the Applicant becoming a Group Member.

Third Schedule

Accession Agreement

Executed as a deed by Te Pūkenga and the Applicant and as a simple contract by each Group Member, acting by its attorney, Te Pūkenga.

TE PŪKENGĀ - NEW ZEALAND INSTITUTE OF SKILLS AND TECHNOLOGY LIMITED

.....
Director signature

.....
Director signature

.....
Director name

.....
Director name

[Drafting note: Method of execution to be confirmed]

[Company] LIMITED

.....
Director signature

Signed for and on behalf of **each Group**)
Company by its attorney **TE PŪKENGĀ -**)
NEW ZEALAND INSTITUTE OF SKILLS)
AND TECHNOLOGY

.....
Director

[Drafting note: Method of execution to be confirmed]

We agree to the Applicant becoming an Additional Group Member and the bank accounts referred to above becoming Group Accounts.

Signed for an on behalf of

WESTPAC NEW ZEALAND LIMITED

Authorised signatory

Third Schedule

Changes to Group Accounts

Third SCHEDULE

Request to add or remove Group Account

To: **WESTPAC NEW ZEALAND** (company number 1763882, NZBN 9429034324622) (**Westpac**)

From: **TE PŪKENGĀ - NEW ZEALAND INSTITUTE OF SKILLS AND TECHNOLOGY**
(**Company**)

Date: [●]

1. We refer to the overdraft and set off agreement previously entered into between Westpac, Te Pūkenga and the Original Group Members (as defined in it) dated [date of set off agreement] (**Agreement**). Terms defined in the Agreement shall have the same meaning in this document. The rules of interpretation set out in the Agreement shall apply to this document.

2. Please add the following bank account(s) as an Additional Group Account:

Account holder	Branch	Account number	Suffix

3. Please remove the following bank account(s) from the Group Accounts:

Account holder	Branch	Account number	Suffix

4. We confirm:

- 4.1 the account holder is a Group Member;
- 4.2 there is no breach of the Agreement that is continuing or would occur as a result of the approval of this request; and
- 4.3 we have not received any notice of revocation of the power of attorney granted to us by each of the Group Members.

5. Each Group Member consents to the requests set out above

Signed for an on behalf of
**Te Pūkenga - New Zealand Institute
Of Skills And Technology**

By

Signed for and on behalf of each Group
Company by its attorney **TE PŪKENGĀ - NEW
ZEALAND INSTITUTE OF SKILLS AND
TECHNOLOGY**

by

.....
[Drafting Note: Method of execution to
be confirmed, noting that Te Pūkenga is
not a company so does not have
directors]

.....
[Attorney] [Drafting Note: Westpac to confirm
witnessing requirements]

We agree to the request.

Signed for an on behalf of

WESTPAC NEW ZEALAND LIMITED

Third Schedule

Changes to Group Accounts

Authorised signatory

TE PŪKENGĀ - NEW ZEALAND INSTITUTE OF SKILLS AND TECHNOLOGY

.....
signature

.....
Name Name

[Drafting Note: Method of execution to be confirmed, noting that Te Pūkenga is not a company so does not have directors]

Execution Pages

[names of other Group Members]

.....
Director signature Director signature

.....
Name of Director Name of Director

[Drafting note: Execution Blocks for Other Group Members to be Inserted]

WESTPAC NEW ZEALAND LIMITED

by its attorney

.....
Attorney signature

.....
Name of attorney

in the presence of:

.....
Witness signature

.....
Name of witness

.....
Occupation

.....
City/town of residence

Master Intra-Group Loan Agreement

DRAFT

between

Each party listed in Schedule 1

Original Borrowers

and

Te Pūkenga - New Zealand Institute of Skills and Technology

Lender

Date

BELL GULLY

WELLINGTON 171 FEATHERSTON STREET
P O BOX 1291, WELLINGTON 6140, DX SX11164, NEW ZEALAND
TEL 64 4 915 6800 FAX 64 4 915 6810

This **Master Intra-Group Loan Agreement** is made on

between (1) **Each party listed in Schedule 1** (each, an **Original Borrower**)

and (2) **Te Pūkenga - New Zealand Institute of Skills and Technology**, a tertiary education institution under the Education and Training Act 2020 and a Crown entity under the Crown Entities Act 2004 (**Lender**)

Introduction

The Lender has agreed to make a loan facility available to each Borrower on the terms and subject to the conditions set out in the General Terms below and the relevant Specific Terms Letter.

General Terms

1. Interpretation

1.1 Definitions

In this Master Intra-Group Loan Agreement, capitalised terms have the meanings given to them in each Specific Terms Letter and, unless the context otherwise requires:

Accession Letter means a letter in substantially the form set out in Schedule 3.

Additional Borrower means each Lender Subsidiary (other than an Original Borrower) that has executed and delivered an Accession Letter to the Lender;

Agreement means the agreement between the Parties set out in each Specific Terms Letter and the Master Intra-Group Loan Agreement;

Borrower means each Original Borrower and each Additional Borrower;

Lender Subsidiary means each wholly owned subsidiary of the Lender, other than an Original Borrower;

Ring Fenced Cash Reserves means the Borrowers' capped, non-refreshing cash-reserves held in specific identified bank accounts, as disclosed to the Lender prior to the Date of this Agreement;

Senior Facility Agreement means the senior facility agreement to be entered into on or about 1 March 2021 between the Lender as borrower and Westpac New Zealand Limited as lender;

Senior Finance Documents means:

- (a) the Senior Facility Agreement;
- (b) any cash pooling agreement entered into between the Lender and Westpac New Zealand Limited; and

DRAFT

- (c) any transactional banking document entered into between the Lender and Westpac New Zealand Limited,

and each other agreement (present or future), required or contemplated by, or relating to, the Senior Facility Agreement; and

Specific Terms Letter means each letter substantially in the form set out at Schedule 2 between a Borrower and the Lender setting out the specific terms of a Loan.

1.2 Construction

In this Agreement, unless the context otherwise requires:

costs incurred by a person include all commissions, charges, losses, expenses (including legal fees on a solicitor and own client basis), liabilities and taxes incurred by that person;

loss includes loss of profit and loss of margin;

a **person** includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a state, an agency of a state and any other entity (in each case, whether or not having separate legal personality);

a **subsidiary** of a person includes:

- (a) a subsidiary as defined in section 5 of the Companies Act 1993 (as if the term "company" in those sections includes entities incorporated in a jurisdiction other than New Zealand); and
- (b) an "in substance" subsidiary and any other person treated as a subsidiary under NZ GAAP; and
- (c) a person controlled (whether directly or indirectly and whether by ownership of share capital, possession of voting power, contract or otherwise) by that person;

the singular includes the plural and vice versa; and

any legislation includes a modification and re-enactment of, legislation enacted in substitution for, and a regulation, order-in-council and other instrument from time to time issued or made under, that legislation.

Headings and the table of contents are to be ignored in construing this Agreement.

2. Availability

- (a) Each Borrower may, from time to time, request that the Lender makes a Loan available.
- (b) If the Lender agrees to make a Loan available, it will issue a Specific Terms Letter to the Borrower setting out the terms and conditions to apply to the relevant Loan.
- (c) The Lender has no obligation to make any Loan available to a Borrower except on the terms set out in any Specific Terms Letter.

3. **Payments**

3.1 **Loan**

The relevant Borrower will repay the Loan, together with all interest, costs and other amounts payable on the applicable Repayment Date.

3.2 **Interest**

The relevant Borrower will pay interest on the Loan outstanding from time to time at the Interest Rate. Interest accrues on a daily basis and is payable in arrears on each Interest Payment Date.

4. **Representations**

- (a) Each Borrower represents that:
 - (i) it is duly incorporated and validly existing under the laws of New Zealand;
 - (ii) it has full power to enter into and comply with its obligations under this Agreement;
 - (iii) its obligations under this Agreement are legal, valid, binding and enforceable in accordance with their respective terms; and
 - (iv) it is solvent and able to pay its indebtedness as it falls due.
- (b) Each of the representations in this clause will be deemed to be repeated continuously so long as this Agreement remains in effect by reference to the facts and circumstances then existing.

5. **Undertakings**

Each Borrower undertakes that it will:

- (a) do all things necessary to maintain its corporate existence; and
- (b) duly and promptly comply with all laws.

6. **Change in circumstances**

6.1 **Illegality**

If, at any time, the Lender determines that it is, or may be or will become unlawful or impractical to fund or allow to remain outstanding all or part of the Loan then, on the Lender notifying the relevant Borrower:

- (a) the Lender may cancel the Loan; and
- (b) if the Loan has been advanced, the relevant Borrower will repay the Loan together with all interest, costs and other amounts payable immediately.

6.2 Increased costs

If, as a result of the introduction of, or a change in, a law or regulation or similar, the Lender determines that its cost of funding or maintaining the Loan is increased then:

- (a) the Lender will notify the relevant Borrower; and
- (b) the relevant Borrower will pay to the Lender on demand the amount certified by the Lender to be necessary to compensate it for that increased cost.

7. Indemnity

The relevant Borrower will indemnify the Lender against each cost incurred by the Lender as a result of an amount payable by that Borrower to the Lender not being paid when due, by payment on demand to the Lender of the amount the Lender certifies is required to compensate it for that cost.

8. Payments

Each payment to the Lender will be made:

- (a) free of any restriction or condition; and
- (b) free and clear of and (except to the extent required by law) without any deduction or withholding for or on account of tax or any other account, whether by way of set-off, counterclaim or otherwise.

9. Set-off

9.1 Set-off

Subject to clause **Error! Reference source not found.**, each Borrower authorises the Lender to apply any credit balance of that Borrower in or towards satisfaction of any indebtedness then due to the Lender in connection with this Agreement and unpaid.

9.2 Contractual rights

The Lender's rights under this clause are contractual rights affecting the terms on which a credit balance is held and the creation of those rights does not constitute the creation of a security interest in that credit balance.

9.3 Ring Fenced Cash Amount

The Lender will have no recourse whatsoever to the Ring Fenced Cash Reserves, and waives any right, to:

- (a) any claim against the Ring Fenced Cash Reserves; or
- (b) set-off any credit balance, combine accounts or to any lien,

that is available to it under a Finance Document, or at law (including on the liquidator of an Borrower) in respect of the Ring Fenced Cash Reserves.

9.4 Senior Finance Documents

If there is any inconsistency between set-off rights or the exercise of those rights in the Agreement or in the Senior Finance Documents, those in the Senior Finance Documents will prevail.

10. Additional Borrowers

10.1 A Lender Subsidiary may become an Additional Borrower if:

- (a) the Lender Subsidiary delivers to the Borrower a duly completed and executed Accession Letter; and
- (b) the Borrower notifies the relevant Lender Subsidiary in writing that it has received the relevant Accession Letter.

10.2 Delivery of an Accession Letter constitutes confirmation by the relevant Lender Subsidiary that the representations and warranties in clause 4 are true and correct in relation to it as at the date of delivery as if made by reference to the facts and circumstances then existing.

11. Miscellaneous

11.1 Assignment

This Agreement is binding on and enures for the benefit of the parties and their respective successors and permitted assignees, novatees and transferees. No party may assign, novate or transfer any of its rights or obligations under this Agreement without the consent of the other relevant party.

11.2 Amendments

No amendment to this Agreement is effective unless it is in writing signed by all the parties.

11.3 Partial invalidity

The illegality, invalidity or unenforceability of a provision of this Agreement under any law will not affect the legality, validity or enforceability of that provision under another law or the legality, validity or enforceability of another provision.

11.4 Counterparts

This Agreement may be signed in any number of counterparts all of which, when taken together, will constitute one and the same instrument. A party may enter into this Agreement by executing any counterpart. Each party consents to this Agreement (including any counterpart of it) being signed and delivered in electronic form in accordance with the Contract and Commercial Law Act 2017.

11.5 Governing law

This Agreement is governed by, and is to be construed in accordance with, New Zealand law.

BELL GULLY

Execution

Executed as an agreement.

Lender [**Drafting Note: Appropriate execution block to be confirmed by Lender**]

SIGNED for and on behalf of **Te
Pūkenga - New Zealand Institute
of Skills and Technology**

Name: [], [Authorised
signatory][Chief Executive]

Original Borrowers

[**Drafting Note: Appropriate execution block to be inserted for each Original Borrower**]

SIGNED for and on behalf of
[Borrower name]

Name: [], [Authorised
signatory][Chief Executive]

D
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A
F
T

Schedule 1. The Original Borrowers

1. Ara Institute of Canterbury Limited
2. Eastern Institute of Technology Limited
3. Manukau Institute of Technology Limited
4. Nelson Marlborough Institute of Technology Limited
5. Northland Polytechnic Limited
6. Otago Polytechnic Limited
7. Southern Institute of Technology Limited
8. Tai Poutini Polytechnic Limited
9. The Open Polytechnic of New Zealand Limited
10. Toi Ohomai Institute of Technology Limited
11. Unitec New Zealand Limited
12. Universal College of Learning Limited
13. Waikato Institute of Technology Limited
14. Wellington Institute of Technology Limited
15. Western Institute of Technology at Taranaki Limited
16. Whitireia Community Polytechnic Limited

DRAFT

Schedule 2. Form of Specific Terms Letter

Te Pūkenga - New Zealand Institute of Skills and Technology

[Date]

Ground Floor, Wintec House
Corner Nisbet and Anglesea Streets
Hamilton

Attention []

Specific Terms Letter – [name of Borrower] (Borrower)

We refer to a master intra-group loan agreement dated [insert] between, among others, the Borrower and Te Pūkenga - New Zealand Institute of Skills and Technology, a tertiary education institution under the Education and Training Act 2020 and a Crown entity under the Crown Entities Act 2004 (the **Master Intra-Group Loan Agreement**).

The Lender has agreed to make a loan facility available to the Borrower on the terms and subject to the conditions set out in the General Terms of the Master Intra-Group Loan Agreement and this Specific Terms Letter.

Parties

Lender	Te Pūkenga - New Zealand Institute of Skills and Technology
Borrower	[•]
Borrower NZBN	[•]

Specific Terms

Loan	<p>(a) NZ\$[insert]; or</p> <p>(b) such higher amount as may result from further advances made by the Lender to the Borrower from time to time; or</p> <p>(c) such lower amount as either of the above amounts may be reduced by as a result of partial repayments by the Borrower to the Lender from time to time</p>
Interest Rate	[insert] per cent per annum]
Interest Payment Dates	at the end of each [calendar month][quarter] or such other dates agreed between the Lender and the Borrower
Repayment Date	<p>the earlier of:</p> <p>(a) [insert]; or</p> <p>(b) a written demand being made by the Lender</p>

DRAFT

BELL GULLY

No amendment to this letter, or waiver in respect of it, is effective unless it is in writing signed by all parties.

This letter is governed by, and is to be construed in accordance with, New Zealand law. It may be signed in any number of counterparts all of which, when taken together, will constitute one and the same instrument. Each party consents to this letter (including any counterpart of it) being signed and delivered in electronic form in accordance with the Contract and Commercial Law Act 2017.

Executed as an agreement.

Lender [*Drafting Note: Appropriate execution block to be confirmed by Lender*]

SIGNED for and on behalf of **Te
Pūkenga - New Zealand Institute
of Skills and Technology**

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[Authorised signatory]/[Chief
Executive]

Borrower

SIGNED for and on behalf of
[Borrower name]

Name: [], [Authorised
signatory]/[Chief Executive]

BELL GULLY

Schedule 3. Form of Accession Letter

To: Te Pūkenga – New Zealand Institute of Skills and Technology

From: [insert] (the **Lender Subsidiary**)

Dated:

Dear Sir/Madam

Te Pūkenga – New Zealand Institute of Skills and Technology - Master Intra-Group Loan Agreement dated [insert] (the Agreement)

DRAFT

1. We refer to the Agreement. This is an Accession Letter. Terms defined in the Agreement have the same meaning when used in this Accession Letter unless given a different meaning in this Accession Letter.
2. The Lender Subsidiary agrees to become an Additional Borrower and to be bound by the terms of the Agreement as an Additional Borrower pursuant to clause 10 of the Agreement. The Lender Subsidiary is a company duly incorporated under the laws of New Zealand.
3. The Lender Subsidiary administrative details are as follows:

Address:

Email:

Attention:
4. This Accession Letter is entered into as an agreement.

Lender Subsidiary

SIGNED for and on behalf of
[Lender Subsidiary name]

Name: [], [Authorised signatory][Chief Executive]

Special resolution of shareholder approving major transaction Entitled person's consent

(Sections 107 and 129 Companies Act (the **Act**))

Noted

- A. Te Pūkenga is the sole shareholder and “entitled person” (as defined in section 2 of the Act) of the following companies:

Ara Institute of Canterbury Limited
Eastern Institute of Technology Limited
Manukau Institute of Technology Limited
Nelson Marlborough Institute of Technology Limited
Northland Polytechnic Limited
Otago Polytechnic Limited
Southern Institute of Technology Limited
Tai Poutini Polytechnic Limited
The Open Polytechnic of New Zealand Limited
Toi Ohomai Institute of Technology Limited
Unitec New Zealand Limited
Universal College of Learning Limited
Waikato Institute of Technology Limited
Wellington Institute of Technology Limited
Western Institute of Technology at Taranaki Limited
Whitireia Community Polytechnic Limited

(together, the **Companies** and each a **Company**).

- B. Pursuant to draft written resolutions proposed to be signed by the directors of the board of each Company (set out at Appendix 1), it is proposed that each Company enter into the “Documents” described in those resolutions and enter into the “Transactions” described in those resolutions.
- C. The entry by each Company into the Documents and the Transactions, either individually or collectively, constitutes or may constitute a major transaction for that Company the purposes of section 129 of the Act.
- D. The constitutions of each of the Companies (**Constitutions**) provide at clause 12.4 that for as long as the relevant Company is a wholly owned subsidiary of Te Pūkenga, any director of the relevant Company may, when exercising powers or performing duties as a director, act in a manner which he or she believes is in the best interests of Te Pūkenga, even though it may not be in the best interests of the applicable Company.
- E. At the Council meeting on 2 February 2021, the Council of Te Pūkenga:
- (a) approved the entry of Te Pūkenga into the Transactions and the Documents; and
 - (b) resolved that the entry of each Company into the Documents and Transactions is in the best interests of Te Pūkenga, even though entry into the Documents and Transactions may not be in the best interests of each Company.
- F. The Constitutions also provide at clause 7.1 that each Reserved Matter set out in Schedule 2 of the Constitution(s) requires the prior written approval of Te Pūkenga. Clause 7.2 of the Constitution(s) provides that Te Pūkenga may issue from time to time an Operational and Financial Parameters Direction (**OFPP Direction**) that specifies, amongst other things:

- the applicable thresholds or financial limits for categories of transactions, or actions, which require approval by Te Pūkenga as Reserved Matters; and
- restrictions or parameters applicable to the Subsidiary in respect of operational matters.

Schedule 2 of the Constitution(s) and the current OFP Direction provide that the Subsidiary must obtain the consent of Te Pūkenga for certain Reserved Matters. Most relevantly, these include:

Reserved Matter under Schedule 2 of Constitution requiring Te Pūkenga approval	OFP Direction threshold
New borrowings: the incurring by the Company of any new borrowing or any other indebtedness or liability in the nature of borrowing (including entering into any finance leases) in excess of the thresholds and/or financial limits specified in its current OFP Direction.	Zero (for borrowing or any other indebtedness or liability in the nature of borrowing which is not a finance lease)
Drawdown on existing debt facilities: drawing-down from any debt or borrowing facilities (in a transaction, or series of related transactions) in excess of the thresholds and/or financial limits, or in advance of the budgeted draw-downs, in each case as specified in its current OFP Direction.	Any amount that would result in budgeted debt draw-downs for the financial year being equal to or greater than 105% of budgeted debt draw down-downs for the financial year
Borrowing limits: the approval of new borrowing limits in relation to any existing debt or borrowing facilities.	No threshold (i.e. must obtain Te Pūkenga approval)

- G. . The board of each Company has sought:
- (a) the approval of the shareholder, by special resolution, to the entry by that Company into the Documents and the Transactions;
 - (b) the prior written approval of the Shareholder (as required by the Constitution and the OFP Direction) to the entry by that Company into the Documents and the Transactions; and
 - (c) the consent of Te Pūkenga as the sole entitled person of the Company to the entry of the Company into the Transactions and its agreement that, to the extent that any director of the Company is or may be interested in the Transactions, nothing in sections 140 and 141 of the Act shall apply with respect to the Transactions..
- H. Capitalised terms used in these resolutions, unless otherwise defined, have the same meaning given to them in the draft resolutions of the board of directors of each of the Company set out in Appendix One.

Resolved

To the extent that any of the Transactions constitute a major transaction for the purposes of section 129 of the Act and/or require the prior approval of the shareholder (including under the Constitution and/or current OFP Direction) and/or agreement of the entitled person of the Company, it is hereby resolved (as a special resolution in writing) and agreed that:

1. The entry into, and performance of, the Documents and the Transactions by each Company are approved (including for the purposes of sections 7.1 and 7.2 of the Constitution(s) and the current OFP Direction).
2. The resolutions of the board of directors of each Company approving the Documents and the Transactions are confirmed, approved and ratified.
3. The entry into the Documents and the Transactions by each Company is in the best interests of that Company and/or or in the best interests of the shareholder of the Company, as contemplated by clause 12.4 of each Company's Constitution.
4. The directors of each Company have acted for a proper purpose in approving the Transactions and the Documents.
5. Notwithstanding any interest a director of each Company may have in the Documents and/or the Transactions, nothing in sections 140 or 141 of the Act applies to the Documents or the Transactions.
6. The entry by the Company into the Documents and the Transactions, and any other documents considered necessary, desirable, advisable or incidental in connection with the Documents and the Transactions, is approved.

DATED: 5 February 2021

SIGNED for and on behalf of

TE PŪKENGĀ – NEW ZEALAND INSTITUTE OF SKILLS AND TECHNOLOGY

(being the sole shareholder and entitled person in relation to each of the Companies)

by:



Murray Strong – Council Chairperson

Appendix 1: Draft Board Resolutions for Te Pūkenga Subsidiaries

[Insert Te Pūkenga Subsidiary] Limited

(the **Company**)

Board Resolutions

Passed as written resolutions of the board of directors pursuant to the Companies Act 1993 (the **Act**)

INTRODUCTION

The Company is a wholly owned subsidiary of Te Pūkenga – New Zealand Institute of Skills and Technology (**Te Pūkenga**).

It is proposed that Te Pūkenga will establish an internal group funding structure as part of the establishment of its central treasury function. This approach means Te Pūkenga, as borrower, will raise external finance (under a Senior Facility Agreement with the new lender) and then provide financing to its subsidiaries (each a **Te Pūkenga Subsidiary**) under new intragroup loan arrangements. It is currently anticipated that the arrangements with the new lender will take effect on 1 March 2021 (**Commencement Date**).

The Company has received an explanatory note from Bell Gully (**Explanatory Note**), which summarises the proposed financing and transactional banking arrangements. This is set out in Appendix 1.

PROPOSED TRANSACTIONS

It is proposed that the Company enter into certain transactions, including:

1. the “Documents” (as listed below); and
2. do all such things and enter into such other transactions as may be considered necessary to give effect to the above transactions or which may be considered necessary, advisable or expedient in connection with, or incidental to, the above transactions,

(together, the **Transactions**).

PROPOSED DOCUMENTS AND PROCESS FOR FINALISATION

1. The Company is required to enter into the following documents in connection with the Transactions:
 - a. a Supplemental Deed in relation to the accession of the Company as a new guarantor to a senior facility agreement between Te Pūkenga as the borrower, the guarantors named therein (each, a **Guarantor**), and Westpac New Zealand Limited as lender (**Senior Facility Agreement**);
 - b. a group overdraft and set-off agreement between the Te Pūkenga, the Company and each of the Guarantors (**Group Overdraft and Set-off Agreement**);
 - c. a master intragroup loan agreement between the Te Pūkenga, the Company and each of the Guarantors (**Master Intragroup Loan Agreement**);
 - d. transactional banking documentation in Westpac’s standard form in relation to the Company’s transactional banking arrangements; and
 - e. any other document contemplated by, or considered necessary, advisable or expedient in connection with, or incidental to, the above documents or the Transactions,

(together, the **Documents**).

2. At the Council meeting on 2 February 2021, the Council of Te Pūkenga:
 - a. approved the entry of Te Pūkenga into the Transactions and the Documents; and
 - b. authorised two Council members to approve (on behalf of Te Pūkenga) the final form of the Documents and sign those Documents on behalf Te Pūkenga.
3. Drafts of the Documents specified in Appendix 2 have been provided to the Board. It is noted that these documents are drafts and are still subject to negotiation.
4. Te Pūkenga and Westpac will be negotiating and finalising the form of the Documents over the next few weeks, as set out in the indicative timetable included in the Explanatory Note. As the final form Documents will need to be executed by Te Pūkenga and each of its Te Pūkenga Subsidiaries by 26 February 2021, it is proposed that by these written resolutions, the Board approve the entry of the Company into the Transactions and the Documents and authorise two directors to:
 - a. approve the final form of the Documents (once received from Te Pūkenga) and sign those documents on behalf the Company; and
 - b. sign the director's certificate required from the Company under the Documents (**Director's Certificate**).

NOTED

Consents

1. Section 282(4) of the Education and Training Act 2020 (**ETA**) provides that an "institution" (including **Te Pūkenga**), may not exercise any of the following powers without the written consent of the Secretary for Education (unless the consent of the Secretary is not required under s 282(5)):
 - a. the power to borrow, issue debentures, or otherwise raise money; and
 - b. the power to mortgage or otherwise charge assets or interests in assets.
2. Section 328 of the ETA specifically provides that unless s 282(5) applies, a Te Pūkenga Subsidiary (which includes the Company) may not exercise any of the powers in s 282(4) unless it has first notified Te Pūkenga and Te Pūkenga has obtained the consent of the Secretary. This restriction is reflected in the Constitution of the Company and the Operational and Financial Parameters Direction which applies to the Company.
3. Under the section 284(4) consent granted by the Secretary for Education on 9 September 2020 (**Intra-group Borrowing Consent**), the Secretary consents to Te Pūkenga and its subsidiaries exercising powers under s 282(4), "where the exercise of those powers does not affect the overall balance sheet of the group comprising NZIST and its subsidiaries." Subject to compliance with those terms, this consent permits transactions under the proposed intragroup loan arrangements without needing to apply for Secretary consent for each separate transaction. A copy of this Intra-group Borrowing Consent is set out in Appendix 3.
4. At the meeting of the Council of Te Pūkenga on 2 February, the Council approved (as required by the Constitution of each Te Pūkenga Subsidiary and the OFP Direction) the entry of the Te Pūkenga Subsidiaries (including the Company) into each of the Documents.

Corporate benefit

5. As part of the Transactions, a cross guarantee and a negative pledge from each Te Pūkenga Subsidiary will support the borrowings of Te Pūkenga under the new Senior Facility Agreement and/or the other Documents. No security is required to be provided by Te Pūkenga or any Te Pūkenga Subsidiaries under the Transactions.

6. In entering into the proposed Transactions, the Board will need to be satisfied that entry into the Transactions, including the cross guarantee, is in the best interests of the Company. It is noted that:
 - a. under the Senior Facility Agreement, the Te Pūkenga group will have greater access to cash. The enhanced financial reserves available to Te Pūkenga places it in a stronger position to support the Company, including through the intra-group loan facility and as required, under the Letter of Support issued by Te Pūkenga on 1 April 2020;
 - b. the proposed arrangements allow the Te Pūkenga group to access debt upon more competitive lending terms than the Company would be able to obtain itself. Entry into the large scale financing arrangement on a negative pledge basis can provide an opportunity for the Company to access finance on more attractive terms than would be available to it on a stand-alone basis; and
 - c. a condition of access to the intragroup funding is that each Te Pūkenga Subsidiary, including the Company, becomes a guarantor under the Senior Facility Agreement and/or the other Documents.
7. The Constitution of the Company provides at clause 12.4 that for as long as the Company is a wholly owned subsidiary of Te Pūkenga, any director of the Company may, when exercising powers or performing duties as a director, act in a manner which he or she believes is in the best interests of Te Pūkenga, even though it may not be in the best interests of the Company.
8. At the Council meeting on 2 February 2021, the Council of Te Pūkenga resolved that the entry of each Te Pūkenga Subsidiary (including the Company) into the Documents and Transactions is in the best interests of Te Pūkenga, even though entry into the Documents and Transactions may not be in the best interests of the Company.

Major transaction

9. The Documents and the Transactions constitute, or may constitute, a major transaction (as defined in section 129 of the Act). Accordingly, the Company's entry into the Documents and the Transactions has been or will be approved by a special resolution of the Company's sole shareholder (Te Pūkenga). The relevant shareholder's resolution and entitled persons consent is set out at Appendix 4.

Interested directors

10. After having made due enquiry of all directors (as defined in section 126 of the Act) of the Company, it has been determined that: **[Option A: no director of the Company] [Option B: one or more of the directors of the Company]** is, or may be, "interested" (as that term is defined in section 139 of the Act) in the Transactions. The Board has sought the agreement of all entitled persons of the Company in accordance with section 107(3) of the Act to the entry into of the Documents and the Transactions by the Company.

[Note to Subsidiary: Please refer to section 139 of the Companies Act for the definition of "interested". Please be aware that although Te Pūkenga and other Te Pūkenga Subsidiaries may be parties to, or derive material financial benefits from, the Transactions, a director of the Company will not be "interested" in the Transactions merely because that director is also an officer or director of Te Pūkenga or any other Te Pūkenga Subsidiary.]

To the extent that the Board determines that a director is "interested" in the Transactions, please notify Te Pūkenga of those interests as soon as possible (including a copy of your signed written board resolutions), as it may mean that Te Pūkenga needs separately confirm, ratify or approve your board resolutions.]

No Financial Assistance

11. The Transactions do not include or involve the provision of financial assistance by the Company (directly or indirectly) in connection with the purchase of shares issued or to be issued by the Company and/or the Company's holding company.

Status of Te Pūkenga Statement of Intent

12. It is noted that Te Pūkenga does not have a current Statement of Intent and has provided a draft Statement of Intent to its responsible Minister in accordance with the process set out in section 146 of the Crown Entities Act 2004.

[Payment of existing external financial debt]

13. It is noted that the Company currently holds external financial debt. Subject to agreement with Westpac, it is proposed that Crown debt will be retained, but any external financial debt with third party financiers currently held by Te Pūkenga Subsidiaries will be repaid within 90 days of the Commencement Date, through borrowings under the new intragroup loan arrangements. This is still being negotiated with Westpac. It is proposed that the Company will liaise with the Director of Finance for Te Pūkenga to discuss the proposed arrangements.] **[Note to Subsidiary: please delete this paragraph if the Company does not have existing external financial debt.]**

Bank account

14. The Company proposes to open one or more bank accounts in connection with the Transactions (**Bank Account(s)**), which each comply with the requirements for bank accounts as set out in section 158(1) of the Crown Entities Act 2004.
15. To facilitate day to day dealings with the Bank Account, the Board proposes to give authority to sign all necessary documents in relation to the Bank Account and to operate the Bank Account to the following persons (together, the **Bank Account Authorised Persons**):
 - (a) the chief executive as an authorised contact and signatory; and
 - (b) the [chief financial officer] as an authorised signatory.

[Note to Subsidiary: If you do not have a chief financial officer, please include the equivalent delegated position at (b). The Subsidiary Board may include other positions in this list of authorised persons.]

Group Treasury Policy

16. On 2 February 2021, the Council of Te Pūkenga approved and adopted a group treasury policy (**Group Treasury Policy**) set out in **Appendix 5 (Group Treasury Policy)**, with effect from the Commencement Date.
17. The Company therefore proposes to adopt the Group Treasury Policy, with effect from the Commencement Date.
18. The Company proposes to (and will procure that all and any Crown entity subsidiaries of the Company will) update and amend all existing delegations, rules, policies, procedures and any other documents as required to reflect the Group Treasury Policy.

RESOLVED that:

1. The Company's entry into, and performance of, the Transactions and (subject to resolution 2 below) the final form Documents, is approved.
2. Any two directors of the Company (acting together) are authorised to approve the final form of the Documents (once received from Te Pūkenga) and sign those documents on behalf the Company.

B.2 Template Board Resolutions (final template)

3. Any one director is authorised to sign the Director's Certificate required from the Company under the Documents in connection with the Transactions.
4. After due consideration and taking into account all relevant factors (including clause 12.4 of the Constitution of the Company):
 - (a) the entry into and performance of the Documents and the Transactions is in the best interests of the Company and/or the Company's sole shareholder, Te Pūkenga;
 - (b) the Company is receiving or will receive fair value from its entry into, and performance of, the Documents and the Transactions; and
 - (c) the directors have acted for a proper purpose in approving the Transactions and the Documents.
5. After due consideration and taking into account all relevant factors, the entry into and performance of the Documents and the Transactions by the Company:
 - (a) is undertaken as part of giving effect to the charter of Te Pūkenga, as set out in Schedule 3 of the Constitution of the Company; and
 - (b) is for the purpose of performing, or assisting Te Pūkenga to perform, the functions of Te Pūkenga.
6. The Documents in their final form be executed by the Company in any of the manners authorised in the Company's constitution or section 180(1) of the Act and section 13 of the Property Law Act 2007, and, where the Documents are deeds, executed and delivered in accordance with section 9 of the Property Law Act 2007.
7. The Board is not aware of any formal step having been taken to appoint a receiver to the Company, nor of any liquidation or voluntary administration proceedings that have been commenced by any person against the Company, or that are intended or anticipated by the Company.
8. Having taken into account all relevant factors, (including, in the case of a guarantee, all rights of contribution and subrogation to which the Company would be entitled if called upon to perform its obligations, and the solvency of any relevant guaranteed parties), the value of the consideration or benefit received, or to be received, by the Company is not less than the value of the consideration provided, or to be provided, by the Company.
9. The Board has not voted in favour of placing the Company into business debt hibernation and has not provided (and does not intend to provide) notice to the Registrar of Companies (appointed under section 357(1) of the Act) of any decision to enter the Company into business debt hibernation pursuant to Schedule 13 of the Act.
10. The Company:
 - (a) is able to pay its due debts and, to the extent applicable, is able to do so from assets other than the property disposed of or to be disposed of in connection with the Documents and the Transactions;
 - (b) does not intend to incur nor does it believe or reasonably should believe that it is incurring debts beyond its ability to pay;
 - (c) will not become unable to pay its due debts as a result of the Documents and the Transactions;

- (d) is not engaged, or about to engage, in a business or transaction for which the remaining assets of the Company are unreasonably small, given the nature of the business or transaction;
 - (e) will be able to perform its obligations under the Documents and the Transactions when required to do so; and
 - (f) has, by entering into the Documents and the Transactions, no intention to prejudice a creditor (within the meaning of subpart 6 of Part 6 of the Property Law Act 2007).
11. Any two directors of the Company (acting together) are authorised to give any notices and other communications under or in connection with the Documents on behalf of the Company, including authorising additional persons to give notices and other communications under the Documents (each, an **Authorised Signatory**).
12. An Authorised Signatory is authorised to:
- (a) give any notices and other communications under or in connection with the Documents on behalf of the Company including authorising additional persons to give notices and other communications under the Documents;
 - (b) negotiate, approve, make, agree and/or execute any amendments, supplements and variations to any Document as that Authorised Signatory may (in their absolute discretion) think fit, the execution of any Document by an Authorised Signatory being conclusive evidence of the due authorisation by the Company of the execution (and, where appropriate, delivery) on the Company's behalf, of that Document, as amended;
 - (c) take such action and make such filings as are required under applicable law;
 - (d) authorise the Company's accountants, solicitors and other professional advisers to enter final details and dates into the Documents; and
 - (e) do all other acts and things as they may consider necessary or desirable in connection with the Transactions contemplated by the Documents.

Bank account

13. The Bank Account Authorised Persons are authorised to sign all necessary documents in relation to the establishment and operation of the Bank Account(s).

Group Treasury Policy

14. The Group Treasury Policy set out at Appendix 4 is approved and adopted by the Company, with effect from the Commencement Date.
15. The Company will (and will procure that all and any Crown entity subsidiaries of the Company will) comply with, and confirms the continued application of, all existing delegations, rules, policies, procedures and any other documents in connection with the Transactions.

These resolutions may be signed by the directors of the Company in as many counterparts (including by PDF copy, facsimile or otherwise) as may be necessary, each of which will be deemed to be an original, and such counterparts together will constitute one and the same instrument.

[Note to Subsidiaries: please update the signature blocks below by including the names of your directors and Deputy Chairperson (if any)]

DATED 2021

Signed by

Chairperson

[Deputy Chairperson][Director]

Director

Director

Director

Director

Director

Director

(being all the directors of the Company)

Appendix 1: Bell Gully Explanatory Note

Appendix 2: Draft versions of Documents

1. Senior Facility Agreement
2. Group Overdraft and Set-off Agreement
3. Master Intragroup Loan Agreement
4. Director's Certificate

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Appendix 3: Intra-group Borrowing Consent

Appendix 4: Shareholder's resolution and entitled person's consent

Appendix 5: Group Treasury Policy

DIRECTOR'S CERTIFICATE

To: Westpac New Zealand Limited as Lender and Transactional Bank

and: Westpac Banking Corporation as Hedge Counterparty

and: MinterEllisonRuddWatts

I, *[name of director]*, a director of *[name of company]* (the **Company**) certify as follows:

1. **Board resolutions**

1.1 The board of directors of the Company (the **Board**) has passed all necessary resolutions (the **Resolutions**):

- (a) approving the transactions (the **Transactions**) contemplated by the documents listed in the *[first]* schedule (the **Documents**) and the Documents themselves; and
- (b) authorising execution of the Documents by the Company in the manner in which they have actually been executed; *and*
- (c) *authorising the persons specified in the second schedule to give any notices and other communications under or in connection with the Documents on behalf of the Company[, including authorising additional persons to give notices and other communications under the Documents].*

1.2 The Resolutions were duly passed in writing and signed by all of the directors of the Company entitled to receive notice of a meeting of the Board.

OR

The Resolutions were duly passed at a meeting of the Board:

- (a) which was properly convened; and
- (b) in which all quorum requirements were duly observed.

1.3 The Resolutions remain in full force and effect and have not been superseded or revoked.

1.4 Entry into and performance of the Documents and the Transactions by the Company:

- (a) complies with all relevant requirements of the Crown Entities Act 2004 (**CEA**) and the Education and Training Act 2020;
- (b) complies with the requirements of the Constitution of the Company;
- (c) is undertaken as part of giving effect to the charter of Te Pūkenga – New Zealand Institute of Skills and Technology (**Parent**), as set out in Schedule 3 of the Constitution of the Company;
- (d) to the extent applicable, complies with the requirements of any Operational or Financial Parameters Direction given under the Constitution of the Company (as that term is defined in the Constitution of the Company); and

- (e) is for the purpose of performing, or assisting the Parent to perform, the Parent's functions.

1.5 The Parent does not have a current statement of intent and has provided a draft statement of intent to its responsible Minister in accordance with the process set out in section 146 of the Crown Entities Act 2004.

2. **Directors' self interested transactions**

2.1 To the best of my knowledge and belief and having made due enquiry of all directors (as defined in section 126 of the Companies Act 1993 (the **Act**)) of the Company, no director has an interest (as that term is defined in section 139 of the Act) in the Transactions.

OR

To the best of my knowledge and belief and having made due enquiry of all directors (as defined in section 126 of the Companies Act 1993 (the **Act**)) of the Company, it has been determined that one or more of the directors of the Company is, or may be, interested (as that term is defined in section 139 of the Act), in the Transactions.

2.2 All of the Company's entitled persons have agreed in writing (under section 107(3) of the Act) to the Company's entry into and performance of the Documents and the Transactions (so that nothing in sections 140 and 141 of the Act shall apply to the Transactions). A true and complete copy of the entitled person[s/s] agreement is attached.

2.3 In approving the Documents and the Transactions, after taking into account all relevant factors, [*the Board*] consider[s] that the Company is receiving or will receive fair value from its entry into, and performance of, the Documents and the Transactions.

3. **Corporate Benefit**

In approving the Documents and the Transactions the Board has, after due consideration and taking into account all relevant factors [*including an express provision in the Company's constitution*], resolved that the Company's entry into and performance of the Documents and the Transactions is in the best interests of the Company[*'s holding company*].

4. **Shareholder Action**

4.1 The shareholder[s] of the Company [have/has] unanimously confirmed, ratified and approved the resolutions of the Board after full disclosure by the director[s] of the Company of all relevant interests.

4.2 It has been determined that the Documents and the Transactions do not constitute a "major transaction" (as defined in section 129 of the Act).

OR

It has been determined that the Documents and the Transactions constitute a "major transaction" (as defined in section 129 of the Act). Accordingly, the Company's entry into the Documents and the Transactions has been approved by a special resolution of [*all of*] the Company's shareholders (a true and complete copy of which is **attached**).

- 4.3 The shareholders' special resolution remains in full force and effect and has not been superseded or revoked.
5. **Financial Assistance**
- The Transactions do not include or involve any provision by the Company (directly or indirectly) of financial assistance in connection with the purchase of a share issued or to be issued by the Company or the Company's holding company.
- OR**
- The Transactions [*may*] include or involve the provision of financial assistance by the Company (directly or indirectly) in connection with the purchase of shares issued or to be issued by [*the Company*][*the Company's holding company*]. All the requirements of sections [76 to 81/107(1)(e) and 108] of the Act have been complied with. A true and complete copy of the relevant shareholder and entitled person['s/s'] consent and directors' solvency certificate are **attached**.
6. **Due Execution**
- Each of the Documents has been properly executed by the Company in compliance with its constitution and section 180(1)[*or 181*] of the Act. Each Document that is a deed has been properly executed and delivered in accordance with section 9 and section 13 of the Property Law Act 2007.
7. **Solvency**
- 7.1 I am not aware of any formal step having been taken to appoint a receiver to the Company, nor of any liquidation or voluntary administration proceedings that have been commenced by any person against the Company, or that are intended or anticipated by the Company.
- 7.2 Having taken into account all relevant factors, [*(including, in the case of a guarantee, all rights of contribution and subrogation to which the Company would be entitled if called upon to perform its obligations. and the solvency of the guaranteed parties)*], the Board is satisfied that the value of the consideration or benefit received, or to be received, by the Company is not less than the value of the consideration provided, or to be provided, by the Company.
- 7.3 The Board has not voted in favour of placing the Company into business debt hibernation and has not provided (and does not intend to provide) notice to the Registrar of Companies (appointed under section 357(1) of the Act) of any decision to enter the Company into business debt hibernation pursuant to Schedule 13 of the Act.
- 7.4 The Company:
- (a) is able to pay its due debts [*and, to the extent applicable, is able to do so from assets other than the property disposed of or to be disposed of in connection with the Documents and the Transactions*];
 - (b) does not intend to incur nor does it believe or reasonably should believe that it is incurring debts beyond its ability to pay;
 - (c) will not become unable to pay its due debts as a result of the Documents and the Transactions;

- (d) is not engaged, or about to engage, in a business or transaction for which the remaining assets of the Company are unreasonably small, given the nature of the business or transaction;
- (e) has, by entering into the Documents and the Transactions, no intention to prejudice a creditor (within the meaning of subpart 6 of Part 6 of the Property Law Act 2007); and
- (f) will be able to perform its obligations under the Documents and the Transactions when required to do so.

8. **Authorised Signatories**

Attached as the second schedule are the true signatures of the persons (**Authorised Signatories**) who have been authorised (*[any one of them acting alone][any two of them acting together]*) to:

- (a) give any notices and other communications under or in connection with the Documents on behalf of the Company, including authorising additional persons to give notices and other communications under the Documents;
- (b) negotiate, approve, make, agree and/or execute any amendments, supplements and variations to any Document as that Authorised Signatory may (in [his or her][their] absolute discretion) think fit, the execution of any Document by an Authorised Signatory being conclusive evidence of the due authorisation by the Company of the execution (and, where appropriate, delivery) on the Company's behalf, of that Document, as amended;
- (c) take such action and make such filings as are required under applicable law;
- (d) authorise the Company's accountants, solicitors and other professional advisers to enter final details and dates into the Documents; and
- (e) do all other acts and things as [he or she][they] may consider necessary or desirable in connection with the Transactions contemplated by the Documents.

9. **Consents**

All consents and approvals required by the Company in connection with the entry into, execution and performance of the Documents and the Transactions (including without limitation, any consents required under the Constitution of the Company) have been obtained on an unconditional and unqualified basis.

10. **Proper Purpose**

The director[s] ha[s][ve] acted for a proper purpose in approving the Transactions and the Documents.

11. **Constitutional Documents**

The copy of the Certificate of Incorporation and the Constitution of the Company (incorporating all amendments) held on its records as maintained at the relevant office of the Registrar of Companies in New Zealand as at the date of this certificate is complete, correct and includes all alterations to date.

12. **Security Interests**

Except any Permitted Security Interest (as defined in the Facility Agreement), no security interest exists over or affects, nor is there any agreement to give or permit to exist, any security interest over or affecting, any of the Company's property.

13. **Entry into Documents**

I am not aware that the Company's entry into and performance of the Documents and the Transactions will cause any existing borrowing, guarantee, security or similar limit binding on the Company to be exceeded.

Signed By

[Name], Director

Date:

First Schedule – Documents

1. [*Describe document, date, and parties – “Facility Agreement” to be defined*];
2. [*etc...*]; and
3. any other document contemplated by, or considered necessary, advisable or expedient in connection with, or incidental to, the above documents or the Transactions.

Second Schedule – Authorised Signatories

The following are the true signatures of the persons who have been authorised (*[any one of them acting alone][any two of them acting together]*) to:

- (a) give any notices and other communications under or in connection with the Documents on behalf of the Company *[and to appoint additional persons as authorised signatories for the purposes of giving notices and other communications under the Documents]*;
- (b) negotiate, approve, make, agree and/or execute any amendments, supplements and variations to any Document as that Authorised Signatory may (in [his or her][their] absolute discretion) think fit, the execution of any Document by an Authorised Signatory being conclusive evidence of the due authorisation by the Company of the execution (and, where appropriate, delivery) on the Company's behalf, of that Document, as amended;
- (c) take such action and make such filings as are required under applicable law;
- (d) authorise the Company's accountants, solicitors and other professional advisers to enter final details and dates into the Documents; and
- (e) do all other acts and things as [he or she][they] may consider necessary or desirable in connection with the Transactions contemplated by the Documents.

Name	Position	Signature

Te Pūkenga - New Zealand Institute of Skills and Technology

Group Treasury Policy

Approval date: 2 February 2021

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1 Introduction

This Group Treasury Policy establishes the framework and scope within which treasury related risks are governed by Te Pūkenga (“Parent”) and its wholly owned Subsidiaries (“Group”).

The Parent finance function manages its own treasury activities along with the group liquidity and debt management requirements which includes the intra-group funding arrangement. The parent has responsibility for the monitoring and reporting of Group treasury activity including the coordinating of the subsidiary’s treasury reporting and monitoring requirements.

The Subsidiaries are responsible for their own treasury activities including day-to day cash management, working capital, treasury investment and risk management.

Te Pūkenga is the borrowing entity of the Group with both external and intra-group borrowing and lending activity managed by the Parent. Intra-group borrowing and lending activity relates to core borrowing and investment activity between the Subsidiaries and the Parent. Refer to section 5.2.

Some Subsidiaries have ring-fenced treasury investments which are recognised within the Group Treasury Policy. Ring-fenced treasury investment policy parameters are outlined in section 7.3 and should be read in conjunction with the Cash Reserves and Ring-Fencing Policy.

The purpose of this Group Treasury Policy is to outline approved policies and procedures in respect of all treasury activity to be undertaken by the Group. The formalisation of such policies and procedures will enable treasury risks within the Group to be prudently managed.

The Group through its operations are or may be exposed to the following risks:

- Funding and Liquidity risk
- Treasury Investments risk
- Interest rate risk
- Cash management risk
- Foreign exchange risk
- Counterparty credit risk
- Operational and Legal risk.

For each of these risks, the Policy identifies the risk, the policy limits and how the risk is to be managed. By identifying these different parameters, Management is enabled to manage risk within a defined set of parameters.

The policy identifies specific reporting requirements for Group and Subsidiary management, and external requirements to the Tertiary Education Commission (TEC) and the bank(s).

In order to ensure that the Policy reflects best treasury practice and continues to provide Management with effective risk management parameters, the policy should be formally reviewed on at least a two-yearly basis. As circumstances change, the policies and procedures outlined in this Policy should be modified to ensure that treasury risks within the Group continue to be well-managed.

The Policy must be implemented within six months of the Council approval date.

2 Purpose

The purpose of the Policy is to establish a robust framework for managing the financial risks associated with liquidity and cash flow management, funding, treasury investments, interest rate, foreign exchange, counterparty credit risks, and other financial market risks of the Group.

The Policy outlines the approved policies and procedures in respect of all group treasury activity.

As circumstances change, the risk limits and operating parameters outlined in this Policy will be formally reviewed and approved to ensure that the financial risks within the Group continue to be prudently managed. In addition, regular reviews will be conducted to test the existing policy against the following criteria:

- Sector and tertiary institution, “best practices” for an education institution the size of Te Pūkenga.
- The risk bearing ability and tolerance levels of the underlying revenue and cost drivers, and statutory stakeholder requirements.
- The effectiveness and efficiency of the Policy and treasury management function to recognise, measure, control, manage and report on the Group’s financial exposure to market interest and foreign exchange rate risks, funding risk, liquidity, treasury investment risks, counterparty credit risks and other associated risks.
- The operation of a pro-active treasury function in an environment of control and compliance.
- The robustness of the Policy’s risk control limits and risk spreading mechanisms against normal and abnormal financial market movements and conditions.
- Consistency in achieving the Group’s strategic objectives and financial plans/budgets.

Amendments to the policy document can only be made in accordance with the procedures outlined in section 13.

2.1 Risk Philosophy

The Group is a risk averse organisation and therefore seeks to minimise risk arising from its treasury activities. The group treasury function in relation to its treasury activity is a risk management function focused on protecting its financial budgets and stabilising its income and expense lines. Accordingly, all treasury activity manages and protects legitimate underlying business exposures, and activity that may be construed as speculative in nature is expressly forbidden.

2.2 Objectives

The objective of this Group Treasury Policy is to effectively manage liquidity and debt funding along with the control and management of costs and treasury investments returns that can influence long-term plans, operational budgets and financial equity.

As Te Pūkenga is publicly funded and accountable, it must maintain its financial resources within a robust financial framework which ensures compliance with relevant legislation and restrictions. This is achieved through the management of group cash flows and financial resources while minimising risk in accordance with relevant legislation and restrictions.

Te Pūkenga is required to comply with the following relevant legislation:

- Crown Entities Act 2004;
- Education and Training Act 2020; and
- Public Finance Act 1989.

In addition to the above, each wholly owned Subsidiary that is incorporated as a limited liability company also needs to comply with the Companies Act 1993.

The following section identifies the specific sections within the above legislation that are materially relevant to Te Pūkenga and its group financing and treasury activities.

2.3 Investment Legislation

Te Pūkenga's authority to invest is governed by Section 305 of the Education and Training Act 2020 and Section 65I(1) and (2) of the Public Finance Act 1989, as follows:

Section 305 Education and Training Act 2020:

- (1) Every institution is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.
- (2) However, that Act applies to institutions and their Crown entity subsidiaries (within the meaning of that Act) only to the extent that this section provides.
- (3) Part 1 of Schedule 4 of that Act applies to all institutions and their Crown entity subsidiaries (within the meaning of that Act).
- (4) Section 65I(1) and (2) of the Public Finance Act 1989—
 - (a) applies, with all necessary modifications, to institutions and, accordingly, every institution must invest in the same manner as the Treasury invests money under that section; but
 - (b) does not apply in respect of any investment made by an institution in the financial products of a related entity.
- (5) An instruction issued by the Minister of Finance under section 80A of the Public Finance Act 1989 does not apply to an institution.
- (6) The financial year of an institution is an academic year.
- (7) The council members of an institution are the Board for the purposes of the Crown Entities Act 2004.

Section S65I(1) and (2) Public Finance Act 1989 prescribes that:

- (1) The Treasury may, without further appropriation than this section, invest any money held in a Crown Bank Account or a Departmental Bank Account—
 - (a) on deposit with a bank (whether in New Zealand or elsewhere) approved by the Minister for the purpose; or
 - (b) in public securities; or
 - (c) in any other securities that the Minister may approve for the purpose.
- (2) The Treasury may—

- (a) invest the money for any period and on any terms and conditions that it thinks fit; and
- (b) sell, or convert into money, any of the securities.

Public securities are defined under section 2 of the Public Finance Act as follows:

“Public security” means any security issued under section 63 or any provision of any other Act and includes any loan or credit agreement, guarantee, indemnity, bond, note, debentures, bill of exchange, Treasury Bill, Government Stock and any other security representing part of the public debt of New Zealand.

This definition excludes investments in local government debt instruments, or any shares or other securities issued by State Owned Enterprises or private companies.

Under the Education and Training Act 2020, Te Pūkenga is also required to target and maintain a number of financial metrics / ratios subject to the Tertiary Education Commission (TEC) definitions. The TEC's reporting regime, the Tertiary Education Institution Financial Monitoring (TEIFM) return focuses on a range of financial targets, of which several are directly applicable to the management of treasury risks.

Investing in any other securities, such as term investments and investments in shares, derivatives, gold, silver or any other commodities require the advance approval of the Minister under section 65I of the Public Finance Act.

Clause 20 of Schedule 11 of the Education and Training Act provides that any real or personal property held by Te Pūkenga and its Subsidiaries (as the case requires) upon trust (**Trust Property**) must be dealt with in accordance with the powers and duties of Te Pūkenga or the relevant Subsidiary as trustee, despite anything in the contrary within the Education and Training Act or any other enactment relating to Te Pūkenga or the relevant Subsidiary. On this basis, the Public Finance Act-related restrictions above regarding investment by the Parent or the Subsidiary do not apply to Trust Property.

When acting as a trustee or investing money on behalf of others, the Trusts Act 2019 (**Trusts Act**) highlights that trustees (e.g., the Parent and/or the Subsidiary, if acting in its capacity as a trustee) have a “default” duty to invest prudently and that they shall exercise care, diligence and skill that a prudent person of business would exercise in managing the affairs of others. Section 28 of the Trusts Act provides that this default duty may be modified or excluded by the terms of a trust.

3 Objectives

The objectives of this Group Treasury Policy are to protect and enhance the Group's financial position by:

- Undertaking financial management activity to ensure the Group achieves its long-term financial strategy and plans.
- Ensuring that all statutory requirements of a financial nature are adhered to.
- Ensuring sufficient group and subsidiary cash flow and financial resources are available to execute the Group's strategy and plans.
- Proactively managing group-wide cash flows, treasury investments and borrowing to maximise financial management efficiencies.
- Maintaining group and subsidiary liquidity levels to meet forecast funding requirements.
- Effectively manage treasury activities within the Parent and Subsidiary delegations and responsibilities.
- Arrange group debt funding at the lowest achievable cost from debt lenders whilst minimising risks and ensuring both debt funding certainty and flexibility.
- Monitoring and managing group, interest rate, foreign exchange, and counterparty credit risks within approved risk control limits.
- Minimise exposure to adverse wholesale interest rate movements.
- Monitor and report on borrowing financial covenants and ratios under the obligations of lending/security arrangements, and Tertiary Education Commission ("TEC") requirements.
- Minimising operational risk by maintaining appropriate internal controls, systems and staffing competencies.
- Protecting the Group's assets and trading activities, preventing unauthorised transactions, and projecting a professional image of financial management control to all external parties.
- Invest, borrow and transact risk management instruments within an environment of control and compliance.
- Develop and maintain good working relationships with bank counterparties, TEC and the Ministry of Education.
- Providing timely, meaningful and accurate reporting of group treasury exposures, performance and Policy compliance to Council.

4 Delegated Authorities

Te Pūkenga's Council has the following responsibilities, either directly by itself, or via the following stated delegated authorities.

Activity	Entity undertaking activity	Delegated Authority	Limit
Approving and changing the Group Treasury Policy	Te Pūkenga	Council	Unlimited
Approving borrowing programme at the Group level	Te Pūkenga	Council	Subject to restrictions in ss282(4) and (5) of the Education and Training Act 2020 (ETA) and the conditions of any relevant written consent of the Secretary for Education for the borrowing Please refer to TEC Guidance
Approval of security and charging assets as security	Te Pūkenga	Refer to the OFP Direction for approval requirements	Subject to statutory restrictions, including in ss282(4) and (5) of the ETA, which specifies limits for both Te Pūkenga and its subsidiaries. Please refer to TEC Guidance Refer to OFP threshold approval levels.
Approval of new and refinanced bank facilities and risk management facilities (being the establishment of a derivative dealing line/limits with the bank or the signing of an ISDA agreement)	Te Pūkenga	Council	Subject to limitations under ss282(4) and (5) of the ETA and the PFA, which specifies limits for both Te Pūkenga and its subsidiaries. Please refer to TEC Guidance

Approve establishment of the intra-group funding facility	Te Pūkenga	Council	<p>Under the section 284(4) consent granted by the Secretary for Education on 9 September 2020, the Secretary consents to Te Pūkenga and its subsidiaries exercising powers under section 282(4), “where the exercise of those powers does not affect the overall balance sheet of the group comprising NZIST and its subsidiaries.”</p> <p>Subject to compliance with those terms, this consent permits transactions under the proposed intra-group loan arrangements without needing to apply for Secretary consent for each separate transaction.</p>
Approve a change in the maximum borrowing limit of each Te Pūkenga Subsidiary under any existing debt or borrowing facility	Te Pūkenga	Council	Refer to conditions of section 284(4) consent granted by the Secretary for Education on 9 September 2020.
Overall day-to-day group and subsidiary treasury management	Te Pūkenga and subsidiaries	Director, Finance of Te Pūkenga and Subsidiary CFO*	Subject to Policy
Approve use of ring-fenced treasury investments	Te Pūkenga and subsidiaries	Council or CE of Te Pūkenga and Subsidiary Board	Refer to the Cash Reserves and Ring-Fencing Policy Limits as per Delegations Policy
Adjust group debt maturity and interest rate risk profile	Te Pūkenga	Director, Finance of Te Pūkenga	Per risk control limits
Maximum daily transaction amount (cash/working capital management related borrowing activity)	Te Pūkenga and subsidiaries	<p>Council or Subsidiary Board</p> <p>CE/DCEO of Te Pūkenga</p> <p>Director, Finance of Te Pūkenga</p> <p>Subsidiary CFO*</p>	<p>Unlimited</p> <p>\$50M</p> <p>\$30M</p> <p>\$30M</p> <p>For internal intra-group activity unlimited.</p>

Maximum daily transaction amount (core borrowing and interest rate risk management) excludes roll-overs on floating rate, borrowing, and interest rate roll-overs on swaps	Te Pūkenga and subsidiaries	Council or Subsidiary Board CE/DCEO of Te Pūkenga Director, Finance of Te Pūkenga Subsidiary CFO*	Unlimited \$50M \$30M \$30M
Maximum daily transaction amount to pay TEC funding amounts	Te Pūkenga	CE/DCEO of Te Pūkenga And Director, Finance of Te Pūkenga	Unlimited
Maximum daily transaction amount (treasury investments, both ring-fenced and non-ring fenced)	Te Pūkenga and subsidiaries	Council or Subsidiary Board CE/DCEO of Te Pūkenga Director, Finance of Te Pūkenga Subsidiary CFO*	Unlimited \$50M \$30M \$30M
Implement the intra-group facility - borrowing and investment activity	Te Pūkenga and subsidiaries	Director, Finance of Te Pūkenga, and Subsidiary CFO*	Subject to Policy
Authorising bank signatories	Te Pūkenga and subsidiaries	Council Subsidiary Board for subsidiary accounts	Unlimited
Opening/closing bank accounts	Te Pūkenga and subsidiaries	Council Subsidiary Board for subsidiary bank accounts	Te Pūkenga is subject to s158 of Crown Entities Act regarding the opening of bank accounts. Subsidiaries should not act inconsistently with this provision.

*or equivalent delegated position if no Subsidiary CFO

This section should be read in conjunction with the OFP Directions and Delegations Policy (for Te Pūkenga) In the event of any inconsistency between:

- (a) this Group Treasury Policy and the current OFP Direction, the OFP Direction applies; and
- (b) this Group Treasury Policy and the Delegations Policy for Te Pūkenga, the Delegations Policy applies.

The Group treasury management structure and responsibilities are outlined in Appendix C.

5 Liquidity and Funding Risk

5.1 Risk Recognition

Liquidity risk is the risk of not being able to raise sufficient funds to meet financial obligations as they fall due.

The Subsidiaries maintain responsibility for daily cash and working capital management including the receiving of fees and payment of operating expenses. The Parent will allocate daily limits to enable the efficient management of the Subsidiary's cash and working capital requirements. Refer section 8.1.

Te Pūkenga has a prudent approach to liquidity risk management, with the primary objective of maintaining adequate liquidity to meet those group obligations as they fall due.

Short-term liquidity management requires that adequate funds are available to meet day-to-day cash requirements of the Group. Prudent liquidity and cash management involves the monitoring of cash flows, management of bank accounts and treasury investment amounts and availability of unused committed bank facilities. The objective is to ensure that any unforeseen event does not result in a short-term cash crisis and financial pressure on the Group. Costs associated with short-term liquidity management should be minimised. Refer to group and subsidiary cash management section 8.

The management of funding risks is important as several risk factors can arise to cause an adverse movement in borrowing margins, term availability and general flexibility including:

- Education sector risk is priced to a higher fee and margin level;
- The Group's own credit standing or financial strength as a borrower deteriorates due to financial or other reasons;
- A large individual lender to the Group experiences their own financial difficulties resulting in the Group not being able to manage their debt portfolio as optimally as desired.
- A disruption in the financial markets that influence funding availability and margins.

A key factor of funding risk management is to spread and control the risk to reduce the concentration of risk at one point in time so that if any of the above events occur, overall borrowing costs are not unnecessarily increased nor the desired debt maturity profile unduly compromised.

5.2 Intra-group Funding Facility

For the efficient use of group funds, the Parent operates an intra-group funding facility. The facility promotes the effective use of group treasury investments (non-ring fenced) to reduce the need for external borrowing across the Group. Rather than borrow from an external bank lender, group cash reserves are lent to the Parent who on-lends these to borrowing Subsidiaries. Accordingly, the Group only borrows the net borrowing amount from external bank providers. The parent maintains available committed bank facilities with external bank lender(s). Therefore, Te Pūkenga will manage debt on a net portfolio basis and will only externally borrow when it is appropriate to do so.

Normal daily cash and working capital management activity does not form part of the intra-group funding facility and continues to be managed by the Subsidiary. Subsidiary cash management is discussed in section 8.

The intra-group funding facility arrangements are:

- Any intra-group funding activity must be conducted within the approved intra-group funding facility Agreement and term sheet. The approved term sheet is included in Appendix E.
- The term of the facility is to 31 December 2022.
- The minimum borrowing or investing term is for one month, with the minimum amount being \$1 million and multiples of \$500,000.
- The establishment and commitment fees payable on the group's committed bank facility are a shared group cost.
- Intra-group borrowing and investing rates are set on a gross basis and the interest rate is on a floating rate basis. The Director, Finance releases a Group, monthly investing and borrowing rate sheet setting out the investing and borrowing margins over the BKBM-FRA rate for terms up to 12-months.

The intra-group borrowing and investing rate sheet is approved by the Director, Finance.

- Interest is accrued in arrears based on the Subsidiary's gross, borrowing or investing activity for that month. Subsidiaries are charged interest monthly.
- One month's notice must be given by an investing Subsidiary to withdraw funds from the intra-group facility, or at a notice period agreed with the Director, Finance.
- One month's notice must be given by a borrowing Subsidiary to drawdown under the intra-group facility or to repay borrowed monies, or at a notice period agreed with the Director, Finance.
- An exception to the one month's notice period, upon approval of the Director, Finance is the use of the facility for liquidity management purposes.
- All lending and borrowing activity are on an unsecured basis.
- Group treasury retains any surplus/deficits from operating the intra-group funding facility and can be disbursed at the discretion of the Director, Finance.

Subsidiaries that lend into the intra-group funding facility recognise the counterparty risk attached to the group investing and borrowing activity. No individual entity investing and borrowing limits are prescribed given the continuation of the following:

- Committed liquidity facility support provided by the bank lender(s)
- \$50 million Crown Contingency Fund, expiring 31 December 2022
- Cross-guarantees provided by the Parent and wholly owned subsidiaries.

5.3 Liquidity Risk Control Limits

The group liquidity risk control limit is as follows:

- The liquidity buffer is determined with reference to sufficient liquid funds and/or available committed bank facilities that are freely available for at least the next three months' worth of group net cash outflow requirements on a rolling basis.
 - Liquid funds are either held as:

- Available non-ring fenced, overnight bank cash deposits, registered certificates of deposit and bank term deposits maturing within a three month period, and
- Available committed bank debt facilities that have a remaining term to expiry of at least three months.
- Committed bank facilities are maintained by the Parent on behalf of the Group and must be held with bank counterparties that have a minimum long-term credit rating of A or above and are a registered bank with the Reserve Bank of New Zealand.
- Net cash outflow information will be provided by the subsidiaries through the Subsidiary Cash Request Notice which is provided to the Parent on the 1st and 15th working day of each month.

5.4 Funding Risk Control Limits

The funding risk control limits are as follows:

- No more than 50% of the total committed bank facility amount can have a remaining term of less than one year. The liquidity and working capital debt facilities are managed within the funding control limits.
- All bank facilities must be re-negotiated at least three months prior to expiry.
- The amount and expiry date of all bank loans and committed bank facilities will not exceed the maximum amount and term of the Consent to Borrow or Ministerial Determination of Exempt Borrowing (whichever is applicable).
- The maximum borrowing term is five years.

5.5 Approved Borrowing Instruments

Approved borrowing instruments are limited to:

- Bank overdraft;
- Committed bank debt facilities;
- Bank term loan and term loan facilities; and
- Finance leases

5.6 Risk Management Policy

Under section 282(4)(d) of the Education and Training Act 2020 (ETA), the Parent may not borrow, issue debentures, or otherwise raise money unless it has obtained approval from the Ministry of Education (MoE) to borrow, or the relevant amounts do not exceed an amount determined by the Minister, or ascertained in accordance with a formula determined by the Minister pursuant to section 282(5)(c). Therefore, any future borrowing requirements that differ from the approved limits must be identified well in advance of the date they will be required to allow sufficient time for the approval process.

The Ministry of Education consent to borrow information is outlined in Appendix B.

5.7 Security Arrangements

Section 282(4) of the Education and Training Act 2020 provides that Te Pūkenga, as an “institution”, may not exercise the power to mortgage or otherwise charge assets or interests in assets without the written consent of the Secretary for Education (unless the consent of the Secretary is not required under s 282(5)). Section 282(5) provides that an “institution” may mortgage or otherwise charge, an asset or an interest in an asset, within certain thresholds set by the Minister.

Section 328 of the ETA specifically provides that unless s 282(5) applies, a Te Pūkenga Subsidiary may not exercise any of the powers in s 282(4) unless it has first notified Te Pūkenga and Te Pūkenga has obtained the consent of the Secretary. This restriction is reflected in the Constitution for each Subsidiary and the OFP Direction.

Section 328 prevents the offering of security without the approval of the Secretary so Te Pūkenga generally offers an unsecured/negative pledge security arrangement for all its borrowing and risk management obligations.

Ring-fenced cash reserves are subject to the restrictions set out in the Cash Reserves and Ring-Fencing Policy.

5.8 Reporting Requirements

External borrowing will be managed within the financial ratios and limits required by bank lenders and the terms of any relevant consent granted by the Secretary for Education. Secretary for Education/TEC financial ratios and reporting requirements are outlined in Appendix B. Refer to Appendix F for the bank financial covenants and reporting requirements.

The Director, Finance ensures that these requirements are complied with at all times. Where these limits are likely to be exceeded, prior approval of Council, Secretary for Education/TEC and bank lenders is mandatory.

5.9 Finance Leases

Finance leases are a tool that allows the Group to accumulate debt-like obligations and therefore have an inherent interest cost.

Restrictions and approval requirements in respect of finance leases and the security of assets are set out in the OFP Directions.

6 Interest Rate Risk

6.1 Risk Recognition and Definition

Interest rate risk is the risk that treasury investment returns or borrowing costs (due to adverse movements in wholesale market interest rates) will materially exceed or fall short of planned/budgeted forecasts, adversely impacting revenue, cost control and capital investment decisions.

The primary objective of interest rate risk management is to reduce uncertainty relating to interest rate movements through fixing of treasury investment returns or borrowing costs. Certainty around borrowing costs on external debt is achieved through the proactive

management of underlying interest rate exposures. Investment interest rate risks are managed concurrently within the interest rate and maturity limit system.

Interest rate risk management decisions are based on the gross external 'core' debt amounts contained in the approved financial forecasts.

Core debt is considered debt amounts that are expected to remain drawn for a period of greater than 12 months. There is no interest rate management of working capital debt amounts that are considered non-core and relate to short-term cash management or working capital funding purposes.

6.2 Risk Management Policy

The below limits apply when drawn external gross core debt amounts exceed \$20 million. At all times Te Pūkenga's fixed interest rate repricing profile for forecast gross external debt should be within the following fixed/floating interest rate risk control limits.

Interest Rate Policy Parameters (calculated on rolling monthly basis)		
Period Ending	Minimum Fixed Rate	Maximum Fixed Rate
Current	40%	90%
Year 1	40%	90%
Year 2	30%	80%
Year 3	20%	70%
Year 4	0%	50%
Year 5	0%	50%

- The percentages are calculated on the rolling forecast gross core debt amount calculated by management.
- "Fixed Rate" is defined as all known interest rate obligations on forecast gross external debt, including where interest rate instruments have fixed movements in the applicable reset rate.
- "Floating Rate" is defined as any interest rate obligation subject to movements in the applicable reset rate.
- As approved by the Director, Finance, forecast gross external debt is the amount of total external debt for a given period. This allows for pre-hedging in advance of forecast physical

drawdown of new debt. When approved forecasts are changed (signed off by the Director, Finance), the amount of interest rate fixing in place may have to be adjusted to ensure compliance with the policy minimum and maximum limits.

- A fixed rate maturity profile that is outside the above limits, but self corrects within 90 days is not in breach of this Policy. However, maintaining a maturity profile that is outside the above limits greater than 90 days requires specific approval by Council.
- The maximum fixed rate or hedged term is 5 years.

6.3 Approved List of Interest Rate Instruments

- Interest Rate Swaps (“fixed to floating” and “floating to fixed”);
- Forward start Interest Rate Swaps;
- Swap extensions, shortenings and deferrals;
- Forward rate agreements (“FRAs”) on:
 - Bank bills;
- Interest rate options on:
 - Bank bills (purchased caps and one-for-one collars);
 - Interest rate swaptions (purchased swaptions and one-for-one collars only).

Limitations on interest rate instruments are set out below:

- The forward start period on swaps and collar strategies to be no more than 12 months unless linked to the expiry date of an existing instrument and which has a notional amount that is no greater than that of the existing instrument.
- Interest rate options must not be sold outright. However, 1:1 collar option structures are allowable whereby the sold option is matched precisely by amount and maturity, to the simultaneously purchased option.
- During the term of the option, the sold option can be closed out by itself (i.e. repurchased). The sold option leg of the collar structure must not have a strike rate “in-the-money”.
- Purchased borrower swaptions mature within 12 months.
- Interest rate options with a maturity date beyond 12 months that have a strike rate (exercise rate) higher than 2.00% above the appropriate swap rate, cannot be counted as part of the fixed rate cover percentage calculation (i.e. an ineffective hedge).

7 Investment Policy

7.1 Risk Recognition

Te Pūkenga has two distinct treasury investment portfolios being ring-fenced and non-ring fenced investment portfolios. Section 7.3 outlines the policy for ring-fenced treasury investments.

7.2 Non-ring Fenced Treasury Investments

The Group is currently a net investor of funds but is anticipated to move into a net borrower position (excluding ring-fenced treasury investments) in FY22. The Group will utilise its non-ring fenced treasury investment portfolio to meet the group's operational funding and future capital spending requirements.

Section 305(4) of the Education and Training Act 2020 provides that Te Pūkenga must invest funds in accordance with sections 65I (1) and (2) of the Public Finance Act 1989. The intention is Te Pūkenga's investment philosophy and approach is conservative, it recognises that all investments (both ring fenced and non-ring fenced) held should be low risk which generally means lower returns.

A primary objective of the treasury investment portfolio is to protect its capital value and maintain liquidity. Maintaining group liquidity means treasury investments are readily available to be used in the intra-group funding facility and for upcoming planned operational/capital spending requirements.

7.3 Ring Fenced Treasury Investments

As part of the Reform of Vocational Education, Cabinet directed that cash amounts accumulated by existing Subsidiaries at the time of the establishment of Te Pūkenga should be ring-fenced in the Group, only to be used within the regions in which they had been accumulated.

Ring-fenced cash reserves are subject to the procedures and approval requirements set out in the Cash Reserves and Ring-Fencing Policy.

7.4 Approved List of Treasury Investments

The approved treasury investments are set out below:

- Overnight and bank term deposits;
- Bank registered certificates of deposit (RCDs);
- Treasury bills;
- NZ Government bonds; and
- NZ Government guaranteed securities.

All treasury investment instruments must be either secured or senior unsecured.

No subordinated debt or similar instruments, or securitised instruments are permitted.

Any instrument not approved under section 7.4 must be approved by Council.

8 Cash Management

Te Pūkenga operates a group treasury function but with the decentralised monitoring and management of short term cash management, working capital and treasury investment management responsibilities by each Subsidiary.

Group treasury may allocate daily borrowing limits to enable the controlled management of each subsidiaries cash and working capital requirements.

The group cash management objectives are:

- Efficient monitoring and use of operating cash inflows and outflows of the group throughout the financial year.
- The planning, monitoring and management of the group cash receipts, payments and bank accounts.
- The gathering and management of cash flow and treasury information to utilise funds effectively throughout the Group.

The Director, Finance and Subsidiary CFO or Delegates have the responsibility for day to day cash management activities as follows:

- On a daily basis, prepare the bank report showing all the bank account information (electronically downloading bank account information).
- Ensure all bank accounts are part of the transactional bank account off-set and daily sweep arrangement and maintained within any prescribed limits.
- Coordinate information to determine daily cash inflows and outflows with the objective of managing the daily closing cash position within approved limits. Coordinate with accounts payable and accounts receivable and update the cash position report and forecast as required.
- Ensure any daily and end of day, short-term borrowing or investing decisions are completed as needed.
- Maintain a cash balance or available funding limit amount to meet at least the next two weeks net cash outflow requirements. All cash balance amounts must remain liquid and held in the overnight group transactional bank account.
- Notify upcoming forecast cash requirements or cash surpluses to the Parent on a fortnightly basis through the Subsidiary Cash Request Notice.
- Monthly, calculate and update the rolling, 12-month cash flow forecast.
- Ensure an ongoing efficient cash management function through continued improvement to accurate forecasting using spreadsheet modelling.
- Minimise fees and bank charges by optimising the group transactional account offset and sweep arrangements.
- Match future cash flows as far as possible to match future receipts and payments amounts.
- Compile reports detailing actual cash flows during the month compared with forecasts.

8.1 Subsidiary Cash Management

It is the responsibility of the Subsidiary CFO to monitor and manage the daily cash management, working capital and treasury investment requirements of that subsidiary. That subsidiary has responsibility for the collection of revenue and the payment of operational expenses (e.g. payroll, rent etc.).

Overnight and forecast transactional debit and credit cash balances in the transactional bank account are managed within prescribed limits. Any forecast transactional balance amounts outside of limits are either approved by the Subsidiary CFO or funded/invested through the intra-group funding facility. Balances are monitored against the limits.

Subsidiary cash management requirements are requested through the Subsidiary Cash Request Notice. The Notice is provided to the Parent on the 1st and 15th working day of each month.

Subsidiaries that maintain operational surpluses are held in overnight bank deposits with the Group's transactional bank.

9 Foreign Exchange Risk

9.1 Risk Recognition

Foreign exchange risk is defined as the adverse impact on NZD expenses and capital expenditure purchases from foreign exchange rate movements. Foreign currency management is transacted by the Subsidiary and monitored by the Parent.

Foreign exchange risk arising on capital expenditure is discussed in section 9.4.

The policy focuses on transactional risks that arise from purchases of goods and services in a currency other than NZD. Foreign exchange exposures are based on continually updated forecast payments and are recognised on the basis of:-

- Forecast payments, based on 12-month rolling payment forecasts for each currency, reviewed and updated on a monthly basis. Any foreign currency receipts are netted against the same currency payments.
- Value in currency of payment.
- Month or date of purchase and settlement terms.

Foreign currency exposures are recognised and managed when group, total annual net payments for a foreign currency amount exceed NZD2,000,000.

Monthly the rolling 12-month net foreign currency forecasts are updated and provided by each Subsidiary to the Parent. Forecasts are approved by the respective Subsidiary CFO.

9.2 Annual Budget Foreign Exchange Rates

For transactional hedging exposures, when setting exchange rates in the annual financial budgeting process, the Group's policy is to apply the contracted foreign exchange rates maturing in the budgeted financial year. Additional budgeted net payments that are not hedged are to be applied at the market forward month-end exchange rate on the day the budget is finalised.

9.3 Risk Management Policy

It is the responsibility of the Subsidiary CFO to advise the Director, Finance of any foreign exchange exposures and hedging activity.

The group, risk management limits are summarised in the following table:

Foreign Exchange Hedging Risk Control Limits		
Period	Minimum	Maximum
0-6 month	50%	100%
6-12 month	0%	50%

9.4 Foreign Exchange Risk on Capital Expenditure Items

Capital expenditure requirements may be sourced overseas in foreign currencies. Capital expenditure that is purchased in foreign currency, requires Te Pūkenga to physically sell NZD and buy foreign currency.

The Group is exposed to two related types of foreign exchange risk on imported capital expenditure items:-

- **Contingent risk:** Applies from the time the project capex budget is approved to the time specific capex items are approved during the course of the year. The period also includes the time from specific capex approvals to the time of purchase orders.
- **Full risk:** At the time capital expenditure purchase orders are approved and legal purchase commitments are made.

All individual capex items greater than NZD 2,000,000 must be hedged at all times in accordance with the following risk control limits:

Capital Expenditure – Foreign Exchange Risk Control Limits		
Recognition point	Exposure covered by approved instruments	Exposure covered by purchased foreign exchange options
Specific capital item approved		Up to a maximum 100%
Committed exposure: purchase order/contract made	Minimum 100%	

Forward exchange contracts may have maturity dates extended if scheduled payment dates are changed due to supplier delays.

9.5 Approved List of Foreign Exchange Instruments

Foreign currency exposures may be hedged by use of:

- Spot foreign exchange;
- Forward exchange contract (including par forwards);
- Foreign currency deposit account; and
- Purchased foreign exchange options.

Limitations on foreign currency hedging are set out below:

- Foreign exchange options cannot be sold outright under any circumstances.
- Purchased options with the premium payment delayed until the expiry date are allowable.

10 Counterparty Credit Risk

10.1 Risk Recognition

Counterparty credit risk is the risk of losses to Te Pūkenga arising from a counterparty defaulting on a treasury investment and/or financial instrument which Te Pūkenga is party to. The credit risk in a default event will be weighted differently depending on the type of instrument entered into. Te Pūkenga is exposed to counterparty credit risk when placing bank deposits and transacting foreign exchange instruments as well as interest rate instruments with bank counterparties.

Group treasury transactions are only entered into with approved bank counterparties. Credit risk exposures arising from students and other general ledger accounts receivable areas are not included in this policy.

Counterparties and limits can only be approved on the basis of long-term credit ratings (Standard & Poor's, Fitch or Moody's) being A or above, or for exposure terms of less than 12-months, a short-term rating of A-1 or above.

10.2 Risk Management Policy

The credit strength of counterparties is assessed by their external rating, with preference being given to S&P. In case of a split rating, the lower rating will apply.

The following schedule confirms the approved group limits:

Counterparty	Minimum long term/short term credit rating)	Investments maximum per counterparty (\$m)**	Risk management instrument maximum per counterparty (\$m)	Total maximum per counterparty (\$m)
NZ Government	N/A	Unlimited	None	Unlimited
NZ Registered Bank*	AA/AA- (A-1+/A-1)	90	15	105
NZ Registered Bank*	A+/A(A-1)	50	5	55
<p>*Subject to a maximum exposure no greater than 50% of the group treasury investment portfolio being invested in one bank counterparty at any one point in time. The exception is the transactional bank whereby a maximum exposure greater than 50% is accepted for a two day period only.</p> <p>** Includes both ring-fenced and non-ring fenced treasury investments</p>				

In determining the usage of the above gross limits, the following instrument weightings will be used:

- Investments (e.g. Bank Deposits) – Transaction Notional Weighting 100%.
- Interest Rate Risk Management (e.g. swaps, FRAs) – Transaction Notional (Maturity (years) 3%).
- Foreign Exchange – Transactional face value amount x (the square root of the Maturity (years) x 15%).

To avoid undue concentration of exposures, financial instruments should be used with as wide a number of approved counterparties as possible.

Credit ratings are reviewed by the Director, Finance on an ongoing basis and in the event of a credit rating downgrade, this should be reported to the Risk and Audit Committee and assessed against exposure limits. The Director, Finance should recommend a strategy to Council to move back into policy compliance as soon as practical.

11 Operational Risk

11.1 Risk Recognition

Operational risk is the risk that the Group incurs losses as a result of people, systems, inadequate or failed internal processes or external events. This includes financial loss due to mismanagement, error, fraud or unauthorised use of financial instruments.

Operational risk is relevant when dealing with financial instruments given that:

- Financial instruments may not be fully understood;
- Too much reliance is often placed on the specialised skills of one or two people;
- Most financial instruments are executed over the phone;
- Operational risk is minimised through the adoption of all requirements of this Policy.

This section also captures the treasury management activities of the subsidiaries.

11.2 Dealing Authorities and Limits

Transactions will only be executed by those delegated persons and within limits approved by Council.

Any potential or actual breach is approved by the Director, Finance and notified to Council as an exception, along with an explanation and how the breach will be rectified.

11.3 Segregation of Duties

As there are a small number of people involved in the treasury function, adequate segregation of duties among the treasury functions of deal execution, confirmation, settling and accounting/reporting is not strictly achievable. The risk will be minimised by the following process:

- The Director, Finance reports directly to the Deputy CEO Operations.
- There is a documented approval process for cash management, borrowing, treasury investment and risk management activity.
- The respective Finance Team of the Parent or Subsidiary reports immediately to the Director, Finance or Subsidiary CFO, if Policy limits or parameters are breached.

11.4 Procedures

All financial instruments should be recorded and diarised within a treasury spreadsheet, with appropriate controls and checks over journal entries into the general ledger. Deal capture and reporting must be done immediately following execution. Details of procedures including templates of internal deal tickets should be compiled in a Treasury Procedures Manual separate to this Policy.

Procedures should include:

- Regular treasury reporting.

- Regular risk assessment, including review of procedures and controls as directed by the Risk and Audit Committee.
- Organisational, systems, procedural and reconciliation controls to ensure:
 - All cash management, borrowing, treasury investment and risk management activity is bona fide and properly authorised.
 - Checks are in place to ensure accounts and records are updated promptly, accurately and completely.
 - Risk positions are updated, reviewed and reported on a regular basis.
 - All outstanding transactions are re-valued regularly and independently of the execution function to ensure accurate reporting and accounting of outstanding exposures and hedging activity.

11.5 Organisational Controls

- The Director, Finance has responsibility for establishing appropriate structures, procedures and controls to support group treasury activity.
- All treasury management activity is undertaken in accordance with approved delegations authorised by Council and the respective Subsidiary.

11.6 Electronic Banking Signatories

- Positions approved by the Council as per register.
- Dual signatures are required for all electronic transfers.

11.7 Authorised Personnel

- All counterparties are provided with a list of personnel approved to undertake transactions, standard settlement instructions and details of personnel able to receive confirmations.

11.8 Recording of Deals

- Competitive rates are sought for all treasury investment and risk management transactions.
- Deal summary records for cash management, borrowing, treasury investments, interest and foreign currency management are maintained on spreadsheets by the respective Finance Team and updated promptly following completion of a transaction.

11.9 Confirmations

- All inward deal confirmations are received and checked by the respective Finance Team against the internal deal ticket and the treasury spreadsheet records to ensure accuracy. The independent checker of the transaction is not the deal originator.
- Deals, once confirmed, are filed (internal deal ticket and attached confirmation) by the respective Finance Team in deal date/number order.
- Any discrepancies arising during deal confirmation checks which require amendment to Te Pūkenga records are signed off by the respective Director, Finance or Subsidiary CFO.

11.10 Settlement

- All cash management, borrowing, treasury investment and interest, foreign currency transaction are settled by direct debit or credit authority.

11.11 Reconciliations

- Bank reconciliations are performed monthly by the respective Finance Team, reviewed and approved by the Finance Manager or Subsidiary CFO. Any unresolved unreconciled items arising during bank statement reconciliation which require amendment to Te Pūkenga records are signed off by the Director, Finance. or Subsidiary CEO.
- A monthly reconciliation of the treasury spreadsheet to the general ledger is completed by the Finance Team and reviewed and approved by the Finance Manager or Subsidiary CFO.
- The Finance Team reconcile monthly summaries of outstanding financial contracts from bank counterparties to internal records which are reviewed and approved by the Finance Manager.
- Interest income and payments from the treasury spreadsheet are reconciled to bank statements by the Finance Team when completing the monthly bank reconciliations.
- Monthly treasury journals are completed by the Finance Team and approved by the Finance Manager or respective Subsidiary CFO.

11.12 Legal Risk

Legal and regulatory risks relate to the unenforceability of a transaction due to an organisation not having the legal capacity or power to enter into the transaction usually because of prohibitions contained in legislation. While legal risks are more relevant for banks, Te Pūkenga may be exposed to such risks, in the event that Te Pūkenga is unable to enforce its rights due to deficient or inaccurate documentation.

Te Pūkenga will seek to minimise this risk by:

- Ensuring all Te Pūkenga authorities in regards to treasury transactions are approved as required by legislation.
- The use of standing dealing and settlement instructions (including bank accounts, authorised persons, standard deal confirmations, contacts for disputed transactions) to be sent to counterparties.
- Approved bank counterparties are sent an up to date list of persons authorised to undertake treasury transactions on behalf of Te Pūkenga on an annual basis or where there is a personnel change.
- The matching of third party confirmations and the immediate follow-up of anomalies.
- The use of expert advice.

11.13 Agreements

Funding arrangements, treasury investments and financial instruments can only be entered into with banks that have in place an approved and executed legal agreement or ISDA Master Agreement.

Te Pūkenga's internal/appointed legal counsel must sign off on all legal documentation.

11.14 Financial Covenants and Other Obligations

Te Pūkenga must not enter into any transactions where it would cause a breach of bank, TEC or other financial covenants/ratios under existing contractual arrangements.

Any forecast technical breach of covenants/ratios must be immediately notified to the Director, Finance and a strategy implemented to ensure an appropriate remedy (e.g. waivers, amendments) is satisfactorily agreed with the affected party.

Te Pūkenga must comply with all obligations and reporting requirements under existing funding/lending facilities and legislative requirements.

12 Reporting and Performance Measurement

12.1 Reporting

The following reports must be produced and presented on the following basis:

Report Name	Frequency	Prepared by	Recipient
<ul style="list-style-type: none"> Bank account analysis and cash position report 	Daily	Subsidiary and Group Finance Team	Subsidiary CFO and Director, Finance
<ul style="list-style-type: none"> Subsidiary Cash Request Notice. 	Bi-monthly	Subsidiary Finance Team	Subsidiary CFO and Director, Finance
<ul style="list-style-type: none"> Treasury Exceptions Report 	As required	Subsidiary and Group Finance Team	Subsidiary CFO and Director, Finance Risk and Audit Committee Council
<ul style="list-style-type: none"> Monthly Treasury Report Treasury investment positions and limits (ring-fenced and non-ring fenced) Borrowing limits Funding and Interest Risk Position Funding facility/usage New treasury transactions Subsidiary and Parent Cash flow forecast report (rolling 12-month) Liquidity position and limits Foreign currency risk position and forecasts Group counterparty credit risk position and limits Market/strategy commentary/update Financial ratios (bank and TEC) 	Monthly	Subsidiary and Group Finance Team	Subsidiary CFO and Director, Finance Risk and Audit Committee Council

Quarterly Treasury Report <ul style="list-style-type: none"> • Content of Monthly Treasury Report • Derivative valuations • Treasury performance 	Quarterly	Subsidiary and Group Finance Team	Subsidiary CFO and Director, Finance Risk and Audit Committee Council
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12.2 Performance Monitoring

In order to determine the success of the treasury function, the following benchmarks and performance measures have been prescribed.

Management	Performance
Operational performance	<ul style="list-style-type: none"> • All policy limits must be complied with, including (but not limited to) counterparty credit limits, risk limits and policy parameters. • All treasury deadlines are to be met, including reporting deadlines.
Management of debt and borrowing costs	<ul style="list-style-type: none"> • The actual borrowing cost amount should be at or below the budgeted YTD/annual borrowing cost amount. • The actual borrowing rate should be at or below the budgeted borrowing rate.
Management of treasury investments (ring-fenced and non-ring fenced)	<ul style="list-style-type: none"> • The actual investment return amount should be at or above the budgeted YTD/annual interest revenue amount. • The actual investment rate of return should be at or above the budgeted rate of return.

12.3 TEC and Bank Reporting Requirements

Te Pūkenga will comply with all TEC, bank and other lender reporting requirements. Refer to Appendix B and F.

13 Group Treasury Policy Review

The Director, Finance has the responsibility to prepare a review report (following the preparation of annual financial statements) that is presented to the DCEO.

The report must include:

- Overview of the treasury function and Policy in achieving the stated objectives;
- Comments and recommendations from the Group's internal/external auditors on the treasury function;
- Comments that the Policy remains consistent with its legal requirements;
- Provide a summary of breaches of policy and one-off approvals outside policy, to highlight areas of policy tension;
- Recommendation as to changes, deletions and additions to the policy.

The Risk and Audit Committee receives the review report, and recommends any policy changes to Council for approval.

The Policy is reviewed annually for internal purposes.

Appendix A – Approved Bank Counterparties

As of January 2021, Te Pūkenga has the following approved bank counterparties:

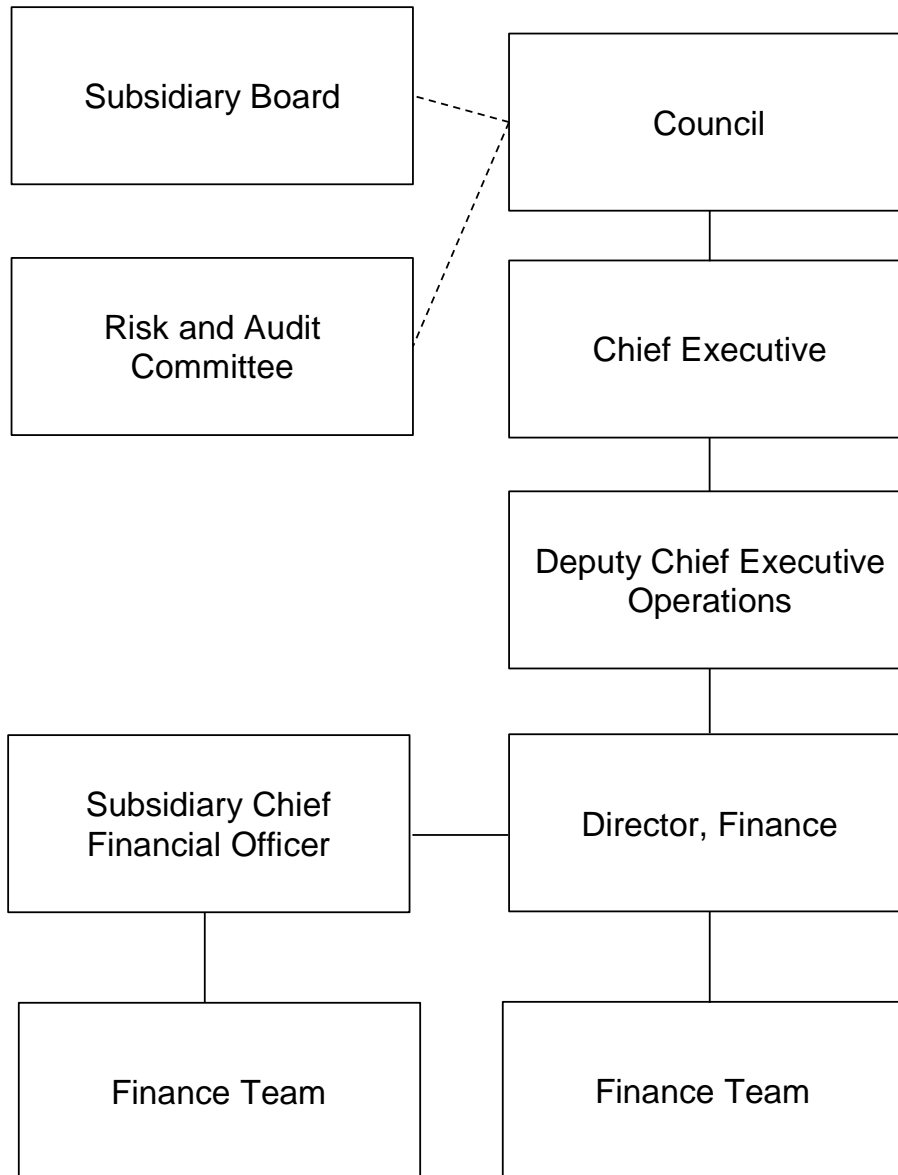
Bank	S&P Credit Rating (short-term and long-term)
ANZ Bank New Zealand Limited	A-1+/AA-
ASB Bank Limited	A-1+/AA-
Bank of New Zealand	A-1+/AA-
Westpac New Zealand Limited	A-1+/AA-
The Hongkong and Shanghai Banking Corporation	A-1+/AA-
Kiwibank Limited	A-1/A
Rabobank New Zealand Limited	A-1/A

Appendix B – Ministry of Education Consent to Borrow and Financial Reporting Ratios

<to update>

Appendix C – Reporting Structure - Parent

The management structure diagram below describes the hierarchy of reporting and the responsibilities of different positions within the Parent's treasury function.



The treasury related tasks and responsibilities are as follows:

Council

The Council has ultimate responsibility for ensuring there is an effective framework for the management of treasury risks. In this respect the Council decides the level and nature of risks that are acceptable, given the underlying objectives of Te Pūkenga.

In this respect, the Council has responsibility to:

- Approve the annual financial and capital expenditure budget and long-term financial plan of Te Pūkenga.
- Maintain and approve the group risk register which includes treasury risks.
- Approve the Group Treasury Policy and any changes to the Policy.
- Approve one-off transactions and policy non-compliance matters.
- Approve new and refinancing of bank facilities and dealing facilities.
- Approve the intra-group funding facility.
- Approve the opening and closing of bank accounts.
- Approve the list of authorised signatories.
- Within the Delegations Policy as required, evaluate and approve or decline a request relating to a Reserved Matter from a subsidiary.

Subsidiary Board

- Approve the use of ring fenced treasury investments.
- Approve the Reserved Matter request prior to seeking Council's consent.

Risk and Audit Committee (RAC)

The Risk and Audit Committee's terms of reference are to review and monitor the Group Treasury Policy and treasury activities, and to report to Council. The Risk and Audit Committee's responsibilities include:

- Review, maintain and monitor the robustness and comprehensiveness of the Group Treasury Policy, including the delegation's framework.
- Review and monitor the implementation of the Policy through receiving regular treasury reports.
- Receive and review issues raised by auditors (both internal and external) in respect of any significant weaknesses in the treasury function.
- Submissions are received from the Director, Finance notifying Policy non-compliance matters and reporting these to Council for approval.
- Annually receive the internal review of the Policy and recommend any changes to Council for approval.
- Receive the two yearly fundamental Policy review report and recommend any Policy changes to Council.

Chief Executive (CE)

The CE has delegated responsibility for group treasury activities and the implementation of the Group Treasury Policy. Day to day responsibility is delegated to the DCEO.

The CE is responsible for the following:

- Where within Delegations Policy to approve or decline a request relating to a Reserved Matter from a subsidiary.

Deputy Chief Executive Operations (DCEO)

The DCEO is responsible for the following:

- Delegating day-to-day responsibility to the Director, Finance for the group treasury function.
- Approve all treasury transactions including interest rate and foreign currency transactions within approved delegated authority.
- Receive and review recommended Policy changes from the Director, Finance.
- Review of submissions from the Director, Finance requesting approval for one-off transactions or risk positions falling outside Policy and seek approval from Council (via RAC).

Director, Finance (DF)

The DCEO delegates to the Director, Finance overall day-to-day responsibility for the group treasury function.

Specific responsibilities include:

Group:

- Reporting to the DCEO and Council on all treasury risks and activities and advise on significant market events that may impact on Te Pūkenga.
- Reviewing and recommending Policy changes to the DCEO and Council (via RAC).
- Maintaining relationships with the bank counterparties and the TEC.
- Ensuring that all TEC and bank financial covenants and reporting requirements are met.
- Set and approve the intra-group funding facility lending and borrowing rate.
- Monitor compliance against limits and prepare reports on an exception basis for approval. Submit one-off approval (via the DCEO and RAC to Council) of individual transactions or risk positions outside the Policy limits.
- Ensuring that treasury procedures and policies are implemented, controlled and reported on in accordance with this Policy.
- Conduct an annual review of the Policy.
- Account for all treasury transactions in accordance with legislation and generally accepted accounting principles.

Parent:

- Approve debt, treasury investment and risk management strategies.
- Approve all treasury transactions including interest rate and foreign currency transactions within approved delegated authority.
- Monitor cash and working capital management activity.
- Approve the daily cash position report.
- Monitor and review all treasury activity through receiving treasury reports from the Finance Team.
- Reviewing the cash flow forecast on a daily basis and ensuring that all group debt, treasury investment and risk management requirements are transacted internally or with the bank(s).
- Check compliance against limits and prepare reports on an exception basis for approval. Submit one-off approval (via the DCEO and RAC to Council) of individual transactions or risk positions outside the Policy limits.
- Ensuring that segregation of duties and internal controls are maintained at all times, particularly during staff absences.

Chief Financial Officer (CFO) or equivalent position - Subsidiary

The Subsidiary CFO has the following tasks and responsibilities:

- Reporting to the Director, Finance on cash management, liquidity, debt, treasury investment and risk management activities on a monthly (or more irregular if needed) basis.
- Maintaining, updating and reviewing the rolling, 12-month cash flow forecast on a weekly basis.
- Inform the Director, Finance of forecast intra-group lending or funding activity including investing, borrowing drawdowns and withdrawals.
- Maintaining relationships with bank counterparties as they relate to ring-fenced and non-ring fenced treasury investments and risk management activity.
- Maintaining relationships with the transactional bank.
- Ensuring that the Policy is implemented and reported on.
- Approve, cash management, working capital management, treasury investment and risk management transactions, along with intra-group lending and funding activity as they relate to the Subsidiary.
- Approve the daily cash position report.
- Ensure daily and forecast compliance against treasury limits.
- Receive external bank deal confirmations. Check all deal confirmations against internal deal tickets and report any irregularities.
- Monthly, approve all bank reconciliations.

- Approve, monthly treasury spreadsheet reconciliation to general ledger.
- Approve monthly treasury journals.

These responsibilities may be delegated by the CFO to an appropriately qualified senior finance staff member.

Finance Team - Group and Subsidiary

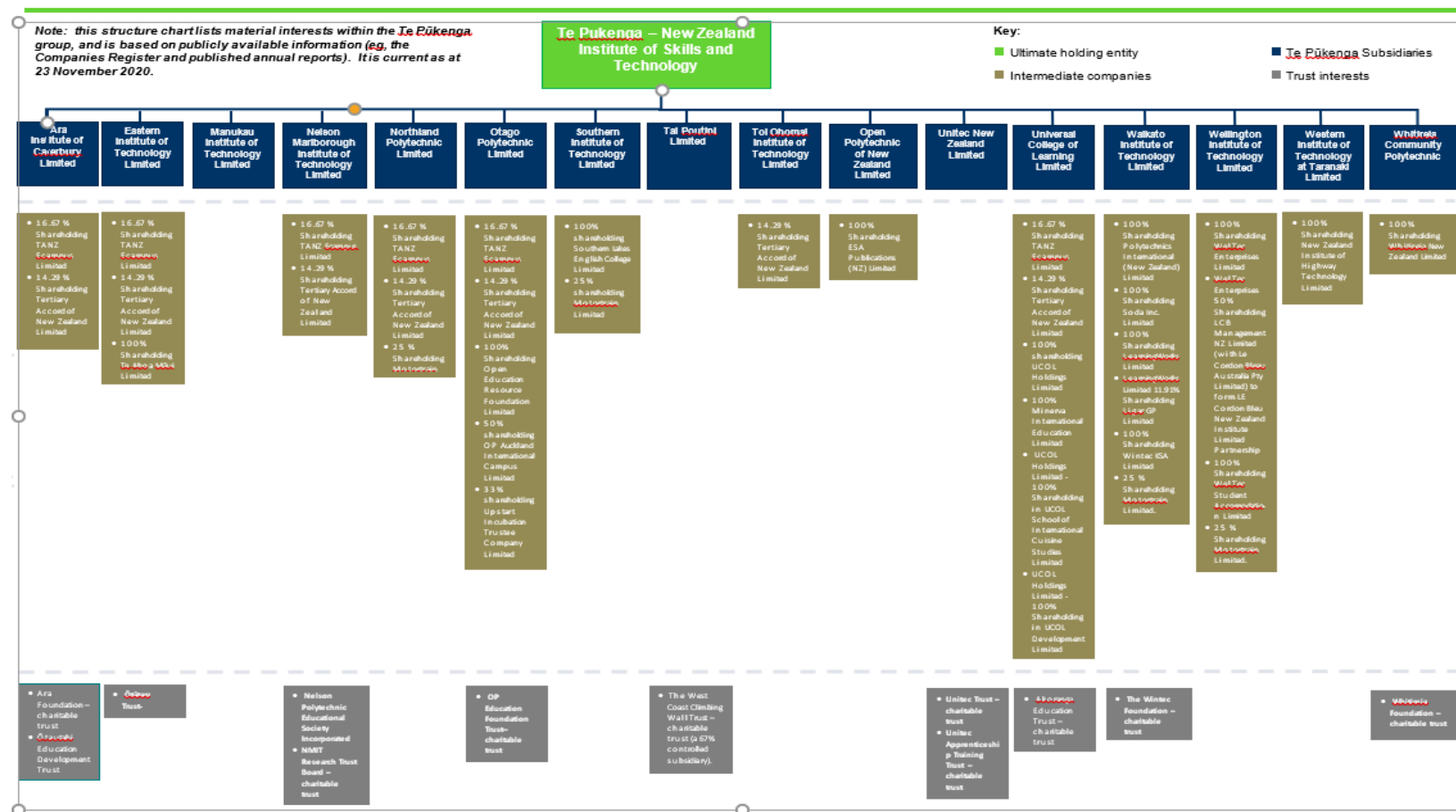
Specific responsibilities include:

- Execute cash management, working capital management, treasury investment (non-ring fenced and ring fenced), debt, interest rate and foreign currency transactions in accordance with delegated authorities.
- Update treasury spreadsheet(s) for all new, re-negotiated and maturing transactions.
- Recording, processing and settlement of all transactions.
- Receive external bank deal confirmations. Check all deal confirmations against internal deal tickets and report any irregularities immediately to the Director, Finance or Subsidiary CFO.
- Handle all administrative aspects of bank counterparty agreements and documentation such as loan agreements and ISDA documents.
- Complete and review all bank reconciliations.
- Reconcile monthly summaries of outstanding financial contracts from banking counterparties to internal records.
- Provide daily (as required), weekly, monthly, quarterly treasury reporting to the Director, Finance or Subsidiary CFO.
- Complete the daily cash position report.
- Complete the short-term and medium term cash flow forecasts.
- Manage the operation of all bank accounts.
- Complete and process Subsidiary Cash Request Notice. (Subsidiary only)
- Complete monthly treasury spreadsheet reconciliation to general ledger.
- Complete monthly interest accrual and treasury journals.
- Review monthly NZD and foreign currency bank reconciliations.
- Settlement of all treasury transactions with approved bank counterparties.
- Monitor credit ratings of approved counterparties (Group only).

Finance Manager (Parent)

- Monthly, approve bank and general ledger reconciliations.
- Approve monthly interest accrual and treasury journals.
- Approve monthly summaries of outstanding financial contracts from banking counterparties.

Appendix D - List of group subsidiaries and legal entities



Appendix E - Intra-group Funding Facility Term Sheet <<to be included>>

Appendix F - Bank Financial Covenants and Reporting Requirements <<to be included>>

Draft Proforma OFP Direction – 24 September 2020 19 January 2021

Te Pūkenga – New Zealand Institute of Skills and Technology
(Te Pūkenga NZIST)

Operational and Financial Parameters Direction - Name of Te Pūkenga NZIST Subsidiary Limited
(the **Company**)

(Clause 7.2 of the constitution of the Company)

Dated **24 September 2020** [Insert] (Effective Date)

Introduction

- A. The Company is a wholly-owned subsidiary of Te Pūkenga ~~the~~ New Zealand Institute of Skills and Technology (Te Pūkenga NZIST).
- B. Pursuant to clause 7.2 of the constitution of the Company (the **Constitution**), NZIST Te Pūkenga may from time to time issue to the Company a written Operational and Financial Parameters Direction (an **OFP Direction**), which specifies:
- (i) the applicable thresholds or financial limits for categories of transactions which require approval as Reserved Matters (as that term is defined under the Constitution) by NZIST Te Pūkenga as the sole shareholder of the Company;
 - (ii) restrictions or parameters applicable to the Company in respect of operational matters; and/or
 - (iii) matters in respect of which the Company must give NZIST Te Pūkenga reasonable notice, consult with NZIST Te Pūkenga and have due regard to NZIST's comments from Te Pūkenga.
- C. This OFP Direction has been prepared by NZIST Te Pūkenga in the context of the open, transparent and continuous reporting and ongoing communication expected between the Company and NZIST Te Pūkenga, as further set out in the letter of expectations from NZIST Te Pūkenga to the Company dated 15 May 2020.

OFP Direction

NZIST Te Pūkenga hereby gives notice to the Company that with effect on and from the Effective Date:

Financial Parameters

1. In accordance with clause 7.2(a) and paragraphs (a) to (f) of Schedule 2 of the Constitution, where the Company proposes to make a decision on any of the following matters (including agreeing to or committing to do such matters), it must first obtain the prior written consent of NZIST Te Pūkenga (and where consent of the Secretary (as defined in the Education and Training Act 2020 (the **Secretary**)) is also required for the relevant matter, NZIST Te Pūkenga will seek consent from the Secretary for and on behalf of the Company if NZIST Te Pūkenga considers it is appropriate to give its prior written consent to the relevant matter):

	Decision	Threshold Amount	Relevant Reserved Matter
(a)	Capital expenditure	An amount equal to or greater than the threshold amount (or level of risk) set by the Secretary pursuant to section 327 of the	Schedule 2, paragraph (a)

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	Decision	Threshold Amount	Relevant Reserved Matter
	<p>The incurring by the Company (in a transaction, or series of related transactions) of any capital expenditure:</p> <ul style="list-style-type: none"> • which will, or is likely to, result in the Company exceeding its capital expenditure budget in the annual budget; and/or • if the cost of, or level of risk of, the capital project is equal to or above the Threshold Amount specified in the next column and: <ul style="list-style-type: none"> i. the capital project is not within a capital plan of NZISTTe <u>Pūkenga</u> approved in writing by the Secretary; or ii. NZISTTe <u>Pūkenga</u> has not already obtained the written consent of the Secretary for the capital project. 	Education and Training Act 2020 (or section 222N of the Education Act 1989)	of the Constitution
(b)	<p>New Debt</p> <p>i. The incurring by the Company of any new borrowing or any other indebtedness or liability in the nature of borrowing (except in relation to any finance leases) in excess of the Threshold Amount specified in the next column.</p>	Zero	Schedule 2, paragraph (b) of the Constitution
	<p>ii. The Company entering into any new finance lease that would result in the Company's Tier 1 borrowing being in excess of the Tier 1 "exempt borrowing" limit in the Ministerial Determination on Exempt Borrowing (https://gazette.govt.nz/notice/id/2014-go2538)</p>	N/A	
(c)	<p>Drawdown on existing debt facilities</p> <p>The Company drawing-down on any debt or borrowing facilities (in a transaction, or series of related transactions) in:</p> <ul style="list-style-type: none"> i. advance of the budgeted draw-downs for the financial year; and/or ii. excess of the budgeted debt draw-downs for the financial 	Any amount that would result in budgeted debt draw-downs for the financial year being equal to or greater than 105% of budgeted debt draw down-downs for the financial year	Schedule 2, paragraph (c) of the Constitution

DRAFT

	Decision	Threshold Amount	Relevant Reserved Matter
	year by the Threshold Amount specified in the next column.		
(d)	Disposal of property assets The leasing or sale, assignment gifting, lending, transfer (including to any trust) or any other disposal (including any demolition of a building) of property assets or interests in property assets (in a transaction, or series of related transactions) by the Company where the value of the property asset or interest exceeds the Threshold Amount specified in the next column.	An amount equal to or greater than the property asset disposal threshold determined by the Minister of Education pursuant to section 192(5) of the Education Act 1989 or section 282(5) of the Education and Training Act 2020. See further: https://www.tec.govt.nz/teo/working-with-teos/tei/asset-management-teis/land-buildings/	Schedule 2, paragraph (d) of the Constitution
(e)	Disposal of non-property assets The leasing or sale, assignment, gifting, lending, transfer (including to any trust) or any other disposal of non-property assets or interests in non-property assets (including cash and any other financial assets) in a transaction, or series of related transactions by the Company in excess of the Threshold Amount specified in the next column.	An amount equal to or greater than the threshold amount for disposals of plant and equipment and financial assets as determined by the Minister of Education pursuant to section 192(5) of the Education Act 1989 or section 282(5) of the Education and Training Act 2020. See further: https://www.tec.govt.nz/teo/working-with-teos/tei/asset-management-teis/sale-plant-equipment-financial-assets/ <i>Note that the definition of “non-property asset” for the purposes of this paragraph 1(e) is wider than the definition of asset referred to in the TEC guidance noted above. The threshold amount calculated pursuant to that guidance applies to the wider definition of non-property assets under this paragraph 1(e).</i>	Schedule 2, paragraph (d) of the Constitution
(f)	Charging of assets The mortgaging or charging of assets or interests in assets (in a transaction, or series of related transactions) by the Company in excess of the Threshold Amount specified in the next column.	An amount equal to or greater than \$500,000	Schedule 2, paragraph (e) of the Constitution
(g)	Leases and licences Entering into any leases or licenses (but excluding where a counterparty exercises any rights of renewal) of land or buildings or parts of buildings by the Company (either as grantor or grantee):	An amount equal to or greater than \$400,000	Schedule 2, paragraph (f) of the Constitution

DRAFT

	Decision	Threshold Amount	Relevant Reserved Matter
	<ul style="list-style-type: none"> where the annual rent payable or receivable is in excess of the Threshold Amount specified in the next column; or which is for a term (including any rights of renewal) in excess of three years. 		

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Operational Parameters

2. In accordance with clause 7.2(b) and paragraph (t) of Schedule 2 of the Constitution, where the Company proposes to make a decision on any of the following operational matters, it must first obtain the prior written consent of NZISTTe Pūkenga:

Chief Executive

- (a) approval of any change to the remuneration of the Company's Chief Executive;
- (b) approval of any remuneration for any new Company Chief Executive;
- (c) approval of any proposed changes to the terms and conditions of employment of the Company's Chief Executive or approval of any proposed terms and conditions of employment of a new Chief Executive of the Company;

MECA

- (d) negotiation and agreement of any Multi Employer Collective Agreement;

Business Systems

- (e) any decision relating to the change, development and implementation of business systems which is materially inconsistent with the guidelines and material transaction limits adopted by NZISTTe Pūkenga, as notified to the Company from time to time;

Student fees and academic policies

- (f) setting student fees outside of the annual budget agreed by the Company with NZISTTe Pūkenga;
- (g) adoption of any academic policies or student regulations and statutes that are inconsistent with any model academic policies or model student regulations and statutes notified by NZISTTe Pūkenga to the Company from time to time;

Mix of provision and programme delivery

- (h) any decision to remove a programme from, add a programme to, or change any programme on (where the change would result in a material change to the nature, scope and purpose of that programme that would impact on the NZISTTe Pūkenga network of programme delivery), the list of programmes prepared by the Company to support the Company's then-current investment plan provided to the Tertiary Education Commission for the purposes of the Company obtaining SAC funding;

- (i) any decision to change the scope of regional delivery of programmes, including the delivery of programmes outside the region in which the Company predominantly operates or the delivery of programmes outside New Zealand;

Marketing

- (j) any decision relating to the design or implementation of regional or international marketing which is materially inconsistent with the brand standards and/or the marketing approach adopted by ~~NZIST~~Te Pūkenga, as notified to the Company from time to time;

Group Treasury Policy

- (k) any decision relating to the entry of the Company into risk management facilities (including the establishment of a derivative dealing line/limits with a bank, or the signing of an ISDA agreement).

Matters requiring notice and consultation

3. In accordance with clause 7.2(c) of the Constitution, the Company must give ~~NZIST~~Te Pūkenga reasonable notice, must consult with ~~NZIST~~Te Pūkenga and must have due regard to ~~NZIST~~Te Pūkenga's comments from Te Pūkenga in relation to any of the following matters in advance of the relevant decision or fact, matter or circumstance occurring:

Expenditure and revenue

- (a) the Company being likely to exceed, or exceeding, 102% of its total budgeted operating expenditure for a financial year;
- (b) the Company being likely to receive less than, or receiving less than, 98% of total budgeted revenue for a financial year;

Appointment and Performance Review of Chief Executive

- (c) appointment of the Company's Chief Executive and the performance review of that Chief Executive;

Student regulations and statutes

- (d) except where additional consent requirements apply under paragraph 2(g) above, adoption of any new student regulations and statutes and/or amendment to any existing student regulations and statutes;

Statement of Strategic Intent

- (e) the development and adoption of the Company's statement of strategic intent;

Employment

- (f) initiating bargaining for, bargaining, and entering into any Collective Employment Agreement (other than a Multi Employer Collective Agreement, which requires ~~NZIST~~Te Pūkenga approval pursuant to paragraph 2(d) above) with employees of the Company on the basis that:
 - (i) the Company is required to ensure that the terms of any concluded Collective Employment Agreement are within agreed parameters set by ~~NZIST~~Te Pūkenga as notified to the Company from time to time, with approval required from ~~NZIST~~Te Pūkenga if it is proposed to include terms in the Collective Employment Agreement which are not within the agreed parameters; and

DRAFT

(ii) the Company is required to advise ~~NZIST~~Te Pūkenga if the parties are having difficulties in concluding a Collective Employment Agreement;

(g) any proposed restructuring of the Company which would, in the Company's view, have a substantial impact on ~~NZIST's the~~ strategic direction for Te Pūkenga and initiatives as notified by ~~NZIST~~Te Pūkenga to the Company from time to time. For any other proposed restructuring, the Company is expected to (i) participate in any ~~NZIST~~Te Pūkenga group transition programme that exists, and (ii) notify ~~NZIST~~Te Pūkenga of the outcome, in each case in order to keep ~~NZIST~~Te Pūkenga informed.

Matters requiring notice

4. The Company is required to notify ~~NZIST~~Te Pūkenga (but is not required to consult with ~~NZIST~~Te Pūkenga) where there are any new employment policies introduced.

Revocation of previous Operational and Financial Parameters Directions

5. Each Operational and Financial Parameters Direction previously issued by ~~NZIST~~Te Pūkenga is revoked and replaced by this Operational and Financial Parameters Direction.

SIGNED for and on behalf
Te Pūkenga – New Zealand Institute of Skills
and Technology by:

Stephen Town
Chief Executive

DRAFT



9 September 2020
Murray Strong
Chair
New Zealand Institute of Skills and Technology

Tēnā koe Murray

Exercising the powers in section 282(4) within the NZIST group

I hold authority delegated by the Secretary for Education for decisions on tertiary education institutions' exercise of powers under section 282(4) and section 328 of the Education and Training Act 2020.

On behalf of the Secretary for Education, I consent to the New Zealand Institute of Skills and Technology (NZIST) and its subsidiaries exercising the powers in section 282(4) of the Education and Training Act 2020 where the exercise of those powers does not affect the overall balance sheet of the group comprising NZIST and its subsidiaries. These powers may be exercised by the entering into of arrangements between NZIST and any of its subsidiaries, or between any of its subsidiaries.

This consent is given under section 282(4) and section 328 of the Education and Training Act 2020. It will expire on either 31 December 2022 or another date specified in an order made under clause 21(2) of Schedule 1 of the Education and Training Act 2020 for corresponding NZIST subsidiaries as the latest date with which the subsidiaries can exist, whichever is the later.

This consent will support NZIST to actively manage the viability and effectiveness of its network of subsidiaries.

In exercising these powers, the consent does not relieve NZIST and its subsidiaries from any other applicable statutory or legal requirements. Furthermore, any exercising of these powers outside of the NZIST group that impacts on NZIST's balance sheet requires the written consent of the Secretary for Education.

Nāku noa, nā

Katrina Sutich
Group Manager
Graduate Achievement, Vocations and Careers



Te Kaupapa: Key Performance Indicators

1. PURPOSE:

FUNCTION:	For Information
NĀ:	Wayne Jackson Chief Executive
TE RĀ:	12 February 2021
PURPOSE:	The purpose of this paper is to provide the Board with an update on the progress against Key Performance Indicators (KPIs) as at 26 January 2021.
RECOMMENDATION(S):	It is recommended that the NMIT Board resolve to: <ol style="list-style-type: none">1. Note the current performance levels.

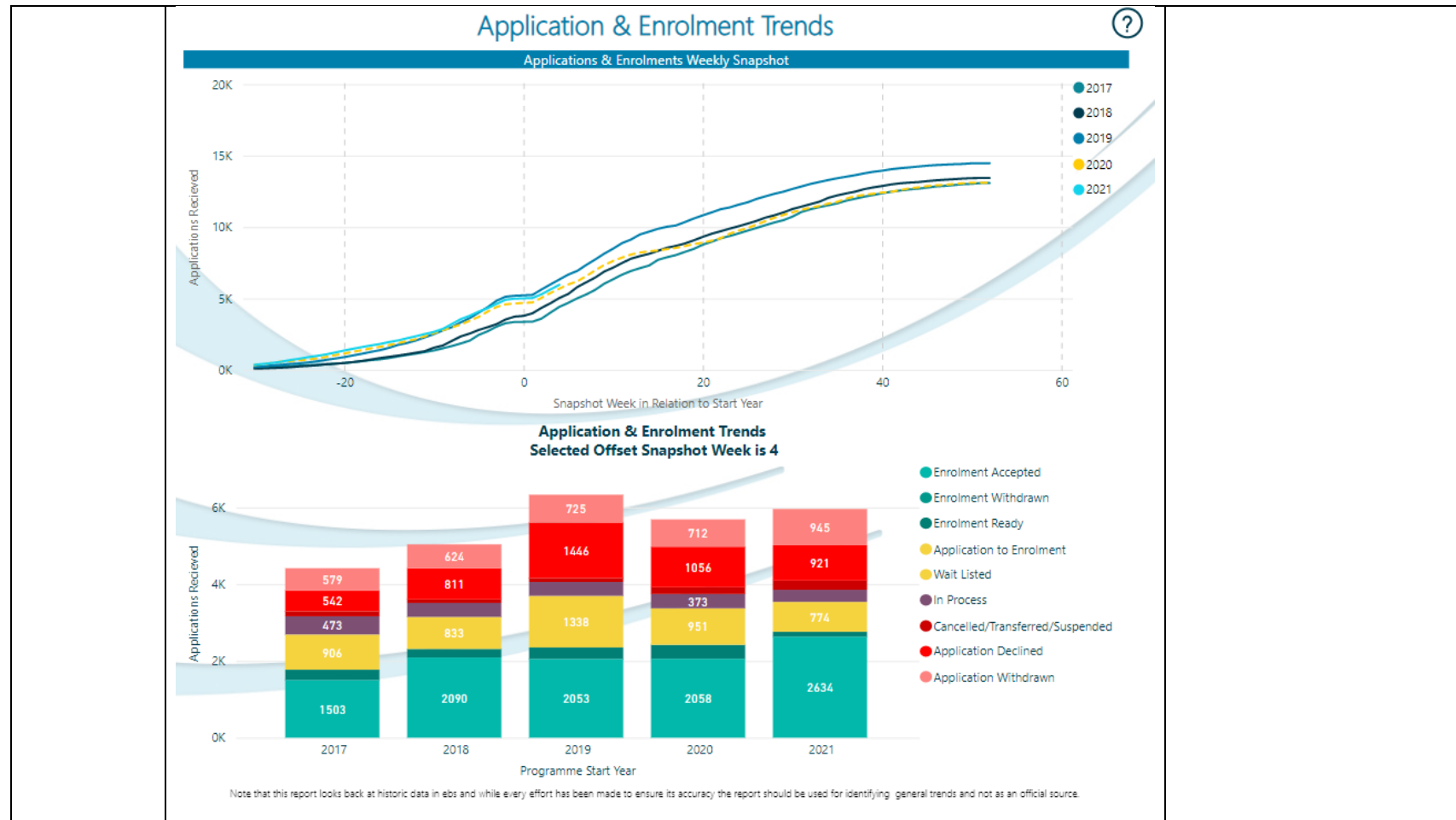
2. EXECUTIVE SUMMARY

- Frequency of Performance Panel presentations to Executive will be reviewed in February 2021.
- At risk learners increased over 2020 due to COVID-19 Alert levels. Learner Services will work across the programme areas to assist in a good start to supporting learners in 2021.
- Overall domestic enrolments so far for 2021 are up on 2020 by 29%.

TOPIC	STATUS REPORT	COMMENTARY
<p>'At Risk' Learners</p>	<div><div><div><div><div>Owner Page</div><div>Learner Page</div></div><div><h3>Pastoral Entries - Overview</h3><div>Date Last Refreshed 25/01/2021 at 11:54:11 PM</div><div><div>2019</div><div>2020</div></div><div><div><div>Concerns</div><div><div>431</div><div>Concerns Raised All Learners</div></div><div><div>47</div><div>Open Concerns Current Learners</div></div><div><div>7</div><div>Unread Concerns Current Learners</div></div><div><div>20</div><div>Awaiting Response Current Learners</div></div></div><div><div>Learners</div><div><div>36</div><div>Learners</div></div><div><div>35</div><div>Monitoring</div></div><div><div>1</div><div>Probation</div></div><div><div>0</div><div>Exclusion</div></div></div></div><div><div><div>Concerns Raised by Category (all learners)</div><div><div>Other</div><div>Poor attendance</div><div>Academic Misconduct</div><div>Behaviour / Harass...</div><div>Disciplinary</div><div>Employment / Work...</div><div>Failure to progress</div><div>Financial Hardship</div><div>Health</div><div>Health and Safety</div></div><div><div>0</div><div>100</div></div></div><div><div><div>Open Concerns by Category (current learners)</div><div><div>Other</div><div>Poor attendance</div><div>Academic Misconduct</div><div>Behaviour / Harass...</div><div>Employment / Work...</div><div>Failure to progress</div><div>Health</div><div>Health and Safety</div><div>Learning difficulty</div><div>Poor results</div></div><div><div>0</div><div>20</div></div></div><div><div><div>Opened vs Closed Concerns by Month & Year</div><div><div>Opened Entries</div><div>Closed Entries</div></div><div><div>2019</div><div>2020</div></div><div><div>0</div><div>200</div><div>400</div></div><div><div>January</div><div>February</div><div>March</div><div>April</div><div>May</div><div>June</div><div>July</div><div>August</div><div>September</div><div>October</div><div>November</div><div>December</div></div></div></div></div></div></div></div></div></div>	<p>NMIT teams have access to information and ongoing training to support students’ pastoral care needs, including identifying and responding to risk, use of the pastoral care module, understanding the privacy principles, and support and referral processes. All teams are embedding pastoral care into all parts of students’ experiences at NMIT.</p>

TOPIC	STATUS REPORT	COMMENTARY																				
Applications & Enrolments	Enrolments as of Week 4:	Domestic applications show that as of week 4 we are 26% up compared to 2020, and the conversion rate is 1% higher than last year.																				
	<table><tr><th>Domestic</th><th>Applications Received</th><th>Volume Percentage</th><th>Enrolment Accepted/Ready</th><th>Conversion Rate</th></tr><tr><td>2020</td><td>3,325</td><td></td><td>2,066</td><td>62%</td></tr><tr><td>2021</td><td>4,185</td><td>26%</td><td>2,637</td><td>63%</td></tr></table>		Domestic	Applications Received	Volume Percentage	Enrolment Accepted/Ready	Conversion Rate	2020	3,325		2,066	62%	2021	4,185	26%	2,637	63%					
	Domestic		Applications Received	Volume Percentage	Enrolment Accepted/Ready	Conversion Rate																
	2020		3,325		2,066	62%																
	2021		4,185	26%	2,637	63%																
	<table><tr><th>International</th><th>Applications Received</th><th>Volume Percentage</th><th>Enrolment Accepted/Ready</th><th>Conversion Rate</th></tr><tr><td>2020</td><td>2,363</td><td></td><td>355</td><td>15%</td></tr><tr><td>2021</td><td>1,774</td><td>-25%</td><td>123</td><td>7%</td></tr></table>		International	Applications Received	Volume Percentage	Enrolment Accepted/Ready	Conversion Rate	2020	2,363		355	15%	2021	1,774	-25%	123	7%					
	International		Applications Received	Volume Percentage	Enrolment Accepted/Ready	Conversion Rate																
	2020		2,363		355	15%																
	2021		1,774	-25%	123	7%																
	<table><tr><th>Status</th><th>Domestic</th><th>International</th><th>Total</th></tr><tr><td>Enrolment Cancellation</td><td>239</td><td>51</td><td>290</td></tr><tr><td>Enrolment Transfers</td><td>44</td><td>12</td><td>56</td></tr><tr><td>Enrolment Withdrawals</td><td>1</td><td>-</td><td>1</td></tr><tr><td>Total</td><td>284</td><td>63</td><td>347</td></tr></table>		Status	Domestic	International	Total	Enrolment Cancellation	239	51	290	Enrolment Transfers	44	12	56	Enrolment Withdrawals	1	-	1	Total	284	63	347
	Status		Domestic	International	Total																	
	Enrolment Cancellation		239	51	290																	
	Enrolment Transfers		44	12	56																	
Enrolment Withdrawals	1	-	1																			
Total	284	63	347																			

KEY PERFORMANCE INDICATORS | 12 FEBRUARY 2021



KEY PERFORMANCE INDICATORS | 12 FEBRUARY 2021

TOPIC	STATUS REPORT	COMMENTARY
Enrolment withdrawals	<div data-bbox="382 342 1524 1243"> <h3>Application & Enrolment Trends</h3> <p>Applications & Enrolments Weekly Snapshot</p> <p>Snapshot Week in Relation to Start Year</p> <h3>Application & Enrolment Trends</h3> <p>Selected Offset Snapshot Week is 52</p> <p>Programme Start Year</p> </div>	<p><u>Enrolment withdrawals:</u></p> <p>December 2018: 284</p> <p>December 2019: 254</p> <p>December 2020: 254</p> <p>64 withdrawals in 2020 were from Te Toki Pakohe</p>

TOPIC	STATUS REPORT	COMMENTARY
Complaints & Misconduct	Complaints	<ul style="list-style-type: none"> 1 complaint regarding removal of art work in G Block – <i>resolved</i> 1 internal Appeal regarding the outcome of formal complaint regarding programme and tutor dissatisfaction - <i>resolved</i> 17.12.2020 *1 external appeal via Disputes Tribunal regarding refund of fees due to course dissatisfaction – <i>resolved</i> 19.01.2021 2 complaints were resolved low-level directly with the parties involved <ul style="list-style-type: none"> 1 x course clarity for student - <i>resolved via CM</i> 1 x member of the public re noise from student(s) camping in NMIT carpark in camper van - <i>resolved via Campus Services</i>
	Complaints received this period (2 November 2020- 26 Jan 2021)	
	Complaints yet to be resolved (excluding those received this period)	
	Complaints resolved/closed during report period	
	Appeals arising this reporting period	
	Appeals resolved/closed during this report period	
	Student Misconduct (Non-academic)	
	Student Misconduct matters reported in this period (2 November 2020- 26 Jan 2021)	
	Ongoing student misconduct investigations	
	Student misconduct investigations resolved/closed during report period	



Te Kaupapa: Common Seal Usage

1. PURPOSE:

- Function:** For Information
- Nā:** Brian Johnston, Exec Director Finance & Campus Services
- Te rā:** 12 February 2021
- Purpose:** The purpose of this paper is:
To provide the Board with a report on the use of the NMIT Common Seal for the period 1 November 2020 to 30 November 2020.
- Recommendation(s):** It is recommended that the NMIT Board resolve to:
1. Receive this report for their information.

2. EXECUTIVE SUMMARY

Below details the use of the Common Seal for the abovementioned reporting period.

Date	Document	Summary of Document	Document Signatory
02/11/20	Invoice to Hubei Polytechnic University	Invoice for share of tuition fees for In China programme delivery	Wayne Jackson
06/11/20	Invoice to Guangdong Engineering Polytechnic	Amended invoice for share of tuition fees for In China programme delivery	Wayne Jackson
09/11/20	Invoice to Guangdong Polytechnic Institute	Invoice for share of tuition fees for In China programme delivery	Wayne Jackson



Te Kaupapa: Common Seal Usage

3. PURPOSE:

Function:	For Information
Nā:	Brian Johnston, Exec Directo Finanace & Campus Services
Te rā:	12 February 2021
Purpose:	<p>The purpose of this paper is:</p> <p>To provide the Board with a report on the use of the NMIT Common Seal for the period 1 December 2020 to 31 December 2020.</p>
Recommendation(s):	<p>It is recommended that the NMIT Board resolve to:</p> <ol style="list-style-type: none"> 2. Receive this report for their information.

4. EXECUTIVE SUMMARY

Below details the use of the Common Seal for the abovementioned reporting period.

Date	Document	Summary of Document	Document Signatory
11/12/20	Invoice to Guangdong Polytechnic Institute	Amended invoice for share of tuition fees for In China programme delivery	Wayne Jackson
11/12/20	Letter to Guangdong Engineering Polytechnic	Confirmation of NMIT name	Wayne Jackson



Te Kaupapa: Common Seal Usage

5. PURPOSE:

Function:	For Information
Nā:	Brian Johnston, Exec Director Finance & Campus Services
Te rā:	12 February 2021
Purpose:	<p>The purpose of this paper is:</p> <p>To provide the Board with a report on the use of the NMIT Common Seal for the period 1 January 2021 to 31 January 2021.</p>
Recommendation(s):	<p>It is recommended that the NMIT Board resolve to:</p> <p>3. Receive this report for their information.</p>

6. EXECUTIVE SUMMARY

Below details the use of the Common Seal for the abovementioned reporting period.

Date	Document	Summary of Document	Document Signatory
12/01/21	SANITI Service Level Agreement Continuation Letter	Continuation of service level agreement for the provision by SANITI of student support services for 2021	Wayne Jackson



Te Kaupapa: Chief Executive's Report

Function:	For Information
Nā:	Olivia Hall, Executive Director Ōritetanga, People, Culture and Learner Services
Te rā:	12 February 2021
Purpose:	<p>The purpose of this paper is:</p> <p>To provide the NMIT Board with an update on NMIT Te Pae Tawhiti Progress Report to Te Pūkenga January 2021.</p>
Recommendation(s):	It is recommended that the NMIT Board resolve to note the final NMIT Te Pae Tawhiti Report.

Overview

This report reflects the feedback from Directors at their meeting on 25 January 2021.

To put together this report, Management team (Executive Directors and Curriculum Directors) provided input, with Olivia Hall Executive Director Ōritetanga, People, Culture and Learner Services as the overall editor. Input and approval from CE then confirmation at the Board. In the future, it is intended that a “wider-team” self-reflective approach is undertaken and this first report sets the tone and foundation for future reporting.

As this was the first time reporting on the outcomes and goals of Te Pae Tawhiti, processes had to be established and accurate information obtained to ensure the breadth of activity was understood, reported on and where needed, improvement planned for.

Overall the findings presented some compelling evidence of achieving the Outcomes and Goals of Te Pae Tawhiti, but there are some specific areas that require improvement to meet the aspirations of Te Pae Tawhiti, and our Te Taihu o te Waka a Māui (Te Taihu) Iwi.

NMIT Actions 2021-22

Table 1 contains a summary of actions that NMIT will commit to over the next two years.



Table 1: NMIT Actions 2021-22

Outcomes and Goals	Measurements	2021 Actions	2022 Actions	Subsidiary portfolio accountable for actions
Outcome 1. Demonstrable Tiriti o Waitangi Partnerships	1. Partnership relationship with each iwi which results in cross-organisational activity	Appoint an Iwi Liaison Confirm MOU with 3 new iwi / Māori organisations	Confirm MOU with 3 new iwi / Māori organisations	CEO & Executive Director Ōritetanga, People, Culture and Learner Services
Outcome 2. Inclusivity and Equity for Māori				
Goal 1. Greater Relevance of Provision	2. Equity is achieved for Māori students at NMIT	Equity research undertaken and Ōritetanga project compiled	Ōritetanga project implemented	Executive Director Ōritetanga People, Culture and Learner Services
Goal 2. Better Equitable Access				
Goal 3. Stronger Māori Participation	3. All NMIT staff are culturally appropriate and culturally response to the needs of Māori	Professional expectations and framework compiled and communicated	Reporting requirement of all managers as well as action plans required for areas of concern	All Executive Directors
Goal 4. More Equitable Outcomes				
Goal 5. Stronger Responsive Practices	4. Equity of outcomes for Māori students consistent across NMIT	Departmental plans to address equity for Māori learners developed and reported against	Intensive support and reporting in place to ensure equity issues at a departmental level are addressed	Executive Director Programmes and Delivery & Executive Director Ōritetanga People, Culture and Learner Services



Te Pae Tawhiti Progress Report



Section One – Subsidiary Information

INFORMATION	RESPONSE
Subsidiary	Nelson Marlborough Institute of Technology Limited
Chairperson	Darryl Wehner
Chief Executive	Wayne Jackson
Senior Māori Executive(s)	Olivia Hall
Second Tier Management	Sue Smart - Executive Director Programmes and Delivery Grant Kerr - Executive Director Demand Management Brian Johnston – Executive Director Finance and Campus Services Olivia Hall – Executive Director Ōritetanga, People, Culture and Learner Services
Te Pae Tawhiti Internal Champion/s	Olivia Hall
Author(s) of report	Olivia Hall
Your Kaitautoko	Janine Kapa
Date report completed and sent	FINAL
Methodology Briefly describe the method used to gather information for this report. You should include the internal subsidiary groups that were involved in any self-reflection under Te Pae Tawhiti	Management team (Executive Directors and Curriculum Directors) provided input, with Olivia Hall Executive Director Ōritetanga, People, Culture and Learner Services as the overall editor. Input and approval from CE then confirmation at the Board. In the future, it is intended that a “wider-team” self-reflective approach is undertaken and this first report sets the tone and foundation for future reporting.
Appended documents	<ul style="list-style-type: none"> • Treaty of Waitangi Policy • MOU with Whakatu Marae

	<ul style="list-style-type: none"> • MOU with Ngāti Koata Trust • Ahi Kaa Wānanga course outline • Letters of support • Project Moturoa promotional material
General overview / Comments on your report	<p>As this was the first time reporting on the outcomes and goals of Te Pae Tawhiti, processes had to be established and accurate information obtained to ensure the breadth of activity was understood, reported on and where needed, improvement planned for.</p> <p>Overall the findings presented some compelling evidence of achieving the Outcomes and Goals of Te Pae Tawhiti, but there are some specific areas that require improvement to meet the aspirations of Te Pae Tawhiti, and our Te Tauihu o te Waka a Māui (Te Tauihu) Iwi.</p>
Glossary	<p>Te Toki Pakohe – building which is the centre of all things Māori at NMIT</p> <p>Mātauranga Māori – is the curriculum area associated with mātauranga Māori courses delivered at NMIT, they are located in Te Toki Pakohe</p> <p>Pouārahi - Director Māori, this role has since been superseded by the role of Executive Director Ōritetanga People, Culture and Learner Services</p> <p>Poumanaaki – Bi-cultural Manager</p> <p>Pouwhakahaere – Mātauranga Māori Curriculum Manager</p> <p>Not Māori – this term is used to indicate the learner group who do not identify as Māori on their enrolment forms</p>

Section Two – Outcomes, Goals and Reflective Questions

<i>Outcome 1. Demonstrable Tiriti o Waitangi Partnerships</i>	
Reflective question 1	Are Māori/Crown partnerships active and meaningful throughout the Te Pūkenga network?
RESPONSE	<p>During the last 12 months, NMIT has achieved the following partnership engagement and support at senior governance and leadership levels, this is in addition to business as usual activity:</p> <ul style="list-style-type: none"> • Appointment of a Board member recommended and supported by all eight iwi of Te Taihū o te Waka a Māui (Te Taihū) • Ongoing Kaumātua guidance and support • Iwi and Kaumātua representation on CEO appointment panel • Te Ahu o te Reo application supported by all eight iwi of Te Taihū via Te Kahui Mātauranga (Te Taihū iwi education group) • Iwi representation at NMIT graduation ceremonies as well as start of the year student mihi whakatau • Various communications and meetings between NMIT Board Chair and Iwi Board Chairs • Joint iwi, Māori and NMIT response to NMIT's bid to becoming the national head office of the New Zealand Institute of Skills and Technology (subsequently named Te Pūkenga) • Various meetings between NMIT and iwi / Māori to advance the following developments: <ul style="list-style-type: none"> ○ Ahi Kaa Wānanga short course development with Wakatū Incorporation ○ Ngāti Kuia and NMIT partnership for delivery of Horticulture course ○ Provision of Nvivo Software to Ngāti Kuia researcher ○ MOU with Ngāti Rārua ○ Statistical information shared with iwi ○ Ngāti Koata and NMIT partnership for purchase of buildings ○ MOU with Whakatū Marae ○ Ongoing discussions and negotiations with various iwi and Māori organisations to confirm expectations in MOU • Implementation of NMIT sponsored scholarships for each of the eight iwi of Te Taihū
Reflective question 2	Is partnership engagement and support visible and proactively led at senior governance and leadership levels throughout the Te Pūkenga network?
RESPONSE	<p>The ultimate responsibility of the Māori / Crown relationship sits with the Board of Directors of NMIT. They are committed to advancing active and meaningful relationships with Te Taihū iwi. The membership of the Board includes two tangata Māori, with one of them appointed on the recommendation of the Te Taihū Iwi Chairs Forum, and with the support of all eight Te Taihū iwi. The NMIT Board and in particular the Board Chair, actively seeks the input and guidance of iwi Board Chairs regularly, both formally and informally.</p> <p>The key guiding document which guides the Institute in meeting the expectations of the NMIT Board in regards to their relationship and responsibility to iwi is the Treaty of Waitangi Policy. This policy guides the activity of NMIT staff in meeting their expectations around the Treaty of Waitangi, Te Tiriti o Waitangi. The purpose of the policy is:</p>

... Nelson Marlborough Institute of Technology is committed to its duty of acknowledging and embedding the Treaty of Waitangi, Te Tiriti o Waitangi and the associated principles of the Treaty within the policies and practices of the Institution.

The policy includes the principles of the Treaty of Waitangi and how they apply at NMIT, as well as the overall aim of the Institution to be:

- *A Māori relevant institution*
- *A place where the Māori language and culture can flourish*
- *A place where Māori students succeed*
- *A place where Māori feel welcomed and supported*
- *An Institution that contributes to the educational and developmental aspirations of whānau, hapū and Iwi*
- *An Institution that celebrates its treaty partnership and multiculturalism*

The CEO, supported by key staff, ensures that there is capability, capacity and resourcing to meet the expectations of the Board outlined in the policy, including those specifically stated within the policy:

- *develop a structure that will facilitate the participation of Mana Whenua and Matawaka at the Governance level within the Institution*
- *develop and implement strategies that will facilitate whānau, hapū and Iwi Māori participation in the development and design of academic curriculum across the Institution*
- *develop and implement strategies and policies that ensure the protection and use of te reo Māori me ona tikanga across all areas of NMIT activity*
- *develop and set appropriate targets for Māori students across NMIT*
- *develop and implement strategies for recruitment, retention and completion of Māori students*
- *develop strategies to actively recruit Māori staff across all levels of the institution*
- *provide ongoing education and training programmes for all employees on the Treaty of Waitangi*
- *provide ongoing specific training and support for both academic and allied staff focusing on working with Māori*

This explicit focus and commitment by the Board has ensured that NMIT remains focused on positive outcomes for Māori, achieved through active and meaningful partnerships with Te Taihū iwi and Māori.

Outcome 2. Inclusivity and Equity for Māori

Reflective question 1	Is the learning environment safe and welcoming for Māori learners, and are their learning experiences conducive to their success?
RESPONSE	Guided by the principles outlined in Seven principles to effectively support Māori students as Māori (Hargraves), an overview of NMIT's ability to provide a learning environment that is safe and welcoming for Māori learners and their learning experiences are conducive to their success is outlined below:

Accepting professional responsibility for, and making a commitment to, improving Māori student's educational achievement

- NMIT staff are made aware of the expectations of Māori student achievement through targets and the requirement to report against them in performance reporting
- The Māori Directorate (Pouārahi, Pouwhakahaere and Poumanaaki) met with each of the curriculum areas multiple times throughout 2020 to establish relationships and ascertain supports required by staff to meet increasing targets and expectations
- 40 hour Treaty of Waitangi and te reo Māori courses introduced in 2020 to meet the professional development needs of staff and the wider community
- 44 NMIT staff undertook mātauranga Māori courses in 2020 at NMIT outside of work hours (noting that some staff undertake non-NMIT courses or other informal learning not recorded here)

Care for students as Māori students

- Te Puna Manaaki learner services team reached out to each individual Māori student at NMIT offering cultural, pastoral, advocacy or educational support. This included phone calls, emails and shared kai opportunities
- Te Toki Pakohe, NMIT's centre of all things Māori, provides students a Māori space to meet with staff, utilise the kitchen, speak and behave in a manner that reflects them as Māori including speaking in te reo
- By Māori for Māori approach enabled to ensure Māori learners are able to access support in a culturally responsive manner

Develop relationships with whānau and iwi

- Te Toki Pakohe is set up as a place where whānau and iwi can be appropriately supported and engaged with, including the ability to formally welcome and manaaki manuhiri
- NMIT staff well connected with Te Tauihu iwi and Māori at a variety of levels, as well as formally engaging with activities of and for iwi Māori, including cultural, industry and community activities.

Transform power relations in the classroom

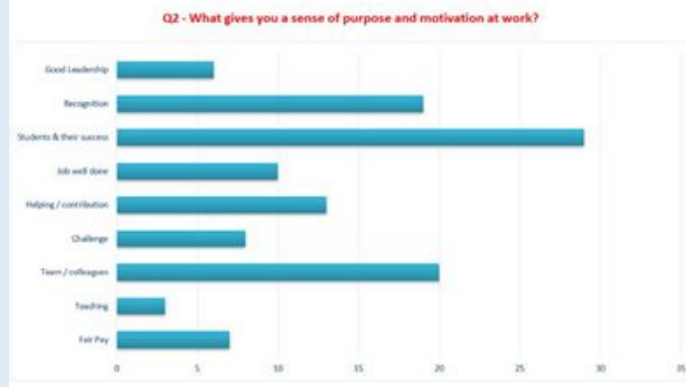
- NMIT's NZCATT (New Zealand Certificate in Adult Tertiary Teaching) course, which is provided to all beginning NMIT tutors, provides an understanding and overview of power dynamics and how to be understanding and responsive to rangatiratanga and self-determination by learners
- Experienced tutors may not yet know or reflect this type of teaching method and more work is required to ensure a cohesive, comprehensive and consistent approach across all curriculum areas is provided through professional development

Develop discursive and co-constructive pedagogies

- This is slowly being better understood and applied not only at NMIT, but also across the education sector. Those staff who actively engage in new research and pedagogies of learning are understanding and applying this style to their teaching however focused work is required to ensure a cohesive, comprehensive and consistent approach across NMIT is developed and maintained

Manage classrooms to promote learning

- All courses across NMIT have expectations regarding management, organisation and security which are embedded in the systems, processes and ongoing communication with students. This provides for the rules, boundaries and organisation that is found to be fundamental for effective learning.
- NMIT staff are committed to best meeting the needs of students and creating relationships that are both professional but personable with students. In a recent staff survey, the leading answer to the question what gives staff a sense of purpose and motivation at work was learners and their success



NMIT staff survey results, November 2020

Have high expectations of Māori students, and reflect on learning outcomes and goals with students and whānau

- Te Puna Manaaki staff provide a learner centric, holistic, culturally appropriate service to Māori learners (and their whānau where applicable). This includes helping them set a learning plan that meets their goals and provides supports to overcome obstacles within their learning journey.
- Te Puna Manaaki work with curriculum areas and teaching staff to ensure that tutor expectations are aligned with the goals of the student and their whānau. Where there is a gap between expectations and realistic outcomes, work with both learner and tutor to ensure an agreeable way forward is found. This can include supporting staff understand cultural differences, learner planning, advocacy, connecting students to additional support, professional development for staff etc.

Reflective question 2

Is your subsidiary improving outcomes for Māori learners and ensuring equitable outcomes for Māori learners?

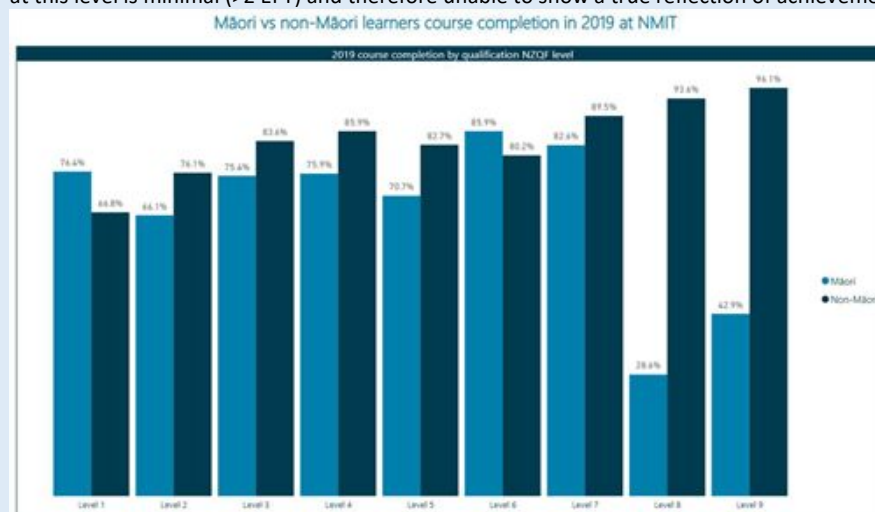
RESPONSE

	2020	2019	2018	2017
Course EPI – Māori	70% 277 EFTS delivered 193 successful EFTS	76% 360 EFTS delivered 273 successful EFTS	80% 429 EFTS delivered 343 successful EFTS	75% 452 EFTS delivered 340 successful EFTS
Course EPI – Not Māori *domestic only	82% 1,518 EFTS delivered 1,237 successful EFTS	84% 1,554 EFTS delivered 1,308 successful EFTS	86% 1,722 EFTS delivered 1,486 successful EFTS	85% 1,667 EFTS delivered 1,412 successful EFTS
Qualification – Māori	57% 587 learners 325 learners completed	53% 609 learners 322 learners completed	54% 617 learners 331 learners completed	54% 608 learners 330 learners completed
Qualification – Not Māori *including internationals	65% 2,962 learners	63% 2,731 learners	57% 2,388 learners	58% 2,560 learners

	1906 learners completed	1,723 learners completed	1,343 learners completed	1,481 learners completed
Retention – Māori Levels 4-7	52% 46 learners 24 learners re-enrolled	62% 61 learners 38 learners re-enrolled	53% 58 learners 31 learners re-enrolled	61% 69 learners 42 learners re-enrolled
Retention – Not Māori Levels 4-7 *including internationals	73% 523 learners 385 learners re-enrolled	71% 575 learners 406 learners re-enrolled	74% 466 learners 632 learners re-enrolled	71% 679 learners 483 learners re-enrolled
Progression – Māori Levels 1-4	20% 300 learners completed 60 learners progressed	18% 315 learners completed 56 learners progressed	19% 323 learners completed 62 learners progressed	29% 304 learners completed 87 learners progressed
Progression – Not Māori Levels 1-4 *domestic only	22% 1,056 learners completed 232 learners progressed	20% 1,012 learners completed 207 learners progressed	15% 867 learners completed 131 learners progressed	17% 930 learners completed 155 learners progressed

EPI data shows consistent inequitable outcomes for Māori learners across all four indicators. Of note:

- **Course EPI**
 - Māori Course EPI has decreased each year since 2018, as has Not Māori learner results
 - Māori at levels 1 and 6 are achieving at a greater rate than non-Māori learners but are lower at all other levels
 - Whilst the achievement at levels 8 and 9 for Māori is substantially lower than non-Māori learners, the number of Māori students at this level is minimal (>2 EFT) and therefore unable to show a true reflection of achievement



- **Qualification**

- Completion rates for both Māori learners has slightly increased over the period being reported on, however there is a persistent inequity of results
- 2020 and in particular 2019 showed greater inequity of results than the previous two years
- Qualification EPIs for NMIT are showing stable levels of attainment over the last five years. For 2020, Māori students were only 3% less than not Māori students at level 1-3, however there is a widening gap developing at levels 4-7 between Māori and not Māori students. Whilst Māori achievement at levels 8-10 looks impressive, the total students studying at this level equates to >2EFTS and therefore not enough to warrant comparison to the equivalent not Māori results.

NMIT	2020	2019	2018	2017	2016
Māori	55%	53%	54%	54%	53%
– Level 1-3	– 66%	– 62%	– 62%	– 62%	– 61%
– Level 4-7	– 45%	– 42%	– 41%	– 44%	– 42%
– Level 7	– 48%	– 42%	– 69%	– 42%	– 32%
– Level 8-10	– 100%	– n/a	– n/a	– n/a	– n/a
Not Māori	64%	63%	56%	58%	55%
– Level 1-3	– 69%	– 72%	– 60%	– 72%	– 69%
– Level 4-7	– 58%	– 57%	– 52%	– 49%	– 48%
– Level 7	– 69%	– 60%	– 63%	– 58%	– 51%
– Level 8-10	– 81%	– 78%	– n/a	– n/a	– n/a

Drilling down to departmental outcomes for qualification EPIs:

Qualification EPIs	2019	2020	Notes re 2020 results
Applied Business & English Language			
• Māori	18%	24%	
• Not Māori	59% -41%	64% -40%	
Aviation			
• Māori	67%	55%	
• Not Māori	61% +6%	51% +4%	
Digital Technologies, Arts & Media			
• Māori	36%	49%	
• Not Māori	58% -22%	60% -11%	Levels 4+ outcomes for Māori is 65% and Not Māori is 58%
Engineering & Construction			
• Māori	50%	35%	
• Not Māori	66% -16%	72% -37%	

Health & Fitness <ul style="list-style-type: none"> Māori Not Māori 	48% 67% -19%	55% 75% -20%	The gap between Māori and Not Māori achievement is more pronounced in Levels 4+
Hospitality, Service Sectors & Pathways <ul style="list-style-type: none"> Māori Not Māori 	72% 85% -13%	71% 76% -5%	
Maritime, AVT & Conservation <ul style="list-style-type: none"> Māori Not Māori 	39% 48% -9%	44% 57% -13%	
Primary Industries <ul style="list-style-type: none"> Māori Not Māori 	86% 90% -4%	85% 86% +1%	Levels 4+ outcomes for Māori is 25% and Not Māori is 64%
Social Sciences <ul style="list-style-type: none"> Māori Not Māori 	56% 65% -9%	57% 70% -13%	
Te Toki Pakohe <ul style="list-style-type: none"> Māori Not Māori 	59% 63% -4%	59% 52% +7%	

This indicates a departmental and programme approach is required to address outcomes for Māori as there are major discrepancies across departments.

- **Retention**
 - The difference between Māori and Not Māori learners is consistently between 10-19%, this indicates the largest difference in outcomes and the one most needing to be looked at and addressed
- **Progression**
 - Māori progression rates have remained relatively stable after a substantive drop from the rates of 2016 and 2017. The opposite can be said for non-Māori progression rates which are on a steady upward trajectory.
 - Drilling down into the difference year levels it is found that Māori overall achieve higher progression rates at Levels 1 but lag behind in levels 2 and 4 in particular.

	2020	2019	2018	2017	2016
Māori	20%	18%	19%	29%	27%
– Level 1	– 28%	– 49%	– 100%	– 46%	– 42%
Students / completed	58/17	59/29	3/3	87/40	73 / 31
– Level 2	– 32%	– 22%	– 33%	– 43%	– 33%
Students / completed	47/15	9/2	9/3	14/6	36/12

– Level 3 Students / completed	– 12% 126/15	– 11% 133/14	– 21% 224/46	– 22% 137/30	– 21% 118/25
– Level 4 Students / completed	– 19% 69/13	– 10% 114/11	– 11% 87/10	– 17% 66/11	– 20% 86/17
Not Māori	22%	20%	15%	17%	15%
– Level 1 Completed / progressed	– 32% 186/59	– 55% 89/49	– 71% 21/15	– 9% 116/10	– 5% 101/5
– Level 2 Completed / progressed	– 41% 49/20	– 41% 29/12	– 24% 49/12	– 33% 122/40	– 20% 120/24
– Level 3 Completed / progressed	– 11% 484/55	– 16% 461/73	– 11% 415/46	– 11% 368/41	– 11% 436/46
– Level 4 Completed / progressed	– 29% 337/98	– 17% 433/73	– 15% 382/58	– 20% 324/64	– 23% 307/72

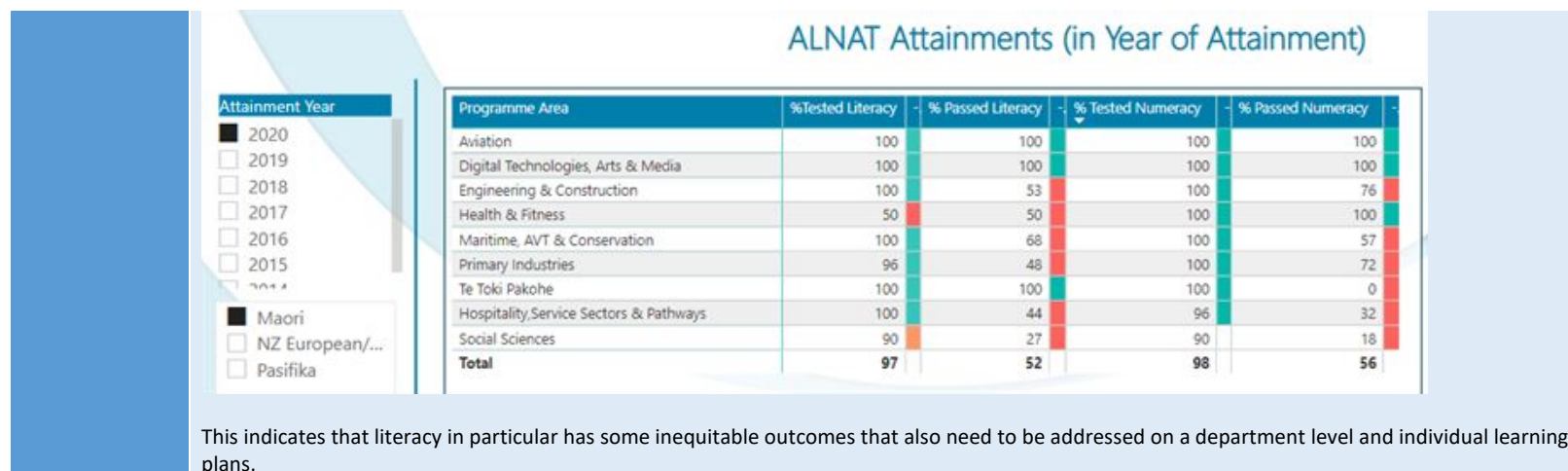
More work is required to understand the reasons why these inequities incur.

ALNAT

Of note is the difference between ALNAT results for Māori compared to those who are not Māori or Pasifika (categories as NZ European/Other):

ALNAT Attainment (in Year of Attainment)	2020	2019	2018	2017
European / other				
• Passed literacy	74%	70%	67%	68%
• Passed numeracy	71%	68%	69%	66%
Pasifika				
• Passed literacy	45%	58%	56%	35%
• Passed numeracy	82%	68%	72%	62%
Māori				
• Passed literacy	59%	60%	65%	65%
• Passed numeracy	61%	56%	65%	65%

Once again there is so pronounced differences in results for Māori compared to European / Other, drilling down further to individual departments shows that a targeted response is required in certain areas that require high levels of literacy such as Social Sciences, or numeracy for Hospitality, Service Sectors & Pathways.



Goal 1. Greater Relevance of Provision

Reflective question 1	Are your subsidiary's services well matched to the needs of its Māori communities and how is this evidenced?
RESPONSE	<p>The following courses have been established in partnership with Māori and iwi organisations over the last two years:</p> <ul style="list-style-type: none"> Project Moturoa (Kaitiaki Whenua Trainee Ranger Level 4) - Coming out of the Regional Intersectional Forum (RIF) which includes representation from Te Taihū Iwi and government organisations, Project Moturoa was driven and developed by the Department of Conservation in conjunction with NMIT and iwi. NMIT has partnered with Ngāti Koata to provide them with buildings which are built as part of the NMIT Carpentry course in 2021 NMIT has partnered with Ngāti Kuia to deliver a Horticulture course to Ngāti Kuia whānau members NMIT has partnered with Wakatū Incorporation to develop Ahi Kaa Wānanga training course Has submitted an application to deliver Te Ahu o te Reo Māori with the support of Te Taihū iwi Graduates of NMIT Mātauranga Māori courses are being more frequently called up to support the activities of iwi and Māori in Te Taihū
Reflective question 2	What are the views of Māori communities about the education and service provision by your subsidiary for Māori? Is there evidence of strong Tiriti-based partnerships and how this impacts positively on Māori learners' success?
RESPONSE	TE OHU WHAKARURUHAU O NMIT

NMIT has a Māori advisory group which is convened by the Executive Director Ōritetanga, People, Culture and Learner Services (previously Director Māori) in conjunction with the Curriculum Manager of Mātauranga Māori and the manager of Te Puna Manaaki Learner Services. The advisory group includes representatives of iwi, Māori organisations, marae, secondary school teachers of te reo Māori, students and staff. During 2017, the advisory group was drawn upon heavily to input into the redevelopment of all NMIT Mātauranga Māori programmes and continues to be a source of communication and feedback from iwi and the Māori community.

MANA WHENUA STAFF

Formal and informal relationships are strong with iwi, marae and Māori organisations as many of the staff have whakapapa to local iwi. Of the Toki Pakohe staff (including Executive Director Ōritetanga, Te Puna Manaaki and Mātauranga Māori staff, approx. 23 staff), over half the staff are mana whenua and connected by whakapapa and kinship to all eight mana whenua iwi.

These staff have various levels of influence and contribution to their respective iwi including:

- entrusted with sacred learnings and called up to teach these to subsequent generations
- being a Trustee of their iwi entities, which are appointed by the voting members of the tribe
- being a nominated chair of the Board of their iwi entity
- representing their iwi interests in local and national boards
- able to speak on behalf of their iwi
- be the voice of their iwi in cultural context including during powhiri, mihi and tangihanga

These close and influential relationships are a by-product of employing mana whenua as each of these staff were employed not due to them being mana whenua, but due to them being the best candidates for the jobs that they are employed to do. These relationships are informal relationships that NMIT has by association with iwi through staff. Whilst they are informal, they can be extremely influential and have proven very effective in advancing NMIT in a way that is reflective and inclusive of the view and input of whānau, hapū and iwi of Te Taihū.

SUPPORT FROM IWI

Through various initiatives, NMIT and Te Toki Pakohe have sought the support of iwi. Attached in the appendix are letters that outline the support for NMIT, Te Toki Pakohe and the impact of the work they do alongside iwi Māori to achieve learner success.

Goal 2. Better Equitable Access

Reflective
question 1

Do Māori have good access to your subsidiary services in all communities?

RESPONSE

NMIT have a variety of delivery options to best meet the needs of Māori and the community including:

- Matike Mai tikanga courses which are delivered on Te Taihū marae via noho and wānanga
- Both day and night classes / Kura rā and Kura pō

- Delivery in Motueka as well as Nelson and Marlborough
- Marae delivery of te reo courses
- In work short courses
- Iwi led courses delivered offsite

Goal 3. Stronger Māori Participation

Reflective question 1	Does your subsidiary consistently provide learning environments that are conducive to Māori participation, progression, completion, and ultimately, success as Māori?																																																																																
RESPONSE	<p>PARTICIPATION</p> <p>Overall Māori student EFTS have decreased at a greater percentage than Non-Māori students, a 35% reduction compared to 16% reduction. Of note within those numbers:</p> <ul style="list-style-type: none">• non-Māori students have had a 90% increase in EFTS in Level 1 whereas Māori have had a 51% reduction. This increase for non-Māori is directly attributable to a growing increase in non-Māori students learning te reo Māori at level 1 (11 in 2016, 11 in 2017, 37 in 2018, 64 in 2019, 70 in 2020).• Results were comparable at Levels 8 and 9, non-Māori EFTS decreased at a great rate than Māori over the five-year period at Levels 2 6 and 7 and Māori had greater overall decreases at levels 1 3 4 and 5. <table><tr><th>Māori</th><th>2020</th><th>2019</th><th>2018</th><th>2017</th></tr><tr><td>EFTS</td><td>312</td><td>384</td><td>440</td><td>458</td></tr><tr><td>– Level 1</td><td>– 33</td><td>– 31</td><td>– 47</td><td>– 19</td></tr><tr><td>– Level 2</td><td>– 46</td><td>– 62</td><td>– 38</td><td>– 73</td></tr><tr><td>– Level 3</td><td>– 76</td><td>– 91</td><td>– 127</td><td>– 137</td></tr><tr><td>– Level 4</td><td>– 63</td><td>– 76</td><td>– 96</td><td>– 101</td></tr><tr><td>– Level 5</td><td>– 47</td><td>– 64</td><td>– 62</td><td>– 58</td></tr><tr><td>– Level 6</td><td>– 30</td><td>– 33</td><td>– 40</td><td>– 51</td></tr><tr><td>– Level 7</td><td>– 13</td><td>– 25</td><td>– 29</td><td>– 17</td></tr><tr><td>– Level 8</td><td>– 2</td><td>– 2</td><td>– 2</td><td>– 3</td></tr><tr><td>– Level 9</td><td>– 0</td><td>– 0</td><td>– 0</td><td>– 0</td></tr><tr><td>Not Māori domestic</td><td></td><td></td><td></td><td></td></tr><tr><td>EFTS</td><td>1,648</td><td>1,697</td><td>1,810</td><td>1,798</td></tr><tr><td>– Level 1</td><td>– 120</td><td>– 117</td><td>– 89</td><td>– 62</td></tr><tr><td>– Level 2</td><td>– 109</td><td>– 130</td><td>– 136</td><td>– 213</td></tr><tr><td>– Level 3</td><td>– 409</td><td>– 399</td><td>– 482</td><td>– 433</td></tr></table>	Māori	2020	2019	2018	2017	EFTS	312	384	440	458	– Level 1	– 33	– 31	– 47	– 19	– Level 2	– 46	– 62	– 38	– 73	– Level 3	– 76	– 91	– 127	– 137	– Level 4	– 63	– 76	– 96	– 101	– Level 5	– 47	– 64	– 62	– 58	– Level 6	– 30	– 33	– 40	– 51	– Level 7	– 13	– 25	– 29	– 17	– Level 8	– 2	– 2	– 2	– 3	– Level 9	– 0	– 0	– 0	– 0	Not Māori domestic					EFTS	1,648	1,697	1,810	1,798	– Level 1	– 120	– 117	– 89	– 62	– Level 2	– 109	– 130	– 136	– 213	– Level 3	– 409	– 399	– 482	– 433
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– Level 5	– 313	– 298	– 323	– 352
– Level 6	– 214	– 270	– 279	– 262
– Level 7	– 133	– 131	– 139	– 126
– Level 8	– 13	– 19	– 14	– 8
– Level 9	– 1	– 3	– 0	– 0

As a percentage of the student body (excluding International learners), Māori participation rates closely reflect or exceed the population percentages of the region at 13-16% (Tasman 8.7%, Nelson 11% and Marlborough 13%). This indicates that NMIT is able to attract Māori students in a comparable way to non-Māori.

Headcount (domestic)	2020	2019	2018	2017
Not Māori	4,686	4,676	4,839	4,782
Māori	811	904	963	1,009
Māori as a percentage of whole	15%	16%	17%	17%

EFTS (domestic)	2020	2019	2018	2017
Not Māori	1,648	1,697	1,810	1,798
Māori	312	384	440	458
Māori as a percentage of whole	16%	18%	20%	20%

Progression and completion statistics have been reported on previously and results reflect a marked difference in success attained by Māori students when compared to Not Māori learners. Whilst this data shows there are issues, little is formally known as to why this inequity is present.

Withdrawals

Māori withdrawals increased from 7.8% to 10.1% in 2020.

For comparison, domestic non-Māori withdrawal rate dropped from 6.1% to 5.6%.

Please note that there is still 3.5% of the total Māori Course EPI EFTS pending (i.e. outstanding results) in 2020 that could increase to the final Maori Course EPI rate.

The decrease in Māori course completion which dropped from 76% in 2019 to 70% in 2020 is attributed to:

- 2.3% increase of withdrawals from 7.8% to 10.1%
- 3.5% of course results in 2020 are still pending so potentially their 2020 course completion can increase to 73.5% once all results are in place.

	<div> <div> 2019 Total EFTS 360.2430 Successful Course Completion 75.8% </div> <div> 2020 Total EFTS 276.7424 Successful Course Completion 69.8% Extensions 67 </div> </div> <div> <div> 2019 EFTS and Course Completion </div> <div> 2020 EFTS and Current Course Completion </div> <div> 2020 Expected Course Completion </div> </div>
	<div> <div> 2019 Total EFTS 1581.7637 Successful Course Completion 84.0% </div> <div> 2020 Total EFTS 1538.9640 Successful Course Completion 81.3% Extensions 292 </div> </div> <div> <div> 2019 EFTS and Course Completion </div> <div> 2020 EFTS and Current Course Completion </div> <div> 2020 Expected Course Completion </div> </div>
	<p>More work is required to understand if 2020 results were due to COVID impacting greater on Māori learners or a trend that requires a targeted response.</p>
Reflective question 2	<p>What systems, structures and services are provided to increase access, engagement and success for Māori learners? How is the success demonstrated?</p>
RESPONSE	<p>SYSTEMS</p> <p>Within the information management systems at NMIT, support services are presented on the PowerBI under the following categories which can each be drilled down to Māori and not Māori students:</p> <ul style="list-style-type: none"> • Course EPI • Delivery Detailed • Delivery Trend • By Provider

STRUCTURES

NMIT has Māori focused roles at the following top levels of the organisation:

- Governance – one iwi representative on Board of Trustees and another Māori board member
- 2nd tier – Executive Director Ōritetanga, People, Culture and Learner Services
- 3rd tier – Poumanaaki Bi-cultural Manager

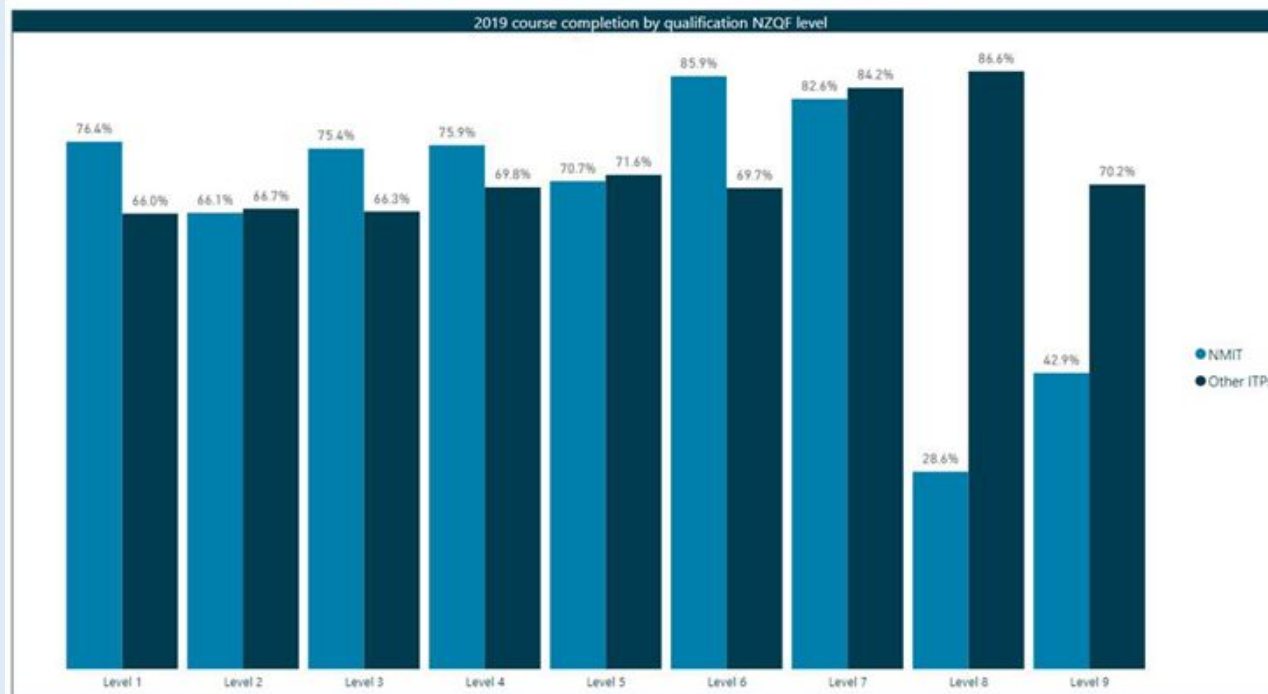
SERVICES

- **TE PUNA MANAAKI**
NMIT has a dedicated Māori Learner Services team called Te Puna Manaaki with three staff members at a total of 2FTE. They include a Poumanaaki as well as two Kaimanaaki who are 0.5TFE each. They are located in Te Toki Pakohe, the centre of all things Māori at NMIT, the building includes Māori staff who support the work of Te Puna Manaaki and is a space for all students who are looking for a Māori space to engage with on the Nelson campus.
- **LEARNER SERVICES**
Located in the Library is the wider Learner Services team who also support Māori students that feel more comfortable in a non-Māori environment or with non-Māori support staff. Both Learner Services and Te Puna Manaaki work closely together to ensure that the multiple needs of Māori students are met.
- **SANITI**
Student Association of Nelson-Marlborough Institute of Technology Incorporated (SANITI) is the independent student body representative organisation for students of NMIT. SANITI “stick up for students, listen to students, work for students, and CELEBRATE students and their successes”. They provide a variety of services to Māori students and work with both Learner Services teams and NMIT management to ensure students are well supported and represented, when required.
- **MARKETING for Māori**
The marketing team along with Te Toki Pakohe staff work collaboratively to ensure that NMIT is visible at specifically Māori events including: Manu Kura speech competitions and Kapahaka competitions. One Māori staff member with whakapapa to Te Taihū iwi is employed as part of the marketing team, they are able to provide or access cultural advice to assist marketing initiatives.

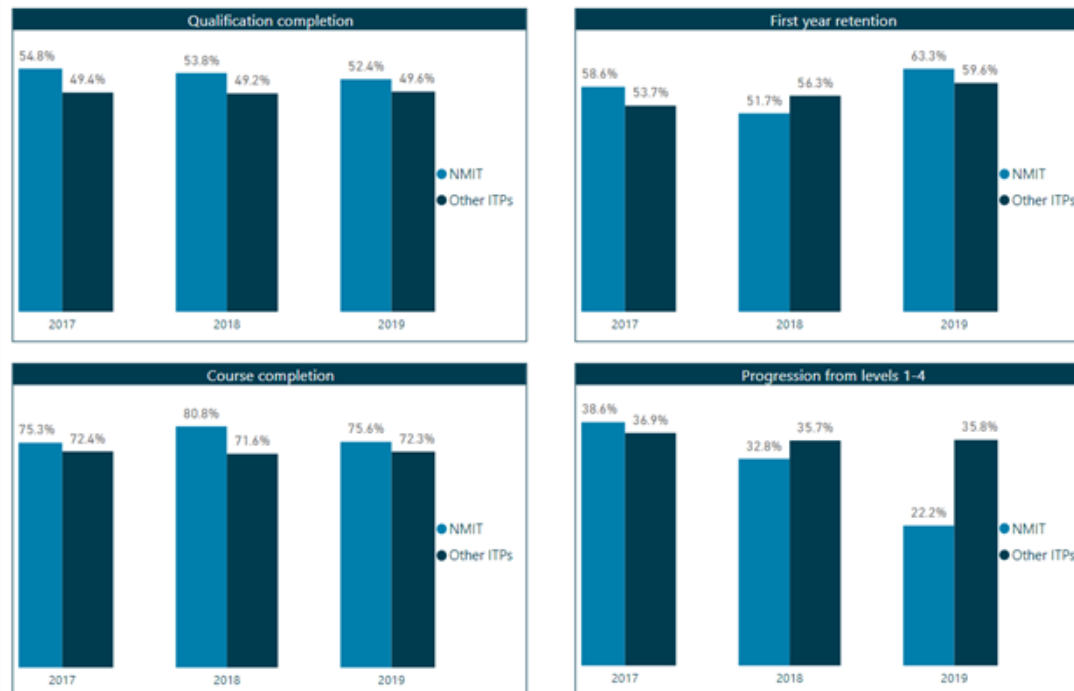
Goal 4. More Equitable Outcomes

Reflective question 1	Are overall Māori course and qualification outcomes satisfactory? What targets exist?
RESPONSE	<p>PERFORMANCE COMPARED TO OTHER ITPS</p> <p>Overall, Māori are performing well against other ITPs in course completion at all year levels except for levels 7, 8 and 9. As reported earlier however, EFTS of Māori in levels 8 and 9 are less than 2 EFTs and therefore not enough at this stage to be a true reflection.</p>

Māori learners course completion in 2019 at NMIT and other ITPs



Māori learners performance at NMIT and other ITPs



Of concern is the progression for levels 1-4 which is showing a marked decrease over 2017-2019, with NMIT performing at a significantly lower rate than other ITPs who consistently scored over 35%.

Progression is a concern when seen in comparison to other ITPs for Māori, however it is noted that progression rates for non-Māori at NMIT is only marginally higher than Māori at NMIT, and still substantially lower than the 35%+ seen at other ITPs for Māori.

Reflective
question 2

Are employment and/or social or cultural outcomes satisfactory? What is known?

RESPONSE

Graduate destination survey results for 2019:

- 93% of Māori and 89% of Not Māori graduates are in paid work

	<ul style="list-style-type: none"> • 76% of Māori and 59% of Not Māori graduates use the knowledge and skills learnt for their qualification in their role <i>frequently</i> or <i>very frequently</i> • 58% of Māori and 44% of Not Māori graduates have had other paid or voluntary roles since graduating • 62% of Māori and 43% of Not Māori graduates are currently or planning to study in New Zealand in the next two years • 92% of Māori and 84% of Not Māori graduates were <i>satisfied</i> or <i>very satisfied</i> with their qualification • 94% of Māori and 90% of Not Māori graduates would recommend the same qualification to others <p>This data shows that Māori learners who graduate from our qualifications are getting greater employment outcomes than Not Māori graduates, and overall more satisfied with their learning and qualification that have received. It is noted that graduate surveys are voluntary so results are indicative only and the number of students that participated in 2019 are 260 not Māori domestic students (6%) and 34 Māori domestic students (4%).</p>
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Goal 5. Stronger Responsive Practices

Reflective question 1	Do academic, teaching and support staff have an understanding of culturally responsive and inclusive practice? How do they apply this in their delivery to best meet the needs of the Māori learners? How is this measured, tracked and advanced?
RESPONSE	Academic, teaching and support staff have various levels of understanding of culturally responsive and inclusive practice. Support for staff has been strengthened in 2020, however staff are able to be self-selecting in their engagement with kaupapa Māori, Māori support staff and professional development to improve their cultural responsiveness. Currently there is no measuring, tracking or agreed to measures which are consistently applied throughout NMIT.
Reflective question 2	Do your subsidiary structure and systems (i.e. governance, leadership, operations) give effect to Te Tiriti o Waitangi? How is this evidenced?
RESPONSE	<p>In keeping with the spirit of the Mana Ōrite Relationship Agreement that the National Iwi Chairs have with Statistic NZ, a relationship between NMIT and iwi is based on a mana ōrite (equal status) and has two distinct levels of relationship; mana-to-mana and mahi-to-mahi. Mana Ōrite ensures both parties have equal explanatory power which means that each party's world views, knowledge and expertise have equal status within their respective environments.</p> <p>Mana-to-mana – is a relationship where a governance to governance relationship is established Mahi-to-mahi – is a relationship where the management to management or operations to operations relationship is established</p> <p>At the mana-to-mana level, governors of boards, usually via the Board Chairs have direct relationship where mana ōrite is maintained. At the mahi-to-mahi level, management and operations engage with the management and operations of the other ensuring that the hierarchy and</p>

responsibility of position holders is respected and reflected in the others response i.e. not a third-tier manager expecting to engage with the CEO or Board Chair of the other organisation.

Mana-to-mana

The NMIT Board Chair has maintained continuous engagement with Iwi Chairs on matters of importance, through both formal and informal mechanisms. The Board is supported by two Māori Directors, one of which was appointed following the support and recommendation of all eight iwi of Te Taihū.

Mahi-to-mahi

The CEO has a direct relationship with the CEO and General Managers of the iwi of the region. The Executive Director Ōritetanga, through delegation from the CEO, holds specific responsibility within their role to advance relationships with iwi and Māori, providing resources, advice and support to ensure appropriate relationships are able to be developed and maintained at all levels of NMIT operations.

NMIT also has kaumatua who support the activities of NMIT, providing support and guidance on matters of tikanga. These roles are formal and kaumatua are appointed via agreement of both iwi and NMIT.

Section Three – Self-Assessment Standard

Below are the rating levels for the self-assessment tool. There is also a guide regarding characteristics for each of the rating levels in Appendix 1 that will assist in the self-assessment process. Informed by the information provided in Section Two, subsidiaries are asked to rate themselves in Table 1, in relation to the alignment of your subsidiary to the outcomes and goals in Te Pae Tawhiti.

Rating Level Te Arawhiti Guidance Explanation 2

Rating Level	Te Arawhiti Guidance Explanation 2
Unfamiliar	Services have little awareness of Māori Crown relationship or how to engage appropriately
Comfortable	Services show basics, able to engage appropriately in a short-term transactional setting
Confident	Service are conducted appropriately and with awareness of what it likely to be important to Māori
Capable	Services are able to lead and advise others, we have deep knowledge in their subject area

Table 1

Outcomes and Goals	Rating	Comments to support your self-rating
Outcome 1. Demonstrable Tiriti o Waitangi Partnerships	Comfortable / Confident	NMIT has a wide ranging and increasing level of partnership happening with iwi and Māori organisations throughout Te Taihū. Whilst the activity that has happened has been positive, there are a number of Te Taihū iwi that NMIT has little engagement with, and no partnership activity happening with NMIT. Overall confident with the ability of NMIT to demonstrate Tiriti o Waitangi Partnerships, but Comfortable rating due to lack of demonstratable partnership activity with a number of Te Taihū iwi
Outcome 2. Inclusivity and Equity for Māori	Comfortable	Whilst there are some good practices happening at NMIT, the equity of outcomes for Māori students is still markedly below that of Not Māori students and requires further analysis and understanding of not only why this difference is, but also what needs to be done to change it then the commitment of resourcing to address the change required.

Goal 1. Greater Relevance of Provision	Comfortable / Confident	<p>NMIT has a wide ranging and increasing level of partnership happening with iwi and Māori organisations throughout Te Taihū. Whilst the activity that has happened has been positive, there are a number that NMIT has little engagement with, and no partnership activity currently.</p> <p>Overall confident with the ability of NMIT to appropriately respond to needs of iwi and Māori, but Comfortable rating due to lack of engagement with some Te Taihū iwi and Māori organisations which could indicate unmet need.</p>
Goal 2. Better Equitable Access	Confident / Comfortable	Where there is a viable option, then NMIT is flexible to provide programmes of study as and where best meets the needs of learners, including in work, offsite, at marae, afterhours, via wānanga etc.
Goal 3. Stronger Māori Participation	Comfortable	Participation rates for Māori are good as a proportion of the population, strengthening and more coordinated supports for Māori learners evident however student's success indicators still lower than Not Māori learners. More information required as to why that is.
Goal 4. More Equitable Outcomes	Comfortable	Qualification outcomes at levels 4-7 for Māori students compared to Not Māori students is widening. Course completion rates favourable compared to national, and positive for Māori learners at levels 1, however still marked differences between Māori and Not Māori at levels 2-9 at NMIT
Goal 5. Stronger Responsive Practices	Comfortable	Inconsistency across the institute, ranging from very strong to culturally ignorant and inappropriate practice

Section Four – Subsidiary Actions for 2021-2022

Outcomes and Goals	Measurements	2021 Actions	2022 Actions	Subsidiary portfolio accountable for actions
Outcome 1. Demonstrable Tiriti o Waitangi Partnerships Outcome 2. Inclusivity and Equity for Māori Goa1 1. Greater Relevance of Provision Goal 2. Better Equitable Access Goal 3. Stronger Māori Participation Goal 4. More Equitable Outcomes Goal 5. Stronger Responsive Practices	1. Partnership relationship with each iwi which results in cross-organisational activity	Appoint an Iwi Liaison Confirm MOU with 3 new iwi / Māori organisations	Confirm MOU with 3 new iwi / Māori organisations	CEO & Executive Director Ōritetanga, People, Culture and Learner Services
	2. Equity is achieved for Māori students at NMIT	Equity research undertaken and Ōritetanga project compiled	Ōritetanga project implemented	Executive Director Ōritetanga People, Culture and Learner Services
	3. All NMIT staff are culturally appropriate and culturally response to the needs of Māori	Professional expectations and framework compiled and communicated	Reporting requirement of all managers as well as action plans required for areas of concern	All Executive Directors
	4. Equity of outcomes for Māori students consistent across NMIT	Departmental plans to address equity for Māori learners developed and reported against	Intensive support and reporting in place to ensure equity issues at a departmental level are addressed	Executive Director Programmes and Delivery & Executive Director Ōritetanga People, Culture and Learner Services

APPENDICES

Table of Appendices

APPENDIX	Name of Appendices	Purpose for inclusion
1.	Treaty of Waitangi Policy	Outlines commitment by the Board of NMIT and sets out their expectations to staff
2.	Memorandum of Understandings	Confirmed relationship agreements with Iwi and Marae
3.	Ahi Kaa Wānanga Course Outline	Demonstrates partnership with Māori organisation
4.	Letters of support	Demonstrates relationship and view of NMIT by Māori stakeholders
5.	Promotional Material	Demonstrates relationship and view of NMIT by Māori stakeholders
6.	Media	
7.	Self-Assessment Standard	Te Pūkenga accepts achieving Te Tiriti excellence is a continuous activity. To demonstrate collaboration and partnership, Te Pūkenga will be transparent about the progress made, as well as areas for improvement. Drawing upon the guidance of Te Arawhiti, the Office of Māori/Crown relations, Te Pūkenga intends to annually report on progress made across our network to achieve better outcomes for Māori learners, their whānau and wider iwi/Māori communities.

Appendix 1 – Treaty of Waitangi Policy

Controlled Document – Refer to NMIT website or intranet for latest version

TREATY OF WAITANGI

Section	Institute Governance and Management		
Approval Date	27.06.2019	Approved by	Council
Next Review	10.06.2022	Responsibility	Chief Executive
This review	10.06.2019	Key Evaluation Question	1-6

PURPOSE

In line with the Education Act 1989, Nelson Marlborough Institute of Technology is committed to its duty of acknowledging and embedding the Treaty of Waitangi¹, Te Tiriti o Waitangi and the associated principles of the Treaty within the policies and practices of the Institution.

The purpose of this policy is to provide a framework through which this can be achieved.

POLICY STATEMENT

This policy acknowledges that:

- The Treaty of Waitangi established a unique relationship between NMIT, as an agent of the crown and whānau, hapū and Iwi Māori.
- NMIT has a duty to acknowledge the Treaty of Waitangi, Te Tiriti o Waitangi, and the principles of the Treaty of Waitangi.
- NMIT acknowledges the eight iwi within its boundary as the Mana Whenua and, as Mana Whenua, that they have the right to determine their own educational outcomes.
- NMIT recognises that Māori have the right of equal access to education.
- NMIT has an obligation to provide an educational environment which is responsive to whānau, hapū and Iwi Māori.

NMIT also acknowledges the aspirations of whānau, hapū and Iwi Māori to:

- Live as Māori.
- Actively participate as citizens of the world, and
- Enjoy good health and a high standard of living².

¹Treaty of Waitangi refers to both the English and Māori versions of the Treaty in line with The Treaty of Waitangi Act 1975.

²These principles were coined by Mason Durie and are commonly referred to as the Durie principles. These principles are also at the heart of “Ka Hikitia – Māori Education Strategy”

PRINCIPLES OF THE TREATY OF WAITANGI

Partnership

NMIT is committed to working in partnership with its Treaty Partner.

Protection

NMIT is committed to actively protecting whānau, hapū and Iwi Māori interests within the Institution.

Participation

NMIT is committed to providing opportunities for whānau, hapū and Iwi Māori to fully participate across all levels of the Institution both in study and work.

POLICY OBJECTIVES

The overall aim of the Institution is to be:

- A Māori relevant institution
- A place where the Māori language and culture can flourish
- A place where Māori students succeed
- A place where Māori feel welcomed and supported
- An Institution that contributes to the educational and developmental aspirations of whānau, hapū and Iwi
- An Institution that celebrates its treaty partnership and multiculturalism

To assist in achieving these objectives NMIT will:

- develop a structure that will facilitate the participation of Mana Whenua and Matawaka at the Governance level within the Institution
- develop and implement strategies that will facilitate whānau, hapū and Iwi Māori participation in the development and design of academic curriculum across the Institution
- develop and implement strategies and policies that ensure the protection and use of te reo Māori me ona tikanga across all areas of NMIT activity
- develop and set appropriate targets for Māori students across NMIT
- develop and implement strategies for recruitment, retention and completion of Māori students
- develop strategies to actively recruit Māori staff across all levels of the institution
- provide ongoing education and training programmes for all employees on the Treaty of Waitangi
- provide ongoing specific training and support for both academic and allied staff focusing on working with Māori

GLOSSARY

Mana Whenua Mana	Self-identity and sense of belonging to a particular place. whenua is based on the principle of ahikaa (occupation over designated territory) and refers to the customary authority exercised by the tangata whenua in an identified area ³ .
Whānau	Family or group of people with a genealogical bond; also used colloquially for those who share a common interest or philosophy ⁴ .
Hapū	Sub Tribe
Iwi	Tribe, a social group of people with shared family links, culture and language dialect ⁵ .
Matawaka	Those Māori that are not from the local iwi
Te Reo me ōna Tikanga	The Māori language and its customs

³ Definition from Ka Hikitia, Managing for Success/Maori Education Strategy 2008-2012

⁴ ibid

⁵ ibid

Appendix 2 – Memorandum of Understanding

Memorandum of Understanding



Whakatū Marae Committee Incorporated

And



Nelson Marlborough Institute of Technology Limited

Te Whare Wānanga o Te Tau Ihu o te Waka a Maui

July 2020

MEMORANDUM OF UNDERSTANDING

Between Whakatū Marae Committee Trust Incorporated
and Nelson Marlborough Institute of Technology Limited
Te Whare Wananga o Te Taihū o te Waka a Maui

This Memorandum of Understanding (MOU) formalises the relationship between Whakatū Marae Committee Incorporated (Whakatū Marae) and Nelson Marlborough Institute of Technology Limited (NMIT), and establishes a clear set of principles and purpose to guide the relationship.

Principles

- Mutual respect
Whakatū Marae and NMIT will maintain a relationship based on mutual respect, acknowledging each other's responsibilities, accountabilities and worldviews.
- Honesty of purpose
The relationship will be honest and conducted with integrity and good will.
- Open communication
The relationship will be based on open, timely and transparent communication processes.
- Active engagement
The relationship will be a proactive and positive one, based on the commitment to be responsive to each other.

Purpose

Whakatū Marae and NMIT will work together to:

- Promote tertiary education to iwi, hapū, whānau and hapori of Whakatū Marae
- Drive increased participation of iwi, hapū, whānau and hapori of Whakatū Marae in tertiary education
- Support iwi, hapū, whānau and hapori of Whakatū Marae to succeed in tertiary education
- Support other initiatives and opportunities to advance the mission and vision of Whakatū Marae and NMIT

Review

The MOU will be reviewed every 10 years, however, it may be amended by mutual agreement at any time.

Agreement

Signed for and on behalf of

Whakatū Marae Committee Incorporated

Signature: _____



Name: Jane de Feu Position: Chairperson

Signed for and on behalf of

Whakatū Marae Committee Incorporated

Signature: _____



Name: Kim Ngawhika Position: Kaiwhakahaere

Signed for and on behalf of

Nelson Marlborough Institute of Technology

Signature: _____



Name: Liam Sloan Position: Chief Executive

Signed for and on behalf of

Nelson Marlborough Institute of Technology

Signature: _____



Name: Olivia Hall Position: Director Māori

Memorandum of Understanding



Te Rūnanga o Ngāti Rārua

And



Nelson Marlborough Institute of Technology Limited

Te Whare Wānanga o Te Tau Ihu o te Waka a Maui

August 2020

A handwritten signature in blue ink, located in the bottom right corner of the page. The signature is stylized and appears to be a cursive or semi-cursive script.

MEMORANDUM OF UNDERSTANDING

Between Te Rūanga o Ngāti Rārua
and Nelson Marlborough Institute of Technology Limited
Te Whare Wananga o Te Tau Ihu o te Waka a Maui

This Memorandum of Understanding (MOU) formalises the relationship between Te Rūanga o Ngāti Rārua (Ngāti Rārua) and Nelson Marlborough Institute of Technology Limited (NMIT), establishing a clear set of principles and purpose to guide the relationship.

Principles

- Mutual respect
The parties will maintain a relationship based on mutual respect, acknowledging each other's responsibilities, accountabilities and worldviews.
- Honesty of purpose
The relationship will be honest and conducted with integrity and good will.
- Open communication
The relationship will be based on open, timely and transparent communication processes.
- Active engagement
The relationship will be a proactive and positive one, based on the commitment to be responsive to each other.

Purpose

Ngāti Rārua and NMIT will work together to:

- Promote Ngāti Rārua and their businesses to NMIT students who align with the iwi, kaupapa and or businesses of Ngāti Rārua
- Promote tertiary education at NMIT to iwi, hapū, whānau, staff and hapori of Ngāti Rārua
- Drive increased participation by current or potential NMIT students in Ngāti Rārua scholarships
- Drive increased participation of iwi, hapū, whānau, staff and hapori of Ngāti Rārua in tertiary education at NMIT



- Support iwi, hapū, whānau, staff and hapori of Ngāti Rārua to succeed in tertiary education at NMIT
- Support other initiatives and opportunities to advance the mission, kaupapa and vision of Ngāti Rārua and NMIT

Review

The MOU will be reviewed every 10 years; however, it may be amended by mutual agreement at any time. An annual plan will be developed each year and reviewed quarterly by the parties.

Agreement

Signed for and on behalf of

Te Rūnanga o Ngāti Rārua

Signature: _____

Name:

Position:

SHANE GRAHAM

Pouwhaka haka
(C.E.)

Signed for and on behalf of

Te Rūnanga o Ngāti Rārua

Signature: _____

Name: Leivine
Eade

Position: Deputy Chair

Signed for and on behalf of

Nelson Marlborough Institute of
Technology Limited

Signature: _____

Name:

Position:

W. R. JARVIS

C.E.

Signed for and on behalf of

Nelson Marlborough Institute of
Technology Limited

Signature: _____

Name:

Position: EXECUTIVE DIRECTOR

GRANT KERR

Appendix 3 – Ahi Kaa Wananga Course Outline

AHI KAA WĀNANGA

Version	Tbc
Effective from:	
Previous Version	NA

Teaching hours	40
Workplace learning hours	0
Learner managed hours	20
Total learning hours	60

Total Learning Hours: All planned learning activities leading toward the achievement of a programme, qualification, award or course learning outcomes

Purpose	This course will connect Wakatū Incorporation (Wakatū) whānau to the area of Te Taihū o te Waka a Maui through experiential learning. Participants will be immersed in mātauranga Māori whilst traversing and connecting with the whenua of their tūpuna.
Indicative Curriculum	<ul style="list-style-type: none"> Learn about historical sites of significance to ngā tupuna o Wakatū Pūrākau Te Reo Māori me ōna tikanga Waiata History, current state and future aspirations of Wakatū

LEARNING OUTCOMES

On successful completion of this course students will be able to:	
1.	Deliver a mihi mihi
2.	Perform a Wakatū waiata
3.	Demonstrate understanding and knowledge regarding the ancestral lands specific to Wakatū

ASSESSMENT AND RESULTS

Basis of Assessment	Not assessed
Course Results	Participation (P), Did Not Participate (NP)

LEARNING AND TEACHING

Learning and Teaching Activities	<ul style="list-style-type: none"> Tutor and participant led instruction and discussion Individual and group activities Individual and group presentations
Learning and Teaching Resources	<ul style="list-style-type: none"> Course materials
Learner managed Activities	<ul style="list-style-type: none"> Individual online activities Research Engagement with resources

Appendix 4 – Letters of support



Ngāti Kuia

Te Iwi Pakohe

1 December 2020

To Whom It May Concern

Letter of Support for Nelson Marlborough Institute of Technology (NMIT) for Te Ahu o Te Reo Māori

Tēnā koutou,

As the mandated voice for Ngāti Kuia we would like to support the application from NMIT to deliver 'Te Ahu o Te Reo Māori' in Te Taihū o Te Waka a Māui.

Ngāti Kuia Iwi Trust has a long standing and ongoing relationship with Nelson Marlborough Institute of Technology. The Māori Department was gifted the name 'Te Toki Pākohe' by our kaumātua. Alongside this name sits a beautiful pākohe mauri stone which represents the role that NMIT has in the education and shaping of our people. NMIT currently employs many of our whānau in their organisation both in teaching and administration roles. NMIT supports our education sub-committee by releasing several of their employees who are our whānau, 4 times a year to advance our education strategy.

It is our position that any organisation that seeks to deliver a programme involving history, pūrākau and Te Reo me ōna tikanga in Te Taihū o Te Waka a Māui must understand that this is a unique rohe with eight mana whenua Iwi and a rich history.

We would like to reiterate that Ngāti Kuia Iwi Trust has a long standing and ongoing relationship with Nelson Marlborough Institute of Technology and would ask that this is taken into consideration when assessing the merits of each application.

Nāku noa nā

David Johnston
General Manager
Te Rūnanga o Ngāti Kuia Trust

Vanya George
Mangai Mātauranga
Te Rūnanga o Ngāti Kuia Trust



PO Box 914 | NELSON 7040
74 Waimea Road | NELSON 7010
Phone: (03) 548 1740
Email: pouawhina@ngati-tama.iwi.nz
Web: www.ngati-tama.iwi.nz

2nd December 2020

Pouārahi, Director Māori
Nelson Marlborough Institute of Technology (NMIT)
322 Hardy Street
Nelson

Delivered by email to: olivia.hall@nmit.ac.nz

Tēnā koe Olivia

Te Ahu o te Reo Māori Investment Application

On behalf of Ngāti Tama ki Te Waipounamu Trust I would like to express support for the application of NMIT to the Ministry of Education Te Ahu o te Reo Māori investment fund to enhance te reo teaching capability in Te Taihū schools.

Ngāti Tama has a strong historical connection and enduring relationship with NMIT and we believe that the institution is best placed to deliver on the objectives of Te Ahu o Te Reo here in Te Taihū at this time. We know and trust that the programmes developed by NMIT will reflect the uniqueness of Te Taihū and be inclusive of iwi input.

We give our strongest recommendation for the favourable consideration of NMIT for their application for Te Ahu o Te Reo investment funding.

Nāku noa i runga i te whakaaro kotahi

A handwritten signature in black ink, appearing to read "Jaqui Ngawaka".

Nā, Jaqui Ngawaka
Te Pouwhakahaere | General Manager
Ngāti Tama ki Te Waipounamu Trust



Ngāti Kuia
Te Iwi Pakohe

16 January 2019

To Liam Slone
Chief Executive
Nelson Marlborough Institute of Technology
Whakatū

Te Toki Pakohe

Tēnā koe e te rangatira

This letter is in support of Te Toki Pakohe management, administration and kaiako for the mahi and contribution they make to Ngāti Kuia.

Ngāti Kuia value the longstanding relationship that we have with Nelson Marlborough Institute of Technology (NMIT) and in particular Te Toki Pakohe. We have and still continue to foster our partnership with NMIT and Te Toki Pakohe due to the importance of the mahi and outcomes that you provide for Ngāti Kuia and our community across Te Taihū.

We understand that a review is currently being conducted regarding the management and administration functions and resourcing for Te Toki Pakohe. With respect we hope that our feedback will reinforce the importance that Te Toki Pakohe has for our iwi members, all iwi and our community.

"Ka pai ki mua, ka pai ki muri. Ka pai ngā mea katoa"

Te Toki Pakohe are a vital leader at the flax roots and have a reputation of delivering to the needs of our communities in Te Taihū to the highest level. "If the front and the back offices are working well then all things are good".

The kaiako (teachers) have consistently been of high quality and effective and remain integral to our people and that is recognition of having strong management and administrative support. We hope that this will continue.

Ngāti Kuia has great plans and dreams for the partnership going forward and the need to keep the waka moving.

Lastly, if you have any questions from us in how we can support the review please do not hesitate to contact me.

24 January 2019



Tēnā koe

LETTER OF SUPPORT FOR TE TOKI PAKOHE

Ngāti Apa ki te Rā Tō Trust is the post-settlement governance entity for the iwi of Ngāti Apa ki te Rā Tō, whose interests encompass large tracts of Te Taihū. Our iwi has had a particular focus on developing its cultural capabilities over the last decade, and the work of Te Toki Pakohe at NMIT has been extremely complementary to this development. Te Toki Pakohe provides much needed pathways for our iwi members to further develop their capability in te reo and tikanga Māori and accordingly, the Trust fully supports its continuance (and indeed its growth) to cater for the current and future needs of our people and the other iwi of Te Taihū.

Noho ora mai rā

Simon Karipa
General Manager
Ngāti Apa ki te Rā Tō Trust / Ngāti Apa ki te Rā Tō Charitable Trust
gm@ngatiapakiterato.iwi.nz

NGĀTI APA KI TE RĀ TŌ TRUST
P.O. Box 708, Blenheim 7201, New Zealand P: 03 5789695 F: 03 5776321



24 January 2019

Tēnā koe,

Te Toki Pakohe

Ngāti Rārua is writing in support of the Māori Department of Nelson Marlborough Institute of Technology (NMIT), Te Toki Pakohe; for all that they do within our rohe of Te Tau Ihu o Te Waka a Maui to advance kaupapa Māori and the realisation of the cultural aspirations of our whanau.

NMIT and Te Toki Pakohe through partnership, is expected to play a big part in the ongoing revitalisation of te reo me ona tikanga Māori amongst our whanau who reside within Te Tau Ihu o Te Waka a Maui. Through the advisory komiti and through whanau who work within the organisation, we are able to input and advise as is appropriate for a mana whenua iwi to an organisation of this nature. We look forward to continuing to support the work of Te Toki Pakohe and NMIT in the future.

Nāku noa, nā



Lesley Udy
Kaiwhakahaere Mātua
Interim Chief Executive Officer



24 January 2019

Tena koe,

Te Toki Pakohe – letter of support

Nga mihi nui ki a koe, ki a koutou katoo.

The purpose of this letter is to express our support for the rationale, role and function of Te Toki Pakohe.

The role of a Maori teaching and research entity focused on the development of matauranga Maori across all spectrums of scholarship is vitally important to the development of the Nelson region and nationally.

A focus on Maori-led and kaupapa Maori research, particularly in the areas of te reo, tikanga and indigenous development is vitally important to the development of Aotearoa/New Zealand as a nation. As such, Te Toki Pakohe requires support and resources to ensure it continues to flourish.

The commitment to Maori scholarship and the active protection of taonga, including te reo Maori and tikanga is inherent in Te Tiriti o Waitangi, and its principles which govern all educational institutions based in Aotearoa.

On behalf the whanau and hapu who comprise Wakatu Incorporation and whose customary lands are based in Whakatu, Motueka and Mohua (Golden Bay) we believe it is vitally important for an institution such as Te Toki Pakohe to exist to provide a benefit for our families and for our wider community and region.

We are very pleased to provide this letter of support.

Heoi ano,

Kerensa Johnston

Chief Executive



61 Te Tiriki o Croucher, Waimea, Pouaka Tāpeta 8026, Whakatū
Waea kōrero: (03) 928 0031 | Mera-hiko: tari@tuiatematangi.ac.nz
Kia Wairua Māori! Kia Tangata Māori! Kia Reo Māori! Ana te Hā!

24 Kohitātea 2019

Ki te Poari Matua o Te Taikura o Te Tau Ihu o Te Waka a Maui

Kei runga noa te Manu o te Mātauranga kia rere te wairua o te tangata! Anei te āhuatanga o tēnei tuhinga hei tautokohia te mana o ngā tangata o Te Toki Pakohe.

Anei ngā kōrero e toru hei whakaaroaro mā koutou te Poari;

Ko te tuatahi: - Ko ngā āhuatanga o ngā tangata mahi Kaiwhakahaere o te tari nei - Me pēhea ō koutou manaakitanga e taea ai e rātou e pūmau ki ngā tūranga? Ko rātou kē ngā Kaitiaki Māori o te Taikura.

Tuarua: -Ki a mātou Raukura kua uru atu ka nui te whai painga i puta mai. Kāhore hoki he painga ki a mātou mehemea ka mahi aukati i a rātou tūranga.

Tuatoru: - He rereke te āhuatanga o mātou Kura Kaupapa kē atu ki te Taikura puta noa ki ngā kura o Te Tau Ihu. Ko taku titiro i Te Toki Pakohe kei reira te wairua o ngā āhuatanga Māori. Na rātou kē e awihinatia, e manaakitanga ia mātou Raukura o te Kura. Te mea nui rawa ia ko te nohotahi ngā tūranga o ngā Kaiwhakahaere me ngā Kaiwhakahaere Tari. Koia.

I roto i āku manaakitanga, nā,

Dayveen Stephens
Chairperson – Board of Trustees.



24 January 2019

Whakatū Marae
99 Atawhai Drive
Nelson
P.O. Box 124
Telephone 064 3 54 69097
Fax 064 3 54 69097
www.whakatumarae.co.nz

Kim.Ngawhika@whakatumarae.co.nz

Tēnā koe

Whakatū Marae has had a close relationship with Te Toki Pakohe for many years and fully support the work of their Pouako both in NMIT and the community. The Department has developed a good reputation among whanau, and kaumatua through the programmes they have delivered and have been supported by Iwi as the pathway to revitalize Te Reo me ōna Tikanga.

This current process being undertaken to change the status of Te Toki Pakohe is not giving due recognition to the work that this department has done in the past and currently to uplift the Mana of the kaupapa they drive and the achievements that have been recently recognised. It is important to recognise also that whanau only come to NMIT when they know they will be supported to achieve in an environment they feel comfortable in. It is through their hard work the Mana of NMIT has increased as a whole.

It should also be noted that tikanga dictates how a kaupapa runs and it is not in a conventional sense. This means Te Toki Pakohe has many functions just as a Marae does and it operates similarly. It appears that these conventions are not being recognized in the current changes being made. This space was dedicated to operate under Te Reo me ōna Tikanga which includes the customs of our ancestors.

The drivers of the kaupapa –the HOD and administration is essential to the success of Te Toki Pakohe. If this is weakened, then the capacity of Te Toki Pakohe is diminished. This will effectively reduce the influence of Te Toki Pakohe in things Māori, diminish the status of the mahi being done and shows the community how the Management of NMIT do not see the importance of this Department to uphold the Treaty of Waitangi policy that the Organisation operates under to uplift Mana Māori Motuhake.

Noho Ora mai,

Jane du Feu

Jane du Feu


Chairperson

Whakatū Marae Committee

Appendix 5 – Promotional material Project Moturoa

- <https://www.nmit.ac.nz/study/programmes/kaitiaki-whenua-trainee-ranger/>
- <https://www.youtube.com/watch?v=IbjuXhPLPjI>
- <https://blog.doc.govt.nz/2020/02/10/project-moturoa/>
- <https://www.nmit.ac.nz/news-article/show/programme-to-grow-iwi-capacity-in-conservation-underway>





Appendix 6 – Media


stuff 

pou tiaki

Iwi teams up with students to ensure ownership within grasp for whānau

Katy Jones • 17:00, Dec 21 2020





SUPPLIED/NELSON MAIL

The out of reach dream of homeownership has become possible for some families in the Nelson. NMIT apprentices will build two affordable houses for Ngāti Koata whānau. Pictured are Ngāti Koata trust's Justin Carter with NMIT's Reid Carnegie, and Marja Kneepkens.

Homeownership may be at its [lowest](#) for nearly 70 years, but the dream is set to become a reality for whānau in the Nelson region.

Two houses are due to be built, and sold for a "significantly reduced rate" next year, to whānau registered to Ngāti Koata, as part of a project between the iwi and Nelson Marlborough Institute of Technology (NMIT).

Ngāti Koata Trust's general manager, Justin Carter, said the trust had identified there was a need for affordable homes with an "increasingly a larger group of people" unable to buy their first home.

"For us there is an opportunity to make a house available to whānau who otherwise wouldn't be able to get on the property ladder."

NMIT students were due to start building the houses at the NMIT carpentry department's [new base](#) in Richmond, from April, Carter said.

He hoped three houses would be built, but that would depend on student numbers which would be confirmed in the new year.



BRADEN FASTIER/STUFF

NMIT and the Ngāti Koata Trust team up to build houses at affordable prices for registered whānau.

So far, NMIT's L3 pre-trade carpentry programme had seen a 100 per cent increase in enrolments for 2021, compared to the year before, he said.

The L4 apprenticeship programme had record enrolments, and the Trades Academy carpentry programme was full, Carter said.

There had been "a lot of interest" in the initiative, which stemmed from the strengthening relationship between local iwi and the institute.

While prices for the houses hadn't been decided, the properties would be affordable because the house-build wasn't a commercial project, he said.

"It's a learning project. So the benefit of a learning project like that is that there's no labour overhead."

Eligibility criteria was being decided, and once complete, the trust would seek registrations of interest from registered Ngāti Koata whānau.

"Certainly first-home buyers are in the group that we're wanting to focus on," Carter said.

The successful applicants would be able to have some say in the configuration of the houses, which once built (anticipated to be around November) would be moved to the buyers' sections.

Suppliers who were part of NMIT's existing industry relationships had shown "good will" towards the project.

"This is not a big scaleable thing, it's just something where we've connected the dots," Carter said.

"It's an opportunity to help some whānau, but also it's a project in which we can learn about different ways of going about supporting whānau into homeownership."

Carter hoped the initiative would be "enduring" with Ngāti Koata and other iwi.

For more details, email pa@ngatikoata.com

- <https://www.stuff.co.nz/pou-tiaki/123645611/iwi-teams-up-with-students-to-ensure-ownership-within-grasp-for-whnau>

Agreement to strengthen iwi access to education opportunities

Maia Hart · 05:00, Nov 15 2020



SUPPLIED/MARLBOROUGH EXPRESS

NMIT chief executive Wayne Jackson, left, and Te Rūnanga o Ngāti Rārua pouwhakahaere Shane Graham.

A top of the south iwi is hoping to guide its whanau to education opportunities after signing a memorandum with the Nelson Marlborough Institute of Technology.

Te Rūnanga o Ngāti Rārua and the Nelson Marlborough Institute of Technology (NMIT) this week signed the memorandum of understanding, to improve access to education and retraining opportunities.

It was hoped it would also give local students more pathways to employment.

Te Rūnanga o Ngāti Rārua pouwhakahaere Shane Graham said the agreement would help guide whanau to the resources available to them.

It would have a long-term benefit for both parties, Graham said.

"This connects directly into our strategic goals as an iwi," he said.

Minister of Education Chris Hipkins announced in June a [\\$320 million Targeted Training and Apprenticeships Fund \(TTAF\)](#), designed to support training across high-demand industries. This funding formed part of the \$1.6 billion trades and apprenticeships training package announced in this year's Budget.

Graham said the new agreement would help make their whanau and hapū aware of these training opportunities, particularly those displaced by Covid-19.

"It means we can increase access to quality education options in our region for our whanau, hapū and iwi.

"Together with the scholarships we offer, it provides options for people to re-train or upskill, which is incredibly important in the time of Covid-19."

The agreement held multiple values, as it allowed whanau to train in the top of the south, where the iwi was based, Graham said.

"In addition, our iwi businesses can provide employment opportunities to NMIT students and graduates, meaning local people can get local jobs," he said.

"The main thing is, traditional learning has changed, there's lots of different avenues like learning online or face-to-face trades training, so this helps hapū and iwi access these tools."

He said the agreement was long term, but had flexibility.



VIRGINIA WOOLF/STUFF

"However, the world may change, good education leads to meaningful work, I'm delighted NMIT and Ngāti Rārua can work together to ensure we make the most of our local talent and our opportunities."

NMIT chief executive Wayne Jackson said the agreement strengthened the institution's commitment to the local community.

"More than ever, we need strong links between community, education and employment," Jackson said.

"This agreement will help us achieve that."

- <https://www.stuff.co.nz/pou-tiaki/123388375/agreement-to-strengthen-iwi-access-to-education-opportunities>

Appendix 7 – Self-Assessment Standard

Rating	Self-Reflection: Outcome or Goal alignment with all or most the following characteristics
Unfamiliar	<ul style="list-style-type: none"> • Largely ineffective identification, analysis and action planning for Māori outcomes. Gaps are noteworthy. • Significant weaknesses in processes and service delivery or approaches. • Outcomes and results from services are poor and/or do not meet threshold targets. • Poor or misleading reporting on issues of importance to Māori. • Little demonstrable and authentic cognisance of Māori worldviews demonstrated throughout organisational business approaches. • Only limited collaborative partnership with iwi/Māori communities can be demonstrated.
Comfortable	<ul style="list-style-type: none"> • Partially effective identification, analysis and action planning for Māori outcomes. Some gaps may exist. • Some weaknesses or inconsistency in processes and service delivery or approaches. • Outcomes and results from services have some but limited value, relevance or impact potential. • Some areas of reporting on issues of importance to Māori require improvements to improve clarity, timeliness and/or organisational guidance. • There is limited cognisance of Māori worldviews demonstrated throughout organisational business approaches. • Some sporadic collaborative partnership with iwi/Māori communities can be demonstrated.
Confident	<ul style="list-style-type: none"> • Effective identification, analysis and action planning for Māori outcomes. Any gaps are minor and not of high significance. • Quality is consistently demonstrated in processes and service delivery / approaches to support outcomes for Māori. • Outcomes and results from services have high value to Māori, relevance and demonstrate positive service impacts. • Reporting and self-review on issues of importance to Māori is clear, genuine, and timely, and forms part of wider organisational guidance. • There is expressed cognisance of Māori worldviews demonstrated throughout organisational business approaches. • Ongoing collaborative partnership with iwi/Māori communities can be demonstrated.
Capable	<ul style="list-style-type: none"> • Highly effective identification, analysis and action planning for Māori outcomes. There are no gaps of significance. • High quality is consistency demonstrated in processes and service delivery / approaches to support outcomes for Māori.

	<ul style="list-style-type: none">• Outcomes and results from services have high value to Māori, relevance and demonstrate excellent service impacts.• Reporting and self-review on issues of importance to Māori is clear, genuine, and timely, and leads wider organisational guidance.• There is high cognisance of Māori worldviews demonstrated throughout organisational business approaches.• Highly effective and ongoing collaborative partnership with iwi/Māori communities can be demonstrated.
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Te Kaupapa: SANITI Report

1. PURPOSE:

Function:	For Information
Nā:	Shinn Krammer, SANITI President
Te rā:	12 February 2021
Purpose:	<p>The purpose of this paper is:</p> <p>To provide the Board with an update on what SANITI is doing on campus in relation to the Service Level Agreement.</p>
Recommendation(s):	<p>It is recommended that the NMIT Board resolve to:</p> <ol style="list-style-type: none">1. Receive this report for their information.

2. EXECUTIVE SUMMARY

Schedule Reporting:

a. Schedule B (Part One) – Independent Advocacy and Support Services

Advocacy Statistics Summary from 2020



Figure 1 and 2: Total Numbers for Advocacy Support Services in 2019 and 2020 Categorized and Totals

*Other includes general information, referrals and requests, information for future students, parents, caregivers, and travel

** Counselling was not an Advocacy Category in 2019

- The graphs shown are from SANITI's Advocacy Reports from 2019 and 2020. The graphs show an overall increase in engagement in support services with NMIT students. That equates to a difference of 956 which is a rounded 231% increase since last year. The main influence of this was the Associations' involvement in the processing and distribution of the government EducationNZ and HAFL hardship funds, put in place to support students impacted by COVID-19.

- Despite COVID-19, the team still made 11 in-person trips and 3 Zoom Meetups to the Marlborough Campus in 2020 to deliver advocacy and support services.

b. Schedule B (Part Two) – Programme Representatives

- In 2020, 62 representatives were registered on Nelson Campus, and 13 representatives in Marlborough/Base Woodbourne. It is our intention to continue in engaging with Programme Representatives in 2021 with a focus on working with NMIT to recruit representatives from programme areas under represented in 2020.
- Due to COVID-19 lockdown, training for Programme Representatives in 1st semester was included as part of the Zoom meetings.

c. Schedule B (Part Three) – Representation on NMIT Committees

- SANITI provided representation on the following: Health, Safety and Wellbeing Committee;, Academic Committee; Programme Approval Committees; Academic Standards and Quality Committee; Learning and Teaching Committee; Working Parties; Research and Ethics Committee. SANITI representatives attended in person and on Zoom throughout 2020.

d. Schedule C – Sports, Recreation and Cultural Activities

- 2020 Schedule has now been completed with the successful delivery of the graduation after functions in Marlborough and Nelson. In 2021 the goal is to hold more events on the Richmond Campus.

e. Schedule D – Employment Information

- 2020 Schedule has now been completed, with the Employment Service supporting students to apply for summer and graduate positions .

f. Schedule E – Operational Management

- Meetings with CE and the Executive set up and held as needed
- Meetings with Manager of Learner Services held fortnightly
- Meetings with Curriculum Directors' held when appropriate

g. Schedule F – International Activities

Despite lockdown, the amended International Activities schedule was fully delivered. On campus events in second semester were well attended by students and their families. 2021 schedule will be amended to meet the needs of current international students. Should there not be any significant intakes in 2021, funds will be used to support students in hardship.

Additional Information

Shinn Krammer Elected as Student President for 2021.

SANITI has become a member of the NZUSA as of 2021 in order to work more closely with the NZUSA and Te Pukenga.

Nelson Marlborough Institute of Technology Limited Board Calendar | 2021

	J	F	M	A	M	J	J	A	S	O	N	D
1. Meeting Schedule												
General Board meeting		12.02	15.03		17.05	28.06		16.08		11.10	22.11	
Audit and Risk Committee meeting			05.03		07.05	18.06				01.10	12.11	
Remuneration and Appointments Committee meeting					17.05						22.11	
Annual General Meeting					TBC							
2. Strategy												
Planning and Adoption							X	X	X			
Investment Plan		X			X			X			X	
Performance review		X	X		X	X	X	X	X	X	X	
Deep dive strategic thought piece			X			X				X		
2. Budget (Annual)												
Development (approval of key assumptions)								X				
Adoption										X		
Review/monitor (Forecast Review)		X	X		X	X		X		X	X	
3. Risk and Compliance												
Review of risk management systems		X										
Review of major risks		X	X		X	X		X		X	X	
Review of regulatory compliance			X			X					X	
Insurance report											X	
Directors certificates for D&O insurance and director fees		X										
4. Policy framework												
Corporate governance code of practice			X									
Committee terms of reference			X									
Major policy review												
- Risk management											X	
- Delegated authorities						X						
- Health, Safety and Wellbeing			X									

5. Board review												
Composition/succession											X	
Evaluation of performance											X	
Remuneration												
- Review											X	
- Shareholder recommendation											X	
Board sub-committee composition/succession											X	
6. Governance												
Audit report			X									
Shareholder communications	X			X			X			X		
Community communications		X						X				
Stakeholder Engagement		X	X			X		X		X	X	
7. Regulatory compliance												
Half-year report and reviewed financial statements								X				
Annual report to shareholders			X									
Statement of Corporate Intent												
- Draft SCI									X			
- Final SCI											X	
8. Financial and operational												
Financial performance		X	X		X	X		X		X	X	
Overall operations report		X	X		X	X		X		X	X	
Significant project report		X	X		X	X		X		X	X	
Significant business development report		X	X		X	X		X		X	X	
Capital requirements		X	X		X	X		X		X	X	
9. Health and Safety												
Health and safety tours		X	X			X		X		X		X
		TBC	TBC			TBC		TBC		TBC		TBC

NMIT Acronyms [May 2020]

ACE	Adult and Community Education
ADP	Academic Development Proposal
AMFM	Annual Maximum Fee Movement
ALNAT	Adult Literacy and Numeracy Assessment Tool
ASM	Academic Staff Member
ATEM	Association of Tertiary Education Management Inc.
AUT	Auckland University of Technology
BAM	Bachelor of Arts and Media
BAppSocSci	Bachelor of Applied Social Science
BCOM	Bachelor of Commerce
BCT	Business & Computer Studies
BIT	Bachelor of Information Technology
BMETS	Basic Mechanical Engineering Training Skills
BN	Bachelor of Nursing
BUA	Beijing University of Agriculture
BVA	Bachelor of Visual Arts
CA and ACA	Chartered Accountant and Associate Chartered Accountant
CAA	Civil Aviation Authority
CAANZ	Chartered Accountants Association of New Zealand
CAM	Capital Asset Management
CAP	Competence Assessment (Nursing)
CAU	China Agricultural University
CC	Cross Credit
CD	Curriculum Director
CEA	Collective Employment Agreement
CM	Curriculum Manager
CoVE	Centre of Vocational Excellence
CT	Credit Transfer
CTLT	Certificate in Tertiary Learning and Teaching
CTS	Core Transferable Skills
CVP	Certificate in Vineyard Practice
DAS	Directory of Assessment Standards (NZQA)
DTLT	Diploma in Tertiary Learning and Teaching

EAP	Employee Assistance Programme
ED CEE	Executive Director – Customer Experience and Excellence
ED FCB	Executive Director – Finance, Compliance and Business Intelligence
ED LID	Executive Director – Learning Innovation and Delivery
ED M	Executive Director – Māori
ED SES	Executive Director – Strategy, Enterprise and Sustainability
EEdO	Equal Education Opportunities
EEO	Equal Employment Opportunities
EER	External Evaluation and Review
EFTS	Equivalent Full-Time Student
ELP	English Language Programme
Eol	Expression of Interest
EPI	Education Performance Indicator
ESOL	English for Speakers of Other Languages
ESP	Employment Scholarship Programme
FTE	Full Time Equivalent
GC	Global Campus
GSE	Group Study Exchange
GTW	Ground Training Wing (at Woodbourne Air Force Base)
HITO	Hairdressing Industry Training Organisation
HR	Human Resources
IEA	Individual Employment Agreement
ITO	Industry Training Organisation
ITPNZ	Institutes of Technology and Polytechnics of New Zealand
ITPQ	Institutes of Technology and Polytechnics Quality
ITPs	Institutes of Technology and Polytechnics
KEQ	Key Evaluation Question
KPI	Key Performance Indicator
LIIT	Learning Innovation and Insights Team

LLC	Library Learning Centre
LLN	Literacy, Language and Numeracy
MDC	Marlborough District Council
ML	Marlborough
MoA	Memorandum of Agreement
MoE	Ministry of Education
MoP	Mix of Provision
MoU	Memorandum of Understanding
MROQ	Mandatory Review of Qualifications
NAMS	New Zealand Asset Management Support
NCC	Nelson City Council
NCEA	National Certificate of Educational Achievement
NEET	Not in Employment, Education or Training (Youth)
NMIT	Nelson Marlborough Institute of Technology
NQF	National Qualifications Framework
NRDA	Nelson Regional Development Agency
NZDB	NZ Diploma in Business 120 credits L5 (new qualification 2017)
NZCALNE	New Zealand Certificate in Adult Literacy and Numeracy Education
NZCATT	New Zealand Certificate in Adult Tertiary Teaching
NZDip Bus	NZ Diploma in Business 240 Credits L6 (old qualification)
NZIM	New Zealand Institute of Management (Part of old NZDipBus)
NZIST	NZ Institute of Skills and Technology
NZQA	New Zealand Qualification Authority
NZQF	New Zealand Qualifications Framework
NZTE	New Zealand Trade and Enterprise
OAG	Office of the Auditor General
OCP	Organisational Counselling Programmes (Student Counselling Service)
OTEPs	Other Tertiary Education Providers
PAC	Programme Approval Committee

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PASM	Principal Academic Staff Member	SME	Subject Matter Expert	TOTSTA	Top of the South Trades Academy
PEAP	Post EER Action Plan	SMS	Student Management System	TRoQ	Targeted Review of Qualifications
PBRF	Performance-Based Research Fund	SSB	Standard Setting Body	TTMU	Te Tiriti o Waitangi Monitoring Unit
PLATO	Programme of Learning and Teaching Observations	SSC	State Services Commission	TTP	Te Toki Pakohe
POD	People and Organisation Development	SSG	Special Supplementary Grants	YG	Youth Guarantee
PoS	Programme of Study	SSP	Sub-sector Provider		
PTE	Private Training Establishment	STAR	Secondary Tertiary Alignment Resource		
QMS	Quality Management System	STCW	Standards of Training and Certification of Watchkeepers		
RAC	Recognition of Academic Credit	STEM	Science, Technology, Engineering and Mathematics		
REANNZ	Research and Education Advanced Network New Zealand Ltd.	SUTI	Skills Update Training Institute		
RFP	Request for Proposal	TAMU	Tertiary Advisory Monitoring Unit		
RNZAF	Royal New Zealand Air Force	TANZ	Tertiary Accord of New Zealand		
RoVE	Review of Vocational Education	TCWG	Those charged with governance		
RPL	Recognition of Prior Learning	TDC	Tasman District Council		
RSG	Refugee Study Grant	TEC	Tertiary Education Commission		
SAC	Student Achievement Component	TEC/Skill NZ	Training Opportunities Programmes Funded by TEC/Skill NZ		
SANITI	Students Association of Nelson Marlborough Institute of Technology Inc	TEI	Tertiary Education Institution		
SAR	Self-Assessment Report	TEO	Tertiary Education Organisation		
SASM	Senior Academic Staff Member	TEOC	Tertiary Education Organisation Component fund		
SDL	Staff Digital Literacy	TES	Tertiary Education Strategy		
SDR	Single Data Return	TEU	Tertiary Education Union		
SHW	Safety, Health and Wellbeing	TIASA	Tertiary Institutes Allied Staff Association		
SIG	Special Interest Group				

Frequently used Academic Definitions

Word or phrase	Meaning	Definition
Academic Committees		<p>A standing committee of the Academic Board responsible for maintaining academic standards for designated programmes and courses.</p> <p>There are two Academic Committees:</p> <ul style="list-style-type: none"> Academic Committee - serving the needs of all Curriculum Areas for results approvals, Moderation Plan approval, award approvals, decisions on exclusion, special assessment results etc. Recognition of Academic Credit (RAC) Committee – considering applications from students for Cross Credits and RPLs.
CMR	Consent and Moderation Requirements	<p>This is an NZQA document that outlines the requirements for achieving ‘consent to assess against standards’ and the ongoing moderation expectations. CMRs are developed by standard-setting bodies (SSBs).</p> <p>Before assessing learners against unit standards NMIT has to be granted consent to assess against those standards.</p> <p>NMIT already has consent to assess against a large number of unit standards. If however a new / revised programme requires unit standards that we do not have consent to assess against, we would have to prepare and submit an application to NZQA.</p>
Credit		<p>A numerical value assigned to unit standards, courses and programmes of study that reflects the estimated student time/effort required to meet the assessment requirements. In most cases, one credit represents approximately ten hours of student learning time (inclusive of scheduled class contact, assessment time, work experience or internships, other directed time and independent/self-directed study). A credit value of 120 is generally equivalent to one year of full time study and 1.0 ECTS.</p>
CT	Credit Transfer	<p>Internal Credit Transfer: Credit for the same course already earned in another qualification from NMIT</p> <p>External Credit Transfer: Credit for the same course already earned in another qualification from another institution</p>

CC	Cross Credit	The granting of academic credit towards a qualification delivered by NMIT, from a similar course already completed as part of another approved qualification.
DAS	Directory of Assessment Standards	The Directory of Assessment Standards (DAS) lists all quality assured unit and achievement standards, known collectively as 'assessment standards'.
ebs	Unit Instances (UIs)	The Student Management System used at NMIT to establish student study contracts, report to TEC and to generate academic records. The specifications of all NMIT's approved programmes of study. Holds all the general information about a programme of study, but not the details that will change with each year or Semester the course is offered
	Unit Instance Occurrences (UIOs)	The details that will change with each year or Semester the course is offered (e.g. dates, fees, venues, etc).
EFTS	Equivalent Full Time Student	One EFTS is 1.0 Equivalent Fulltime Student.
EER	External Evaluation and Review	A periodic evaluation of NMIT, by NZQA, to provide a statement of confidence (judgement) about the organisation's educational performance and capability in self-assessment.
EPIs	Educational Performance Indicators	The TEC has published information on the educational performance of tertiary education organisations based on agreed educational performance indicators: <ul style="list-style-type: none"> • successful course completion • student retention • qualification completion, and • student progression.
ILP	Individual Learning Plan	An Individual Learning Plan essentially belongs to the student. It identifies a student's learning goals, personal goals, timescales, resources and any support required to meet those goals.
ITP	Institute of Technology and Polytechnic	
MoE	Ministry of Education	

NZQA	New Zealand Qualifications Authority	<p>New Zealand Qualifications Authority.</p> <p>Key aspects of the NZQA role are to:</p> <ul style="list-style-type: none"> • develop, register and support the New Zealand Qualifications Framework • manage the external assessment of secondary school students and moderate secondary schools' internal assessment activities and processes • quality assure non-university tertiary education organisations and their courses, and moderate assessment activities and processes for national qualifications for NZQA-owned unit standards • maintain effective liaison with overseas certifying and validating bodies in order to recognise overseas educational and vocational qualifications in New Zealand, and to achieve recognition of New Zealand educational and vocational qualifications overseas • act as a standard-setting body
NZQF	New Zealand Qualifications Framework	A list of all quality assured qualifications in New Zealand. The framework is the definitive source for accurate and current information on each qualification.
PAC	Programme Approval Committee	A standing committee of the NMIT Academic Board responsible for evaluating and recommending approval of academic developments.
Programme Regulations - including Course Descriptors		<p>The Programme Regulations describe the formal rules of the Programme and its constituent courses. Programme Regulations are the legally binding, contractual obligations of staff and enrolled students. They are used by academic staff to guide delivery of the Programme and its courses.</p> <p>Course Descriptors indicate teaching hours, hours of total student learning, course aims, learning outcomes, unit standards (if included), assessment methods, learning and teaching approaches, requirements for successful completion of the course.</p> <p><i>Approved Programme Regulations and Course Descriptors are not altered, and are used by academic and administrative staff to guide delivery of the programme and its courses.</i></p>
PLATO	Programme of Learning and Teaching Observations	<p>The Programme is an important and integral part of NMIT's Quality Assurance System.</p> <p>It is designed to ensure maximum effectiveness of curriculum delivery by encouraging the sharing of good practice within NMIT. The Programme</p>

		encourages discussion within programme teams and across NMIT on improving teaching and learning.
QMS	Quality Management System	<p>A system of clearly defined institutional structures, processes, responsibilities and resources used to manage quality improvement.</p> <p>Accordingly, the QMS includes all aspects of NMIT operations, all work areas and all geographic locations.</p>
RAC	Recognition of Academic Credit	<p>The process for formally recognising relevant experience and/or study that has been achieved prior to completion of a qualification offered by NMIT, as academic credit for a course or courses at NMIT. Includes: Cross Credits, Credit Transfers and RPLs</p>
RPL	Recognition of Prior Learning	<p>A process that makes use of evaluation of evidence of academic achievement and/or work/life experience to assess relevant learning.</p>
Records Management		<p>The effective and efficient operation of NMIT's record keeping systems, including implementing the use of the electronic document management system across the institute.</p>
SA	Self-assessment	<p>The ongoing processes NMIT uses to gain evidence of its own effectiveness in providing quality education.</p>
SAC Funding	Student Achievement Component (SAC) funding	<p>The Government's contribution to the direct costs of teaching, learning, and other costs driven by learner numbers.</p> <p>SAC funding comprises two elements:</p> <ol style="list-style-type: none"> 1. The programme element, which relates to the types of programmes or courses approved for funding in NMIT's Investment Plan, is based on the SAC funding categories (A, B C etc) 2. The volume element, which relates to the number of valid enrolments in those programmes or courses.
SAR	Self-assessment Report	<p>Self-assessment should be continuous, culminating in formal annual review of the previous year, recorded in a Self-assessment Report (SAR).</p>
SDR	Single Data Return	<p>Data items that are specifically required by the Ministry of Education (MOE) and the Tertiary Education Commission (TEC) for funding, monitoring performance against Investment Plans, publishing performance information, as well as statistical reporting purposes.</p>

		<p>All students for which a valid enrolment has been made in ebs are required to be reported, regardless of the level of study or the funding source.</p> <p>Information is required on student characteristics, course enrolment details, course and qualification completions, course details, and actual EFTS on a monthly basis. Further information on EFTS forecasts is required as part of the validation process.</p> <p>Submitted three times a year (April, August and December).</p>
SMS	Student Management System	How NMIT manages all its student data. Currently using ebs
Student Feedback <ul style="list-style-type: none"> • First Impressions • Course / Tutor • Learner Experience • Graduate Destination 		<p>Student surveys are a vital tool for conducting systematic, evidence based, inquiries that are an integral part of NMIT's Self-Assessment process - not just for specific programmes but also for business support areas.</p> <p>It also provides evidence that improvements are actually occurring.</p> <p>First Impressions – within first 4 – 8 weeks of the programme</p> <p>Course / Tutor – scheduled, at suitable time, by Programme Area</p> <p>Learner Experience – within last 2-4 weeks of the programme</p> <p>Graduate Destination – conducted 6 months following Graduation</p>
TANZ	Tertiary Accord of New Zealand	<p>A network of ITPs - comprising:</p> <ul style="list-style-type: none"> • NorthTec • Toi Ohomai • Universal College of Learning (UCOL) • EIT • NMIT • Ara Institute of Canterbury • Otago Polytechnic
TEC	Tertiary Education Commission	Responsible for funding tertiary education in New Zealand
3v6		New course or programme change approval form



To consider and if thought fit, to pass the following resolutions:

Resolved:

1. *That members of the public and press be excluded from the remainder of the meeting and that the NMIT Board move In-committee.*
2. *That the Chief Executive – Wayne Jackson (and the following Executive Directors – Olivia Hall, Grant Kerr, Brian Johnston) be permitted to remain at the meeting, after the public has been excluded, because of their knowledge in relation to specific agenda items. This knowledge, which will be of assistance in relation to the matters to be discussed, is relevant to those matters because they have assisted in the preparation of such matters.*

Resolutions will be made in reliance on section 48(1) of the Local Government Official Information and Meetings Act 1987 (**LGOIMA**) and the particular interests protected by section 9 of the Official Information Act 1982 which would be prejudiced by the holding of the relevant parts of the proceedings of the meeting in public.

The general subject of each matter to be considered while the public is excluded, the reason for passing the resolution in relation to each matter and the specific grounds under section 48(1) of LGOIMA for the passing of the resolution are as follows:

General subject of each matter considered	Reason for passing resolution in relation to each matter	Grounds under section 48(1) for the passing of the resolution
Minutes from public excluded part of previous meeting on 23 November 2020	<p>Section 9(2)(g)(i) of the Official Information Act – maintain the effective conduct of public affairs through the free and frank expression of opinion by or between members of any organisation or employees of any organisation in the course of their duty</p> <p>Section 9(2)(b)(ii) of the Official Information Act - protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information</p>	That the public conduct of this item would be likely to result in the disclosure of information for which good reason for withholding would exist under section 9 (noting the Board is specified, in Schedule 2 of LGOIMA, as a body to which LGOIMA applies).
<ul style="list-style-type: none"> - Risk - Strategy - Performance Reporting - Items for Information 	<p>Section 9(2)(g)(i) of the Official Information Act – maintain the effective conduct of public affairs through the free and frank expression of opinion by or between members of any organisation or employees of any organisation in the course of their duty</p> <p>Section 9(2)(i) of the Official Information Act – enable the organisation holding the information to carry out, without prejudice or disadvantage, commercial activities</p> <p>Section 9(2)(b)(ii) of the Official Information Act - protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information</p>	That the public conduct of this item would be likely to result in the disclosure of information for which good reason for withholding would exist under section 9 (noting the Board is specified, in Schedule 2 of LGOIMA, as a body to which LGOIMA applies).