# The Open Polytechnic of New Zealand Limited
(the **Company**)

# Minutes of a meeting of the Board of Directors
**(Board)**

# 2 April 2020 at 9.30am

## Minutes

These are the minutes of a meeting of the board of the Company held on 2 April 2020 by Microsoft Teams Meeting.

## Present

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| **Directors present:** | Vaughan Renner, Chairperson<br>Dr Therese Arseneau, Director<br>Jerry He, Director<br>Breccan McLeod-Lundy, Director<br>Murray Strong, Director<br>Sue Sutherland, Director<br>Dr Karen Vaughan, Director |

Vaughan Renner acted as chairperson of the meeting.

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| **Other attendees present:** | Dr Caroline Seelig, Acting Chief Executive<br>Dave Jenkins, Legal & Procurement Manager<br>Shelley Fitzpatrick, Board Secretary |
| **Public attendance:** | Mary-Liz Broadley, TEU Branch President<br>Daniel Benson-Guiu, TEU Organiser – Wellington |

## Apologies

There were no apologies.

## Quorum

The Chairperson noted that a quorum of directors was present at the meeting and declared the meeting open.

The meeting opened with the OPNZ Ltd. karakia and welcome in Māori by Wayne Glen, Kaiwhakahaere, Te Kura Wānanga / Manager, The Māori Office.

Each director introduced themselves and provided a summary of their background.

## Conflicts of interest

The Directors' Interest Register was taken as read.

No conflicts were declared in relation to the open agenda.

## Items not on the Agenda

The following items were raised and discussed:

**COVID-19 Report**
The paper was taken as read.

Since the paper was written, due dates for exams and assessments have been automatically extended for all OPNZ Ltd. students.

OPNZ Ltd. continues to work with the wider sector to support the move to online. To date, OPNZ Ltd. has received approximately 43 enquiries from PTEs. A director commended Management on reaching out to the sector.

Conversations are underway with the Ministry of Education (MoE) regarding ESA Publications Ltd. (a subsidiary of OPNZ Ltd.) providing print and digital resources to support schools during the lock down period. To date, there has been one print run in New Zealand and there is ongoing discussion with MoE for additional print and digital resources.

OPNZ Ltd. does not have any international students (outside of NZ) nor does it have face to face students, meaning that it's been more or less business as usual during the lock down period.

Feedback from OPNZ Ltd. staff is that working from home is going well and OPNZ's ability to mobilise working from home so quickly is viewed by staff as exemplary.

**2020 OPNZ Ltd. Board Meetings**
**Action:** Directors to feedback to the Board Secretary on their availability to attend meetings on the proposed dates.

**Proposed Company Secretary Biography**
Dave Jenkins, Legal and Procurement Manager and proposed Company Secretary, was welcomed to the meeting. The Board noted D Jenkins' biography.

## Items under "Noted" in First Board Meeting Resolutions

The directors considered and discussed the items under "Noted" in the First Board Meeting Resolutions attached as a Schedule to these minutes.

In particular, the directors:

- received the Constitution, which will be discussed further at the next Board meeting.
- noted that Caroline Seelig is the Acting Chief Executive for OPNZ and that clause "O" be amended to read, "the Acting Chief Executive of the Existing Polytechnic becomes the Acting Chief Executive of the Company." The Chairperson will bring the Board up to date with respect to the Acting Chief Executive role at the next meeting.
- discussed existing statutes, regulations, delegations, rules, policies, procedures and other documents of the Existing Polytechnic, noting the following:
    - **Action:** The Acting Chief Executive will provide a letter of attestation that the existing statutes, regulations, delegations, rules, policies, procedures and other documents are consistent with or will be updated and amended to reflect the Education Act and the CE Act; the Companies Act 1993 and the Constitution.
    - the existing statutes, regulations, delegations, rules, policies, procedures and other documents of the Existing Polytechnic more across to the Company in totality.

- while it's a 'leap of faith' for the new directors to sign-off on this Resolution, the Board acknowledges that Management need confirmation of ongoing delegations in order to continue operating. The Board agreed it can approve this Resolution and can delve deeper into the existing statutes, regulations, delegations, rules, policies, procedures and other documents at a future meeting.

- **Action:** the existing statutes, regulations, delegations, rules, policies, procedures and other documents to be made available to the Board.

- discussed the continuation of the existing Audit, Finance and Risk, People and Performance and Appeals Committees and the folding into the Board of the Commercial Function Project Committee and the Learner Focus Committee. In future, the Board can look to those committees that are being folded into the Board and split out as required. Committee membership will be discussed at the next meeting.

- noted the global insurance coverage for all directors of the 16 subsidiaries under NZIST; the documents relating to indemnities and insurance is available in the Information Section.

- noted that disclosed Directors' interests will be updated each meeting; and at each meeting directors will be asked by the Chairperson to declare any conflicts of interest in relation to that particular meeting agenda.

## Resolved

The directors resolved, as resolutions in writing, the matters set out in Resolutions 1 to 11 in the First Board Meeting Resolutions attached as a Schedule to these minutes.

In particular, the directors:

- agreed that the process for resolving the matters set out in the Resolutions, would be for the Chairperson to work through all the Resolutions and then ask each individual director if they agree the Resolutions and if their electronic signature can be used to sign off the Resolutions in writing.

- each agreed that the First Board Meeting Resolutions and other documents approved in such First Board Meeting Resolutions which require signature by one or more directors (**Approved Documents**) may be signed through the application of an individual director's electronic signature; and

- each expressly authorised the use of his or her electronic signature (as previously provided by the director) for the purposes of signing the First Board Meeting Resolutions and the Approved Documents.

Directors' votes were recorded as follows:

Dona (Therese) Arseneau, Director: approved Resolutions 1-11; electronic signature can be used
Xiao Peng (Jerry) He, Director: approved Resolutions 1-11; electronic signature can be used
Breccan McLeod-Lundy, Director: approved Resolutions 1-11; electronic signature can be used
Murray Strong, Director: approved Resolutions 1-11; electronic signature can be used
Sue Sutherland, Director: approved Resolutions 1-11; electronic signature can be used
Karen Vaughan, Director: approved Resolutions 1-11; electronic signature can be used.
Vaughan Renner, Chairperson/Director: approved Resolutions 1-11; electronic signature can be used.

## General Business

**TEU letter**
The Board received the letter from the Tertiary Education Union and the Chairperson encouraged directors to view the link to the paper. **Action:** TEU letter to be discussed at the next Board meeting.

**Induction of Directors**
All directors would like to participate in an induction to include a briefing on the sector as a whole as well as The Open Polytechnic of New Zealand Ltd. specifically.

**Action:** The Chairperson and Acting Chief Executive to develop a proposed induction agenda and circulate to directors for input.

The NZIST Council plans to run further induction sessions for subsidiary directors.

**Feedback on First Board Meeting**

MS Teams platform displays fewer people than other online meeting venues, e.g. Zoom. **Action:** Board Secretary to investigate if MS Teams settings can be changed to display all attendees and/or other meeting platforms to be considered.

The next meeting will likely be held via an online meeting venue.

**Letter of Expectation**
M Strong, NZIST Council Chair, noted that the Letter of Expectation from the Minister has not yet arrived. It is anticipated the letter will arrive for the 9 April IST Council meeting and it will later be cascaded to subsidiaries.

## Closure

The Chairperson thanked the directors for their participation and encouraged directors to make contact at any time.

There being no further business the Chairperson declared the meeting closed at 10.45am.

Dated: 24 April 2020

Signed as a correct record

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**Chairperson**

# 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 Acting Chief Executive of the Existing Polytechnic becomes the Acting 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

**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.