

Tertiary Education Report: Appointment of a Commissioner to Whitireia and WelTec

Date:	26 September 2018	TEC priority:	High Priority
Security level:	In Confidence	Report no:	B/18/00687
		Minister's office No:	

ACTION SOUGHT		
	Action sought	Deadline
<p>Hon Tracey Martin Acting Minister of Education</p> <p>Hon Chris Hipkins Minister of Education</p>	<p>note that the combined Council of Whitireia Community Polytechnic and Wellington Institute of Technology have responded to your preliminary decision to dissolve the combined Council and appoint a Commissioner stating that they have no additional feedback to their earlier submission and that it would be in the institutions' best interests to bring this matter to a speedy conclusion.</p> <p>agree to dissolve the combined Council of Whitireia Community Polytechnic and Wellington Institute of Technology and appoint Dr Neil Barns as Commissioner.</p> <p>sign the attached notice and accompanying letter to the combined Council of Whitireia Community Polytechnic and Wellington Institute of Technology to give effect to your decision.</p> <p>note that the notice must be published in the <i>Gazette</i> and presented to the House of Representatives as soon as is practicable after it is sent to the combined Council.</p>	<p>As soon as practicable</p>
Enclosure: Yes	Round Robin: No	

CONTACT FOR TELEPHONE DISCUSSION (IF REQUIRED)				
Name	Position	Telephone		1st contact
9(2)(a)	Investment Manager	9(2)(a)	9(2)(a)	✓
Gillian Dudgeon	Deputy Chief Executive – Delivery	9(2)(a)	9(2)(a)	

THE FOLLOWING DEPARTMENTS/AGENCIES HAVE SEEN THIS REPORT

- CERA DPMC ENZ ERO MBIE MoE MFAT
 MPIA 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 See Minister's Notes Withdrawn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 Tracey Martin, Acting Minister of Education

It is recommended that you:

1. **note** that on 18 September 2018, you consulted with the combined Council of Whitireia Community Polytechnic and Wellington Institute of Technology on your preliminary decision to dissolve the combined Council and appoint a Commissioner.
2. **note** that the combined Council of Whitireia Community Polytechnic and Wellington Institute of Technology has responded to your preliminary decision stating that they have no additional feedback to their earlier submission and that it would be in the institutions' best interests to bring this matter to a speedy conclusion.
3. **agree** to dissolve the combined Council of Whitireia Community Polytechnic and Wellington Institute of Technology and appoint Dr Neil Barns as Commissioner.

AGREED / NOT AGREED

4. **sign** the attached notice and accompanying letter to the combined Council of Whitireia Community Polytechnic and Wellington Institute of Technology to give effect to your decision.
5. **note** that the notice must be published in the *Gazette* and presented to the House of Representatives as soon as is practicable after it is sent to the combined Council.
6. **note** talking points are attached to support an oral item in Cabinet.
7. **agree** that the Tertiary Education Commission proactively release this briefing once the combined Council has been dissolved and the Commissioner appointed.

AGREED / NOT AGREED



Gillian Dudgeon

Deputy Chief Executive – Delivery

Tertiary Education Commission

26 September 2018

Hon Tracey Martin

Acting Minister of Education

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Purpose

1. The purpose of this briefing is to advise you on the response from the combined Council of Whitireia Community Polytechnic (Whitireia) and Wellington Institute of Technology (WelTec) on your preliminary decision to dissolve the combined Council and appoint a Commissioner. It also outlines the next steps you need to take to give effect to your decision.

Background

2. In August 2018, Cabinet agreed to provide a capital injection of \$15 million to Whitireia to meet a projected cash shortfall in 2018/19. This funding is to ensure continuity of provision for learners while rapid work is undertaken to identify and realise options, aligned to the Institute of Technology and Polytechnics (ITP) Roadmap 2020 project, for a viable model of high quality vocational education and training that meets community needs (SWC-18-MIN-0105 refers).
3. We briefed you in August 2018 (B/18/00508 refers) outlining the serious financial issues facing Whitireia and WelTec and the options available to you for statutory intervention. On 23 August 2018, you advised the combined Council of the possible need to dissolve the combined Council and appoint a Commissioner. Submissions from the combined Council and interested parties were sought by 5 September 2018 on the proposal. The TEC undertook this initial consultation process on your behalf and we briefed you on 12 September 2018 on the feedback received (B/18/00627 refers).
4. On 18 September 2018, you wrote to the Chair of the combined Council of Whitireia Community Polytechnic and Wellington Institute of Technology informing them of your preliminary decision to dissolve the combined Council and appoint Dr Neil Barns as Commissioner. As per section 195D of the Education Act 1989, the combined Council had 21 days to consider and provide feedback on your preliminary decision.

The combined Council's response

The Council has responded noting they have nothing to add to their earlier submission...

5. On 20 September 2018, the Chair of the combined Council, Greg Campbell, wrote to you on behalf of the Council. He noted that the Council had met on 19 September 2018 and that they had nothing to add to their 5 September 2018 submission on your original proposal to dissolve the combined Council and appoint a Commissioner. We briefed you on the combined Council's response on 12 September 2018 and the combined Council's full submission was attached to that briefing (B/18/00627 refers).
6. As such, the combined Council noted that there is no need for further consultation and that it would be in the institutions' best interest to bring this matter to a speedy conclusion. The Chair also noted that the combined Council would have expected the opportunity to meet with the Minister of Education prior to a decision being made on this matter.
7. Although the combined Council is not supportive of your proposal to dissolve the combined Council and appoint a Commissioner, we understand that they view the appointment of Dr Neil Barns as appropriate.

...which brings to an end the consultation process you must follow before dissolving the combined Council and appointing a Commissioner...

8. The combined 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. The statutory requirement is that you provide the combined Council with 21 days to respond to your preliminary decision. The TEC has received legal advice that once the combined Council has responded, you do not need to wait for that period to expire and can act immediately. As noted in the letter from the Chair of the combined Council, they have also stated that it would be in the institutions' best interest to bring this matter to a speedy conclusion.
10. This is a similar situation to that which occurred when you dissolved the Council of the Unitec Institute of Technology and appointed Murray Strong as Commissioner. In that instance, the Council also responded promptly to your preliminary decision and a final decision was made before the 21-day period ended.

...you must now send a formal notice to the combined Council to give effect to your decision...

11. Given that the combined Council has not provided any further information in response to your preliminary decision, we recommend that you take immediate action to dissolve the combined Council and appoint Dr Neil Barns as Commissioner.
12. To give effect to your decision, you need to send a formal notice to the combined Council. We have attached a draft notice for your signature (Appendix 1) as well as draft letter to the Chair, Greg Campbell, advising the combined Council of your decision (Appendix 2). The formal notice must specify the date when the dissolution and appointment take effect as well as the name of the person appointed as Commissioner.
13. In addition to being sent to the combined Council, the notice must be published in the *Gazette* and presented to the House of Representatives as soon as is practicable after it is sent.

...while an advisory committee must be established in due course to support the Commissioner

14. Section 195F of the Education Act 1989 also requires the Minister of Education to appoint an advisory committee of up to five members for the purpose of advising and supporting 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.
15. You may wish to appoint some of the outgoing combined Council members as committee members to ensure that the Commissioner has access to the combined Council's knowledge and experience. Indeed, this was suggested in some of the submissions in response to your original proposal to dissolve the combined Council and appoint a Commissioner.
16. We can provide further advice to you on the membership of the advisory committee once Dr Barns is fully briefed on the situation at Whitireia and WelTec and is able to comment on the skills and expertise needed to support him in exercising his functions.

Next steps

17. If you agree, you will need to sign and send the attached formal notice and draft letter to the Chair of the combined Council of Whitireia and WelTec informing them of your decision to dissolve the Council and appoint Dr Neil Barns as Commissioner.
18. In anticipation of an oral item at Cabinet on 1 October 2018, we have attached talking points to assist you in updating your colleagues.
19. We will also work with your office on any public announcements regarding your final decision and the timing of such announcement.

Appendix 1: Formal Notice

Dissolution of combined Council and appointment of Commissioner: Wellington Institute of Technology and Whitireia Community Polytechnic

To Chairperson of the combined Council of Wellington Institute of Technology and Whitireia Community Polytechnic

Pursuant to section 195D(1) of the Education Act 1989, I give you notice that I am dissolving the combined Council of Wellington Institute of Technology and Whitireia Community Polytechnic and appointing a Commissioner to act in place of the combined Council.

The dissolution of the combined Council and appointment of the Commissioner take effect on [date October 2018].

The person I have appointed as Commissioner is Dr Neil Barns.

Dated at Wellington this [] day of October 2018.

Hon Tracey Martin, Acting Minister of Education.

Appendix 2: Draft letter to Chair of the combined Council

Greg Campbell
Chair
Combined Council of Wellington Institute of Technology and Whitireia Community Polytechnic

By email: greg.campbell@wandw.ac.nz

Dear Greg

Decision to dissolve the combined Council and appoint a Commissioner

Thank you for responding promptly on behalf of the combined Council to the Minister of Education's preliminary decision to dissolve the combined Council of Wellington Institute of Technology and Whitireia Community Polytechnic and appoint Dr Neil Barns as Commissioner. I agree that it is in the institutions' best interests to bring this matter to a speedy conclusion.

Your submission on behalf of the combined Council brings to a close the statutory process I must follow before exercising my authority under section 195D(1) of the Education Act 1989 to dissolve the combined Council and appoint a Commissioner.

Given your response, I confirm that I do not intend to wait until 10 October when the 21-day period would end and instead will act with immediate effect. Please see attached the formal notice of my decision. A copy of the notice will be published in the *Gazette* and presented to the House of Representatives in accordance with the statutory requirements. I intend to do this as soon as possible.

I want to thank you and members of the combined Council for your service. I appreciate the prompt response to my preliminary decision and I hope that you will support and facilitate the transition to new governance arrangements.

Yours sincerely

Hon Tracey Martin
Acting Minister of Education

Appendix 3: Talking points for Cabinet

I have no confidence in the combined Council of Whitireia and WelTec and intend to appoint a Commissioner

- As Cabinet is aware, Whitireia Community Polytechnic is in extreme financial distress. In August 2018, Cabinet agreed to provide a Crown capital injection of \$15 million to Whitireia. Whitireia were projected to run out of cash in late September without Crown support.
- Although WelTec is in a better position than Whitireia, I also have reasonable grounds to believe that WelTec is at risk of being unable to pay its debts as they become due in the normal course of business.
- Given Whitireia and WelTec's current financial situation, I believe the combined Council has failed to fulfil its statutory duty to ensure that Whitireia and WelTec operate in a financially responsible manner that maintains their long-term viability.
- I have no confidence in the ability of the combined Council to successfully lead the necessary work to restructure the operations of both organisations and develop a viable model of high quality vocational education and training that meets community needs.
- 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 combined Council and appoint a Commissioner.
- I intend to appoint Dr Neil Barns to the role. Dr Barns has a strong reputation in the tertiary sector and has held various management and governance roles, particularly in the ITP sector, and is already playing a major role in the Government's ITP Roadmap 2020 project.
- Dr Barns is a former chief executive of Nelson Marlborough Institute of Technology, Christchurch Polytechnic Institute of Technology and he was also interim chief executive of Toi Ohomai Institute of Technology. He is currently an independent advisor to Western Institute of Technology at Taranaki and a Council member of Otago Polytechnic.

The combined Council do not support my intervention but agree that it is in the institutions' best interests to bring this matter to a speedy conclusion

- The combined Council of Whitireia and WelTec is not supportive of my decision to dissolve the combined Council and appoint a Commissioner. However, they do note that it is in the institutions' best interests to bring this matter to a speedy conclusion.
- I understand that the combined Council believe Dr Barns is an appropriate appointment for Commissioner.
- I intend to dissolve the combined Council and appoint Dr Neil Barns as Commissioner with effect from **1 October 2018**. I will make a public announcement at that time.

I need to appoint an advisory committee to support the Commissioner

- Dr Barns 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. I intend to do so once I have received advice from Dr Barns on the skills and expertise needed.
- 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. This may include some former Council members to ensure the Commissioner has access to the Council's knowledge and experience.