



Tertiary Education Report: Unitec Commissioner Appointment

Date:	19 July 2019	TEC priority:	High
Security level:	In Confidence	Report no:	B/18/00489
		Minister's office No:	

ACTION SOUGHT		
	Action sought	Deadline
<p>Hon Chris Hipkins Minister of Education</p>	<p>Note Unitec council has responded positively to your preliminary decision to dissolve the council and appoint a commissioner;</p> <p>9(2)(h) [REDACTED] [REDACTED] [REDACTED]</p> <p>Agree to dissolve the council and appoint Murray Strong as commissioner, and</p> <p>Sign the attached notice, to be published in the Gazette and presented to the House, and the letter to Unitec council; and</p> <p>Note talking points are attached to support an oral item in Cabinet together with a draft media release.</p>	<p>As soon as practicable</p>
<p>Enclosure: Yes</p> <ul style="list-style-type: none"> • Draft Gazette notice • Draft letter to Unitec council • Talking points for Cabinet • Draft media release 	<p>Round Robin: No</p>	

CONTACT FOR TELEPHONE DISCUSSION (IF REQUIRED)				
Name	Position	Telephone		1st contact
Tim Fowler	Chief Executive	Section 9(2)(a)	[REDACTED]	✓
Section 9(2)(a)	[REDACTED]	Section 9(2)(a)	Section 9(2)(a)	

THE FOLLOWING DEPARTMENTS/AGENCIES HAVE SEEN THIS REPORT

- DPMC MPI ENZ ERO MBIE MoE MFAT
 MPP MSD NZQA NZTE TEC TPK Treasury

- Minister's Office to Complete:** Approved Declined
 Noted Needs change
 Seen Overtaken by Events
 See Minister's Notes Withdrawn

Comments:

Recommendations

Hon Chris Hipkins, Minister of Education

It is recommended that you:

1. **Note** that on 13 July 2018 you consulted with the council of the Unitec Institute of Technology (Unitec) on your preliminary decision to dissolve the council and appoint a commissioner;
2. **Note** the council has responded positively to your preliminary decision;
3. **9(2)(h)** _____;
4. **Agree** to dissolve the council and appoint Murray Strong as commissioner;
AGREED / NOT AGREED
5. **Sign** the attached notice and accompanying letter to the Unitec council, which will give effect to your decision; and
6. **Note** that the notice must be published in the Gazette and presented to the House as soon as is practicable after it is sent to the council; and
7. **Note** talking points are attached to support an oral item in Cabinet; and
8. **Note** we have also provided a draft media release to announce your decision; and
9. **Agree** that the TEC release this briefing once the council has been dissolved, the commissioner appointed, and decisions on financial support have been made.



Gillian Dudgeon
Deputy Chief Executive, Delivery
Tertiary Education Commission

19 July 2018

Hon Chris Hipkins
Minister of Education

___ / ___ / ___

Unitec council has responded positively

1. This paper follows our briefing to you on 12 July 2018 and your subsequent letter to the Unitec council. Your letter notified the council of your preliminary decision to dissolve the council and appoint Murray Strong as commissioner.
2. Dianne Kidd, Deputy Chair, responded to your letter on behalf of the Unitec council on 18 July 2018. Ms Kidd confirmed that the council continues to support the appointment of Murray Strong as commissioner. The council also endorsed the benefits set out in your letter, which include speeding up decision-making at Unitec and increasing confidence in its future, and is committed to assisting a smooth and efficient handover to Mr Strong.
3. The council's response brings to a close the statutory process you must follow before exercising your authority under section 195D(1) of the Education Act 1989 to dissolve the council and appoint a commissioner.

9(2)(h)

5. The council's letter endorses the benefits of shortening the 21-day period and considers it would help towards bringing about certainty of outcomes for Unitec and stability for its staff and students.
6. We therefore attach a draft notice for your signature. The notice must specify—(a) the date when the dissolution and appointment take effect; and (b) the name of the person appointed as commissioner. As Minister, you must publish the notice in the Gazette and present a copy to the House as soon as is practicable after sending the notice to the council.

Establishment of Advisory Committee to follow

7. As Minister, you also have a responsibility to appoint an Advisory Committee of up to five members to support the commissioner. The composition of the committee must reasonably reflect the community of the institution as represented by its council at the time of the council's dissolution. You may wish to appoint some of the outgoing council as committee members to ensure the commissioner has access to the council's knowledge and experience.
8. We have previously discussed with you potential members of an Advisory Committee, and will provide further advice on the membership of the Advisory Committee once Mr Strong is able to comment on the skills and expertise needed to support him in exercising his functions.

Next Steps

9. Based on the council's response, we recommend that you take immediate action to dissolve the council and appoint a commissioner. To do so, please sign the attached notice (Tab One), and sign the letter to the current council advising them of your action (Tab Two).
10. Section 9(2)(h) [Section 9(2)(g)(i)]
The notice is to be published in the Gazette and presented to the House as soon as is practicable after it is sent and we will work with your office on the timing of the notice and associated announcements.

11. In anticipation of an oral item at Cabinet on Monday 23 July 2018, we attach talking points to assist you in updating your colleagues (Tab Three).
12. A draft media release is also attached for you to make an announcement about your final decision (Tab Four).

Tab 1 – Notice

Dissolution of council and appointment of commissioner: Unitec Institute of Technology

Pursuant to section 195D(1) of the Education Act 1989, I hereby give notice that I am dissolving the council of Unitec Institute of Technology and appointing a commissioner to act in place of the council.

The dissolution of the council and appointment of the commissioner take effect on 23rd July 2018.

The person I have appointed as commissioner is Mr Murray Strong.

Dated at Wellington this 23rd day of July 2018.

Hon CHRIS HIPKINS, Minister of Education.

Tab 2 – Draft Letter to the Council

Section 18(d)

Tab 3: Talking points for Cabinet on Unitec Institute of Technology

Purpose

1. This paper provides you with talking points to update your Cabinet colleagues on your decision to dissolve the council of Unitec Institute of Technology (Unitec) and appoint Murray Strong as commissioner.

Talking points

I have no confidence in the Unitec council and intend to appoint a commissioner

2. As Cabinet is aware, Unitec is in extreme financial distress, is forecast to run out of cash in September 2018 and will need short-term financial support from the Crown.
3. Unitec has failed to respond to declining EFTS (equivalent full-time students) over several years and incurred significant costs associated with its transformation project.
4. I have no confidence in the ability of Unitec's governing council to successfully lead the necessary work to right-size the organisation. Three of the eight council members have now resigned: Chair, Dr Lee Mathias ONZM, and two council-appointed members, Alastair Carruthers CNZM and Vaughn Davis.
5. I have now completed the process and the consultation required for me to exercise my authority under section 159D of the Education Act 1989 to dissolve the council and appoint a commissioner.
6. I intend to appoint Mr Murray Strong to the role. Mr Strong has a long-term involvement with the ITP sector, is already playing a major role in the Government's ITP Roadmap 2020 project, and is the Crown Manager for Tai Poutini Polytechnic.
7. Mr Strong holds governance and advisory roles in both the public and private sector including the NZQA and the Ministry of Education. Over the last fifteen years, he has held a range of senior Crown appointed roles, including as commissioner at the Western Institute of Technology at Taranaki in 2006, and has worked in governance and senior management roles that include the education sector.

Unitec council supports my prompt intervention

8. Consultation has included the Unitec council. The council has endorsed my intervention, supports Mr Strong's appointment, agrees the intended benefits, and is committed to a smooth and efficient handover to Mr Strong.
9. The council also agrees to my prompt intervention before the end of the 21-day period allowed for the council submission. The council considers this would help towards bringing about some certainty and stability for Unitec's staff and students.
10. I therefore intend to dissolve the council and appoint the commissioner with effect from **23 July 2018**; I will publish a notice in the Gazette and present it to the House at the earliest opportunity.

Advisory Committee to be appointed

11. Mr Strong will initially be supported by the independent financial advisor, John Fisk. I am also required to appoint an Advisory Committee of up to five members to advise and support

the commissioner in the exercise of his functions, the duties, and powers. I intend to do so once I have received Mr Strong's advice on the skills and expertise needed.

12. The composition of the committee must reasonably reflect the community of the institution as represented by its council at the time of the council's dissolution. I therefore would expect my appointments to include some former council members to ensure the commissioner has access to the council's knowledge and experience.

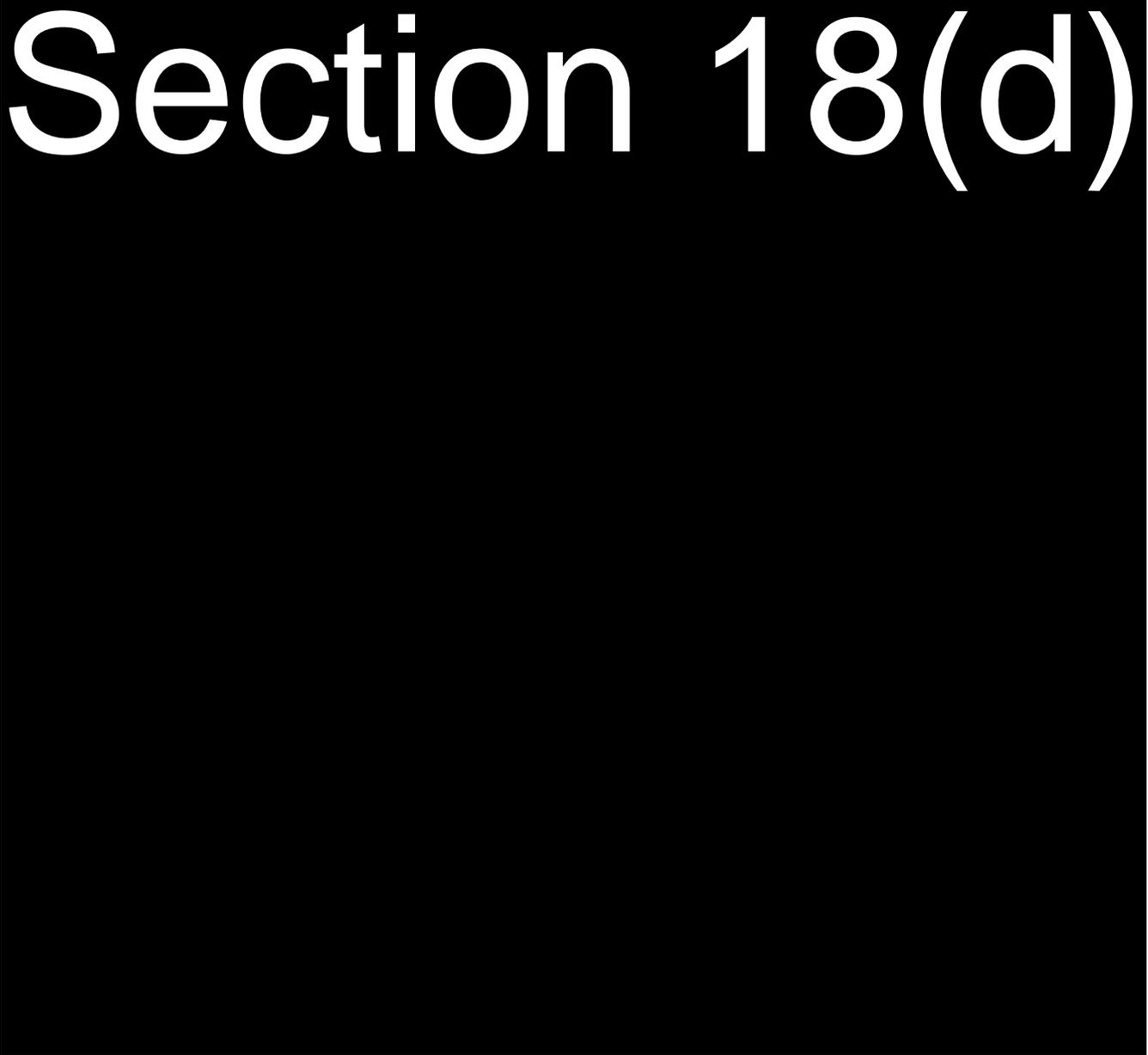
Further advice on Unitec's financial arrangements will follow

13. Officials are progressing the strategy to support Unitec via a no-interest fully repayable concessionary loan of up to \$50 million. As one other polytechnic, Whitireia New Zealand, is facing a possible cash shortfall in 2018, I intend to present one Cabinet paper in early August to cover both institutions to establish the appropriation and funding required.
14. In response to Cabinet's request, at the same meeting I will provide a report on the financial positions of all ITPs, and work being done to identify and manage other ITPs that could be susceptible to similar cash flow issues over the short- and medium-term.
15. The significant work underway to transform the polytechnic sector and wider vocational education and training systems is proceeding at a pace. I expect to be in a position to consider options well before the end of the year.
16. In the meantime, the steps taken at Unitec are intended to reassure students, staff and other stakeholders that this Government is committed to ensuring top quality vocational education and training remains available now and in the future.

Tab 4 – Draft Media Release

Commissioner appointed at Unitec

Section 18(d)



Appendix TWO: analysis other interventions

Legal authority	Responsibility	Description of Intervention	Analysis
s195B	Chief Executive of the TEC	Council required to provide specified information about the operation, management, or financial position of the institution at specified times.	Unitec management and council are working cooperatively with the TEC. All information is being supplied without having to enact this provision. Provision of information will not resolve Unitec's financial situation.
s222A	Chief Executive of the TEC	Council required to obtain specialist help. Council must take advice into account in performing its functions and duties.	Rather than exercising this power, in April 2018 Unitec agreed with the Chief Executive of the TEC to the appointment an independent financial advisor. The independent financial advisor has enabled Unitec to identify its significant financial issues, but does not have sufficient power to ensure council satisfactorily addresses those issues.
s222B	Chief Executive of the TEC	Council required to prepare and provide draft performance improvement plan addressing matters specified in notice. When plan has been approved, council must implement plan.	Performance improvement plans primarily focus on educational performance. Preparing, and approving the plan can take a significant amount of time. The council then requires time to implement the plan. This intervention will not reduce the risk as immediate action is required given the projected cash flow issues.
s195C	Minister	Appointment of Crown Observer to attend council meetings, provide advice to the council, and report to the Minister on any matters raised or discussed at meeting.	A Crown Observer would boost the council's resources and expertise. However, as a Crown Observer is unable to vote on a matter, or exercise any of the powers or perform any of the functions of a member of the council, this intervention would not resolve the current tensions on the council, or ensure decisions are made quickly to address Unitec's financial situation. Some council members are currently working well with the TEC to enable the TEC to effectively observe the council.

s222AG(3)	Minister	Dismissal of Chair and Deputy Chair from office as Chair and Deputy Chair	<p>The intervention would enable the appointment of a new Chair and Deputy Chair.</p> <p>However, the role of Chairperson is currently vacant. The Minister has the power to appoint a new Chairperson under section 222AG of the Education Act. This intervention will be insufficient to address Unitec's current financial issues.</p>
s222C	Minister	Appointment of a Crown Manager, who performs the functions of the council specified by the Minister	<p>The effectiveness of this intervention depends on the functions the Minister specifies the Crown Manager must perform.</p> <p>Given the nature of the issues (financial and education performance), it is likely that the Minister would require a Crown Manager to undertake most, if not all, of the council's functions.</p> <p>This option would not ensure that the council works well with senior management, or ensure that all of the issues identified by the IFA are addressed.</p> <p>Unless members of the Council resign (or their term of appointment ends), the Council will take control of Unitec after the Crown Manager's appointment has ended.</p>