

## Tertiary Education Report: Unitec Commissioner Consultation

<b>Date:</b>	12 July 2019	<b>TEC priority:</b>	High
<b>Security level:</b>	In Confidence	<b>Report no:</b>	B/18/00479
		<b>Minister's office No:</b>	

ACTION SOUGHT		
	Action sought	Deadline
<b>Hon Chris Hipkins</b> Minister of Education	<p><b>Note</b> feedback received regarding your proposal to dissolve the council of Unitec Institute of Technology and appoint a commissioner,</p> <p><b>Agree</b> to continue the process to dissolve the council and appoint a commissioner, and</p> <p><b>Sign</b> the attached notice to Unitec's current council notifying them of your decision.</p>	As soon as practical
<b>Enclosure:</b> Yes	<b>Round Robin:</b> Yes	

CONTACT FOR TELEPHONE DISCUSSION (IF REQUIRED)				
Name	Position	Telephone		1st contact
Tim Fowler	Chief Executive	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:**

<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 Withdrawn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:**

## Recommendations

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**Hon Chris Hipkins**, Minister of Education

*It is recommended that you:*

1. **Note** feedback received regarding your proposal to dissolve the council of Unitec Institute of Technology (Unitec) and appoint a commissioner,
2. **Agree** to notify the council of your preliminary decision to dissolve the council of Unitec and appoint Mr Murray Strong as commissioner under section 195D(1) of the Education Act, and
3. **Sign** the attached notice to Unitec's current council notifying them of your decision.

**AGREED / NOT AGREED**

4. **Agree** that the TEC release this briefing decisions on dissolving the council and providing financial support have been made, with personal details about submitters withheld to protect their privacy.



**Tim Fowler**

Chief Executive  
Tertiary Education Commission

12 July 2018

**Hon Chris Hipkins**

Minister of Education

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## Summary of feedback

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1. The TEC received 23 submissions on your proposal to dissolve the council of Unitec Institute of Technology and appoint a commissioner.
2. The submitters were nearly unanimously in favour of appointing a commissioner. We also received significant comment on matters which fall outside of the scope of this consultation, including comments on the management of Unitec, reasons for the issues identified, and suggestions for how the Commissioner could go about returning Unitec to viability. If you decide to appoint a commissioner, we will provide them with these comments to consider. Otherwise, we would work with the council to address the concerns raised.
3. The majority of the feedback came from Unitec staff (16). We also received comment from the council, two unions, the Unitec Runanga, the executive leadership team, and a group of Māori staff. A breakdown of who provided feedback is attached as Tab One.

### Feedback from the council

4. The council provided a joint submission advising that they support this proposal, and that they would be interested in enabling the appointment of a commissioner – should that remain your wish – as quickly as possible (ie they would respond well within the 21 day timeframe that you are required to give them to consider the formal notice of your preliminary decision, which is the next step in this process.)
5. When contacted about the proposal, council members expressed that they were not surprised, and welcomed government intervention. One Council member (Elena Trout) also provided individual written feedback supporting the proposal.
6. As you are aware, the Chair (Dr Lee Mathias) resigned before the council's submission was made, and did not contribute to or make a submission on your proposal, so as not to impede the decision making of other Council members. Alastair Carruthers and Vaughan Davis also resigned prior to the Council's submission. These resignations were based on the members' beliefs that the Council could not make capital expenditure decisions it was being asked to make without greater surety of future funding. Alastair indicated he remained supportive of your proposal. Vaughan indicated he remains willing to support Unitec, and acknowledged that remaining on Council does not achieve that.

### Feedback from the unions

7. The Tertiary Education Union supports this proposal, and have requested that you consider creating an advisory reference group which includes student, staff, and union representation.
8. Tertiary Institutes Allied Staff Association Te Hononga (TIASA) Inc also support this proposal. They requested that the term of the commissioner be only as long as necessary to ensure the viability of Unitec, and develop competent management and governance structures.

### Feedback from the Unitec Rūnanga and Māori staff

9. The Rūnanga supports this proposal, and has requested that one of its member(s) be appointed to the Advisory Committee to the Commissioner. We are providing you with advice about the potential make up of any Advisory Committee to the Commissioner separately.
10. A separate group of Māori staff met and provided joint comment requesting that "consideration be given to the Commissioner being a Māori who has competencies in the Māori world, business acumen and an understanding of what is required in the tertiary sector given the current review of the ITP sector therein. If not, then whomever it is should also have those same competencies and not just be focused on business."

## **Feedback from the Executive Leadership Team**

11. The Executive Leadership Team supports the proposal.

## **Feedback from other staff**

12. The majority of staff members support this proposal.

13. One individual did not support it, and believes that the proposal is a 'knee jerk reaction to short term issues.'

14. Specifically he points to the "long term counter cyclical trend against the state of the economy...when the economy is doing well, student numbers decline." And believes that Unitec will be able to correct the issues as long as the team in charge is able to adequately utilise Unitec's "new buildings, upgraded classrooms with integrated digital technology, new courses, and is in the midst of moving activity to a smaller footprint to make better use of its assets."

15. We disagree with his analysis. While tertiary education enrolments do tend to run counter-cyclical to the economy, Unitec's domestic enrolments have been declining since 2012, and the Council has failed to adequately respond. As per our previous advice, Unitec has also failed to manage an ambitious transformation project effectively, and as it is due to run out of cash, it clearly meets the risk criteria to warrant statutory intervention.

## **Next Steps**

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16. Based on the feedback received, we recommend that you move forward to dissolve the council and appoint a commissioner.

17. To do so, please sign the attached notice (Tab 2) to the current council advising them of your decision.

18. As above, the council has indicated that it supports your proposal and will respond quickly to this notice. We will brief you again following receipt of their response, and recommend a final decision.

19. It is possible this could be announced shortly after you return from China, and we are working with your office on the timing of any potential announcement.

## Tab One – Summary of Submissions

	Name of submitter	Stakeholder type	Do they support the proposal?	Summary or excerpt of comments related to the appointment of a commissioner (as necessary)
1	Section 9(2)(a)	Staff	Yes	
2	Section 9(2)(a)	Staff	Yes	
3	Section 9(2)(a)	Staff	Yes	
4	Section 9(2)(a)	Staff	Yes	
5	Section 9(2)(a)	Staff	Yes	
6	Section 9(2)(a)	Staff	Yes	
7	Section 9(2)(a)	Staff	Yes	
8	Section 9(2)(a)	Staff	Yes	
9	Section 9(2)(a)	Staff	No	Section 9(2)(a) believes the appointment of a commissioner is a “callous knee jerk reaction to short term issues.” Specifically he points to the “long term counter cyclical trend against the state of the economy...when the economy is doing well, student numbers decline.” Leading to Unitec naturally turning around, as long as the team in charge is able to adequately utilise Unitec’s “new buildings, upgraded classrooms with integrated digital technology, new courses, and is in the midst of moving activity to a smaller footprint to make better use of its assets.”
10	Section 9(2)(a)	Staff	Yes	
11	Section 9(2)(a)	Staff	Yes	
12	Section 9(2)(a)	Staff	Yes	
13	Section 9(2)(a)	Staff	Yes	“I think all the Council members should be removed, especially those that have been on the Council for more than a year.”
14	Section 9(2)(a)	Staff	Yes	

15	Section 9(2)(a)	Staff	Yes	
16	Section 9(2)(a)	Staff	Yes	
17	Section 9(2)(a)	Māori staff member(s)	Yes	<p>“We would ask that consideration will be given to the Commissioner being a Māori who has competencies in the Māori world, business acumen and an understanding of what is required in the tertiary sector given the current review of the ITP sector therein. If not, then whomever it is should also have those same competencies and not just be focused on business.</p> <p>The Rūnanga should not be affected by the appointment and the Commissioner will work in partnership with that group in effecting a governance that will be beneficial to Māori and non-Māori generally, and Māori students and staff at Unitec. “</p>
18	Rūnanga of Unitec	Rūnanga of Unitec	Yes	Members of the Runanga are committed to working in a transparent and collaborative way with TEC in the spirit of Te Noho Kotahitanga Unitec’s partnership agreement and therefore request that a member/s be formally appointed to the Advisory Committee to the Commissioner
19	Tertiary Education Union	Union	Yes	<p>“TEU members at Unitec have noted the following will be critical to ensuring the commissioner can do their best by students and staff:</p> <ul style="list-style-type: none"> <li>• A strong focus on maintaining the public good responsibility of Unitec – to serve it’s communities through high-quality teaching, learning and support services reflecting current and future needs and aspirations</li> <li>• An advisory reference group that includes student, staff and union representatives</li> <li>• A transparent approach to any changes planned for any aspect of Unitec’s operations and delivery, including realistic timelines</li> <li>• A good process for inviting student and staff feedback and for reporting back on the outcomes of this feedback</li> </ul> <p>The current senior leadership team continues to build stronger relations with TEU members through open and frequent dialogue.“</p>
20	Tertiary Institutes Allied Staff Association Te Hononga (TIASA) Inc	Union	Yes	<ul style="list-style-type: none"> <li>• “the term of appointment for the commissioner be only as long as necessary to ensure the viability of Unitec and competent management and governance structures.”</li> </ul>

21	Unitec Leadership Team	Unitec Leadership Team	Yes	
22	Council	Council	Yes	<p>Joint feedback from the council was that “Unitec Council fully supports the appointment of a Commissioner by TEC. It believes it is in the best interest of Unitec – its staff and students, to accelerate this process if at all possible“</p> <p>When contacted about the proposal, council members expressed that they were not surprised, and welcomed government intervention.</p>
23	Elena Trout	Council	Yes	

**Tab 2: Letter to the Council and relevant appendices**

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# Section 18(d)

# Section 18(d)

# Section 18(d)

# 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>