

The Open Polytechnic of New Zealand Limited

(the **Company**)

Board Resolutions

Passed as written resolutions of the board of directors pursuant to the Companies Act 1993 (the **Act**)

NOTED

Background

The Education (Vocational Education and Training Reform) Amendment Act 2020 (the **Amendment Act**) has been enacted as part of the Reform of Vocational Education (**RoVE**), one of the four major reviews in the Government's Education Work Programme. The Amendment Act amends the Education Act 1989 (**Education Act**). The purpose of RoVE is to create a cohesive vocational education system in New Zealand with employers, learners, regions and communities at its centre.

The Amendment Act establishes the New Zealand Institute of Skills and Technology (**NZIST**) as a tertiary education institution under the Education Act and as a Crown entity under the Crown Entities Act 2004 (**CE Act**). The Amendment Act also converts the 16 current Institutes of Technology and Polytechnics, including The Open Polytechnic of New Zealand Limited (an **Existing Polytechnic**) to wholly-owned Crown entity subsidiary companies of NZIST (each, an **NZIST Subsidiary**).

The Company was incorporated pursuant to the Education Act on 1 April 2020 (the **Commencement Date**) as an NZIST Subsidiary, and the Registrar of Companies issued a certificate of incorporation for the Company on 1 April 2020. The Company wishes to deal with certain preliminary matters in relation to its incorporation.

Incorporation and administrative matters

Company details

- A. The Company was incorporated pursuant to the Amendment Act on 1 April 2020. The Registrar of Companies issued a certificate of incorporation for the Company on 1 April 2020.
- B. The Company has notified the Registrar that the registered office and address for service of the Company is:

3 Cleary St

Lower Hutt 5011
- C. Pursuant to section 41(3) of the Financial Reporting Act 1993, the balance date of the Company is fixed as 31 December, the last day of the academic year, as defined in section 159(1) of the Education Act.

Companies Act 1993 compliance obligations

- D. The Company appoints Dave Jenkins as Company Secretary of the Company.

Shareholder

- E. NZIST consented to act as sole shareholder (the **Shareholder**) of the Company in accordance with section 12(1)(d)(i) of the Companies Act 1993 (the **Companies Act**) and was named as Shareholder in the application for registration of the Company (the **Application**).
- F. Pursuant to section 41(a) of the Companies Act, the Company has issued to the Shareholder the number of shares specified in the Application, being the number of shares to be issued to the

Shareholder pursuant to clause 29(1)(c) of Part 10 of Schedule 1 of the Education Act (being 100 shares).

- G. In accordance with section 87 of the Companies Act, the name, the number of shares and the other required details of the Shareholder have been or will be entered in the share register of the Company.

Constitution

- H. Pursuant to section 12(1)(f) of the Companies Act, the Application included a constitution of the Company (the **Constitution**), which was accordingly adopted by the Company on incorporation. The provisions of the Constitution:
- (i) include a list of "Reserved Matters" in Schedule 2 which require approval by the Shareholder as the parent company; and
 - (ii) allow the Shareholder as the parent company to issue Operational and Financial Parameters Directions (**OFP Directions**) from time to time, which the Company must comply with. The Company has received an OFP Direction dated 1 April 2020 from the Shareholder (the **Initial OFP Direction**).

Directors

- I. Pursuant to sections 152 and 153(1) of the Companies Act, the persons listed at Appendix A (the **Directors**, and each a **Director**):
- (i) have consented to act as Directors of the Company; and
 - (ii) were named as such in the Application and accordingly hold office as Directors of the Company.
- J. The Company has received the Shareholder's approval of the amount of director's fees payable to each Director of the Company for each financial year, which has been determined by the Shareholder in accordance with the Fees Framework (as defined in the Crown Entities Act 2004) (the **Directors' Fees Approval**). The Fees Framework also provides that each Director is entitled to be paid for all reasonable travel, accommodation and other expenses incurred by him or her in connection with his or her attendance at meetings, or otherwise in connection with the Company's business.
- K. In accordance with clause 12.5 of the Constitution, the Shareholder has appointed Vaughan Renner as Chairperson of the Board.

Rights, assets and liabilities of Existing Polytechnic

- L. Pursuant to clause 36 of Part 10 of Schedule 1 of the Education Act, on and after 1 April 2020:
- (i) the rights, assets and liabilities of the Existing Polytechnic vest in the Company; and
 - (ii) unless the context requires otherwise, every reference to the Existing Polytechnic in any enactment (other than the Education Act), or instrument, agreement, deed, lease, application, notice or other document before 1 April 2020 must be read as a reference to the Company.

Same person for purposes of Inland Revenue Acts

- M. Pursuant to clause 37 of Part 10 of Schedule 1 of the Education Act, for the purposes of the Inland Revenue Acts (as defined in section 3(1) of the Tax Administration Act 1994), the Company must be treated as the same person as the Existing Polytechnic.

Employees of Existing Polytechnic

- N. Pursuant to clause 38 of Part 10 of Schedule 1 of the Education Act, on and after 1 April 2020, every employee of the Existing Polytechnic becomes an employee of the Company on the same terms and conditions that applied to that person immediately before they became an employee of the Company.

Chief Executive

- O. Pursuant to clause 38 of Part 10 of Schedule 1 of the Education Act, the Chief Executive of the Existing Polytechnic becomes the Chief Executive of the Company.

Existing Statutes and Regulations

- P. Clause 44 of Part 10 of Schedule 1 of the Education Act provides that, unless the context requires, a reference to the Existing Polytechnic in any enactment (other than the Education Act) must be read as a reference to the Company.
- Q. All existing statutes and regulations enacted by the Existing Polytechnic pursuant to section 194 of the Education Act will therefore continue to apply (to the extent that such statutes and regulations are not inconsistent with the provisions of the Education Act as amended by the Amendment Act).

Existing delegations, rules, policies, procedures and other documents of Existing Polytechnic

- R. The Company proposes to (and will procure that all and any Crown entity subsidiaries of the Company will) comply with, and confirm the continued application of, all existing delegations, rules, policies, procedures and any other documents of the Existing Polytechnic, to the extent they are not inconsistent with:
- (i) the Education Act and the CE Act (each as amended by the Amendment Act);
 - (ii) the Companies Act 1993; and
 - (iii) the Constitution (including, in particular, the Reserved Matters in Schedule 2) and any OFP Direction provided by NZIST to the Company as contemplated by the Constitution, including the Initial OFP Direction.
- S. The Company proposes to (and will procure that all and any Crown entity subsidiaries of the Company will) update and amend all existing delegations, rules, policies, procedures and any other documents of the Existing Polytechnic as required to reflect:
- (i) the Education Act and the CE Act (each as amended by the Amendment Act);
 - (ii) the Companies Act 1993; and
 - (iii) the Constitution (including, in particular, the Reserved Matters in Schedule 2) and any Operational and Financial Parameters Direction provided by NZIST to the Company as contemplated by the Constitution, including the Initial OFP Direction.

Academic Board and Academic Board Sub-Committees

- T. The Company proposes that the former:
- (i) Academic Board of the Existing Polytechnic continues as the Academic Committee of the Board. The Company proposes that the former members of such Academic Board will continue as the members of the new Academic Committee; and
 - (ii) Academic Board Sub-Committees (i.e., Research Committee; Academic Quality Assurance Committee; Ethics Committee; Results and Awards Committee) of the Existing Polytechnic

continue as Academic Committee Sub-Committees of the Board. The Company proposes that the former members of such Academic Board Sub-Committees will continue as the members of the new Academic Committee Sub-Committees.

Existing Council Committees and Sub-Committees

- U. The Company proposes that the following committees of the Council of the Existing Polytechnic continue as committees of the Board with the purposes set out below:
 - (i) Audit, Finance and Risk Committee, the purpose of which is to assist with the discharge of the Board's financial and risk governance responsibilities and in accordance with prudent business governance practice.
 - (ii) People and Performance Committee, the purpose of which is to monitor the performance of the Chief Executive in carrying out their statutory requirements as an employer, and in the meeting of Board's strategic objectives on behalf of the Board; the Committee may also provide advice to the Chief Executive on employee remuneration and 2nd tier management positions.
 - (iii) Appeals Committee, the purpose of which is to consider the appeals of students against decisions of the Executive Director Academic Services following their review of the initial decision made by the Academic Registrar and the Results and Awards Committee as may be permitted by the Academic Statute.
- V. The Board will appoint the new members of each committee and/or subcommittee (as the case may be) at the next Board meeting.

Indemnities and insurance

- W. The Company proposes to enter into a deed of indemnity in respect of its Directors. Clause 14 of the Constitution provides for the Company to indemnify its directors for any costs referred to in section 162(3) of the Companies Act and any liability or costs referred to in section 162(4) of the Companies Act, subject to the Company obtaining the approval of its Shareholder and the directors of the Company (the **Indemnity Approval**).
- X. Pursuant to a meeting of the NZIST Council of 1 April 2020, the Shareholder has approved the form of deed of indemnity the Company proposes to enter into (the **Deed of Indemnity**), a copy of which has been circulated to the Directors.
- Y. Pursuant to a meeting of the NZIST Council of 1 April 2020, the Shareholder resolved to effect directors' and officers' insurance cover for the board of the Company under a group insurance policy, with effect from 1 April 2020. A summary of the terms of that cover is set out in the letter from Marsh dated 31 March 2020, which has been circulated to the Directors.

Disclosure of interests

- Z. The Directors have declared their interests (for the purposes of sections 139 and 140 of the Companies Act) to the Board in relation to the above matters (including the grant of the indemnity and the effecting of insurance referred to in paragraphs X to Y above) and generally in respect of other relationships that give rise to an interest (the **Directors' Interests**) and have directed that the nature and extent of their interests be entered into the Company's interests register.

Execution of written resolutions and approved documents by counterpart and electronic signature

- AA. It is proposed that these Board Resolutions and any other documents approved in such Board Resolutions which require signature by one or more directors (**Approved Documents**) may be signed:

- (i) through the application of an individual signatory's electronic signature, where the individual has expressly authorised such use of his or her electronic signature; and/or
- (ii) in any number of counterparts, including by PDF copy, each of which is be deemed to be an original and, when taken together, constitutes the same document.

RESOLVED (as a resolution in writing) that:

Incorporation and administrative matters

Company administration matters

1. With effect from the date of this resolution, Dave Jenkins be appointed as Company Secretary of the Company.

Directors' matters

2. In accordance with section 161(1) of the Companies Act, the Board is satisfied that the payment by the Company of the Directors' fees as set out in the Directors' Fees Approval is fair to the Company.
3. The Directors are authorised to sign a certificate for the purposes of section 161(4) of the Companies Act, in the form attached as Appendix B.
4. The Company will pay the Directors' fees as set out in the Directors' Fees Approval and any reasonable travel, accommodation and other expenses incurred by each Director in connection with their attendance at meetings, or otherwise in connection with the Company's business, and the Company Secretary be authorised to enter the particulars of such payments into the interests register of the Company.
5. The Company enter into, execute, deliver and perform its obligations under the Deed of Indemnity, and any two or more members of the board be authorised to execute the Deed of Indemnity.
6. The Company Secretary be authorised to enter particulars of the Deed of Indemnity in the interests register in accordance with section 162(7) of the Companies Act and report this to the Shareholder for the purposes of section 152(1)(E) of the CE Act.
7. The Company Secretary be authorised to enter in the Company's interests register any interests declared by the Directors in writing to the Board in relation to the matters the subject of this meeting.

Existing Statutes and Regulations

8. The Company will (and will procure that all and any Crown entity subsidiaries of the Company will) comply with, and confirms the continued application of, all existing delegations, rules, policies, procedures and any other documents of the Existing Polytechnic, to the extent they are not inconsistent with:
 - (iii) the Education Act and the CE Act (each as amended by the Amendment Act);
 - (iv) the Companies Act 1993; and
 - (v) the Constitution (including, in particular, the Reserved Matters in Schedule 2) and any OFP Direction provided by NZIST to the Company as contemplated by the Constitution.

Existing delegations, policies, etc.

9. The Company will (and will procure that all and any Crown entity subsidiaries of the Company will) update and amend all existing delegations, rules, policies, procedures and any other documents of the Existing Polytechnic as required to reflect:
 - (i) the Education Act and the CE Act (each as amended by the Amendment Act);
 - (ii) the Companies Act 1993; and
 - (iii) the Constitution (including, in particular, the Reserved Matters in Schedule 2) and any OFP Direction provided by NZIST to the Company as contemplated by the Constitution.

Academic Committee and Academic Board Sub-Committees

10. The former:
 - (i) Academic Board of the Existing Polytechnic will continue as the Academic Committee of the Board, and the former members of such Academic Board will continue as the members of the new Academic Committee; and
 - (ii) Academic Board Sub-Committees of the Existing Polytechnic will continue as Academic Committee Sub-Committees of the Board. The Company proposes that the former members of such Academic Board Sub-Committees will continue as the members of the new Academic Committee Sub-Committees.

Board committees/sub-committees

11. The committees of the Council of the Existing Polytechnic listed in paragraph U above will continue as committees of the Board with the name(s) and purposes set out in that paragraph, on the basis that the Board will appoint the new members of each committee and/or subcommittee (as the case may be) at the next Board meeting.

Execution of written resolutions and Approved Documents by counterpart and electronic signature

12. These resolutions and the Approved Documents may be signed:
 - (i) through the application of an individual signatory's electronic signature, where the individual has expressly authorised such use of his or her electronic signature; and/or
 - (ii) in any number of counterparts, including by PDF copy, each of which is be deemed to be an original and, when taken together, constitutes the same document.

DATED

02 April 2020

Signed by

Vaughan Renner, Chairperson

Murray Strong, Director

Dona (Therese) Arseneau, Director

Sue Sutherland, Director

Xiao Peng (Jerry) He, Director

Karen Vaughan, Director

Breccan McLeod-Lundy, Director

Appendix A - Directors of the Company

	Name of Director
1.	<i>Vaughan Renner, Chairperson</i>
2.	<i>Dona (Therese) Arseneau, Director</i>
3.	<i>Xiao Peng (Jerry) He, Director</i>
4.	<i>Breccan McLeod-Lundy, Director</i>
5.	<i>Murray Strong, Director</i>
6.	<i>Sue Sutherland, Director</i>
7.	<i>Karen Vaughan, Director</i>

The Open Polytechnic of New Zealand Limited

(the Company)

Directors' certificate relating to payment of remuneration or benefits to directors

(Section 161(4) Companies Act 1993)

Payment of remuneration or benefits to directors

The persons named below, being all of the directors of the Company who voted in favour of resolutions dated on or about the date of this certificate (the **Board Resolutions**) authorising, amongst other things, the Company to pay directors fees as follows (with effect from 1 April 2020 for each financial year):

	Name of Director	Remuneration
1.	Vaughan Renner, Chairperson	\$37,365 per annum
2.	Dona (Therese) Arseneau, Director	\$18,680 per annum
3.	Xiao Peng (Jerry) He, Director	\$18,680 per annum
4.	Breccan McLeod-Lundy, Director	\$18,680 per annum
5.	Murray Strong, Director	\$18,680 per annum
6.	Sue Sutherland, Director	\$18,680 per annum
7.	Karen Vaughan, Director	\$18,680 per annum

certify that, in their opinion the provision of such remuneration is fair to the Company, upon the following grounds:

- (a) the remuneration has been determined by the Shareholder in accordance with the Fees Framework (as defined in the Crown Entities Act 2004) and has been approved by the Shareholder;
- (b) the remuneration is reasonable and fair to the Company and is appropriate;
- (c) the fees appropriately reflect the time and effort devoted to the Company by the directors, taking into account their role on the board;
- (d) the directors have extensive expertise and experience in the industry in which the Company operates, or otherwise relevant to the industry in which the Company operates; and
- (e) it is beneficial to the Company and its shareholders to remunerate and incentivise directors to encourage and motivate performance by the directors, and align individual director goals with Company goals.

Execution of certificate by counterpart and electronic signature

This certificate may be signed:

- (a) through the application of an individual signatory's electronic signature, where the individual has expressly authorised such use of his or her electronic signature; and/or
- (b) in any number of counterparts, including by PDF copy, each of which is be deemed to be an original and, when taken together, constitutes the same document.

DATED **02 April 2020**

Signed

Vaughan Renner, Chairperson

Murray Strong, Director

Dona (Therese) Arseneau, Director

Sue Sutherland, Director

Xiao Peng (Jerry) He, Director

Karen Vaughan, Director

Breccan McLeod-Lundy, Director

(being all the directors of the Company)