



Ref: OI/17/00908

16 January 2018

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9(2)(a)  
Email: 9(2)(a)

Dear 9(2)(a)

Thank you for your email of 27 November 2017 to the Tertiary Education Commission, in which you request under the Official Information Act 1982 (Act) the following information:

*“ . . . information about why a decision was made to change things so Victoria University doesn't have to give 20 percent of the profit it makes back to the Crown when it sells the Karori Campus”*

A review of documents pertaining to the transfer of Crown assets to Victoria University of Wellington and the disposal of some assets, identified one document that is within the scope of your request. This document is:

- *Tertiary Education Report: Victoria University of Wellington – Disposal of assets transferred from the Crown and a decision on Victoria University of Wellington.*

I am releasing the information referenced above. In compliance with the Official Information Act, I am withholding some information in the released document. Redactions are clearly marked in the document, with reasons for the redactions provided.

Under section 28(3) of the Act you have the right to complain to the Ombudsman about my decision.

Yours sincerely

Tim Fowler  
Chief Executive  
Tertiary Education Commission





## Tertiary Education Report: Tertiary Education Institutions' Disposal of Assets Transferred from the Crown and a Decision on Victoria University of Wellington

<b>Date:</b>	3 August 2017	<b>TEC priority:</b>	High
<b>Security level:</b>	In Confidence	<b>Report no:</b>	B/17/00704
		<b>Minister's office No:</b>	

<b>ACTION SOUGHT</b>		
	<b>Action sought</b>	<b>Deadline</b>
<p><b>Hon Paul Goldsmith</b> Minister for Tertiary Education, Skills and Employment</p>	<p><b>agree</b> that requests from tertiary education institutions to retain more than 80 percent of the net proceeds of sale of assets transferred from the Crown within the previous five years are assessed against the framework outlined in this report</p> <p><b>indicate</b> the proportion (either 80 percent or 100 percent) of the proceeds of sale of specified assets transferred to Victoria University of Wellington in 2014 and 2015 that Ministers consider VUW should retain</p> <p><b>forward</b> this submission to the Minister of Finance for his consideration</p>	At your earliest convenience
<p><b>Hon Steven Joyce</b> Minister of Finance</p>	<p><b>agree</b> that requests from tertiary education institutions to retain more than 80 percent of the net proceeds of sale of assets transferred from the Crown within the previous five years are assessed against the framework outlined in this report</p> <p><b>indicate</b> the proportion (either 80 percent or 100 percent) of the proceeds of sale of specified assets transferred to Victoria University of Wellington in 2014 and 2015 that Ministers consider VUW should retain</p>	At your earliest convenience
<b>Enclosure:</b> No	<b>Round Robin:</b> No	

CONTACT FOR TELEPHONE DISCUSSION (IF REQUIRED)				
Name	Position	Telephone		1st contact
Tim Fowler	Chief Executive	04 462 5287	027 221 3266	✓
9(2)(a)	Project Manager, TEI Crown Asset Transfers and Disposals	9(2)(a)	9(2)(a)	

**THE FOLLOWING DEPARTMENTS/AGENCIES HAVE SEEN THIS REPORT**

MoE     TEC     Treasury

**Minister's Office to Complete:**

<input type="checkbox"/> Approved	<input type="checkbox"/> Declined
<input type="checkbox"/> Noted	<input type="checkbox"/> Needs change
<input type="checkbox"/> Seen	<input type="checkbox"/> Overtaken by Events
<input type="checkbox"/> See Minister's Notes	<input type="checkbox"/> Withdrawn

**Comments:**

Released under the Official Information Act 1982

## Executive Summary

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1. In establishing the tertiary education institution (TEI) Crown asset transfer and disposal policy, Cabinet agreed that, if a TEI sells a transferred asset within five years of its transfer, it must pay up to 20 percent of the net proceeds of sale to the Crown. While the policy envisages that a TEI could potentially retain up to 100 percent of the net proceeds in these circumstances, it does not provide guidance on how requests to retain more than 80 percent should be evaluated and determined. This report proposes a framework, consistent with the principles underpinning the policy, to consider requests from TEIs to retain more than 80 percent.
2. Victoria University of Wellington (VUW) has requested the retention of 100 percent of the net proceeds from the sale of assets that were transferred from the Crown to VUW's ownership in 2014 and 2015. This is the first request made by a TEI to retain more than 80 percent of the net proceeds from the disposal of assets transferred to it within the previous five years under the policy. Further requests of this nature are possible in the future. To maintain the integrity of the overarching policy, it will be important that all TEIs are seen to be treated in the same manner when Ministers consider requests to retain more than 80 percent of the net proceeds of sale of an asset transferred within the previous five years. The second part of this report applies the proposed framework to VUW's request.
3. The Tertiary Education Commission (TEC) and the Ministry of Education (MoE) consider there to be a strong rationale for VUW to retain more than 80 percent of the net proceeds from the disposal of transferred properties. The Treasury considers that, on balance, the case against VUW's request outweighs the case in favour.

## Recommendations

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**Hon Paul Goldsmith**, Minister for Tertiary Education, Skills and Employment

*It is recommended that you and the Minister of Finance jointly:*

1. **note** that the tertiary education institution (TEI) Crown asset transfer and disposal policy (the policy) established by Cabinet in 2010 provides for:
  - a. the legal ownership of Crown assets managed by a TEI to be transferred to that TEI;
  - b. Crown assets managed, but no longer needed by a TEI, to be disposed of, with up to 100 percent of the net proceeds of disposal being available to the TEI for investment;
2. **note** that Cabinet agreed that, if a TEI disposes of an asset transferred to it within five years of its transfer, it must pay up to 20 percent of the net proceeds of sale to the Crown;
3. **note** that while the policy envisages that a TEI could retain up to 100 percent of the net proceeds of disposal of an asset transferred in the previous five years, it does not provide guidance on how requests to retain more than 80 percent should be evaluated and determined;
4. **note** that VUW has requested to retain 100 percent of the net proceeds of the proposed sale of assets transferred to it from the Crown in 2014, and 2015 and that further requests of this nature from other TEIs are possible in the future;

**Proposed framework for considering requests to retain more than 80 percent of net proceeds from disposal of assets within five years of their transfer from the Crown**

5. **agree** that such requests be treated consistently and in accordance with the principles underpinning the policy, which are that transfers or disposals of Crown assets used by TEIs should:
- a. support the Government's goals, as stated in the Tertiary Education Strategy;
  - b. support TEIs to improve their capital asset management and deliver on their investment plans;
  - c. be fair and transparent;
  - d. provide incentives for TEIs to make decisions that ensure value for money through effective and efficient management of their assets; and
  - e. be consistent with TEIs being autonomous and accountable institutions.

AGREE / DISAGREE

**Minister of Finance**

AGREE / DISAGREE

**Minister for Tertiary Education, Skills and Employment**

6. **agree** that such requests are assessed against the following considerations:
- a. the time since the asset transferred;
  - b. the time taken to transfer the asset the TEI is disposing of since:
    - the TEI applied for the transfer of Crown assets;
    - the time the TEI signed the Memorandum of Understanding for the transfer process;
  - c. whether the TEI is overcapitalised;
  - d. whether the TEI has demonstrated that the retained earnings will be used in capital projects that are of value to the educational activities of the institution;
  - e. whether the TEI continues to meet the government's capital asset management expectations
  - f. whether the TEI remains viable; and
  - g. the financial implications for the TEI and the Crown:
    - the amount the 20 percent represents;
    - the level of investment the TEI has contributed to the value of the asset;
    - the TEI's current financial situation; and
    - other potential priorities for the Crown.

AGREE / DISAGREE

**Minister of Finance**

AGREE / DISAGREE

**Minister for Tertiary Education, Skills and Employment**

**Application of proposed framework to Victoria University of Wellington's (VUW's) request to retain 100 percent of net proceeds from the disposal of assets transferred within the last five years**

7. **agree** that the framework outlined above be applied to VUW's request to retain 100 percent of the net proceeds from the disposal of assets transferred in 2014 and 2015;

AGREE / DISAGREE

AGREE / DISAGREE

**Minister of Finance**

**Minister for Tertiary Education, Skills and Employment**

8. **note** that the Tertiary Education Commission (TEC), the Ministry of Education (MoE) and the Treasury have assessed VUW's request within the framework outlined above;

9. **note** that officials consider the reasons to support VUW's request include:

- a. disposing of assets it no longer needs is consistent with the effective and efficient management of its assets;
- b. over six years have elapsed since VUW applied for the transfer of the Crown-owned assets that it had managed since 1990 and more than five years have elapsed since VUW signed the MoU for the process to transfer the assets, the times at which its ongoing need for the assets would have been considered by VUW;
- c. VUW is not overcapitalised;
- d. the retained proceeds will be invested in purposes that provide value to the educational activities of the institution;
- e. VUW continues to meet the Government's CAM expectations;
- f. VUW remains viable in terms of its educational and financial performance; and
- g. VUW, and its predecessor institution at Karori, have invested in maintaining the value of the assets.

10. **note** that officials consider the reasons against supporting VUW's request include:

- a. less than two years elapsed between the transfer process being completed and VUW declaring the assets it now intends to dispose of surplus to its educational requirements. This is inconsistent with the intent of the policy to provide incentives to TEIs to improve their CAM by considering their long-term need;
- b. the proposed use of the proceeds includes restoration work following the Kaikoura earthquake, which VUW recently requested additional funding to remedy, and which the government declined; and
- c. the estimated quantum of the 20 percent of net proceeds of sale is approximately [REDACTED] 9(2)(b)(ii) which Ministers could apply to other government priorities in the tertiary system or across the whole of government.

11. **note** that:

- a. the TEC considers that in the context of the overall objectives and principles of the policy there is a strong case for VUW to retain 100 percent of the net proceeds from the sale of these assets and the proceeds specifically invested in capital assets that benefit educational outcomes;
- b. the Treasury considers that, on balance, the case against VUW's request outweighs the case in favour due to two key considerations: the request undermines the policy intent of the TEI asset transfer and disposal policy, and the best use of Crown funding should be considered, including VUW's proposed use of funding;

12. **EITHER** [TEC preference]

- a. **agree** that VUW retains 100 percent for reinvestment in capital assets that benefit educational outcomes;

AGREE / DISAGREE

AGREE / DISAGREE

**Minister of Finance**

**Minister for Tertiary Education,  
Skills and Employment**

**OR** [Treasury preference]

- b. **agree** that VUW retains 80 percent;

AGREE / DISAGREE

AGREE / DISAGREE

**Minister of Finance**

**Minister for Tertiary Education,  
Skills and Employment**

13. **note** that, once notified of your and the Minister of Finance's decisions on the above, a letter to formally communicate your decision to the VUW's Vice-Chancellor will be provided to your office for you to sign; and

14. **forward** this submission to the Minister of Finance for his consideration.

AGREE / DISAGREE

**Minister for Tertiary Education, Skills and Employment**

**Tim Fowler**

Chief Executive  
Tertiary Education Commission

3 August 2017

**Hon Paul Goldsmith**

Minister for Tertiary Education, Skills and  
Employment

\_\_\_ / \_\_\_ / \_\_\_

**Hon Steven Joyce**

Minister of Finance

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## Purpose

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1. The purpose of this report is to provide you with:
  - a framework for assessing requests from TEIs to retain more than 80 percent of the net proceeds from the sale of assets transferred to them within the previous five years;
  - advice on the application of that framework to Victoria University of Wellington's (VUW's) request to retain 100 percent of the net proceeds from the disposal of transferred assets; and
  - options for a decision on VUW's request.
2. Once notified of your and the Minister of Finance's decisions on VUW's request, a letter to formally communicate your joint decision to the VUW's Vice-Chancellor will be provided to your office for you to sign.

## Background

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3. In October 2009, Cabinet agreed to establish a policy that would allow tertiary education institutions (TEIs) to obtain the legal title to Crown-owned assets under their management [CAB Min (09) 38/12 refers]. The policy, known as the TEI Crown asset transfer and disposal policy was confirmed by Cabinet in 2010, following refinement of the initial proposals [SOC Min (10) 5/6].
4. The intent of the policy is to, over time, transfer Crown-owned assets managed, used and needed by TEIs into TEI ownership (provided there are no over-riding reasons to retain the assets in Crown title). It also aims to provide incentives for TEIs to identify Crown-owned assets that are no longer needed and reinvest the proceeds from their disposal into capital projects that reflect the TEIs' current and emerging needs.
5. The following principles underpin the policy. Transfers or disposals of Crown-owned assets used by TEIs should:
  - support the Government's goals, as stated in the Tertiary Education Strategy;
  - support TEIs to improve their capital asset management (CAM) and deliver on their investment plans;
  - be fair and transparent;
  - provide incentives for TEIs to make decisions that ensure value for money through effective and efficient management of their assets; and
  - be consistent with TEIs being autonomous and accountable institutions.
6. Where a Crown-owned asset is no longer fit for purpose, or is surplus to a TEI's requirements, the policy provides for its disposal (instead of being transferred). In these circumstances, the policy provides for:
  - 80 percent of the net proceeds being available to the TEI for capital projects to support its educational activities;
  - the remaining 20 percent being available to the TEI if the Crown agrees the TEI is not overcapitalised and has demonstrated the additional funding will be used in capital projects that are of adequate value to the educational activities of the institution.
7. In finalising the policy in 2010, Cabinet agreed that "a "condition on sale" would be attached to all transfers, stating that if a property is transferred to a TEI and the TEI sells that property within five years of the date of transfer, then the TEI must pay up to 20 percent of the net proceeds of the

sale to the Crown [SOC Min (10) 5/6 refers]. The purpose of this condition was to discourage TEIs seeking the transfer of assets and then immediately disposing of them and circumventing the requirements above.

8. TEIs are able to retain 100 percent of the proceeds where sale of a transferred asset occurs more than five years after its transfer from the Crown.

## Experience to date

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9. Since mid-2010, 21 TEIs have submitted applications for the transfer of approximately [REDACTED] 9(2)(b)(ii) of Crown-owned land and building assets that they have managed since 1990 into their own titles. Six of those TEIs have also at the time of application identified Crown-owned assets surplus to their requirements with a total net book value of 9(2)(b)(ii) and have sought their disposal and the retention of 100 percent of the net proceeds of sale. The proportion of total assets that this figure represents is less than 1 percent (0.22 percent).
10. Overall, assets valued at approximately [REDACTED] 9(2)(b)(ii) have transferred from the Crown to nine TEIs since late 2014. A further [REDACTED] 9(2)(b)(ii) of assets is currently in the s50 Public Works Act 1981 (PWA) transfer process to 10 TEIs. Assessments have yet to be completed on approximately 9(2)(b)(ii) of assets requested for transfer by four TEIs. The assets sought for transfer are TEIs' main campus sites and also related ancillary properties being used for the provision of student services, such as accommodation. The main campus sites account for the great majority of the value of the Crown-owned assets managed by TEIs.
11. Where TEIs have nominated Crown-owned assets as surplus to their requirements, they were not using them for the delivery of educational services, or were planning to cease using them for that purpose in the immediate future. The assets identified as surplus have been peripheral sites away from main campuses, primarily house lots that were at the time of application leased on commercial terms to third parties, or vacant land.
12. On all applications to dispose of an asset (rather than have it transferred) considered to date, Ministers have agreed to TEIs retaining 100 percent of the net proceeds of sale for reinvestment in capital projects. Business cases or campus development plans approved by TEI Councils have been submitted as evidence of the need for retention of the additional 20 percent of the net proceeds. Overcapitalisation has been assessed against the tests applied by market analysts taking account of the particular nature of TEIs. In only one case has the additional 20 percent been greater than \$1 million based on net book value at the time of application.

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<sup>1</sup> 9(2)(b)(ii)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

## Policy Settings and Issues

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### **The policy recognises that transferred assets may become surplus and be disposed of within five years of transfer.....**

13. In addition to preventing gaming, the intention of including a condition on sale of a transferred asset, was to allow the policy to accommodate genuine changes in TEIs' capital needs in a way that did not disadvantage the Crown or the TEI. The policy recognised that an asset may become surplus sooner than was expected or as a result of an unforeseen change in the TEI's operating environment. This is reflected in the policy providing for *up to* 20 percent of the net proceeds being paid to the Crown if an asset was disposed of within five years of being transferred.
14. The length (five years from the date of transfer) was noted as being somewhat arbitrary, but was considered to be long enough to prevent gaming and short enough to accommodate genuine changes in the capital needs of TEIs.

### **...but provides no guidance on how requests should be considered**

15. The policy includes criteria to be met for the disposal of Crown-owned assets and reinvestment of net proceeds *when the TEI applies for the asset(s) to be disposed of rather than transferred*. However, the policy provides no guidance on how requests to retain more than 80 percent of the net proceeds from the sale of transferred assets are to be assessed if the TEI decides to dispose of them within five years of completion of the transfer.

### **Transfers are taking several years to complete**

16. The original Cabinet papers did not indicate what a protracted process this could become. When Ministers set the five-year timeframe from the "date of transfer"<sup>4</sup>, they may have thought this was more immediate than it has been in reality.
17. Of the 21 TEI applications for the transfer of Crown owned assets, 17 have been approved by joint Ministers, but only eight have been fully completed and titles issued in the name of the respective TEI. Nine transfers are at various stages of the s50 PWA transfer process. In addition, there are three applications yet to be considered by joint Ministers which have been with the TEC for over two years. Appendix A sets out the key dates for those TEIs that have applied for the transfer of Crown-owned assets that they manage.
18. The change of legal ownership largely does not affect how a TEI manages an asset that it has used and is continuing to use for educational purposes, so the detailed input required of TEIs throughout the process is often not given a high priority. In addition, the numbers of agencies involved in the process, the policy's interaction with a number of other government policy requirements, land status issues and the fact that the purchasers are already occupying and using the assets all contribute to the length of time it is taking to complete transfers.

### **VUW's request is the first of its kind...**

19. In March 2017, VUW's Vice-Chancellor wrote to you requesting to retain 100% of the proceeds of the proposed sale of assets transferred from the Crown within the previous five years and which are now surplus to its requirements.
20. VUW was the first TEI that applied for the transfer of the Crown-owned assets that it managed and, as far as the TEC is aware, it is the first TEI to decide that a transferred asset is surplus to

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<sup>4</sup> The date of transfer is the date the vesting of the land in the TEI is notified in the New Zealand Gazette.

its requirements. Its request to retain all of the net proceeds of sale of a transferred asset is also the first received.

### ... and further requests are possible

21. The TEC is aware that other TEIs where assets have recently been transferred, or are still in the transfer process, are also considering the future of some of those assets. <sup>9(2)(b)(ii) and out of scope</sup>

[REDACTED]

[REDACTED]

23. Given that none of the assets that have been approved for transfer have yet been in TEIs' ownership for five years, it is very possible that further TEIs will find that due to changes in their operating environments assets transferred from the Crown become surplus to their requirements within five years of their transfer, and request that they retain 100% of the proceeds of their disposal.

### Proposed framework to assess and decide on requests to retain more than 80 percent of net proceeds of sale of an asset disposed of within five years of transfer

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24. To maintain the integrity of the overarching policy, it will be important that all TEIs are seen to be treated in the same manner if, and when, they make requests to retain more than 80 percent of the net proceeds of sale of an asset transferred within the previous five years. Any considerations to assess and decide on requests of this nature should also be consistent with the principles underpinning the policy (see paragraph 5).

25. This section proposes a framework of considerations to apply to requests from TEIs to retain more than 80 percent of the net proceeds of sale of an asset disposed of within five years of transfer from the Crown. In summary, it proposes the following are considered:

- the time since the asset transferred;
- the time taken to transfer the asset the TEI is disposing of since:
  - the TEI applied for the transfer of Crown assets;
  - the time the TEI signed the Memorandum of Understanding (MoU) for the transfer process;
- whether the TEI is overcapitalised;
- whether the TEI has demonstrated that the retained earnings will be used in capital projects that are of value to the educational activities of the institution;
- whether the TEI continues to meet the government's CAM expectations
- whether the TEI remains viable; and
- the financial implications for the TEI and the Crown:
  - the amount the 20 percent represents;

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<sup>5</sup> <sup>9(2)(b)(ii) and out of scope</sup>

- the level of investment the TEI has contributed to the value of the asset;
- the TEI's current financial situation; and
- other potential priorities for the Crown.

### **The time since the asset transferred**

26. TEIs are aware, when they enter into the process for rationalising ownership of the Crown-owned assets they manage, that they need to consider the future of all the assets they manage from a strategic perspective, and seek to transfer or dispose of Crown assets in the context of their long term strategic capital asset plan or campus master plan. They should be clear that the Crown assets they seek for transfer are needed for educational purposes on an ongoing basis.
27. Where a TEI identifies a Crown-owned asset as surplus (or shortly to be surplus) to its requirements as part of this process, it has the opportunity to seek to retain all the net proceeds of its subsequent disposal. Those TEIs that identify an asset as surplus to their requirements shortly after its transfer could be said to have not considered their ongoing need for the asset appropriately in the first place.
28. The Crown's expectations with regard to the net proceeds of sale of assets transferred from the Crown are clear when a TEI applies for the transfer or disposal of Crown-owned assets. They are recognised and acknowledged by TEIs when they sign MoUs and sale and purchase agreements, albeit, the wording does envisage that the Crown may agree to an amount less than 20 percent being paid to it from the net proceeds of sale if an asset is sold within five years of transfer. If a TEI's situation has changed between its application and the signing of the sale and purchase agreement and an asset is no longer needed for ongoing educational purposes, it can withdraw it from the transfer process and seek its disposal with the retention of potentially 100 percent of the net sale proceeds.
29. Considering the time since the asset transferred is therefore consistent with providing incentives for TEIs to make decisions that ensure value for money through effective and efficient management of their assets both at the time they make applications for the transfer of Crown-owned assets and throughout the transfer process.

### **The time taken to transfer the assets the TEI is disposing of**

30. It would be possible to take into account the length of the transfer process by including some of this time in the five year period which Cabinet intended reflect a balance between genuine changes in TEIs capital needs and an adverse impact on the Crown if TEIs gamed the system. Taking account of the length of the transfer process would also be consistent with providing incentives for TEIs to make decisions that ensure value for money through effective and efficient management of their assets. It may encourage TEIs that are continuing to use functional but now sub-optimal or underutilised assets to consider their future at the most opportune time for the institution, rather than delaying those decisions until five years had passed since the assets transferred and they were sure of retaining all the sale proceeds.
31. There are two dates within the control of the TEI that could be considered. (While the signing of the sale and purchase agreement is within the control of the TEI, it is sufficiently close to the actual transfer as to not be material.)

### *The date the TEI applied for the transfer of Crown-owned assets*

32. This is the date at which the TEI confirms that it requires the assets sought for transfer for educational purposes now and in the future and provides evidence that the transfers align with its long term strategic goals, its strategic CAM plan and its investment plan. This is also the time that the TEI considers its need for the Crown-owned assets that it manages from a strategic perspective and would nominate those assets it would not need in the future for disposal.

33. The length of time that will elapse between a TEI making an application and all the transfers for that institution being effected will be a period of years. Of the eight transfers that have been completed, the average time between application and receiving the title was three years and nine months. The longest time to date is five years and three months and the shortest is two years.

*The date the TEI signs the Memorandum of Understanding to apply to the transfer of the assets*

34. The MoU sets out the understanding between the Crown and the TEI on the principles to be applied to the transfer of the assets and describes the process for implementing the transfer. It includes the "condition on sale". It is signed by the TEI and the Secretary for Education on behalf of the Crown. It is a formal agreement by both parties to undertake the process on the terms set out in the agreement. In signing the MoU, the TEI effectively agrees to the provisions in it and confirms the declarations and information provided in its application.

35. Once the MoU has been signed the time taken to implement the undertaking is only partly within the control of the TEI, as it is also dependent on the timely participation of a number of other agencies. Of the eight transfers that have been completed, the amount of time between the MoU being signed and the completion of the transfers ranges from nine months to over three and a half years. For a number of large transfers still in the s50 PWA process, this time gap will be longer. **Out of scope**

**Whether the TEI is overcapitalised and the proposed use of the retained funding**

36. As outlined in paragraph 6 above, when a TEI applies to dispose of a Crown-owned asset it has been managing instead of having it transferred to the TEI's legal ownership, all of the net proceeds of its sale may be made available to a TEI if the Crown agrees:

- the TEI is not overcapitalised; and
- the TEI has demonstrated that the additional 20 percent of funding will be used in capital projects that are of adequate value to the educational activities of the institution.

37. These criteria could be applied to requests to retain more than 80 percent of the net proceeds of sale of an asset transferred in the previous five years. This would be consistent with the treatment of TEIs that identified a Crown-owned asset as surplus and sought its disposal. It would also enable oversight of the rationale for the disposal and the intended use of the proceeds. It therefore aligns with the policy principles of supporting the Government's goals as stated in the Tertiary Education Strategy and supporting TEIs to improve their CAM and deliver on their investment plans.

**Whether the TEI continues to meet CAM expectations and remains viable**

38. Where TEIs seek to have Crown-owned assets transferred into their ownership, in addition to demonstrating that they have an ongoing educational need for the assets, they must integrate the government's CAM expectations into their strategic, financial planning and reporting systems. The TEI's educational and financial risk status is also assessed against the TEC's financial monitoring framework and educational performance indicators to identify whether the institution is likely to be subject to intervention or closure which could present a risk to the ongoing ownership of the assets.

39. It would be appropriate to consider whether a TEI is continuing to meet the Government's CAM expectations where they seek more than 80 percent of the net proceeds of sale of a transferred asset. This is consistent with the principle of supporting TEIs to improve their CAM and deliver on their investment plans. Considering ongoing viability would also protect the Crown against

the risk that the value of the asset being disposed of would not be used to support the Government's goals set out in the Tertiary Education Strategy.

### **The Financial Implications for the TEI and the Crown**

40. In addition to the policy principles it is relevant to consider the financial implications for both the TEI and the Crown when a TEI seeks more than 80 percent of the net proceeds of sale of a transferred asset. Specifically, it would be appropriate to consider:

- the amount the 20 percent represents;
- the level of investment the TEI has contributed to the value of the asset;
- the TEI's current financial situation; and
- other potential priorities for the Crown.

### **Application of proposed framework to VUW's request**

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41. In requesting the retention of 100 percent of the proceeds of the disposal of assets transferred from the Crown within the last five years, VUW stated that it was severely resource constrained and could ill afford a 20 percent deduction from its property rationalisation proceeds if it was to meet its strategic goals and health and safety obligations for capital investment. It stated that the proceeds would be reinvested in high priority capital projects using a prudent combination of external borrowing and recycled capital funding.

42. This section applies the framework proposed above to VUW's request.

### **The time since the assets transferred to VUW**

43. VUW assured the TEC at the time of its application (September 2010) that "these assets (Crown-owned) are currently utilised to capacity and are all required for current and future delivery of Victoria's educational programme and research". It declared the transferred Karori and Aro Valley properties surplus less than two years (and in one case, less than one year) after the dates of their transfers.

44. VUW had the opportunity to identify the assets as shortly to be surplus rather than seek their transfer at the time it applied for the transfer or disposal of the Crown-owned assets that it managed. VUW also had the opportunity to seek 100 percent of the net proceeds of sale at that time. VUW did not avail itself of this opportunity. Further, VUW could have withdrawn these properties from the transfer process at any time prior to signing the relevant sale and purchase agreements if the ongoing need for them had altered since it sought their transfer in 2010.

### **The time taken to transfer the assets VUW is disposing of**

45. VUW submitted its application for the transfer of all the Crown-owned assets that it managed on 14 September 2010. The properties which VUW has now declared as surplus to its requirements transferred in three tranches between 18 December 2014 and 10 December 2015, that is between four years and three months and five years and three months after VUW had confirmed that it required them for on-going educational use. VUW declared them surplus in late 2016, after reviewing its long term and capital asset management plans, its debt capacity and operating efficiency – that is, six years after it had assessed its ongoing need for the assets in the context of its Crown asset transfer application.

46. The time from VUW signing its MoU (30 April 2012) and the transfers of the properties it has now declared surplus ranges between two and a half and three and a half years. A further period of around a year elapsed before VUW concluded that they were surplus to its requirements. As the

properties are yet to be sold, the total time between the signing of the MoU and the sale of the properties will be over five years.

47. VUW has stated (its letters of 30 August 2016 and 28 November 2016 to the Secretary of Education) that since the transfer of ownership from the Crown, it reviewed options for the ongoing use of the properties and considered in the context of its strategic direction, redevelopment and reuse opportunities, that the properties were no longer required for educational purposes. A decision by VUW to dispose of assets it no longer needs is consistent with the effective and efficient management of its assets.

### **Whether VUW is overcapitalised and the proposed use of the retained funding**

48. Applying the tests for overcapitalisation that the TEC has used in assessing the TEIs that have sought to retain 100% of the net proceeds of sale of a Crown-owned asset, VUW would not be considered to be overcapitalised.
49. VUW has stated that it can demonstrate that the additional 20 percent that it seeks to retain will generate a positive return for the Crown in terms of both financial and TES outcomes. (Professor Guilford's letter of 26 March 2017). Following consideration of its long term plan, VUW has identified a programme of priority capital projects, including a new engineering building, seismic strengthening on buildings for the relocated education faculty, health and safety space enhancements and restoration work following the Kaikoura earthquake. VUW states that projects are carefully screened, assessed and prioritised and that all funding sources have been explored.
50. In a later letter to the Minister of Education (26 July 2017) Professor Guilford states that VUW intends to apply the first tranche of divestment proceeds from Karori to support disadvantaged students from low decile schools in the Wellington region. He states that the second call will be to meet costs resulting from the Kaikoura earthquakes and the remaining proceeds from the divestment of Karori will be used to provide permanent facilities for the faculty of Education on the Kelburn campus.
51. The TEC reviewed VUW's capital programme in the context of considering its request for a borrowing consent and is satisfied that decisions on capital investment result from an appropriate assessment process and that the institution's Council considers that they will provide adequate value to the educational activities of the organisation.

### **Whether VUW continues to meet CAM expectations and remains viable**

52. VUW continues to report solid educational performance results and has a low risk rating in the TEC's financial monitoring framework. Its most recent independent review of its CAM capabilities (May 2015) indicates that VUW is continuing to make good progress towards meeting the targets it has set for itself against the CAM standard. The independent reviewer also confirmed that the targets VUW was working towards were appropriate for an entity of its size and nature. A further independent review is scheduled to be completed this year.

### **The financial implications for VUW and the Crown**

#### *The Amount Represented by the 20 percent*

53. 20 percent of the net proceeds of sale of the Karori and Aro Valley sites is estimated to be [REDACTED] based on the rateable value of the assets. This is a significant amount for VUW and not insignificant for the Crown.

### *The Investment VUW has Contributed to the Value of the Assets*

54. On the basis of VUW's Crown asset transfer application no new buildings have been constructed on the Karori or Aro Valley sites since 1991. This is the time from which VUW, and its predecessor institution at Karori, would have funded capital development. VUW states (Professor Guilford's letter of 19 June 2017) that it has spent 9(2)(b)(ii) in construction, upgrading and maintenance work at Karori since it became the beneficial owner in 2004. Its predecessor institution can be expected to have spent a similar amount in the period between 1991 and 2004.

55. VUW will have carried out some maintenance on the sites that it is disposing of in the Aro Valley while it was using the buildings. However, they have been unused since 2013 due to seismic issues and VUW has stated that the buildings have significant deferred maintenance. VUW has further stated that it would cost at least 9(2)(b)(ii) to remediate the buildings and this is uneconomic for VUW.

### *VUW's Current Financial Situation*

56. In 2016 VUW reported a net surplus of \$14 million which is 3.4 percent of total revenue and above the TEC's guideline level. VUW has an existing borrowing consent with a borrowing limit of \$150 million from the Secretary for Education. As at 31 December 2016, VUW had \$105 million of bank borrowings under this consent and continues to fulfil all consent conditions and all bank borrowing covenants.

### *Other Potential Priorities for the Crown*

57. Given the estimated amount of 20 percent of the net proceeds of sale of VUW's Karori and Aro Valley sites - 9(2)(b)(ii) and VUW's currently healthy financial situation, there is a case to consider other potential priorities for the Crown's use of its retained interest in the assets which are being disposed of.

## **Conclusions and advice on VUW's request to retain 100 percent of the net proceeds of sale of assets transferred from the Crown in the last five years**

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58. Overall there are reasons both for and against VUW retaining 100 percent of the net proceeds from the disposal of its Karori and Aro Valley sites.

59. Within the proposed framework, officials consider that the reasons to support VUW's request include:

- disposing of assets it no longer needs is consistent with the effective and efficient management of its assets;
- over six years have elapsed since VUW applied for the transfer of the Crown-owned assets that it had managed since 1990 and more than five years have elapsed since VUW signed the MoU for the process to transfer the assets, the times at which its ongoing need for the assets would have been considered by VUW;
- VUW is not overcapitalised;
- the retained proceeds will be invested in purposes that provide value to the educational activities of the institution;
- VUW continues to meet the Government's CAM expectations;
- VUW remains viable in terms of its educational and financial performance; and

- VUW, and its predecessor institution at Karori, have invested in maintaining the value of the assets.

60. Officials consider the reasons against supporting VUW's request include:

- less than two years elapsed between the transfer process being completed and VUW declaring the assets it now intends to dispose of surplus to its educational requirements. This is inconsistent with the intent of the policy to provide incentives to TEIs to improve their CAM by considering their long-term need;
- the proposed use of the proceeds includes restoration work following the Kaikoura earthquake, which VUW recently requested additional funding to remedy, and which the government declined; and
- the estimated quantum of the 20 percent net proceeds of sale is approximately 9(2)(b)(ii), which Ministers could apply to other government priorities in the tertiary education system or across the whole of government.

## Agency Views

### *TEC View*

61. The TEC considers that in the context of the overall intent and principles of the government's TEI Crown asset transfer and disposal policy there is a strong case for VUW to retain 100% of the net proceeds from the sale of assets that are no longer needed for its educational purposes and reinvest the funds into capital projects that reflect its current and emerging needs and benefit educational outcomes. The length of time between VUW considering its ongoing need for the assets when it applied for their transfer in 2010 and signed a MoU in 2012, and declaring them surplus in 2016 is such that changes in its needs can be expected. Declaring the assets surplus once it became apparent that they were no longer needed demonstrates effective and efficient capital asset management.

### *Treasury View*

62. Treasury considers that, on balance, the case against VUW's request outweighs the case in favour. In particular we think there are two key considerations: the policy intent of the TEI asset transfer and disposal policy, and consideration of the best use of Crown funding, including VUW's proposed use of funding.

### *Policy intent*

63. Although the process to transfer the assets to VUW's title was lengthy, as outlined in this report, VUW confirmed the ongoing need for the assets as recently as 2015. Given the recent change in VUW's stated needs for the assets it is not clear the extent to which they have taken a forward looking strategic approach to their capital asset management. VUW had the opportunity to identify the assets as surplus to requirements throughout the transfer process, which they did not do. We consider that allowing VUW to retain up to 100 percent of the net proceeds of sale undermines the policy intent to improve TEI's capital asset management, in particular the policy intent that TEIs are incentivised to accurately consider their ongoing need for their capital assets.

### *Best use of Crown Funding*

64. The approximate value of the 20 percent has been estimated at around 9(2)(b)(ii). We consider that as a default Ministers should at least first have the opportunity to consider whether the funding can be reprioritised to higher value initiatives within the tertiary education sector, or beyond. Part of the proposed use of the 20 percent includes restoration work following the Kaikoura earthquake (VUW press release, 1 August 2017). VUW's requests for government funding to cover these costs has previously been declined because TEIs are expected to pay for

such costs with insurance (Letter to Prof Grant Guilford from Hon Goldsmith, 9 June 2017). Further we note that in recent correspondence with Ministers, VUW's potential use of the 20 percent has proliferated into a range of areas (including supporting disadvantaged students in the Wellington region). We also note in context that the Crown has reached a settlement for the Karori ECE centres of 9(2)(b)(ii), despite the title for these properties being transferred to VUW without a particularly sound rationale (as VUW was not utilising them or managing any rental) and for essentially no cost.

65. We therefore recommend that Ministers consider alternative uses (higher value priorities) for any proceeds of the sale (the 20 percent) that materialise. Ministers may wish to request further advice from officials on such alternative uses including cost pressures within Vote Tertiary Education and any priority initiatives for future Budgets that the proceeds could be reprioritised to.

#### *MoE View*

66. The MoE considers that, in the context of the overall objectives and principles of the policy, and due to the time that has passed since VUW applied for the properties to be transferred, there are grounds for VUW to retain more than 80 percent of the net proceeds but less than 100 percent. The Ministry agrees with the Treasury concern about restoration work post-earthquakes. There is a risk that providing government funding for such activity (even via the asset transfer process) reduces the incentives on TEIs to have in place suitable insurance arrangements.

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**Appendix A: Key Dates – TEI Crown Asset Transfers**

TEI	Application	Ministerial Approval	MoU Signed	Transfer Complete	Comment
VUW	14.09.10	22.08.11	30.04.12	14.12.15	
Out of scope	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		
[REDACTED]	[REDACTED]				
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED] [REDACTED] [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		
[REDACTED]	[REDACTED]				
[REDACTED]	[REDACTED]				
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		
[REDACTED]	[REDACTED]	[REDACTED]			
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		[REDACTED] [REDACTED]
[REDACTED]	[REDACTED]				