



Waitakere City Council  
*Te Taiāo o Waitakere*



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## **Memorandum of Understanding (MOU)**

**Between**

**Transit New Zealand,**

**and**

**Waitakere City Council**

**In respect of land transport issues in Waitakere City**

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## **1.0 Parties**

- 1.1 Waitakere City Council a local authority under the Local Government Act 2002 (Council).
- 1.2 Transit New Zealand, an authority continued under section 75 of the Land Transport Management Act 2003 (Transit).

## **2.0 Background**

- 2.1 The parties have objectives, which encourage closer working relationships with other agencies to enhance business results.
- 2.2 The parties have discussed ways to formalise a working relationship and have decided to enter into a Memorandum of Understanding.

## **3.0 Intent**

- 3.1 The intent of the MOU is to:
  - formalise a working relationship between the parties;
  - specify the time, place and frequency of meetings to develop and enhance the relationship;
  - state the protocols for collaborative actions, including monitoring the health of the relationship.
- 3.2 The parties do not intend that this MOU create a legally enforceable agreement.

## **4.0 Scope**

- 4.1 Any land transport management activities plus any activity where the relationship will advance the interests of both parties and those they represent.

## **5.0 Goals**

- 5.1 The parties acknowledge they have separate objectives and statutory responsibilities some of which may not be congruent.
- 5.2 It is therefore important to list the respective goals to set up a platform from which collaborative efforts can be pursued



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5.3 Transit's statutory objective:

- 5.3.1 Transit's statutory objective is to operate the State highway system in a way that contributes to an integrated, safe, responsive, and sustainable land transport system (section 77(1) Land Transport Management Act 2003).
- 5.3.2 In meeting its objective, Transit must exhibit a sense of social and environmental responsibility, which includes;
- (a) avoiding, to the extent reasonable in the circumstances, adverse effects on the environment;
  - (b) taking into account the views of affected communities;
  - (c) giving early and full consideration to land transport options and alternatives in a manner that contributes to paragraphs (a) and (b); and
  - (d) providing early and full opportunities for contributions from other parties to the development of its land transport programmes (section 77(2) Land Transport Management Act 2003).

5.4 Council's objectives:

- 5.4.1 Council's 2020 vision is a city with public transport systems that provide fast, effective services to the whole city and travel which demonstrates integrated, environmentally responsible and innovative design.
- 5.4.2 In meeting its vision, Council applies the following principles:
- (a) **Just:** focused on meeting the essential needs of all residents for access to essential goods and services, communication and safety;
  - (b) **Empowering:** helping communities to balance the need for transport against its social and environmental effects and encouraging individual responsibility for safety and for protection of the environment;
  - (c) **Holistic:** recognising the relationships between transport, communications, people and the environment, through complementary policies in these areas;
  - (d) **Forward looking:** promoting transport systems which develop in a consistent strategic direction and which anticipate and respond flexibly to future needs;
  - (e) **Non-parochial:** recognising that the City is a part of a larger area which people want to reach and that the benefits and costs of transport transcend geographic boundaries;



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(f) **Innovative:** seeking new and better ways of reaching our objectives for transport.

## 6.0 Agreements

6.1 The parties agree to:

- Identify the key staff who will be empowered to make this MOU work;
- Meet quarterly and discuss issues which are preventing the parties from delivering their goals;
- Minute issues in priority order which the parties have agreed to co-operate on;
- Work collaboratively and co-operatively on identified issues;
- Monitor the effectiveness of the relationship; and
- Celebrate successes.

## 7.0 Special Agreements

7.1 That the signing of the Memorandum of Understanding will mandate:

7.1.1 Development of a Heads of Agreement to address the delivery of the Upper Harbour Motorway, Te Atatu Interchange and the six-laning of State Highway 16 Te Atatu to Royal Road, projects.

7.2 The parties will add to such a Heads of Agreement key projects in Waitakere City that come within Transit's work programme. At the time of entering into this MOU, other key projects may or may not include the extension of State Highway 16 at Westgate, the Whau Crossing feasibility study, and ramp metering in relation to state highways in Waitakere City, and the development of High Occupancy Vehicle lanes and priorities in the district, regional, and strategic parts of the metropolitan network

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## 8.0 Principles

8.1 The principles that underpin this Memorandum of Understanding are as follows:

8.1.1 That the parties agree to meet on a regular basis at senior management and operational levels to ensure that all are informed of issues and that relevant information is shared between them.

8.1.2 Each party commits to consider, investigate and resolve issues as they arise in a manner that maintains the integrity, professionalism and statutory accountabilities of each party.

8.1.3 Each party will endeavour to keep their organisation, and the members of the other parties advised of issues that may affect one party as a result of the activities by the other.

8.1.4 The Parties agree that they will act in good faith in meeting their responsibilities under this agreement and in resolving differences in opinion.

## 9.0 Term

9.1 Both parties will proactively maintain the MOU.

9.2 In the event of no dialogue, review or action over a 12-month period the MOU will be deemed to be terminated.

## 10.0 Amendment

10.1 This MOU can be amended at any time. This must be by written agreement of both parties.

## 11.0 Costs

11.1 Unless otherwise agreed costs will be where they fall.

## 12.0 Limitations

12.1 The parties recognise that the Transit New Zealand Act 1989 and the Local Government Act 2002 and other constraints (such as Transfund Policies, the Land Transport Management Act 2003, the Local Government Auckland Amendment Act 2004, the Regional Land Transport Strategy, Regional Policy Statement, District Plan, ARTA's transport plan,) may constrain their capacity to enter into a joint contract and agree to explore other options if necessary so as to give effect to their objectives.



**13.0 Conflict**

13.1 Where a conflict arises between the parties which is impacting on the collaboration effort then:

13.1.1 The conflict will be elevated immediately to the respective Chief Executive Officers: and

13.1.2 If the CEOs are unable to resolve the conflict an independent mediator, agreeable to both parties, shall be appointed to help resolve the issue.

**14.0 Implementation**

14.1 A control group shall be appointed consisting of no less than two senior managers of the two organisations to implement this MOU.

14.2 The control group shall prepare protocols from time to time to help guide the relationship which shall progressively be appended to the MOU. Such protocols will deal with issues such as publicity, meeting minutes and performance reviews etc.

14.3 The control group shall from time to time mandate teams consisting of individuals from both parties to work on a significant issue. When this occurs the work shall be described in a project plan and appended to this MOU.

**15.0 Delegations**

15.1 All persons authorised to make decisions on behalf of their organisations shall be recorded in Annexure 2: Delegations.

**16.0 Signing**

Signed for Transit New Zealand by:	Signed for Waitakere City Council by:

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Waitakere City Council  
Te Taiāo o Waitakere



Rick Van Barneveld <b>Chief Executive</b>	Harry O'Rourke <b>Chief Executive</b>
in the presence of:	in the presence of:
Name:	Name:
Occupation:	Occupation:
Address:	Address:

**17.0 Changes**

17.1 The following register shall record all changes made to the MOU:

Reference	Description of Change	Documentation

**Annexure 1: Special Agreement(s)**

The following register shall record all Special Agreement(s) entered into by the parties:

Reference	Description of Special Agreement	Documentation

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**Annexure 2: Delegation (s)**

The following persons are authorised to make decisions on behalf of their organisations:

Name	Organisation	Delegations
Name	Transit	Describe the delegated authority of the named individual

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18 October 2004

National Highway Manager (Acting)  
Transit New Zealand  
PO Box 5084  
**WELLINGTON**

Attention: Graham Taylor

Dear Mr Taylor

### **SUBMISSION ON PROPOSED NATIONAL TOLL SYSTEM**

Thank you for the opportunity for Waitakere City Council to submit on the proposal to establish a national electronic toll collection system. This is an officers' submission which has yet to be considered by the Council. It is proposed to seek the Council's endorsement in November 2004. Any changes to the submission will be advised in writing or at the submissions hearings.

The Council recognises that the proposed electronic toll collection system provides benefits of free-flow of traffic at collection points, thus maximising safety and minimising environmental effects.

The Council supports the concept of a national toll collection system that is administered nationally in relation to nationally funded state highways and local roads. However, flexible arrangements are required depending on how a toll project is structured and funded. With private sector involvement in toll arrangements, or locally funded projects, there should be an option whether or not to use the national toll collection system.

The Council submits that a commitment to the proposed national toll collection system should not be made until the Government has completed its road pricing study. The toll collection system must not be inconsistent with the road pricing system that is ultimately adopted for the Auckland region. There is not enough information currently available for Transit New Zealand to conclude that the proposed national toll collection system will be consistent with the eventual road pricing system for the Auckland region.

The Council submits that the proposed national toll collection system has a large cost which cannot be justified by the current toll projects that have been assessed as suitable for tolls. A commitment to the proposed system could only be made once a sufficient number of road projects have been assessed as suitable for a toll in order to justify the cost of introducing the system. Until that time, there is a risk that projects will be required to be tolled in order to justify the cost of the national toll collection system.

The Council submits that there are a number of issues that need to be resolved before a commitment is made to an electronic toll collection system in New Zealand.

**Manual or Electronic** - It is likely that the most appropriate system design will be strongly influenced by the number and type of transactions. A large number of regular users are likely to justify a sophisticated

fully electronic system. A smaller number of irregular users are likely to be better served by a manual system. It would seem unlikely that the same system would be appropriate for tolling a single facility (for example, ALPURT), compared with tolling of say 30 facilities under a road pricing in Auckland. Similarly, system compatibility will be important if there are a number of toll projects in a single urban area, but less important for projects in different areas.

**Tolling strategy** - A tolling strategy should be well defined before implementing a national toll system. The strategy should include an implementation plan, identify the cost of the complete system (includes "front office" for toll collection and "back office" for toll management). The toll strategy should also take into account the road pricing study and other travel demand management initiatives before implementing a national toll system.

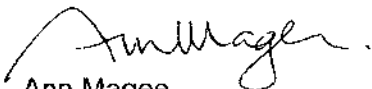
**Evolving technology** - Rapidly changing technology has the potential to significantly change the physical characteristic, performance and cost of toll collections within a time-frame of 3-5 years. If a full electronic toll collection system is established for ALPURT B2 and only attracts low volume transaction, the system may be exposed to extremely high cost and out of date technology. The system could be designed in such a way that permits subsequent system evolution.

**Manual tolling** - Manual tolling has the advantages of flexibility and cost effectiveness for low to medium traffic volume projects. An electronic collection system could be considered when sufficient toll transaction volume is identified to warrant the introduction of free-flow full electronic toll collection system and the establishment of a single national back office for toll processing.

A completed questionnaire is also attached with this submission.

Waitakere City Council wishes to be heard in support of this submission.

Yours sincerely



Ann Magee  
Director Strategy & Development

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**Question 1** - Do you agree with Transit's proposal that further investigation and design should be based on a fully electronic toll collection basis? What advantages or disadvantages do you see for this option? (Refer page 7 of the Briefing Document).

Further investigation and design should also take into account alternative toll collection methods e.g. manual tolling with automatic machine.

Full electronic toll collection has the advantages of free-flow traffic, less land take, more environmental sustainable and better safety and personal security. However, full electronic toll collection would only be cost effective for high traffic volume projects. High transaction cost caused by low volume project and high proportion casual users need to be addressed.

Manual toll collection system has the advantages of flexibility and cost effectiveness for low to medium traffic volume projects and should not be completely discounted.

A possible combination of various facilities for 'front office' i.e. consists of electronic toll collection (for high volume urban project) and manual tolling with only automatic machine (for low volume rural projects), plus an integrated national 'back office' should be explored.

**Question 2** - Do you agree with Transit's proposal to further develop this idea of an integrated national toll management system in subsequent investigation and design? (Refer Page 7).

Yes. An integrated national toll management system has the advantage of economies of scale and consistency across a region and the nation.

**Question 3** - Do you agree with Transit's strategy to use the TRC in the manner explained? What advantages or disadvantages do you see for this option? (Refer page 8).

Yes. There is an efficiency advantage in using the existing registration system.

**Question 4** - Do you see yourself as a key stakeholder, willing to provide continuous further inputs to the project? (Refer page 8).

No.

**Question 5** - What type of information would you expect in advance of the toll road? (Refer page 9).

- Tolling strategy;

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- Identification of proposed projects that would use and justify the proposed electronic toll collection system;
- Costs of administration and collection;
- Costs of various options including a mixed system (i.e. automatic machines plus one express lane with electronic toll collection).

**Question 6** - *Could you see yourself, or the public in general, using an electronic toll collection system? What assurances would you want, or concerns would you have when using an electronic toll collection system? (Refer page 9).*

Not really, as the only proposed toll road is ALPURT B2. The majority of motorists using this road would be casual users who would be unlikely to install a transponder.

**Question 7** - *Would you establish such an account with Transit? If so, what payment options would you prefer? What benefits would you see with this option? What concerns would you have? (Refer page 9).*

Only if a toll road is being used often by Council vehicles. An account would provide a convenient means of payment.

**Question 8** - *Would you prefer to not have an account with Transit, even though this might be a more expensive option? What benefits would you see with this option? What concerns would you have? (Refer page 10).*

N/A

3 November 2004

Select Committee Clerk  
Education and Science Select Committee  
Parliament Buildings  
**WELLINGTON**

Dear Sir/Madam,

**SUBMISSION ON THE EDUCATION (ESTABLISHMENT OF UNIVERSITIES) AMENDMENT BILL**

Waitakere City Council welcomes the opportunity to make this submission on the Education (Establishment of Universities) Bill.

The western areas of Auckland, which now comprise Waitakere City, have long been poorly served by the tertiary education sector, something that is now being addressed through the admirable commitment by Unitec New Zealand (hereafter Unitec) to the West, and the innovative partnership between Unitec and Waitakere City Council. It is within this context that Waitakere City Council comments on the Bill that is currently being considered.

Waitakere City Council supports Unitec's application to obtain university status and therefore opposes the Bill in so much as it will prevent this or may make it more difficult. The Council believes that Unitec obtaining university status would be in the interests of the Waitakere City community, as well as serving to improve educational opportunities and standards for the country as a whole. The Waitakere City community has been disadvantaged for some time in comparison with other parts of the region and country by the absence of a tertiary education institute within the city. Census data indicates that Waitakere City has a lower proportion of residents with tertiary academic qualifications or advanced vocational qualifications than most of the Auckland region and the country as a whole. The most talented young people from Waitakere City are forced to leave and go elsewhere to take up tertiary education opportunities. Often they do not return. This has an impact on the educational levels of the workforce and business communities within Waitakere City.

In response to this situation, Waitakere City has long sought to have a tertiary education institute of university status established within the city. One initiative that is now coming to fruition is the partnership with Unitec, which is providing for significant capital investment in teaching facilities by Unitec in Waitakere City. Waitakere City Council believes that the range and credibility of educational opportunities within the city will be confirmed and enhanced by the conferring of university status on Unitec.

Unitec has a track record in delivering a range of educational programmes and opportunities ranging from trade and vocational education through professional degree level qualifications up to doctoral level, including ground breaking, applied research. Unitec has proved that it has moved beyond the level of delivery provided by other polytechnics around New Zealand, and has already demonstrated success as a dual sector "University" of Technology. A comparison between Unitec and the other institution of a similar nature, being Auckland University of Technology, would see that both institutions are similar in their range and levels of activity, and that the only difference between them in terms of University status is that one was slightly ahead of the other in terms of lodging their application.

The Council believes that conferring university status on Unitec would reflect reality and would further benefit those students who choose Unitec as an education provider. It would seem that there is an emerging consensus in the education sector that Unitec becoming a dual sector University of Technology (as it is in all but name at the moment), would be the best way ahead for both Unitec and the communities it serves. Waitakere City is concerned that the Bill as drafted is likely to unilaterally deprive Unitec of this opportunity.

Waitakere City Council is also concerned, from a fairness perspective about the retrospective nature of the Bill and the administrative processes provided within it. The Bill appears to provide the Minister with the ability to deny an applicant university status without a proper assessment of the applicant institution having taken place and without detailed information and advice having been provided to the Minister. It is difficult to see how this can promote good decision making. Parliament has progressively moved toward more rigorous requirements on administrative decision makers, particularly with respect to the need to base decisions on robust analysis and information. The decision-making provisions of the Local Government Act 2002 are a prime example of this. The Bill as drafted seems to be inconsistent with Parliament's moves toward greater accountability and robustness around administrative decision making.

The Bill also appears to be designed to target Unitec and its application for university status. The Waitakere City Council sees this aspect of the Bill as very disadvantageous to its community. Unitec applied for university status under the 1999 legislation, which provides for an assessment to be made as to whether Unitec meets the characteristics of a University. Waitakere City Council believes it is appropriate that the application should be assessed under that legislation and the criteria it provides. Already the legislative framework has been adjusted to provide that granting of university status must be in the 'national interest'. While it is unclear how this would be assessed, something such as this application, which is so positive for the large population in the natural catchment area for Unitec comprising Waitakere City and the western areas of Auckland City (close to 10 percent of the population), must be in the national interest. In any case the Council believes that Unitec's application should be judged on its merits – if Unitec does not meet the standards required in order to receive university status then, although we will be disappointed, we will accept that decision. However, we are confident that Unitec will make the grade. Unitec certainly is characterised by a wide diversity of teaching and research, including at a high level; it does advance, disseminate and assist the application of knowledge; and it most definitely promotes intellectual independence and community learning. It should be allowed to seek university status as it originally set out to do. A detailed assessment should take place forthwith.

One particularly troubling aspect of the Bill is Section 6. This appears to provide for any successful application by Unitec made before the Bill is passed into law to be invalidated retrospectively. Such a move would set an unfortunate precedent and would be considered by Council to be constitutionally unwise. It amounts to a 'get out of jail free card' for the Minister, in the case that a Court rules that the current delays are unfair and that an assessment should take place. The Council, as an administrative decision maker itself, would love to have such devices at its disposal. However, quite properly, it does not. The Council asks that Section 6 of the Bill be omitted and that if Parliament feels that this Bill is necessary in some form, a savings clause should be included in it to protect the position of those already involved in processes under the existing legislation.

In summary, Waitakere City Council:

1. Opposes the Education (Establishment of Universities) Amendment Bill and seeks that the Select Committee recommend that the Bill's progress through the House be discontinued and that the application of Unitec for university status be processed under the provisions of the 1999 legislation.
2. Strongly supports Unitec's application to attain University Status under the Education Act 1989.
3. Seeks, in the event that the Select Committee decides that some form of the Bill is necessary, to have Section 6 of the Bill omitted and a Savings provision included to provide for applications for university status to be processed under the legislative provisions extant at the time the application was made.

4. Seeks a recommendation from the Select Committee to the Minister that the application of Unitec for university status be processed without further delay.

Waitakere City Council would like to be heard in support of this submission.

Yours faithfully

Harry O'Rourke, MNZM, JP  
**CHIEF EXECUTIVE**

# BILLS DIGEST

**EDUCATION (ESTABLISHMENT OF UNIVERSITIES) AMENDMENT BILL  
2004**

**Date of Introduction: 17 September 2004**

**Bills Digest No. 1160**



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**EDUCATION (ESTABLISHMENT OF UNIVERSITIES) AMENDMENT BILL  
2004**

Date of introduction: 17 September 2004  
 Portfolio: Education  
 Select Committee: As at 22 September, 1<sup>st</sup> reading not held

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**PURPOSE**

The aim of the Bill is to amend the Education Act 1989 (the Act) to give priority to the requirement that the establishment of a new university must be in the interests of the tertiary education system and the nation as a whole.

**BACKGROUND**

**Establishment of educational institutions – Section 162 of the Education Act 1989**

Section 162(2) of the Education Act 1989 provides that the Governor-General may, by Order in Council made on the written recommendation of the Minister, establish a body as a college of education, a polytechnic, a specialist college, a university, or a wananga, as the Governor-General considers appropriate.

Section 162(3) provides that before deciding whether or not to recommend to the Governor-General the making of such an Order in Council the Minister of Education must:

- give the New Zealand Qualifications Authority a reasonable period in which to give advice on the matter and “consider any advice so given” (*Section 162(3)(a)*);
- satisfy himself or herself that the establishment of the institution is in the interests of the tertiary education system and the nation as a whole (*Section 162(3)(ab)*); and
- consult with such institutions, organisations representing institutions, and other relevant bodies, as the Minister considers appropriate (*Section 162(3)(b)*).

Section 162(4) provides that in recommending to the Governor-General that a body should be established as a college of education, a polytechnic, a specialist college, a university, or a wananga, the Minister must take into account:

- that universities have all the following characteristics and other tertiary institutions have one or more of those characteristics:

- they are primarily concerned with more advanced learning, the principal aim being to develop intellectual independence;
  - their research and teaching are closely interdependent and most of their teaching is done by people who are active in advancing knowledge;
  - they meet international standards of research and teaching;
  - they are a repository of knowledge and expertise; and
  - they accept a role as critic and conscience of society (*Section 162(4)(a)(i)-(v)*); and
- that certain institutions have the following characteristics:
    - a college of education is characterised by teaching and research required for the pre-school, compulsory and post-compulsory sectors of education, and for associated social and educational service roles;
    - a polytechnic is characterised by a wide diversity of continuing education, including vocational training, that contributes to the maintenance, advancement, and dissemination of knowledge and expertise and promotes community learning, and by research, particularly applied and technological research, that aids development;
    - a specialist college is characterised by teaching and (if relevant) research of a specialist nature that maintains, enhances, disseminates, and assists in the application of knowledge and expertise;
    - a university is characterised by a wide diversity of teaching and research, especially at a higher level, that maintains, advances, disseminates, and assists the application of, knowledge, develops intellectual independence, and promotes community learning; and
    - a wananga is characterised by teaching and research that maintains, advances, and disseminates knowledge and develops intellectual independence, and assists the application of knowledge regarding ahuatanga Maori (Maori tradition) according to tikanga Maori (Maori custom) (*Section 162(4)(b)(i) – (iv)*).

#### **Why the Bill is required**

Section 162 of the Education Act requires that the Minister of Education must be satisfied that all the requirements of that section are satisfied before recommending the establishment of a university. The entire range of considerations and procedures in Section 162 must be complied with before the making of this recommendation..

The Bill provides for a two stage process. The Minister of Education must firstly seeks advice as to whether an application for establishment as a university is “in the interests of the tertiary education system and the nation as a whole”.

After considering that advice, the Minister must either:

- decide to proceed to the further stages of the process; or
- form the view that the establishment of a particular body as a university would not be “in the interests of the tertiary education system and the nation as a whole” and, after consultation particularly with the requestor, confirm that decision, and reject the request for establishment as a university at that point without needing to go on to the next stages of the procedure..

## UNITEC

A recent news report<sup>1</sup> has described the case of UNITEC, an Auckland polytechnic.

“One of the country’s top-ranked polytechnics is considering legal action against the Government in its fight to be recognised as the country’s ninth university. Unitec has been battling since 1996 to join the eight elite tertiary institutions. But it claims it has been scuppered at every attempt by a Government determined to prevent a fair and open assessment.

“The latest spoiler came on Friday when Associate Education Minister Steve Maharey tabled the Education (Establishment of Universities) Amendment Bill. It allows the minister to decide whether an institution should be measured against university criteria without an actual assessment taking place. ‘This step is being taken to streamline the processes so that valuable resources are not wasted,’ said Mr Maharey.

“Unitec first applied for redesignation in 1996 and renewed its application in 1999, but it has never been processed. Chief executive John Webster said it was the third time in four years the Government had drafted legislation designed to block Unitec from assessment. ‘If it weren’t such a waste of public funds, and so patently unjust, the way the Government has acted would be humorous,’ he said. ‘The process adopted by the Government has been unfair and, we have been advised, unlawful.’ Unitec did not want to take court action, but ‘our council has a statutory obligation to act in the best interests of our students, and we will have to consider all our options’, said Dr Webster.

“Unitec’s application got as far as the formation of a Qualifications Authority-appointed international assessment panel in May 2000, but two weeks before the visit the Government introduced the Education (Limiting the Number of Universities) Bill. Though the bill never made it into law, Unitec is still waiting to be assessed. Legislation was passed in 2002 providing that, as well as an institution having to demonstrate that it meets the criteria for university status, the minister must be satisfied that its redesignation would be in the national interest.

“The new legislation means Mr Maharey has the power to decide in advance whether an assessment can take place. Dr Webster says Unitec meets the criteria for university status so comfortably that, after an assessment, it would be hard for Mr Maharey to turn it down. The minister said Unitec’s case would still be considered if it wished, but ‘it will need to be done under the new procedures with issues of national interest

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<sup>1</sup> Stuart Dye, Unitec weighs up legal action in uni struggle, *New Zealand Herald*, 20 September 2004, p. A12.

addressed first'. He said current legislation meant the Qualifications Authority was potentially wasting a great deal of time and money considering whether an organisation should become a university, when it was clear the proposal was not in the national interest. The issue had been highlighted by Unitec's request to be reclassified as a university, said Mr Maharey'.

"Unitec is one of the largest tertiary institutions in the country, with about 5800 equivalent-fulltime students in its higher-education divisions - much larger than Lincoln University - and 4500 in its sub-degree division. It rated 12th of all tertiary institutes in the Performance-Based Research Fund rankings released this year and claims to have matured into a 'world-class university of technology'. But it is often seen as the poor cousin to universities and some have welcomed the new legislation.

"The Vice-Chancellors Committee, which represents the country's universities, said the distinctive characteristics of universities needed to be maintained to protect established standards and New Zealand's reputation as a provider of international standing of university education. 'What this country needs is a greater level of investment in the existing universities, not more universities,' said committee chairman Professor Stuart McCutcheon. He said it was a not about blocking Unitec per se. Other institutions were also seeking assessment for university status. 'Our position is that any organisation must meet the requirements of the Education Act, such as most of the teaching must be done by people involved in research.' He said the Research Fund rankings showed that was not the case at Unitec".

#### "Timeline

- 1995: Unitec lodges application for university status;
- 1996: Application suspended until guidelines on assessment are developed;
- 1999: Under new guidelines Auckland Institute of Technology achieves university status;
- August 1999: Unitec lodges application for assessment;
- May 2000: Application formally suspended with introduction of Education (Limiting Number of Universities) Amendment Bill 2000
- July 2000: Bill is deferred;
- March 2001: Tertiary Education Advisory Commission recommends no change to the criteria that define a university;
- July 2001: Unitec lodges application;
- 2002: Application suspended with introduction of Education Amendment Bill requiring becoming a university to be in the national interest;

- May 2003: Education (Limiting Number of Universities) Amendment Bill 2000 is discharged;
- August 2003: Unitec signals its intent to reactivate its application;
- September 2004: Government tables Education (Establishment of Universities) Amendment Bill<sup>7</sup>.

## MAIN PROVISIONS

### **Commencement**

The Bill comes into force on the day after the date on which it receives the Royal assent (*Clause 2*).

### **Establishment of universities**

The Bill provides that in considering whether to recommend that a body be established as a university, the Minister must be satisfied, having followed the procedure set out in New Section 162A (see below), that the establishment of the body as a university is in the interests of the tertiary education system and the nation as a whole and that the body has the characteristics of a university as set out in Section 162(4)(a)(i) to (v) and (4)(b)(iii) (described above) (*Part 1, Clause 3, inserting new subsection (3A) into Section 162 of the Education Act 1989*).

### **Procedures before recommending the establishment of a university**

The Bill provides that in considering whether to recommend that a body be established as a university:

- the Minister must first determine whether the establishment of the body as a university is in the interests of the tertiary education system and the nation as a whole; and
- if the Minister is so satisfied, he or she must then seek and receive advice on, consult about, and determine whether the body has the characteristics of a university as set out in section 162(4)(a)(i) to (v) and (4)(b)(iii) of the Education Act 1989 (see above).

It is also provided that before determining whether the establishment of the body as a university is in the interests of the tertiary education system and the nation as a whole, the Minister must:

- seek and receive advice on the matter from the Tertiary Education Commission; and
- consult on the matter with such institutions, organisations representing institutions, and other relevant bodies as the Minister considers appropriate.

The bill also provides that before determining whether the body has the characteristics of a university as set out in section 162(4)(a)(i) to (v) and (4)(b)(iii) of the Education Act 1989, the Minister must:

- seek and receive advice on the matter from the New Zealand Qualifications Authority; and
- consult on the matter with such institutions, organisations representing institutions, and other relevant bodies, as the Minister considers appropriate.

If the Minister determines that the establishment of a body as a university is not in the interests of the tertiary education system and the nation as a whole, he or she

- is not required to determine whether the body has the characteristics of a university (as set out in Section 162); and
- may not seek or receive advice on the matter from the Qualifications Authority or any other body (*Part 1, Clause 4, New Section 162A of the Education Act 1989*).

#### *Comment*

If the Minister decides, in considering and deciding whether the “national interest” is met, that the “national interest” is not met, he or she has no discretion to continue the process and the request for the establishment of a university must be declined.

#### **Use of the term “university”**

The Bill amends the provisions of the Education Act 1989 relating to the consent of the Minister for the use by educational institutions of terms such as “university”. The amendments modify the requirements in relation to an application to use the term “university” in a similar manner to the requirements of New Section 162A (see above) (*Part 1, Clause 5, amending Section 264A of the Education Act 1989*).

#### **Retrospective application**

The Bill provides that an Order in Council that is made under Section 162(2) of the Education Act 1989 for the establishment of a body as a university, and which was made during the period from 17 September 2004 to the day before the date on which this Bill comes into force, ceases to have effect and expires, and the body identified in the Order in Council ceases to be a university, unless the written recommendation required for the Order in Council included a statement by the Minister that:

- the Minister was satisfied as to both matters under New Section 162(3A) (i.e. that the establishment of the university is in the national interest and that the body has the characteristics of a university); and
- that before making the recommendation, the Minister had followed the procedure as set out in proposed New Section 162A (*Part 2, Clause 6*).

#### *Comment*

This appears to be designed to prevent any successful Court action by Unitec based on the present law forcing the Minister to complete the entire Section 162 process to a favourable conclusion for Unitec before the Bill is passed.