

New Zealand Institute of Skills and Technology
(NZIST)

**Operational and Financial Parameters Direction - Name of NZIST
Subsidiary Limited**

(the Company)

(Clause 7.2 of the constitution of the Company)

Dated **24 September 2020** (Effective Date)

Introduction

- A. The Company is a wholly-owned subsidiary of the New Zealand Institute of Skills and Technology (**NZIST**).
- B. Pursuant to clause 7.2 of the constitution of the Company (the **Constitution**), NZIST may from time to time issue to the Company a written Operational and Financial Parameters Direction (an **OFP Direction**), which specifies:
- (i) the applicable thresholds or financial limits for categories of transactions which require approval as Reserved Matters (as that term is defined under the Constitution) by NZIST as the sole shareholder of the Company;
 - (ii) restrictions or parameters applicable to the Company in respect of operational matters; and/or
 - (iii) matters in respect of which the Company must give NZIST reasonable notice, consult with NZIST and have due regard to NZIST's comments.
- C. This OFP Direction has been prepared by NZIST in the context of the open, transparent and continuous reporting and ongoing communication expected between the Company and NZIST, as further set out in the letter of expectations from NZIST to the Company dated 15 May 2020.

OFP Direction

NZIST hereby gives notice to the Company that with effect on and from the Effective Date:

Financial Parameters

1. In accordance with clause 7.2(a) and paragraphs (a) to (f) of Schedule 2 of the Constitution, where the Company proposes to make a decision on any of the following matters (including agreeing to or committing to do such matters), it must first obtain the prior written consent of NZIST (and where consent of the Secretary (as defined in the Education and Training Act 2020 (the **Secretary**)) is also required for the relevant matter, NZIST will seek consent from the Secretary for and on behalf of the Company if NZIST considers it is appropriate to give its prior written consent to the relevant matter):

	Decision	Threshold Amount	Relevant Reserved Matter
(a)	Capital expenditure The incurring by the Company (in a transaction, or series of related transactions) of any capital expenditure:	An amount equal to or greater than the threshold amount (or level of risk) set by the Secretary pursuant to section 327 of the Education and Training Act 2020	Schedule 2, paragraph (a) of the Constitution

	Decision	Threshold Amount	Relevant Reserved Matter
	<ul style="list-style-type: none"> • which will, or is likely to, result in the Company exceeding its capital expenditure budget in the annual budget; and/or • if the cost of, or level of risk of, the capital project is equal to or above the Threshold Amount specified in the next column and: <ul style="list-style-type: none"> i. the capital project is not within a capital plan of NZIST approved in writing by the Secretary; or ii. NZIST has not already obtained the written consent of the Secretary for the capital project. 	(or section 222N of the Education Act 1989)	
(b)	<p>New Debt</p> <ul style="list-style-type: none"> i. The incurring by the Company of any new borrowing or any other indebtedness or liability in the nature of borrowing (except in relation to any finance leases) in excess of the Threshold Amount specified in the next column. 	Zero	Schedule 2, paragraph (b) of the Constitution
	<ul style="list-style-type: none"> ii. The Company entering into any new finance lease that would result in the Company's Tier 1 borrowing being in excess of the Tier 1 "exempt borrowing" limit in the Ministerial Determination on Exempt Borrowing (https://gazette.govt.nz/notice/id/2014-go2538) 	N/A	
(c)	<p>Drawdown on existing debt facilities</p> <p>The Company drawing-down on any debt or borrowing facilities (in a transaction, or series of related transactions) in:</p> <ul style="list-style-type: none"> i. advance of the budgeted draw-downs for the financial year; and/or ii. excess of the budgeted debt draw-downs for the financial year by the Threshold Amount specified in the next column. 	Any amount that would result in budgeted debt draw-downs for the financial year being equal to or greater than 105% of budgeted debt draw down-downs for the financial year	Schedule 2, paragraph (c) of the Constitution

	Decision	Threshold Amount	Relevant Reserved Matter
(d)	<p>Disposal of property assets</p> <p>The leasing or sale, assignment gifting, lending, transfer (including to any trust) or any other disposal (including any demolition of a building) of property assets or interests in property assets (in a transaction, or series of related transactions) by the Company where the value of the property asset or interest exceeds the Threshold Amount specified in the next column.</p>	<p>An amount equal to or greater than the property asset disposal threshold determined by the Minister of Education pursuant to section 192(5) of the Education Act 1989 or section 282(5) of the Education and Training Act 2020. See further: https://www.tec.govt.nz/teo/working-with-teos/tei/asset-management-teis/land-buildings/</p>	<p>Schedule 2, paragraph (d) of the Constitution</p>
(e)	<p>Disposal of non-property assets</p> <p>The leasing or sale, assignment, gifting, lending, transfer (including to any trust) or any other disposal of non-property assets or interests in non-property assets (including cash and any other financial assets) in a transaction, or series of related transactions by the Company in excess of the Threshold Amount specified in the next column.</p>	<p>An amount equal to or greater than the threshold amount for disposals of plant and equipment and financial assets as determined by the Minister of Education pursuant to section 192(5) of the Education Act 1989 or section 282(5) of the Education and Training Act 2020. See further: https://www.tec.govt.nz/teo/working-with-teos/tei/asset-management-teis/sale-plant-equipment-financial-assets/</p> <p><i>Note that the definition of “non-property asset” for the purposes of this paragraph 1(e) is wider than the definition of asset referred to in the TEC guidance noted above. The threshold amount calculated pursuant to that guidance applies to the wider definition of non-property assets under this paragraph 1(e).</i></p>	<p>Schedule 2, paragraph (d) of the Constitution</p>
(f)	<p>Charging of assets</p> <p>The mortgaging or charging of assets or interests in assets (in a transaction, or series of related transactions) by the Company in excess of the Threshold Amount specified in the next column.</p>	<p>An amount equal to or greater than \$500,000</p>	<p>Schedule 2, paragraph (e) of the Constitution</p>
(g)	<p>Leases and licences</p> <p>Entering into any leases or licenses (but excluding where a counterparty exercises any rights of renewal) of land or buildings or parts of buildings by the Company (either as grantor or grantee):</p> <ul style="list-style-type: none"> • where the annual rent payable or receivable is in excess of the 	<p>An amount equal to or greater than \$400,000</p>	<p>Schedule 2, paragraph (f) of the Constitution</p>

	Decision	Threshold Amount	Relevant Reserved Matter
	<p>Threshold Amount specified in the next column; or</p> <ul style="list-style-type: none"> • which is for a term (including any rights of renewal) in excess of three years. 		

Operational Parameters

2. In accordance with clause 7.2(b) and paragraph (t) of Schedule 2 of the Constitution, where the Company proposes to make a decision on any of the following operational matters, it must first obtain the prior written consent of NZIST:

Chief Executive

- (a) approval of any change to the remuneration of the Company's Chief Executive;
- (b) approval of any remuneration for any new Company Chief Executive;
- (c) approval of any proposed changes to the terms and conditions of employment of the Company's Chief Executive or approval of any proposed terms and conditions of employment of a new Chief Executive of the Company;

MECA

- (d) negotiation and agreement of any Multi Employer Collective Agreement;

Business Systems

- (e) any decision relating to the change, development and implementation of business systems which is materially inconsistent with the guidelines and material transaction limits adopted by NZIST, as notified to the Company from time to time;

Student fees and academic policies

- (f) setting student fees outside of the annual budget agreed by the Company with NZIST;
- (g) adoption of any academic policies or student regulations and statutes that are inconsistent with any model academic policies or model student regulations and statutes notified by NZIST to the Company from time to time;

Mix of provision and programme delivery

- (h) any decision to remove a programme from, add a programme to, or change any programme on (where the change would result in a material change to the nature, scope and purpose of that programme that would impact on the NZIST network of programme delivery), the list of programmes prepared by the Company to support the Company's then-current investment plan provided to the Tertiary Education Commission for the purposes of the Company obtaining SAC funding;
- (i) any decision to change the scope of regional delivery of programmes, including the delivery of programmes outside the region in which the Company predominantly operates or the delivery of programmes outside New Zealand;

Marketing

- (j) any decision relating to the design or implementation of regional or international marketing which is materially inconsistent with the brand standards and/or the marketing approach adopted by NZIST, as notified to the Company from time to time.

Matters requiring notice and consultation

3. In accordance with clause 7.2(c) of the Constitution, the Company must give NZIST reasonable notice, must consult with NZIST and must have due regard to NZIST's comments in relation to any of the following matters in advance of the relevant decision or fact, matter or circumstance occurring:

Expenditure and revenue

- (a) the Company being likely to exceed, or exceeding, 102% of its total budgeted operating expenditure for a financial year;
- (b) the Company being likely to receive less than, or receiving less than, 98% of total budgeted revenue for a financial year;

Appointment and Performance Review of Chief Executive

- (c) appointment of the Company's Chief Executive and the performance review of that Chief Executive;

Student regulations and statutes

- (d) except where additional consent requirements apply under paragraph 2(g) above, adoption of any new student regulations and statutes and/or amendment to any existing student regulations and statutes;

Statement of Strategic Intent

- (e) the development and adoption of the Company's statement of strategic intent;

Employment

- (f) initiating bargaining for, bargaining, and entering into any Collective Employment Agreement (other than a Multi Employer Collective Agreement, which requires NZIST approval pursuant to paragraph 2(d) above) with employees of the Company on the basis that:
 - (i) the Company is required to ensure that the terms of any concluded Collective Employment Agreement are within agreed parameters set by NZIST as notified to the Company from time to time, with approval required from NZIST if it is proposed to include terms in the Collective Employment Agreement which are not within the agreed parameters; and
 - (ii) the Company is required to advise NZIST if the parties are having difficulties in concluding a Collective Employment Agreement;
- (g) any proposed restructuring of the Company which would, in the Company's view, have a substantial impact on NZIST's strategic direction and initiatives as notified by NZIST to the Company from time to time. For any other proposed restructuring, the Company is expected to (i) participate in any NZIST group transition programme that exists, and (ii) notify NZIST of the outcome, in each case in order to keep NZIST informed.

Matters requiring notice

4. The Company is required to notify NZIST (but is not required to consult with NZIST) where there are any new employment policies introduced.

Revocation of previous Operational and Financial Parameters Directions

5. Each Operational and Financial Parameters Direction previously issued by NZIST is revoked and replaced by this Operational and Financial Parameters Direction.

SIGNED for and on behalf
New Zealand Institute of Skills and Technology
by:

Stephen Town
Chief Executive