**Education report: Sector feedback on introducing a property disposal threshold**

| To: | Hon Chris Hipkins, Minister of Education |
| Date: | 29 August 2018 | Priority: | Medium |
| Security Level: | In Confidence | METIS No: | 1142570 |
| Drafter: | Mary Kuepper | DDI: | 6 9(2)(a) |
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| Messaging seen by Communications team: | No | Round Robin: | No |

**Purpose of report**

This report advises you of the outcomes of sector engagement with tertiary education institutions (TEIs) on the introduction of a property disposal threshold under section 192 (5) of the Education Act 1989.

**Summary**

Following your approval in May, we consulted with TEIs on introducing a threshold to dispose of low-value property (land or buildings) without the approval of the Secretary for Education (the Secretary) [METIS 1096508 and 1119921 refers]. Transactions valued above the threshold would still require the Secretary’s approval. The property disposal threshold would reduce unnecessary costs and time delays associated with low-value transactions, while managing the risks associated with larger transactions.

The sector welcomed the introduction of a property disposal threshold. Based on sector feedback, we recommend two minor changes to the proposed requirements to:
- give providers flexibility in the type of property evaluation they use within the criteria, and
- better exclude risky TEIs without unnecessarily limiting other TEIs (see paragraphs 9 to 17).

We also consulted with TEIs on the risk assessment criteria [METIS 1119921 refers]. Since we initiated sector engagement on the risk assessment criteria review, the financial position of the institute of technology and polytechnic (ITP) sector has further declined. Given the current ITP sector challenges, we are further considering our advice to you on these criteria, and will provide an update shortly.
Recommended actions

The Ministry recommends you:

a. agree that, based on their group equity value as shown below, TEIs may dispose of property valued below the thresholds without the Secretary’s approval, as long as they meet the criteria, as described in recommendation 6.

<table>
<thead>
<tr>
<th>Group equity value of an institution (taken from the most recent annual report)</th>
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<td>$15,000,000</td>
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</tbody>
</table>

b. agree that to use the thresholds shown in recommendation a above, a TEI must meet the following criteria, these being to:

I. ensure the disposal is consistent with its Capital Intentions Plan

II. have a recent valuation (within the last year) of the property done as part of the annual audit process or by a registered valuer

and

III. either have:

i. a ‘core’ rating in its most recent independent Capital Asset Management Maturity Assessment, if it has a ‘low’ or ‘moderate’ rating in its most recent Financial Monitoring Framework report, or

ii. an ‘intermediate’ rating in its most recent independent Capital Asset Management Maturity Assessment, if it has a ‘high’ rating in its most recent Financial Monitoring report.

c. agree to introduce a baseline threshold of $300,000 to allow TEIs that do not meet the Capital Asset Management Maturity Assessment and Financial Monitoring Framework criteria to dispose of very low-value property without needing the Secretary’s approval

d. note that the threshold does not affect TEIs’ existing management practices and responsibilities, and that in disposing of property TEIs would be expected to confirm ownership of the property, satisfy Treaty of Waitangi obligations, Public Works Act 1981 any Right of First Refusal and any obligations from an earlier Crown asset transfer

Noted
e. **agree** to set the threshold for property disposal by TEIs through the *Gazette* notice attached in Annex four
   a. at this time, ahead of decisions on any changes to the risk assessment criteria
      [Agree / Disagree]
   b. following decisions on any changes to the risk assessment criteria
      [Agree / Disagree]

f. **proactively release** this report following publication of the property disposal threshold by *Gazette* notice
   [Release / Not release]

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Andy Jackson  
Group Manager  
Tertiary Education  
Graduate Achievement, Vocations and Careers

29/08/2018

Hon Chris Hipkins  
Minister of Education

17/9/18
Introducing a property disposal threshold for TEIs under section 192 of the Education Act 1989 (the Act)

Background on introducing a property disposal threshold

1. Currently, when a TEI council wants to sell or dispose of property (land or buildings) that it owns, it is required to ask for approval from the Secretary under section 192(4) of the Act. This applies regardless of the value of the property. The role of the Secretary is to check that TEI councils have used an appropriate decision-making process, not to make the decision on behalf of TEI councils.

2. In recent years, the Ministry, the TEC and TEIs have spent a lot of time and effort on disposals of low-value assets. This is an unnecessary transaction cost and is a barrier to TEIs’ efficient use of assets. Introducing a property disposal threshold will reduce these costs and time delays, while managing the risks associated with larger transactions. Section 192 (5) of the Education Act allows you to set a threshold below which TEIs can dispose of property without the consent of the Secretary.

Description of the property disposal threshold we consulted on

3. Because of the variation in the size of TEIs, we proposed four tiers based on TEI equity, with a fixed amount threshold for each tier (see Annex four). The size of the thresholds within each tier has been chosen to allow TEIs to make low-value property transactions at the margins of their business, not to restructure significant educational assets.

4. Our oversight of such low-value disposals does little to change the risks that TEIs face. There are a number of decisions that TEIs make (for example investing in new property) that expose them to risks, many of which are greater than disposing of low-value property.

5. Larger disposals would come above the thresholds and would still require the Secretary’s approval. These transactions are relatively rare, such as the sales of the Tamaki campus in April 2016, the Karori campus in December 2017 and the Mt Albert campus in March 2018. This is where the Secretary’s approval does help manage the risk to the government associated with such high-value transactions.

6. To ensure that the benefits from the threshold are balanced against the risk to the Crown’s ownership interest, we proposed three requirements that TEIs must meet to use the threshold. A TEI must:
   a. ensure the disposal is consistent with its Capital Intentions Plan
   b. have a recent valuation of the property by a registered valuer (within the last year), and
   c. either have:
      i. a ‘core’ rating in its most recent independent Capital Asset Management (CAM) Maturity Assessment, and a ‘low’ rating in its most recent Financial Monitoring Framework (FMF) report, or
      ii. an ‘intermediate’ rating in its most recent independent CAM Maturity Assessment, and a ‘moderate’ rating in its most recent FMF report.

7. If a TEI does not meet the required CAM Maturity Assessment and FMF ratings, but fulfills all other criteria listed above, we proposed that the TEI could still dispose of property valued below $300,000 without needing the Secretary’s approval. This ensures the original policy intent is upheld.
We consulted with TEIs on the proposed threshold

8. Seventeen TEIs provided feedback (see Annex one for a list of providers who responded). Overall, the sector welcomed the introduction of a property disposal threshold.

We propose two changes to the requirements to use the threshold based on TEI feedback

Issue 1: Valuation methods

9. Several TEIs suggested removing the registered valuer requirement, and instead use valuations that are already at hand from yearly audits or insurance processes.

Ministry comments

10. Requiring TEIs to have a recent valuation of the property by a registered valuer mitigates the risk that TEIs lose money when selling property or sell property for less than it is worth. However, this requirement adds unnecessary administrative and compliance costs, when an equivalent valuation already exists. We consider the valuation used in annual reporting should be sufficient for this criteria.

Recommended change

11. We now recommend that to use the threshold a TEI must have a recent valuation (within the last year) of the property done as part of the annual audit process or by a registered valuer.

Issue 2: The CAM and FMF requirements are too restrictive

12. Many TEIs thought that the proposed requirements around the CAM Maturity Assessment and the FMF might exclude a large number of institutions from being able to use the threshold, particularly if FMF risk ratings continue to worsen. Some TEIs thought the intermediate threshold for the CAM Maturity Assessment did not add much value.

Ministry comments

13. The CAM Maturity Assessment is a measure of the processes a TEI uses to manage assets. The FMF speaks to a TEI's financial position. The CAM Maturity Assessment and the FMF are driven by different factors and together account for different aspects that contribute to responsible decision-making about property.

14. The proposed requirement excludes those TEIs that need to improve their asset management capability and/or are struggling financially from being able to use the threshold. We still think that measures from both the CAM Maturity Assessment and the FMF should inform the requirements for TEIs to use the threshold.

15. Particularly for a number of ITPs, FMF risk ratings have worsened in the last two years (see Annex two). The requirements we consulted on might have been too restrictive to meet the policy intent of introducing a property disposal threshold (see paragraph 2).

16. We are open to adjusting the required FMF risk rating because an 'intermediate' CAM Maturity Assessment rating represents a very high level of competence regarding asset management capability.

Section 9(2)(b)(ii) currently has a 'high' FMF risk rating and still meets the intermediate CAM Maturity Assessment rating (see Annex two).
Recommended change

17. We now recommend that in order to use the threshold, a TEI must either have:

   a. a ‘core’ rating in its most recent independent CAM Maturity Assessment, if it has a ‘low’ or ‘moderate’ rating in its most recent FMF report, or
   
   b. an ‘intermediate’ rating in its most recent independent CAM Maturity Assessment, if it has a ‘high’ rating in its most recent FMF report.

The TEC supports the proposed changes to the property disposal threshold

18. We have worked with the TEC in analysing sector feedback. Annex four provides the Gazette notice to set the threshold (with updated requirements) for your consideration.

We do not propose any changes based on other issues raised by the sector

Issue 3: Demolition should not be included in the threshold

19. The sector suggested that institutions should be able to demolish property without needing to meet any criteria.

Ministry comments

20. We would not want TEIs to demolish property that has significant value without a compelling business case for its replacement. If the value of the property being demolished is above the threshold, we would want the Secretary to consider such transactions to ensure this has been done. We therefore do not think that TEIs should be demolishing property valued above the threshold without consent.

21. Well-governing institutions are unlikely to make decisions that reduce their own capability. If institutions wish to demolish property, it is likely that this will fit within the thresholds as it will likely need to pay less value. We therefore think the threshold should apply to both sales and demolitions.

Issue 4: Percentage threshold for upper tier

22. Several (larger) TEIs suggested that the threshold for the upper band (that is TEIs with a total group equity value over $250 million) should be a percentage of equity, rather than a fixed value. The proposed threshold in this tier is $15 million (see Annex four).

Ministry comments

23. We want to ensure that the thresholds are set at such a level that TEIs manage their assets. However, we would still want TEIs to require the Secretary’s approval for high-value transactions. Therefore, we think that the current threshold of $15 million is set at an appropriate level.

24. If, in future, TEIs make lots of transactions valued over $15 million, we can re-assess the thresholds. However, in the past, there have been few transactions of such a scale (see paragraph 5).

25. As part of the Crown asset transfer process, TEIs were asked to identify any surplus property they might want to dispose of. All assets that have been transferred were identified by TEIs as essential for future educational purposes. Only three TEIs are yet to apply for Crown asset transfer. This means that the number of high-value transactions is unlikely to increase in the near future.
Additional comments made by the sector

26. The sector suggested that the threshold should be tied to inflation. We used fixed values, as these are easy to understand and stable year-to-year. After a while, a fixed amount may need to be updated due to inflation. Updating the threshold will be straightforward because the threshold is set by Gazette notice and not legislation. Not tying the threshold to inflation allows us to review how the threshold is working in three to four years.

27. Some TEIs considered the baseline threshold too low. Setting the baseline threshold at $300,000 allows TEIs that do not meet the necessary requirements to use the main threshold, to dispose of buildings that no longer hold value, without enabling TEIs to sell off functional assets. We think the baseline threshold is set at an appropriate level, given the adjustment we are proposing to the requirements within the main threshold.

28. One submittter noted that thresholds should be applied to sales over the financial year. We designed the threshold for individual sales, so TEIs would make decisions on the merit of each property disposal. We do not see a need to limit how often TEIs can use the threshold within a time period, as long as they meet the criteria for using the threshold. We are therefore happy for the thresholds to apply to individual sales.

29. Another suggestion was to remove the lower middle tier (that is for TEIs with a total group equity value between $60 million to $100 million). We do not see what merit the removal of this tier would have.

Sector engagement on the risk assessment criteria under section 195A of the Act

30. We also consulted with TEIs on the risk assessment criteria, because there was a statutory requirement under section 195A(3) of the Act to review the criteria. The risk assessment criteria are used to assess whether a TEI’s operation and long-term viability, and the educational performance of students enrolled at institutes of technology and polytechnics, are at risk to the extent that a statutory intervention is warranted.

31. The sector feedback did not provide any compelling reasons for changing the current criteria, although some submitters suggested introducing more flexibility to the criteria. Given current ITP sector challenges, we do not think the criteria should be made more flexible.

32. Since we initiated sector engagement on the risk assessment criteria review, the financial position of the ITP sector has further declined. We are therefore further considering our advice on these criteria, before tendering it to you.

You could defer publication of the property disposal threshold

33. You may wish to defer the publication of the property disposal threshold until after decisions on any changes to the risk assessment criteria have been made.

34. While the threshold will give TEIs more autonomy with regard to low-value property transactions, our oversight of such low-value transactions does little to change the risks TEIs face (see paragraph 4). We also note that the threshold will free up agency resource to focus on other activities, such as monitoring.
Next steps

35. Should you agree with the threshold, we will arrange with your office to set the threshold for property disposal by TEIs via Gazette notice (see Annex four), subject to your direction (as indicated in recommendation e).

36. We will notify all TEIs of the outcomes of the consultation before publication of the Gazette notice.

37. Officials will further consider advice on the risk assessment criteria, before tendering it to you.

Proactive release

38. We recommend that this education report is proactively released following publication of the property disposal threshold by Gazette notice. Any information which may need to be withheld will be done so in line with the provisions of the Official Information Act 1982.

Annexes

Annex one: TEIs that responded to the consultation material
Annex two: TEIs’ recent independent CAM Maturity Assessment and FMF risk ratings
Annex three: The threshold for each TEI based on their 2017 annual reports
Annex four: Proposed Gazette notice – Property disposal threshold for TEIs
Annex one: TEIs that responded to the consultation material

<table>
<thead>
<tr>
<th>Type of Institution</th>
<th>Introduction of a property disposal threshold</th>
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</thead>
<tbody>
<tr>
<td>Wānanga</td>
<td>Te Wānanga o Raukawa</td>
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<tr>
<td>ITPs</td>
<td>Ara Institute of Canterbury (Ara)</td>
</tr>
<tr>
<td></td>
<td>Northland Polytechnic (NorthTec)</td>
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<td></td>
<td>Otago Polytechnic</td>
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<td></td>
<td>Universal College of Learning (UCOL)</td>
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<td></td>
<td>Toi Ohomai Institute of Technology (Toi Ohomai)</td>
</tr>
<tr>
<td></td>
<td>Wellington Institute of Technology (Weltec)*</td>
</tr>
<tr>
<td></td>
<td>Whitireia Community Polytechnic (Whitireia)*</td>
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<td></td>
<td>Eastern Institute of Technology (EIT)</td>
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<tr>
<td>Universities</td>
<td>The University of Auckland</td>
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<td></td>
<td>Auckland University of Technology (AUT)</td>
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<td></td>
<td>Lincoln University</td>
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<td>Massey University</td>
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<td>The University of Otago</td>
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<td></td>
<td>Victoria University of Wellington</td>
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</tbody>
</table>

* = Weltec and Whitireia made a joint submission for each consultation.
Annex two: TEIs' recent independent CAM Maturity Assessment and FMF risk ratings

The bolded TEIs are those that would be excluded from being able to use the threshold, based on the requirements we consulted on (see paragraph 6). § 9(2)(b)(ii)

Introducing a property disposal threshold is intended to reduce costs and time delays for low-value transactions, while managing the risks associated with larger transactions. Excluding § 9(2)(b)(ii) from being able to use the threshold goes against the policy intent.

The TEIs highlighted yellow are those that would be excluded from being able to use the threshold, based on the recommended changes to the CAM Maturity Assessment and FMF requirement (see paragraph 17). § 9(2)(b)(ii)
### Annex three: The threshold for each TEI based on their 2017 annual report

<table>
<thead>
<tr>
<th>The maximum valuation price of property that the TEI can dispose of without the approval of the Secretary</th>
<th>The TEIs who can use this threshold based on 2017 annual reports</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>$15 million</strong>&lt;br&gt; <em>The group equity value in its 2017 annual report is over $250 million</em></td>
<td>Massey University&lt;br&gt; University of Auckland&lt;br&gt; University of Canterbury&lt;br&gt; University of Otago&lt;br&gt; University of Waikato&lt;br&gt; AUT&lt;br&gt; Victoria University of Wellington&lt;br&gt; Ara</td>
</tr>
<tr>
<td><strong>$5 million</strong>&lt;br&gt; <em>The group equity value in its 2017 annual report is between $100 million and $250 million</em></td>
<td>Lincoln University&lt;br&gt; EIT&lt;br&gt; Otago Polytechnic&lt;br&gt; SIT&lt;br&gt; Wintec&lt;br&gt; Te Wānanga o Aotearoa</td>
</tr>
<tr>
<td><strong>$3 million</strong>&lt;br&gt; <em>The group equity value in its 2017 annual report is between $60 million and $100 million</em></td>
<td>NMIT&lt;br&gt; Open Polytechnic&lt;br&gt; UCOL&lt;br&gt; Te Wānanga o Raukawa</td>
</tr>
<tr>
<td><strong>$1 million</strong>&lt;br&gt; <em>The group equity value in its 2017 annual report is less than $60 million</em></td>
<td>Te Whare Wānanga o Awanuiārangi</td>
</tr>
<tr>
<td><strong>$300,000</strong>&lt;br&gt; <em>Baseline threshold for TEIs that do not meet the CAM Maturity Assessment and FMF requirements</em></td>
<td>Northtec&lt;br&gt; Tai Poutini&lt;br&gt; WITT&lt;br&gt; Weltec&lt;br&gt; Whiteria&lt;br&gt; MIT&lt;br&gt; Unitec&lt;br&gt; Te Ohomai</td>
</tr>
</tbody>
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*Source: TEC*
Annex four: Proposed Gazette notice – Property disposal threshold for TEIs

Background

Under section 192(5) of the Education Act 1989 ("the Act"), the Minister of Education ("Minister") may set a threshold to limit the applications for property disposals (land or buildings) that require approval from the Secretary for Education ("Secretary"). Such a threshold would allow tertiary education institutions to make transactions valued below the threshold without getting approval from the Secretary.

This notice sets out the threshold.

The property disposal threshold will reduce unnecessary administrative and compliance costs and time delays associated with low-value transactions, while managing the risks associated with larger transactions.

The threshold does not affect existing management practices and responsibilities of institutions

Nothing in this notice limits or affects the duties of a tertiary education institution council under section 181 of the Act, or any other duties or obligations of an institution or council under any other enactment.

Under section 181 of the Act, it is the duty of the council of an institution to ensure that the institution operates in a financially responsible manner that ensures the efficient use of its resources and maintains the institution’s long-term viability.

Institutions are expected to continue operating with appropriate internal delegations and make decisions that are consistent with their investment and capital plans. In disposing of property, institutions are also expected to confirm ownership of the property, and satisfy Treaty of Waitangi obligations, Public Works Act 1981 requirements, any Right of First Refusal, and any obligations from an earlier Crown asset transfer to institutions.

Words and phrases used in this notice bear the same meaning as under the Act.

Threshold for property disposal by tertiary education institutions

The table below outlines the threshold for property disposal by tertiary education institutions. The table separates institutions into tiers by the size of their equity. To determine which tier an institution is in, the group equity value of the institution will be taken from its most recent annual report. The right-hand column displays the threshold that is then applied for each tier.

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For an institution to dispose of property under the threshold, it needs to meet the following criteria:

To use the threshold, a TEI must:

a. ensure the disposal is consistent with its Capital Intentions Plan

b. have a recent valuation (within the last year) of the property done as part of the annual audit process or by a registered valuer, and

c. either have:
   i. a ‘core’ rating in its most recent independent CAM Maturity Assessment, if it has a ‘low’ or ‘moderate’ rating in its most recent FMF report, or
   ii. an ‘intermediate’ rating in its most recent independent CAM Maturity Assessment, if it has a ‘high’ rating in its most recent FMF report.

If an institution does not meet criteria (c) (i) or (ii), but fulfils criteria (a) and (b) listed above, the institution can still dispose of property valued below $300,000 without needing the Secretary’s approval.

Dated at Wellington this [date] day of [month] 2018.
Hon Chris Hipkins, Minister of Education.