



Ref: OI/19/00408

14 May 2019

9(2)(a)

Level 9, 44 The Terrace

PO Box 27048

Wellington, New Zealand 6141

P +64 4 462 5200

www.tec.govt.nz

Dear 9(2)(a)

Thank you for your request, received on 12 March 2019, for the following information under the Official Information Act 1982 (the Act):

Any correspondence between TEC and outside parties including the minister, Wintec, SFO and the Office of the Auditor General regarding the draft and final Audit New Zealand report into Wintec dated January 31 2019. This should include any feedback on reports, emails and letters.

Details of the advice the TEC gave Wintec regarding both the audit report and the QC investigation into allegations around its senior management.

I am releasing the five emails and letters listed in the attached table. In compliance with the Act, I am withholding some information in the released documents. Redactions are clearly marked in the documents, with reasons for the redactions provided.

I am also withholding one email in full. This email was provided to the Tertiary Education Commission under an obligation of confidence and is being withheld under section 9(2)(ba)(i) of the Act.

I am satisfied, in terms of section 9(1) of the Act, that the need to withhold the information referred to above is not outweighed by other considerations that render it desirable, in the public interest, to make the information available.

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

The TEC intends to publish its response to this request on our website with your personal details removed. Consistent with the Act, we are publishing responses in the interests of transparency and accountability, and to improve access to official information.

Yours sincerely

Tim Fowler
Chief Executive



Information released under the Official Information Act (1982)

Item No	Date	Document Type	Title	Reference/ Notes	Release
1	15 December 2017	Letter	Letter from TEC to Council Chair of Wintec	N/A	Release with personal information withheld
2	21 December 2017	email	[Confidential] 2017.12.21 - Email to Barry Harris - Candidate names and draft ToR from BK	N/A	Release with personal information withheld
3	9 March 2018	Email	Wintec Statements	N/A	Release with personal information withheld
4	9 August 2018	Letter	Allegations against Wintec Chief Executive	N/A	Release with information withheld that is subject to an obligation of confidence
5	23 October 2018	Email	Wintec Report additional assurance work – confidential draft	N/A	Withhold in full under section 9(2)(ba)(i) as the inform is subject to an obligation of confidence
6	9 April 2019	Email	Confidential Draft Communications - Wintec		Release with personal information withheld



15 December 2017

Barry Harris
Chairperson
Waikato Institute of Technology (Wintec)
Hamilton

Via email: Section 9(2)(a)

Dear Barry

Confidential: Wintec – Review of previous investigation into complaints about the Chief Executive

Thank you for your email on 14 December regarding your intention to commission an independent review of the previous investigation into allegations made about the Chief Executive.

I support your proposal to undertake this review, and the TEC would be happy to assist you. I can provide you with advice regarding the scope of the review and elements of the previous investigation you may consider prudent to review. These could include the original scope, terms of reference, the process used and the conclusions reached.

As we discussed, it will be important to have an independent person undertake the review. I can provide you a list of Wellington-based candidates with relevant expertise and experience you could consider to undertake the review.

Earlier today I contacted the Office of the Auditor-General (OAG) and asked them to consider looking into some of the reports and allegations made in the media recently regarding Wintec's control of sensitive expenditure. I have requested that they do this as part of their annual audit process for Wintec. I am awaiting a formal response from the OAG however in initial discussions they have indicated they are comfortable with this request.

I would like to acknowledge your proactive approach to addressing these matters. It is important that the Council assures itself, the Minister and the public that these allegations were addressed satisfactorily and any actions as a result are followed-up and implemented. This will give the Minister and the public confidence in New Zealand's publicly funded institutions. It is my expectation that this is done in an open and transparent manner while maintaining appropriate standards of privacy.



If you would like to discuss any aspect of this letter further I can be reached by email at brendan.kelly@tec.govt.nz or by phone on **Section 9(2)(a)**

Yours sincerely



Brendan Kelly
Acting Chief Executive



We ensure New Zealand's future success.

Hugh McIlraith

From: Brendan Kelly
Sent: Thursday, 21 December 2017 4:21 PM
To: barry harris
Cc: Tim Fowler
Subject: Draft TOR
Attachments: DraftTEC_WINTEC_ 2017 ToR for review of investigation -Ve....docx

Hi Barry,

In my 15 December letter to you I undertook to provide you with a list of Wellington-based candidates for you to consider to undertake a review of the Wintec 2015 Investigation. I have provided these names for you below.

- Mary Scholtens QC <http://www.stoutstreet.co.nz/barrister-detail/?id=14>
- Victoria Casey QC <http://www.chambers.co.nz/our-barristers/victoria-casey/>
- Tom Broadmore, retired District Court Judge (Mr Broadmore practised as a barrister from 1998 to 2005, after 21 years as a partner in Chapman Tripp. His practice was primarily in civil litigation. Much of his practice was in maritime law in particular, and in insurance work. He served as Federal President of the Maritime Law Association of Australia and New Zealand from 1997 – 2000, only the second New Zealander to hold the position in the Association’s 30-year history.)
- Terry Sissons, Barrister http://www.lambtonchambers.co.nz/terence_sissons.html

Please have a look at these candidates and let me know if you need any assistance in contacting them.

I have also attached a draft Terms of Reference you may wish to consider as the basis for engagement of one of the above candidates.

If you have any questions or would like to discuss anything in this email, please don’t hesitate to contact me.

I wish you a restful Christmas break with family and friends.

Kind regards

Brendan Kelly

Brendan Kelly

Deputy Chief Executive Information / Chief Information Officer



Section 9(2)(a)

E Brendan.kelly@tec.govt.nz

PO Box 27-048, Wellington 6141, New Zealand

www.tec.govt.nz

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Independent Review of Investigation in 2015 into <insert title of report>

Day Month Year

1. Background

1.1 [REDACTED] made a complaint to the former Chair of the Tertiary Education Commission (TEC) regarding the Chief Executive of WINTEC, Mark Flowers. [REDACTED],

[REDACTED] to discuss [REDACTED] serious allegations about Mr Flowers, however, [REDACTED] did not believe that those concerns were considered or raised with the WINTEC Council for its consideration.

1.2 [REDACTED] the TEC advised WINTEC it had received the complaint and asked WINTEC to advise what steps it had taken to address the allegations.

1.3 [REDACTED] WINTEC advised the TEC that it was confident the matter had been dealt with appropriately [REDACTED] WINTEC advised that the allegations contained insufficient evidence to justify investigating the matter further.

1.4 However, [REDACTED] the WINTEC Council convened a sub-committee to initiate an investigation, conducted by an independent investigator, into the allegations [REDACTED].

1.5 On [REDACTED] WINTEC advised the TEC that the investigation (2015 Investigation) had concluded that there was no substance to the allegations, concluding that *“the allegations made by [the complainants] have no credibility and do not stand up to scrutiny”*. The WINTEC Council then adopted the sub-committee’s recommendation *“that the report be accepted and no disciplinary action be undertaken”*¹. The final report was not provided to the TEC

1.6 [REDACTED] The TEC advised [REDACTED] to advise WINTEC of [REDACTED] concerns about the investigation and the report.

1 Letter from WINTEC Chair dated 10 September 2015.

1.7 In [REDACTED] [REDACTED] raised [REDACTED] concerns about WINTEC with Minister Hipkins, advising [REDACTED] remains dissatisfied with WINTEC's response to the complaints [REDACTED] had raised.

1.8 On 14 December 2017, the Wintec Council Chair advised the TEC that the Wintec Council intends to commission a peer review of the 2015 Investigation to advise on the process followed and the completeness of the investigation.

1.9 TEC supports Wintec's intended approach.

2. Roles and Responsibilities

2.1 WINTEC will:

- (a) commission an independent review of the 2015 Investigation;
- (b) appoint an independent person to complete the independent review (**Reviewer**);
- (c) receive the final report and provide comments on the findings and recommendations;
- (d) provide a copy of the final report to the TEC;
- (e) act on the independent findings and recommendations.

2.2 TEC will:

- (a) provide advice on the Terms of Reference for the independent review;
- (b) provide the names of candidates to Wintec to consider for the appointment of the Reviewer;
- (c) receive a copy of the final report and recommendations of the independent review;

- (d) provide input on the action to take as a result of the independent findings and recommendations.

3. Review objectives

3.1 It is expected that the objectives of the independent review are to:

- (a) review whether all relevant information was considered in the 2015 Investigation;
- (b) review whether all relevant persons who were available were considered and or interviewed, or adequate reasons were given for not interviewing those people;
- (c) determine whether the findings in the report contain fair and justifiable assessments of credibility;
- (d) determine whether the conclusions of the 2015 Investigation were within the range of findings that a fair and reasonable investigator could have made.

3.2 The Reviewer will make a recommendation to WINTEC about whether the 2015 Investigation needs to be re-opened and if yes, set out why and recommend what the re-opened investigation should address.

4. Review scope and approach

4.1 The scope of the independent review will involve a review and assessment of the 2015 Investigation process, including the scope, terms of reference, process and findings/conclusions, into the complaints made by [REDACTED]

4.2 At the completion of the independent review a written report will be produced including any relevant recommendations. This report will be provided to the TEC, with the strictest of confidence, and privacy matters considered.

4.3 The investigation and assessment will be performed through <to insert what will be provided and what it is anticipated the review will cover – assume it will be paper based?>.

5. Review Timing

5.1 The Terms of reference will be finalised by <insert date>.

5.2 The Reviewer will be appointed by <insert date> and the independent review will commence on <insert date>.

5.3 The independent review will be completed by <insert date> and a report will be provided by <insert date> (subject to availability and access to relevant documentations and people for interview).

DRAFT

Hugh McIlraith

From: Barry Harris <Barry.Harris@wintec.ac.nz>
Sent: Friday, 9 March 2018 9:43 AM
To: Tim Fowler
Subject: Wintec - Statements
Attachments: Statements emailed on 9 March 2018.pdf; Terms of Reference - Audit Extension.pdf; Terms of Reference - Independent Peer Review.pdf

Good morning Tim

Here are some public statements that were made today, for your information.

Regards

Barry

Barry Harris

Council Chair

Wintec

Private Bag 3036, Waikato Mail Centre, Hamilton 3240

Phone: Section 9(2)(a)

Web: <http://www.wintec.ac.nz/>



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Statements emailed on 9 March 2018

All staff version

Good morning

Further to my communications last year, I advised I would continue to update you on matters.

Late last year the Wintec Council announced it would undertake an independent peer review of the process undertaken for the 2015 investigation into a complaint and allegations relating to Mark Flowers, Wintec's chief executive, as well as asking the Auditor-General to extend Audit New Zealand's programmed annual audit of Wintec to include assessment into matters raised around expenditure and restructuring costs.

Both the review and the audit extension assurance work will get underway this month, with the terms of references now agreed. Queen's Counsel Victoria Casey from Wellington will undertake the independent peer review, and Audit New Zealand will conduct the audit assurance work. Key points from these terms of reference are **attached**.

The Wintec Council proactively instigated these actions to give assurance that Wintec continues to be a responsible, public organisation. It was in response to media commentary and coverage at the time and the effect that was having on public confidence around Wintec's operations. This work is estimated to cost Wintec approximately \$30,000 for the independent peer review, and approximately \$80,000 for the initial stage of the additional audit work. I wanted to be upfront and transparent about the costs so that you realise the completeness and thoroughness of these pieces of work.

We look forward to allowing the processes to proceed, and will aim to update you on the outcomes at the appropriate time, but expect this will not be until May. Just so you are aware, all of the information in this email will also be advised to the media. I would expect there may be some media coverage about this, and further Official Information Act information that has been released, in the coming week.

In regards to the media, please refer all inquiries to Erin Andersen, Director – Communications via erin.andersen@wintec.ac.nz or **Section 9(2)(a)** and familiarise yourself with Wintec's Media Policy – [Part A](#) and [Part B](#)

We have obligations to all of our staff and stakeholders to ensure that our reputation, and that of its people, are upheld. I'd encourage you to again keep focussed on business as usual, and the important priorities that you are all working towards. Please be assured we all will continue to be focussed on being a successful tertiary education provider regionally, nationally and globally and delivering quality education to our students.

Regards
Barry Harris

Stakeholder Version

Good morning,

I wanted to continue to update you as a valued stakeholder and partner of Wintec on matters which relate to my communications last year.

Late last year the Wintec Council announced it would undertake an independent peer review of the process undertaken for the 2015 investigation into a complaint and allegations relating to Mark Flowers, Wintec's chief executive, as well as asking the Auditor-General to extend Audit New Zealand's programmed annual audit of Wintec to include assessment into matters raised around expenditure and restructuring costs.

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We look forward to allowing the processes to proceed, and will aim to update you on the outcomes at the appropriate time, but expect this will not be until May. Just so you are aware, information in this email will be advised to our staff and also to the media. I would expect there may be some media coverage about this, and on further Official Information Act information that has been released, in the coming week.

I'm sure you'll understand we have obligations to all of our staff and stakeholders to ensure that our reputation, and that of its people, are upheld. Please be assured Wintec will continue to be focussed on being a successful tertiary education provider regionally, nationally and globally and delivering quality education to our students while maintaining our strong relationships with industry and employers.

Regards
Barry Harris

Media Version

Late last year the Wintec Council announced it would undertake an independent peer review of the process undertaken for the 2015 investigation into a complaint and allegations relating to Mark Flowers, Wintec's chief executive, as well as asking the Auditor-General to extend Audit New Zealand's programmed annual audit of Wintec to include assessment into matters raised around expenditure and restructuring costs.

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cost Wintec approximately \$30,000 for the independent peer review, and approximately \$80,000 for the initial stage of the additional audit work. I wanted to be upfront and transparent about the costs so that you realise the completeness and thoroughness of these pieces of work.

We look forward to allowing the processes to proceed, and will aim to update you on the outcomes at the appropriate time, but expect this will not be until May.

We have obligations to all of our staff and stakeholders to ensure that our reputation, and that of its people, are upheld.

Wintec will continue to be focussed on being a successful tertiary education provider regionally, nationally and globally and delivering quality education to more than 22,000 students each year, while maintaining our strong relationships with industry and employers.

Barry Harris
Wintec Council Chair

Terms of Reference

Independent Peer Review – conducted by Victoria Casey, QC

March 2018

Full terms of reference

In 2015 the Tertiary Education Commission received complaints regarding its Chief Executive Mark Flowers, and those complaints were passed on to Wintec's Council.

Following receipt of the complaints Wintec's Council appointed a well-respected and independent lawyer as an investigator to undertake a confidential investigation and make factual findings on whether the alleged conduct had occurred. Subsequently that investigator prepared a confidential report which concluded that the allegations made had no credibility and did not stand up to scrutiny (the Report).

For completeness and openness, and in light of recent media coverage, in engaging an independent peer review of the investigation, it is Wintec's Council purpose to satisfy itself as to whether the findings of the investigation can be relied upon.

The peer reviewer is to provide advice to Wintec's Council on whether the investigation was sufficiently robust and that Wintec's Council can have confidence in its conclusions. This should include the peer reviewer's views on whether: the complaints were investigated, the investigation process undertaken was adequate, the conclusions reached were reasonable, and any other matter relevant to the purpose of the peer review. The peer reviewer may make recommendations to Wintec's Council, including that the Council reopen the investigation, or accept the Report's conclusions as sufficiently robust.

For the avoidance of doubt, the peer review is in relation to the investigation and should be restricted to the allegations and complaints dealt with in the Report. In particular the peer review should not extend to any matters to be separately considered by Audit New Zealand.

Terms of Reference

Audit Extension – Additional Assurance Work Conducted by Audit New Zealand

March 2018

Excerpts from terms of reference

In relation to the Chief Executive's expense claims and redundancy and severance payments to former employees of Wintec and its subsidiaries.

The work will involve consideration of:

- The expenses incurred in relation to all travel to Hong Kong and China by the Chief Executive, from the beginning of 2009, to the end of 2017.
- The expenses incurred in relation to all travel to Hong Kong and China, by all members of the executive team both past and present, from the beginning of 2009, to the end of 2017.
- The expenses incurred in relation to all travel, other than to Hong Kong and China, by the Chief Executive, from the beginning of 2013, to the end of 2017.
- The expenses incurred in relation to all travel by all other members of the executive team both past and present, other than to Hong Kong and China, from the beginning of 2013, to the end of 2017; and
- All redundancy or severance payments made to former employees of Wintec, from the beginning of 2013, to the end of 2017, including those made where the contract providing for the payment, between Wintec and the former employee, includes obligations to keep details confidential.

The approach will test all expenses against:

- Wintec's policies and related guidance;
- any contractual agreements;
- any applicable statutory requirements;
- the Office of the Auditor-General's auditing standards, particularly AG-3 Effectiveness and efficiency, waste and lack of probity or financial prudence; and
- the Office of the Auditor-General's good practice guide: Controlling Sensitive Expenditure: Guidelines for public entities.

The objective of our assurance work in relation to the amounts paid to former employees of Wintec as redundancy payments or severance payments, is to determine the number and amount paid over the five year time period, as well as establish what the basis was for the payments.



9 August 2018

Barry Harris
Council Chair
Waikato Institute of Technology
Private Bag 3036
Waikato Mail Centre
Hamilton 3204

By email: **Section 9(2)(a)**

Dear Barry

Allegations against Wintec Chief Executive

Thank you for the conversation we had on Tuesday with regard to the allegations against Waikato Institute of Technology's (Wintec) chief executive, Mark Flowers, and your proposed way forward.

I understand that the Wintec council will be considering this issue in the near future. I would like to

Section 9(2)(ba)(i)

Under section 180 of the Education Act, the council is required to monitor and evaluate the performance of its chief executive. This function includes thoroughly investigating allegations. In addition, section 181 of the Education Act provides that it is the duty of the council, in the performance of its functions and the exercise of its powers to "*ensure that the proper standards of integrity, conduct, and concern for the public interest are maintained*". It is in the public interest that allegations are properly investigated, and that the council, as an employer, ensures that its workplaces are safe for everyone and the relevant policies in place are suitable and effective.

According to the *Gazetted Risk Assessment Criteria for Tertiary Education Institutions* (22 January 2015), a council is at risk if it has not fulfilled, and continues to not fulfil, its statutory functions and duties under the Education Act. If I have reasonable grounds to believe that a tertiary education institution (TEI) is at risk, I may exercise specific powers set out in the Education Act.



The public sector code of conduct does not apply to TEIs. However, that code of conduct sets the benchmark against which I expect TEIs to operate. I believe that undertaking the investigation is required under the Education Act, and is the right thing to do for the individuals involved, as well as to ensure public confidence in Wintec as a Crown funded institution. Section 9(2)(ba)(i)

Section 9(2)(ba)(i)

I would appreciate if the views that I have stated in this letter are shared at your upcoming Council meeting where you will be discussing the matter.

Section 9(2)(ba)(i)

Please give me a call if you wish to discuss further.

Kind Regards



Tim Fowler
Chief Executive

cc. Peter Hughes, State Services Commissioner
Geoff Short, Assistant Commissioner, State Services Commission



We ensure New Zealand's future success.

Hugh McIlraith

From: Section 9(2)(a)
Sent: Tuesday, 9 April 2019 8:27 AM
To: Section 9(2)(a)
Cc: Section 9(2)(a)
Subject: FW: Confidential - Confidential Draft Communications - Wintec
Attachments: image001.png; image002.gif; Wintec - Report to the Council on additional assurance work - 31 Jan 201... (1).pdf; 2019-02-04 summary - confidential.pdf; Statement - All staff - Feb 2019.pdf; Statement - Stakeholders - Feb 2019.pdf; Statement - Media - Feb 2019.pdf

-----Original Message-----

From: Erin Andersen [mailto:Erin.Andersen@wintec.ac.nz];
Sent: 07/02/2019 14:08:04
To: Section 9(2)(a)
CC: Section 9(2)(a); Barry Harris [mailto:Barry.Harris@wintec.ac.nz]; Barry Harris
Subject: Confidential - Confidential Draft Communications - Wintec

Good afternoon Section 9(2)(a)

Barry Harris, Chair of Wintec Council, has asked that I copy you, for your information, the embargoed, and currently confidential, Wintec Council communications relating to the recent audit report and the inquiry outcomes. These communications have been finalised following the recent Wintec Council meeting. It is the intention that the full audit report and the summary findings from Simon Mount will be attached with these public statements, which will go to all Wintec staff, stakeholders and media.

It is expected these announcements will be made public on Monday next week. Final timing yet to be decided.

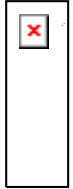
Barry will be calling Tim to discuss this further tomorrow, along with the request around the report mentioned in your email on Tuesday 5 February.

If you wish to discuss further, please just call me and please keep these communications confidential at this stage.

Regards

Erin

Erin Andersen
Director, Communication
Wintec
Private Bag 3036, Waikato Mail Centre, Hamilton 3240
Phone: Section 9(2)(a)
www.wintec.ac.nz



From: Section 9(2)(a)
Sent: Tuesday, 5 February 2019 2:06:33 PM (UTC+12:00) Auckland, Wellington
To: Barry Harris
Cc: Tim Fowler; Section 9(2)(a)
Subject: RE: Confidential - Confidential Draft Communications

Good afternoon Barry

Tim has asked me to get back to you and to thank you for sharing the summary report and public statements.

Now that these have been considered by Council, are you or Erin able to advise when you plan to put this out? Please use me and/or our Strategic Communications Manager Section 9(2)(a) (copied), as a contact point.

We appreciate that the full report of the QC's investigation will not be published in order to maintain confidentiality and privacy for those involved. However, would you consider sharing a copy of the full report with the TEC for our information? The summary report makes reference to findings about Wintec more generally, and not just about Mr Flowers. If you were willing to share the report with us, you could consider redacting information that identifies individuals, to protect their privacy and confidentiality, while still sharing information relevant to Wintec.

Finally, it would also be helpful if you're able to provide us with an update on the progress of Audit NZ's separate additional assurance work. I understand the Wintec Council received a draft report in November. Do you have any clarity on when this report will be finalised and potentially published?

Kind regards

Section 9(2)(a)

Section 9(2)(a)

Acting Manager

Monitoring and Crown Ownership

Section 9(2)(a)



Section 9(2)(a)

Section 9(2)(a)

PO Box 27-048, Wellington 6141, New Zealand

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From: Tim Fowler

Sent: Monday, 4 February 2019 4:58 PM

To: Section 9(2)(a)

Subject: FW: Confidential - Confidential Draft Communications

Hi guys see attached. Can you share with the ministers office and provide any feedback direct to Barry copying me in.

Tim

From: Barry Harris [<mailto:Barry.Harris@wintec.ac.nz>]

Sent: Monday, 4 February 2019 8:53 AM

To: Tim Fowler <Tim.Fowler@tec.govt.nz>

Cc: Erin Andersen <Erin.Andersen@wintec.ac.nz>

Subject: Confidential - Confidential Draft Communications

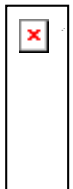
Hi Tim

Please find attached for your information the confidential draft public summary from Simon Mount QC, and confidential draft Wintec Council communications relating to the inquiry outcomes, both of which will be considered at the Wintec Council meeting today. I have asked Erin Andersen, Wintec's Director-Communications, to be in touch with you regarding the statements and timing this week.

Regards

Barry

Barry Harris
Council Chair
Wintec
Private Bag 3036, Waikato Mail Centre, Hamilton 3240
Phone: Section 9(2)(a)
Email: Barry.Harris@wintec.ac.nz
Web: <http://www.wintec.ac.nz/>



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[Date]

Stakeholder email

Announcement from Chair of Council Barry Harris.

This email is to update you on the outcomes of the inquiry and the audit assurance work, both of which were commissioned by the Wintec Council in late 2017 to respond to extensive public commentary and coverage over allegations of complaints against Chief Executive Mark Flowers, and serious concerns raised around expenditure and restructuring costs.

For transparency, I've attached the inquiry's summary findings and the full audit assurance report. These documents will also be shared with our staff and the media.

Last year I advised that the Wintec Council would revisit the complaints and allegations against Wintec Chief Executive Mark Flowers. This has now been concluded.

Queen's Counsel Simon Mount has completed his independent inquiry into the 2015 complaints concerning Mr Flowers. In his summary of findings, attached, he did not find the majority of complaints to be established. He did find the Chief Executive should have better managed a conflict of interest in relation to an employee; and another instance where Wintec did not adequately respond to a serious complaint.

As a result, the Council's resolved to action through its sub-committees a review of processes and policies to ensure they are fit for purpose, particularly in regards to employment, conflicts of interest and serious complaints. Having now received the full and confidential report from Simon Mount QC, the Wintec Council is satisfied this matter is now concluded. The findings have been shared and discussed with Mr Flowers, and the complainants.

The Wintec Council is satisfied with the robustness of this latest inquiry, and has confidence in the findings. In fairness to all parties we will not be releasing any further details in order to respect the confidentiality and privacy of everyone involved.

The Wintec Council has now also received the report from Audit New Zealand on the additional audit assurance work on travel expenses related to past and present executive members, redundancy and severance payments.

This report, attached, was carried out in the context of allegations of inappropriate or personal expenditure on overseas trips. The Audit New Zealand report did not find direct evidence of wrongdoing, but expressed serious concerns over the controls relating to the expenditure of public funds, and made a series of recommendations around Wintec-wide systems, processes and policies (reference - section 6).

The Wintec Council will outline this month, through its sub-committees, an urgent action plan and programme of work based on these recommendations for management to work through. This report

clearly shows the need for improvement of many Wintec-wide processes, despite many of these shortfalls being historic, as far back as 2009, and no direct evidence of wrongdoing.

It goes without saying that these matters have been on-going now for more than two years. For Mark, and in fact for many of you at Wintec, I acknowledge this has seemed a long and drawn out process, and has been costly, combined with a lot of media and public commentary.

The inquiry by Simon Mount QC has cost Wintec \$152,000 (excluding GST) and the audit assurance work has cost Wintec \$130,000 (excluding GST). However, ensuring due process was followed, and thoroughness of the work conducted, has been a key focus throughout.

As you know Mark has been unwell for some time now, and resigned last year as CE with the intention of retiring. He officially finishes with Wintec at the end of this month and Council is currently working with him on organising a farewell.

Wintec would like to acknowledge Mark's 16 years at the helm. His innovative approach, his committed service and long standing passion for Wintec, its staff and stakeholders, has been integral to Wintec's achievements.

The recruitment process for a new Wintec Chief Executive is currently underway, with Dave Christiansen remaining as Wintec's Acting Chief Executive.

It is significant that the above matters are now at a stage where there are clear outcomes and actions to remedy as a result. Wintec remains a strong performing institute of technology. Thank you for your positive support throughout.

As a valued stakeholder and partner, you've helped us ensure Wintec continues to have a great reputation as a quality education provider for our thousands of students, and the many industry, employers and community groups we interact with.

Regards
Barry Harris

Report to the Council

**Additional assurance work on
travel expenses, redundancy and
severance payments**

Waikato Institute of Technology

31 January 2019

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Executive summary

We were asked by the Chairman of Waikato Institute of Technology (Wintec) to carry out additional assurance work in conjunction with our 2017 annual audit. The additional work was to cover:

- expenses incurred by the Chief Executive, and past and present members of the executive team, for all travel to Hong Kong and China from 2009 to 2017 inclusive;
- expenses incurred by the Chief Executive, and past and present members of the executive team, for all other travel from 2013 to 2017 inclusive; and
- all redundancy and severance payments made to former Wintec employees from 2013 to 2017 inclusive.

We started our work on travel expenses by focusing on trips to Hong Kong and China in 2009 and 2010, and then extended our work to 2013 and 2017. We identified similar issues and deficiencies in each year, although there was some improvement by 2017. We spoke to Wintec about the value of us covering the remaining intervening years and travel to other countries, and it was agreed that we would not do so at this stage as further work is unlikely to change our findings. This means we have completed work on:

- expenses incurred by the Chief Executive, and past and present members of the executive team, in relation to travel to Hong Kong and China in 2009, 2010, 2013, and 2017; and
- all redundancy and severance payments made to former employees of Wintec from 2013 to 2017 inclusive.

A public entity must be able to show what it is spending money on and that any expenditure is justified, reasonable, and appropriate in the circumstances. Sensitive expenditure, where there is a perceived potential for private benefit, should be conservative and moderate. There also needs to be transparent and robust processes for approving expenditure. In both areas of testing, we identified:

- incomplete and inaccurate records relating to the expenditure; and
- numerous instances where the expenditure had not been properly approved.

As a result, in many cases Wintec has been unable to provide an account of how it has spent public money. This is unacceptable for a public entity charged with the stewardship of public resources.

We are particularly concerned about the processes, patterns of behaviour, and level of documentation we saw in our work on international travel expenditure. Some of these practices simply do not meet accepted standards of public sector behaviour and provide an increased opportunity for the misuse of public money.

1 Overall findings

1.1 Travel expenses to Hong Kong and China

We found significant weaknesses and poor practices in the earlier years tested (2009 and 2010). These problems continued, although to a lesser extent, in 2013 and 2017. Our detailed concerns are set out in this report at section 4.3, *Travel expenses - detailed findings*. In summary, we found:

- limited evidence of the prior approval or business justification for the trip costs;
- that the documentation provided to support expenditure, for example invoices, receipts, or other validating documentation, was often inadequate, in Mandarin (and untranslated) or missing. In these instances, it is unclear how the person who approved the expenditure could have determined what the expenses were for and whether they were appropriate;
- cash advances that remain unexplained and unreconciled;
- practices that meant the “one-up” principle for approving expenditure was not followed (this included examples of senior executives approving their own expenditure);
- expenditure that was beyond what might be regarded as moderate or conservative;
- departures from Wintec’s policies and good practice that remain unexplained;
- instances where expenditure incurred on purchasing cards (p-cards) had not been approved;
- instances of potential personal expenses or travel which were not reimbursed to Wintec or not adequately explained; and
- that the guidance in Wintec’s various policies relating to gifts is inconsistent, meaning it is unclear whether some purchased gifts complied with the policies.

Each one of these matters is of concern. In combination they raise serious doubts about Wintec’s systems and controls for international travel during the period we reviewed. Wintec should urgently review its systems and policies to ensure they align with the expectations for public entities.

Importantly for our work, the practices we observed, combined with the lack of adequate documentation, have also meant we were unable to put together a complete account of the expenses incurred by the Chief Executive and the executive staff members while in Hong Kong and China. This is not good enough for a public entity operating in New Zealand. Senior executives of public entities must be transparent about, and accountable for, the expenditure they incur.

We are aware that our work has been carried out in the context of allegations that inappropriate or personal expenditure may have been incurred on overseas trips, including trips during the period covered by our work. While we have not found direct evidence of serious wrongdoing, we have found weaknesses that provide an increased opportunity for the misuse of public money. Because of the problems outlined above, we are unable to provide assurance that all expenditure was appropriate or not of a personal nature.

1.2 Redundancy and severance payments

The purpose of our work on redundancy and severance payments was to establish the number and amount of payments made, and the basis for those payments. Unlike our work on travel expenses, we did not assess the appropriateness of the payments. Our work focused on whether:

- there was evidence of the payments being approved in line with Wintec's financial delegations;
- the payments were supported by formal agreements, such as settlement agreements or employment contracts; and
- the documentation supports the calculation of the payments.

Our detailed findings are set out in this report at section 5.2. *Redundancy and severance payments - detailed findings*. In summary, on redundancies we found that:

- There were no written change proposals outlining the reasons and process for a proposed restructure for 35% of redundancy cases;
- most proposals failed to consider the financial cost of the proposed restructure;
- there was no evidence that where change proposals were developed they had been appropriately approved;
- in most cases before June 2016 there was no evidence that the confirmed redundancies had been approved by the Chief Executive, as was required by the delegated employment authorities in place at the time; and
- there were some inconsistent or variable practices for voluntary redundancy, redeployment, and applying the pay in lieu of notice period when calculating redundancy payments.

For severance payments we found:

- in most cases, severance payments followed mediated settlement agreements signed by all parties;
- there were two severance payments in 2016 without a formal deed or agreement. The settlement terms appear to have been confirmed in correspondence. This is inconsistent with good practice; and

- before June 2016, most settlement agreements or severance payments lacked evidence that they had been approved by the Chief Executive, as was required by the delegated employment authorities in place at the time.

2 Scope of our additional assurance work

In December 2017, the Chairman of Wintec asked Audit New Zealand to carry out additional assurance work, in conjunction with the annual audit process, on travel expenses of the Chief Executive and executive staff members, and amounts paid to former Wintec employees as redundancy payments or severance payments. We agreed to undertake this work as part of our 2017 annual audit by extending the scope of our normal testing approach to focus on these areas.

The additional work was to cover:

- the expenses incurred in relation to all travel to Hong Kong and China by the Chief Executive, from the beginning of 2009 to the end of 2017;
- the expenses incurred in relation to all travel to Hong Kong and China by all other members of the executive team both past and present, from the beginning of 2009 to the end of 2017;
- the expenses incurred in relation to all travel, other than to Hong Kong and China by the Chief Executive, from the beginning of 2013 to the end of 2017;
- the expenses incurred in relation to all travel by all other members of the executive team both past and present, other than to Hong Kong and China, from the beginning of 2013 to the end of 2017; and
- all redundancy and severance payments made to former Wintec employees, from the beginning of 2013 to the end of 2017, including those made where the contract providing for payment, between Wintec and the former employee, includes obligations to keep details confidential.

The scope and extent of this work is far more detailed than we would normally conduct to complete our annual audit. The objective of an annual audit is to provide reasonable assurance that the financial statements and (where relevant) performance information are fairly presented, in all material respects. As an example, routine examinations of sensitive expenditure are done on a limited sample basis. Given the nature of that work, governors of public entities should not rely solely on the annual audit to provide assurance about all aspects of the entity.

To gain an understanding of the work involved in completing the additional assurance work, Wintec agreed to a staged approach to the audit of travel expenses. We started with travel to Hong Kong and China in 2009 and 2010, and then extended our work to cover 2013 and 2017. This allowed us to compare the controls, processes and patterns of behaviour for travel to Hong Kong and China at different points in time – in the early years, at a mid-point and in the most recent full year.

We have now completed the following work:

- The expenses incurred by the Chief Executive in relation to all travel to Hong Kong and China in 2009, 2010, 2013, and 2017.
- The expenses incurred by all other members of the executive team, both past and present, in relation to all travel to Hong Kong and China in 2009, 2010, 2013, and 2017.
- All redundancy and severance payments made to former employees of Wintec¹, from the beginning of 2013 to the end of 2017, including confidential settlements.

Our review of travel expenses found similar issues and deficiencies present in each year. While there was some improvement in policies and the level of documentation by 2017, we still found some concerning practices that need to be urgently addressed by Wintec. Given this, we discussed the value of reviewing travel expenses for the remaining intervening years (2011, 2012, 2014, 2015, and 2016) with the Chair of Wintec's Audit and Risk Committee. We agreed that further work was unlikely to add meaningfully to the issues already identified in this report.

¹ The testing of severance and redundancy payments to former employees of the Wintec Group has been done on a sample basis.

3 Challenges in completing this additional assurance work

We have had a number of difficulties completing our work. The information Wintec sent at commencement was incomplete and contained inaccuracies for both broad areas that we looked at.

3.1 Travel expenses

We have concerns about the completeness of the information available and therefore we are unable to provide assurance that we have seen all supporting evidence.

The period that we reviewed goes back a number of years. Wintec has experienced some turnover in key roles, which has resulted in the loss of institutional knowledge. During this period Wintec also decommissioned the financial system that was in place in the early years of our review. We asked for the financial system for 2009 and 2010 to be reconstructed to enable us to access the source data. Wintec worked to reproduce the information, however, due to the age of the system this is not in a format that has been useful for our work. The itineraries booked through the travel agent were also not available to corroborate the extent of the trips. We have therefore built up a picture of the travel undertaken in these years from a range of other sources, including p-card statements, expense claims, and agent invoices. This has been a huge task and has impacted on the timeframes and costs of our work.

In the early years of travel to China, Wintec used an agent to assist them on the ground in China (the China Agent). There was a practice for the China Agent to pay for some of the costs incurred in China and then invoice Wintec for reimbursement of those expenses. Wintec was able to locate some but not all key information relating to the China Agent's invoices for 2009, 2010, and 2013. This documentation is important for understanding what expenses were incurred and by whom.

There were situations where, even though we were able to identify that travel was undertaken by certain people, we were not able to identify any expenses incurred in relation to or by them or the approval of those expenses.

Given these difficulties, and despite our best efforts at reconstructing the information for our work, we remain concerned that the travel expenditure reviewed within these years is incomplete.

With the implementation of new financial systems in 2012, Wintec has been able to provide more robust source data from which we have been able to compile relevant itineraries for our review of the 2013 and 2017 years.

3.2 Redundancy and severance payments

At the beginning of our work, Wintec provided a list of all redundancy and severance payments that fell within the specified period. Through our work, we identified:

- cases that should have been included in Wintec's list but had not been;
- cases that were included but should not have been; and
- cases where the payment amount was inaccurately recorded.

This raises concerns about the integrity and completeness of the information Wintec had provided.

While we have made every effort to test all redundancy and severance payments, any payments processed through accounts payable and not coded as restructure costs may not have been identified. We have also observed a large number of payroll payments noted as lump sum payments. Having made enquiries of Wintec, these do not appear to be redundancy or severance related.² We have therefore not reviewed all these payments.

² For example, payments for: moderator fees; guest speaker fees; research income; on call allowance; Associate Teacher – lump sum at end of assignment.

4 Travel expenses

4.1 What we did

The purpose of our additional assurance work on travel expenses was to assess the appropriateness of the expenditure. We identified 20 trips to Hong Kong and China in 2009, 2010, 2013, and 2017 that included the Chief Executive or an executive member of staff (past or present)³. We tested the expenses claimed for these trips by the Chief Executive and executive staff members against:

- Wintec’s policies and related guidance;
- any contractual agreements;
- any applicable statutory requirements;
- the Auditor-General’s auditing standards, particularly AG-3 *Effectiveness and efficiency, waste and a lack of probity or financial prudence*; and
- the Auditor-General’s good practice guide, *Controlling sensitive expenditure: Guidelines for public entities*.

4.2 Basis for our expectations

The Auditor-General’s good practice guide, *Controlling sensitive expenditure: Guidelines for public entities* (the A-G guidance on sensitive expenditure), states that “the most fundamental fact applicable to all expenditure by a public entity is that the entity is spending public money”. It goes on to say that all public sector spending must meet standards of probity and financial prudence that will enable it to withstand Parliamentary and public scrutiny. Specifically, it is important that expenditure decisions:

- have a justifiable business purpose;
- preserve impartiality;
- are made with integrity;
- are moderate and conservative, having regard to the circumstances;
- are made transparently; and
- are appropriate in all respects.

These principles should be applied and evidenced in the approval of sensitive expenditure, regardless of where in the world you might be doing business.

³ For this review, we have included the role of the Director Internationalisation. The Director Internationalisation undertook a lot of the travel to Hong Kong and China and was often the organiser of trips other executives attended. This makes the Director Internationalisation’s travel relevant to our work.

4.3 Travel expenses - detailed findings

4.3.1 Lack of prior approval of travel for business purposes

The A-G guidance on sensitive expenditure states that approval of sensitive expenditure should be given only when the person approving the expenditure is satisfied there is a justified business purpose and, wherever practical, be given before expenditure is incurred. Contrary to these expectations, we found:

- While there was evidence Wintec was aware that executives were travelling and that the travel was within the overall programme of work with overseas partners, there was generally no evidence of a specific rationale or approval for individual trips, the expected costs of those trips or approval of those costs. Where an articulated rationale or approval did exist, they rarely provided details of the expected costs for the trip. There were some improvements by 2017, but practice was inconsistent and still lacked detailed expected costs.
- Despite Wintec's *International & Domestic Travel Policy* requiring all employees to complete the "Application for Travel Associated Costs and Leave" form in advance of any ticket purchase, we saw no evidence of this form being used. The form provides a template for prior approval for travel.
- There were some instances where the then Council Chair approved a programme of travel (for example, an overview of intended travel for 2017). However, this approval did not cover the details of individual trips, including confirmed dates and who would be travelling, or the expected cost and anticipated benefits of those trips.

Overall, this meant we found limited evidence of the approval or business justification for the trips. Expenses were generally only approved after they were incurred and on return to New Zealand.

Having detailed rationale and approval for individual trips would ensure that approvals for travel are made in line with the principles outlined above, and that the business justification for travel is properly tested before expenditure is incurred.

4.3.2 Inadequate supporting documentation for expenses incurred

Incurred expenses requiring approval should be accompanied by adequate supporting documentation. This could include tax invoices, receipts, or other validating documentation. The documentation should include the date, amount, description, and purpose of minor expenditure when receipts are unavailable or unclear. Without this sort of documentation it is difficult for the approver to properly assess whether the expenses incurred were appropriate.

Because of the nature of the scope of this review we have sought to corroborate all expenses, irrespective of size, to ensure the expenses were accurately recorded and to enable their assessment of appropriateness.

We found that the information provided to support invoices was frequently insufficient to enable this assessment. Some particular examples that do not meet our good practice expectations include:

- There are instances of costs being charged back to hotel rooms without detailed receipts or invoices. There is no way to know what those charges were for, or whether they were an appropriate use of public money.
- There was a practice for all room costs for the travelling party to be transferred to one room and paid from there. The invoice for this room would include the consolidated charges, but sometimes supporting invoices or documentation relating to the transferred costs would not be retained. In these cases, there is no documentation to explain what the costs were for and, in some instances, who incurred them.
- Many of the receipts were in Mandarin, without translations. Where necessary, we had receipts translated so we could test whether there was appropriate supporting documentation. In some instances, despite the translation, we could not confirm what the expenditure was for because the receipts lacked adequate detail (for example, a receipt would show the total amount spent but not what it was spent on).
- As already mentioned, in the early years Wintec's China Agent would pay for some of the costs incurred in China and then invoice Wintec for reimbursement of those expenses. As this was for the reimbursement of costs incurred, the China Agent has included a summary breakdown of costs and copies of receipts (in Mandarin) to evidence the expenditure. However, through to 2013 we found instances where no receipts or supporting documentation were attached to the invoices. It appears these invoices have been approved for payment based on inadequate supporting documentation.
- Where supporting documentation was attached, we tried to reconcile the receipts and other supporting documentation provided by the China Agent to the invoice that was approved for payment. We found instances where the documentation was incomplete and did not support the amount in the summary and invoice.

We have been unable to confirm the appropriateness of the expenditure in the above instances. It is also unclear how the approver could have properly assessed this expenditure.

Put simply, Wintec has been unable to show what these expenses were for and, therefore, what public money has been spent on. As a public entity, this is unacceptable.

4.3.3 Inadequate practices for approval of expenses

We expect expenditure to be approved in line with appropriate financial delegations set out in *Wintec's Financial Delegations Principles and Procedures*. This includes the expectation that approval is:

- made only when budgetary provision and delegated financial authority exist; and
- not made where the expenditure relates to that individual. The “one-up” principle, where expenses are approved by a more senior person, must be applied.

We found several practices that do not accord with good practice:

- From May 2009, we understand that the approval of p-card expenditure was undertaken through the flexi-purchase system. For executives, this required two levels of approval. An initial on-line approval by the Chief Financial Officer and a second approval on a one up basis documented in hard copy. We found instances across the years tested where there was no hard copy evidence of the “one-up” approval.
- A practice whereby a non-executive staff member would pay for all of the hotel and restaurant costs incurred by the team. This practice did not comply with the expectations of good practice or *Wintec's Financial Delegations Principles and Procedures*. Specifically this includes:
 - the “one-up” approval process was not always observed. For example, where a non-executive staff member paid for expenses, including those of the Chief Executive, the expenses were approved by that staff member’s line manager. The “one-up” principle required the Chief Executive’s expenses to be approved by the Council Chair; and
 - there were instances of executive staff members approving their own expenses. This happened where a more junior staff member had paid for the team’s expenses on their p-card which included expenses relating to an executive. This same executive subsequently approved those expenses as the one-up approval.
- As already mentioned, in the early years Wintec’s China Agent would pay for some expenses, including expenses of the Chief Executive or other executive staff, and then invoice Wintec for reimbursement of those costs. These invoices were approved by the relevant cost centre budget holder (who was often part of the travelling party). This is not in line with the required “one-up” approval.

This evidence suggests that the Council Chair may not have had full oversight of sensitive expenditure being incurred by the Chief Executive.

4.3.4 Questions over whether expenses were moderate and conservative

Our expectations reflect those set out in the A-G guidance on sensitive expenditure and Wintec's policies on sensitive expenditure. These require that sensitive expenditure should not be extravagant or considered immoderate for the public sector. Each public sector entity should set out in their policies how "appropriate" is to be applied.

Wintec's policies for sensitive expenditure have been strengthened over time. However, they remain flexible and allow for exceptions to be agreed in most instances. We noted the following issues that would benefit from clarification in the policy and guidance:

- We saw a range of nightly room rates. There are instances of accommodation being booked in five-star hotels. This is inconsistent with Wintec's policy and there is no explanation to justify the deviations from policy. There were also instances where the room rate per night differed for members of the team. It was common to observe that the most senior staff member on the trip would stay in a more expensive room.

We accept that sometimes there may be limited options for accommodation depending on location or circumstances or particular reasons requiring certain accommodation. However, we expect any deviation from policy to be explained and pre-approved. Wintec would benefit from establishing standards for acceptable accommodation in light of the Auditor-General's guidance on sensitive expenditure.

- Minibar expenses were incurred in 2009 and 2010. Since then a prohibition has been in place on minibar charges and we saw this being observed in 2013 and 2017. In contrast, Wintec appears to have a very flexible approach to alcohol purchased in restaurants and bars. In some instances, expenses from more than one bar or restaurant were incurred on the same night (for example, starting at Hari's Bar, then Oyster Bar, and then back at Hari's Bar). This pattern suggests the charges were for more than reasonable dinner costs.

Wintec should consider providing more guidance to staff on what is appropriate for drinks or alcohol and meals, including limits on what will be paid for by Wintec.

4.3.5 Poor control over use of cash withdrawals

Wintec has told us it had a system in 2009 and 2010 for managing cash advances. However, Wintec has acknowledged that it could not identify those advances and make them available for testing. Our audit has therefore been unable to test cash advances during 2009 and 2010 and as a result, we are unable to confirm how cash was used during overseas trips and what the cash was spent on.

Despite a cash advance system being in place in later years, we continued to find cash withdrawals that were unreconciled in 2013 and 2017.

To have cash withdrawals that remain unreconciled is totally unacceptable.

Wintec's policies discourage the use of p-cards as a means to withdraw cash unless it is for an emergency and the policy allows for it. The policy states that p-cards should be used as the preferred method of payment for items that previously would have been covered through expenses or petty cash advances. Our testing identified two p-card transactions in the period 2009 and 2010 which were noted as cash withdrawals. Their explanations raise further questions about the circumstances of the withdrawals and how the money was spent:

- A cash withdrawal of Chinese Yuan (NZ\$270.48) by the Chief Executive on the business credit card that was subsequently exchanged with another non-executive staff member for New Zealand dollars. There is no evidence of the reconciliation of the remaining Chinese Yuan or the New Zealand dollars or evidence any remaining Chinese Yuan or New Zealand dollars were repaid to Wintec.
- A p-card transaction recorded on the Chief Executive's monthly statement as a balance transfer (approximately NZ\$421.47). The explanation provided to support the p-card statement refers to this as a cash advance. There is no evidence that receipts were provided to support how the cash was used.

4.3.6 Private element to travel and expenses

The A-G guidance on sensitive expenditure includes information on taking personal travel in conjunction with business travel and travelling with spouses or family members. The principles that apply to both is that there should be *"no additional cost to the public sector entity... In the rare circumstances that involvement of a spouse directly contributes to a clear business purpose, we expect the spouse's travel to be pre-approved"*. Where public sector entities permit personal leave in conjunction with business travel, they should satisfy themselves that *"the purpose of the trip was a business one... and that the arrangement did not give rise to any perception of inappropriateness"*.

We have not been able to form a full picture of all relevant travel details because the records provided by Wintec are incomplete and lack detailed pre-approved rationale and itineraries. Subsequent to our audit work we have been provided with examples of itineraries which shed some light on the rationale of some of these trips. However, we found through reviewing this build-up of costs and the itineraries it was still not clear whether some elements related to personal travel.

It is important for Wintec to understand the full cost of a trip and the proportion paid for privately or provided through hospitality. Wintec should ensure that the rationale and approval covers the full itinerary of all travellers, and identifies which parts are Wintec funded, privately funded or provided by hospitality.

Our testing found a number of instances where some costs incurred through p-cards were reimbursed by staff. We found one instance where expenses on a p-card statement were

annotated as personal costs, however we were unable to confirm the reimbursement of these costs. Wintec should consider whether the controls in place allowing such costs to be incurred and their subsequent reimbursement are appropriate.

4.3.7 Poor process for declaring hospitality

Where hospitality has been received by Wintec staff members, we expect there to be a transparent process for recording or declaring that hospitality. This helps manage risks associated with accepting hospitality, in particular the risk (either real or perceived) that a public entity, or particular staff members, become subject to an obligation or influence.

We have not found any monitoring or recording of hospitality received as part of the trips we reviewed.

4.3.8 Gift Policy

The A-G guidance on sensitive expenditure recognises that:

- a public entity may give gifts in international relations when doing so is customary practice; and
- while receiving gifts does not involve expenditure, it is a sensitive issue and one that entities need to manage carefully.

We found a range of purchased gifts that were not in line with aspects of Wintec's policies and guidance (for example, wine, supplements, and health food). However, the guidance across the various policies is inconsistent. This means it is unclear whether some gifts complied with the policies. Wintec should clarify its guidance to make clearer what types of gifts are appropriate in these circumstances.

We also noted gifts being purchased through p-cards, rather than the purchase order system required by the Gifts Policy.

Wintec provided us with a copy of the Gifts Register for 2011 onwards. The relevant policy requires all gifts or gratuities to be recorded in the register, including gifts received on behalf of Wintec. Despite the number of visits to Hong Kong and China since 2011, there are only two gifts recorded as being received on these visits. We find this surprising given the cultural practice of Wintec giving gifts as part of the visits. It suggests the policy is not being adhered to.

4.3.9 China Agent contract

We expect that arrangements for reimbursement of costs incurred by third parties are clearly spelt out in contractual agreements. The contract should address the level of supporting documentation required as part of the invoicing process and provide a process for resolving any disputes.

Between 2009 and 2013, the China Agent paid for expenses incurred by Wintec staff in China and then invoiced Wintec for reimbursement of those expenses. We have reviewed the contracts in place between Wintec and the China Agent during this period. We found no specific mention of this arrangement in the contracts.

5 Redundancy and severance payments

5.1 What we did

The purpose of our additional assurance work on redundancy and severance payments was to establish:

- the number and amount of redundancy and severance payments paid to former Wintec employees between the start of 2013 and the end of 2017; and
- the basis for the payments.

We tested 32 redundancy and 25 severance payments made between 2013 and 2017. The average redundancy payment was \$37,007 and the average severance payment was \$35,993.

We considered the payments against (where applicable):

- individual employment contracts;
- Wintec's policies and guidance for restructuring;
- business cases for the relevant restructures;
- any relevant statutory obligations;
- the Auditor-General's Auditing Standards, particularly AG-3 *Effectiveness and efficiency, waste and a lack of probity or financial prudence*; and
- the Auditor-General's good practice guide: *Severance payments: A guide for the public sector*.

We are aware there has been some criticism about the frequency and use of redundancy and severance processes at Wintec. It is important to note that this audit did not assess the appropriateness of the decisions to restructure, whether the redundancies or severance agreements were justified, or whether the individual amounts for severance payments were reasonable. These types of assessments would require further work to investigate the circumstances leading to each decision, and potentially require interviews with the key people in those cases. This was beyond the scope of our work.

Our work focused on whether:

- there was evidence of the payments being approved in line with Wintec's financial delegations;
- the payments were supported by formal agreements, such as settlement agreements or employment contracts; and
- the documentation supports the calculation of the payments.

We also considered the accuracy of payments and whether the relevant guidance had been applied consistently.

5.2 Redundancy and severance payments - detailed findings

To preserve the confidentiality of the cases, this part of our report focuses on general findings from our work.

5.2.1 Underlying business reasons for restructuring not always well documented

In line with Wintec's *Restructure process guidelines for managers*, we expect that written change proposals are developed where a restructure is being considered. Wintec's *Restructure process guidelines for managers* states that proposals need to include:

- rationale for change;
- the objectives that need to be achieved;
- what has already been done to try and meet these objectives;
- current staffing structure;
- proposed staffing structure, i.e. recommendation and impact on workloads; and
- consultation/submission period details.

In 65% of restructure cases, we found written change proposals to support the underlying business reasons for restructuring. Where proposals existed, they generally followed Wintec's guidelines. However, no proposals considered the financial costs of the restructure against the expected benefits, that is they did not demonstrate the value for money proposition of the restructure. Wintec should consider amending its guidelines to require that proposals include this analysis.

There were no written proposals in 11 restructure cases (35%). Wintec has explained to us that in some of these cases a verbal meeting took place and voluntary redundancy was offered as an option prior to progressing to a formal change proposal.

There appears to be little guidance about the process for voluntary redundancy and what employee entitlements might be. Written proposals did not explain the process for voluntary redundancy. We observed that the lack of guidance led to some inconsistent practices and a potential for confusion. For example, we found several cases where a staff member who appears to have resigned also sought (and received) a payment for voluntary redundancy. In a situation like this the explanation for the payment and the supporting documentation appear inconsistent.

5.2.2 Basis for redundancy payments

Redundancy payments are contractual entitlements arising from a person's employment agreement. We therefore needed to identify the relevant employment agreements and redundancy clauses within those agreements.

We found five redundancy cases where signed employment agreements were not on the relevant personnel files, or the documentation on the files suggested a different agreement was in place to that on the system and used by HR to determine redundancy entitlements. We have been unable to fully verify the redundancy calculations in these cases.

5.2.3 Basis for severance payments

Severance payments are made over and above what a person is entitled to under their employment agreement. Severance payments are often used to secure an employee's departure on agreed terms when the employment relationship has broken down. However, any payment to a departing employee that is over and above what the employer is legally obliged to make is, in formal terms, a discretionary severance payment.

The Auditor-General's good practice guide notes specific challenges with severance payments. A severance payment can be agreed between the parties in an employment relationship without involving other parties or advisers. However, the risk of doing this is that the public entity might not follow proper process, properly assess the basis for a severance payment, or document it correctly. These failings can give rise to legal and financial risks (for example, with tax, delegated authority, and disclosure requirements).

The expectation therefore is that an agreement reached by private negotiation is documented by deed or a simple contract, rather than a less formal format such as email correspondence.

We found that in most cases where a severance payment was made, an official mediation agreement was in place. The agreements were signed by the parties involved and the mediator. However, we found two severance payments made in 2016 where no formal deed or contract was available. Instead a letter or email trail appears to confirm the terms of settlement with the employee. This is not in accordance with good practice.

5.2.4 Approving redundancies and severance payments in line with delegated authority

All redundancies and severance payments must be approved within the appropriate level of delegated authority. *Wintec's Delegated Employment Authority* sets out the three relevant delegated employment authorities:

Description	Delegated Authority as at October 2008	Delegated Authority as at June 2016
Review of an area under a surplus staffing situation (change proposals)	Dean, Directors and Senior Managers reporting directly to the Chief Executive	Tiered authorities on the basis of one-up. Requires consultation with the Director/People and Culture and Chief Executive or their delegate or level B depending on the level being reviewed
Redundancy	Chief Executive	Tiered authority on the basis of one-up. Requires consultation with Director/ People and Culture and Chief Executive or their delegate or level B depending on the level being reviewed
Ex gratia payment (severance)	Chief Executive	Executive team member, in consultation with People and Culture

We found many cases where there was no evidence to show that the correct approval had been obtained for the redundancies and severance payments we reviewed:

- none of the written change proposals (for restructuring) were signed or dated. We have not received any other written evidence that the reviews were approved.
- Before June 2016, only the Chief Executive had authority to approve redundancy and severance payments. However, we found that:
 - generally the only evidence that the redundancy payments had been approved was a formal letter to employees advising that their role was to be disestablished. These letters were generally signed by the Director People and Culture or the line manager of the team under review. We have seen no evidence that the Chief Executive approved the payments, except where he was the line manager. Therefore, there is no evidence that redundancy payments below the senior management team were appropriately approved; and
 - most settlement agreements (for severance payments) had been signed by the Director People and Culture or the line manager of the person receiving the payment. We saw no evidence that the Chief Executive had approved the settlement agreements or resulting severance payments.

This also included one of the severance payments in 2016 that had no formal settlement agreement.

Wintec amended the relevant delegated employment authorities in June 2016. We found that the subsequent redundancy and severance payments were approved at the appropriate level within Wintec.

5.2.5 Inconsistent practices in calculation of redundancy payments

Our audit identified some inconsistent practices in the calculating of redundancy payments:

- We observed that the pay in lieu of notice period was generally added to the employee's length of service for the purposes of calculating the redundancy payment. However, we have found at least one case where this approach had not been applied.
- In some cases, pay in lieu of notice had been apportioned for that part of the notice period that had been worked. In other cases, pay in lieu of notice had not been apportioned.
- There were three instances where Wintec agreed to pay in lieu of notice starting from a future date rather than the date of notice.

Although the payments met Wintec's contractual obligations, they raise questions about fairness and consistency in Wintec's processes. There is no recorded reason for the different approaches taken. In some of these cases, the payment may also include an ex gratia component that was over and above what the employee was contractually entitled to. However, this is not explicitly stated in the documentation. Wintec should provide further guidance in these areas.

We found a few cases where the redundancy calculation did not match the terms of the relevant employment contract. There were two cases where it appears Wintec may have incorrectly paid an employee based on their contractual entitlements.

We appreciate that Wintec has a range of employment contract terms and conditions, which can add complexity to the calculation of redundancy payments and increase the risk of errors being made. However, we expect such payments to be the subject of robust checking and approval processes.

5.2.6 Redeployment of staff

Wintec's *Restructure process guidelines for managers* states that redeployment must be considered in cases of redundancy.

We noted that two staff were redeployed into other fixed term roles after being notified that their roles were being disestablished and were eventually paid their redundancy at the end of those terms. However, there is evidence on both files that the individuals were re-employed shortly after the end of their fixed term contracts. Wintec's guidelines state

that *“as a guideline, a redundant staff member will not be re-employed within 12 months of their last day of duty.”* The guidelines go on to say that where a redundant staff member accepts re-employment for longer than one month, *“the relevant proportion of the original severance payment may be recovered.”* The two cases we have identified appear contrary to this guidance.

One staff member was redeployed several times over a period of nine months before being made redundant. The original redundancy payment calculation was not revised to take into account the additional nine months of service. Wintec advised that this reflected the contracts in place during the redeployment period. However, we have been unable to verify this based on the copies of the contracts that Wintec provided.

6 Main recommendations

This report does not provide detailed recommendations for Wintec to address as some of the issues identified within this report will take time and a cultural change to address. However, there are some critical controls which should be addressed as a priority. Recommendations for these are detailed below:

No.	Recommendation
1	Systems should be developed to strengthen the control over cash advances and enable Wintec to demonstrate how all funds have been applied.
2	<p>Implement a system supported by policy and guidance which ensures that staff travelling prepare a proposal for consideration by their line manager which sets out the intended outcomes of the travel and a reasonable estimation of the likely costs. Approval should consider whether:</p> <ul style="list-style-type: none"> • The travel is appropriate and justifiable. • The associated costs to Wintec are appropriate. • Any personal element is clearly identifiable and is not adding cost to the public sector.
3	Expenditure incurred should be supported by appropriate evidence. This should be sufficient so that the approver is able to determine what has been incurred. This could include tax invoices, receipts or other validating documentation. In instances where receipts are unavailable this should be explained.
4	Review practices around the approval of travel expenses to ensure that the principles within the Financial Delegations Principles and Procedures are applied and update guidance where necessary.
5	<p>Undertake a review of Wintec practices and policies in relation to sensitive expenditure. This should include:</p> <ul style="list-style-type: none"> • accommodation costs; • alcohol and meals; • hospitality; • gifts; and • other incidental costs relating to travel

Appendix 1: Data on the overseas trips and redundancy and severance payments

Trips to Hong Kong and China

Please note that we have had to collate the details in the following table from various records. Problems with the completeness of information provided by Wintec means this table should not be relied on as a complete or definitive record of trips taken.

Trip reference	Approximate date of trip	Known attendees	Known locations (Hong Kong/China)
1	1-18 April 2009	Chief Executive, Director Internationalisation, Executive Director Commercial, Non-executive staff	Beijing, Xian, Shandong, Chengdu, Shenzhen, Hong Kong
2	23-27 May 2009	Director Internationalisation, Non-executive staff	Chengdu, Hong Kong
3	10-25 October 2009	Chief Executive LearningWorks Limited	Hong Kong, Hangzhou, Shanghai, Shenzhen
4	12-17 October 2009	Director Internationalisation	Hong Kong
5	22 November-1 December 2009	Chief Executive, Director Internationalisation, China Agent's staff	Hong Kong, Beijing, Chengdu, Wuxi, Shenzhen
6	8-18 April 2010	Chief Executive, Director Internationalisation, Director Support Services, China Agent's staff	Beijing, Zibo, Guangzhou, Hong Kong
7	9-25 June 2010	Chief Executive, Director Internationalisation, China Agent's staff	Shenzhen, Shanghai, Beijing
8	12-18 September 2010	Senior Advisor, Non-executive staff, China Agent's staff	Chengdu, Shenzhen, Hong Kong
9	16-22 October 2010	Director Internationalisation, China Agent's staff	Shenzhen, Hong Kong

Trip reference	Approximate date of trip	Known attendees	Known locations (Hong Kong/China)
10	13-19 January 2013	International Business & Relationship Director, International Office staff, Non-executive staff	Qingdao, Tianjin
11	27 February-9 March 2013	International Business & Relationship Director, Non-Executive staff, International Office staff	Beijing, Tianjin, Qingdao
12	7-20 April 2013	Chief Executive, International Business & Relationship Director, Senior Advisor, International Office staff	Guangzhou, Shanghai, Beijing, Tianjin, Chengdu
13	18-25 May 2013	Senior Advisor, Non-executive staff	Unclear. Flights suggest Hong Kong. No known accommodation
14	17 June-1 July 2013	International Business & Relationship Director, International Office staff, Non-executive staff	Chengdu, Hangzhou, Qingdao, Beijing
15	6-13 July 2013	Senior Advisor, Director Products and Planning, Non-executive staff	Chengdu
16	13-30 September 2013	Chief Executive, Chair, International Business & Relationship Director, Senior Advisor, International Office Staff, Non-executive staff	Hong Kong, Chengdu, Tianjin, Qingdao, Zibo
17	5-12 December 2013	International Business & Relationship Director, Director Internationalisation, International Office staff	Changchun, Tianjin, Beijing
18	2-11 June 2017	Chief Executive, International Office staff	Shanghai, Tianjin, Chengdu, Beijing
19	9-24 September 2017	Council Members, Chief Executive, Senior Advisor, International Office staff	Beijing, Shanghai, Changchun
20	24 November-2 December 2017	Senior Advisor, International Office staff	Shenzhen, Tianjin

Redundancy and severance payments

Year	2013	2014	2015	2016	2017
Number of redundancy payments	2	10	5	7	8
Number of severance payments	5	1	8	8	3
Annual total	7	11	13	15	11

Average redundancy payment between 2013 and 2017 inclusive: \$37,007

Average severance payment between 2013 and 2017 inclusive: \$35,993

AUDIT NEW ZEALAND

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4 February 2019

The Wintec Council

Private Bag 3098
Waikato Mail Centre
Attn: Barry Harris

Dear Barry,

Re: Report on complaints against the Chief Executive of Wintec – Public Summary

On 24 December 2018 I completed an inquiry into various complaints made against the Wintec Chief Executive, Mark Flowers.

The full report of the inquiry is confidential and contains private information about participants in the inquiry. I now attach a summary of the inquiry and my findings which I believe is suitable for public release if Council is minded to do so.

Yours sincerely



Simon Mount QC

Report on complaints against the Chief Executive of Wintec

Public Summary

Introduction

In accordance with terms of reference dated 31 August 2018, I undertook an independent inquiry into complaints made about the conduct of the Wintec Chief Executive Mark Flowers. The complaints largely related to alleged conduct in the period 2010-2014.

The complaints were first investigated in 2015, and the process used for that investigation was peer reviewed earlier last year by Victoria Casey QC. This led to the Wintec Council requesting a fresh inquiry in August 2018.

I have provided a confidential full report into these matters to the Wintec Council. In order to respect the confidentiality and privacy of those involved, I will not publicly disclose the details of the complaints and allegations. However, a brief summary of the inquiry and my findings follows.

Process and method

I approached the questions independently and did not see the 2015 report or the 2018 review.

Over a 17 week period, I formally interviewed more than 20 people and reviewed a large number of documents including email and phone records, policies and employment files. I spoke with every person who requested or agreed to be involved, and was provided with all information and documentation that I requested. In most cases the interviews were transcribed into written form, and where appropriate I provided copies of the transcripts, or extracts from them, to affected participants for comment.

There were challenges for this Inquiry investigating events that were alleged to have occurred up to 8 years ago, but which were not investigated until much later – in some cases many years later. I acknowledge the frustration and difficulty for all participants arising from the passage of time, and from the re-opening of these questions after the 2015 investigation.

Findings

I did not find the majority of the complaints to be established on the balance of probabilities.

However, I did find instances where the Chief Executive should have better managed and dealt with a conflict of interest in relation to one employee; and where Wintec did not adequately respond to a serious complaint. I found that the absence of a specific policy to deal with the complaint at the time was a factor, and I recommended Wintec review and revise its existing policies in a number of areas.

General comments

My terms of reference invited comments on themes related to organisational culture during the relevant period. Any broader comments about Wintec must begin by acknowledging the success of Wintec under Mr Flowers' leadership – particularly in terms of its financial performance, building programme, and internationalisation. The change processes Mr Flowers led contributed to that success, and many people I interviewed described Mr Flowers as a charismatic, highly intelligent and

approachable leader who sought to foster a culture of innovation, rigorous debate, and personal development.

At the same time, a consistent theme from many I interviewed was that Wintec did not always strike the right the balance between flexibility and due process. This manifested itself in the areas described above, including a failure to manage a conflict of interest, and the absence of specific policies to deal with issues raised. It also contributed to a perception among many of the staff I interviewed that the Chief Executive could direct employment outcomes without following proper process.

Among other things these matters emphasise the importance of a strong, professional and independent HR function. My terms of reference confined me to observations about the culture at the relevant time and I made no comment on the current situation, other than to observe that there has clearly been recent progress in a number of areas. Maintaining the right balance is no doubt a matter deserving the continuous attention of senior management and Council.

Simon Mount QC

[Date]

All staff email

Announcement from Chair of Council Barry Harris

This email is to update you on the outcomes of the inquiry and the audit assurance work, both of which were commissioned by the Wintec Council in late 2017 to respond to extensive public commentary and coverage over allegations of complaints against Chief Executive Mark Flowers, and serious concerns raised around expenditure and restructuring costs.

For transparency, I've attached the inquiry's summary findings and the full audit assurance report. These documents will be also be shared with our stakeholders and the media.

Last year I advised that the Wintec Council would revisit the complaints and allegations against Wintec Chief Executive Mark Flowers. This has now been concluded.

Queen's Counsel Simon Mount has completed his independent inquiry into the 2015 complaints concerning Mr Flowers. In his summary of findings, attached, he did not find the majority of complaints to be established. He did find the Chief Executive should have better managed a conflict of interest in relation to an employee; and another instance where Wintec did not adequately respond to a serious complaint.

As a result, the Council's resolved to action through its sub-committees a review of processes and policies to ensure they are fit for purpose, particularly in regards to employment, conflicts of interest and serious complaints. Having now received the full and confidential report from Simon Mount QC, the Wintec Council is satisfied this matter is now concluded. The findings have been shared and discussed with Mr Flowers, and the complainants.

The Wintec Council is satisfied with the robustness of this latest inquiry, and has confidence in the findings. In fairness to all parties we will not be releasing any further details in order to respect the confidentiality and privacy of everyone involved.

The Wintec Council has now also received the report from Audit New Zealand on the additional audit assurance work on travel expenses related to past and present executive members, redundancy and severance payments.

This report, attached, was carried out in the context of allegations of inappropriate or personal expenditure on overseas trips. The Audit New Zealand report did not find direct evidence of wrongdoing, but expressed serious concerns over the controls relating to the expenditure of public funds, and made a series of recommendations around Wintec-wide systems, processes and policies (reference - section 6).

The Wintec Council will outline this month, through its sub-committees, an urgent action plan and programme of work based on these recommendations for management to work through. This report

clearly shows the need for improvement of many Wintec-wide processes, despite many of these shortfalls being historic, as far back as 2009, and no direct evidence of wrongdoing.

It goes without saying that these matters have been on-going now for more than two years. For Mark, and in fact for many of you at Wintec, I acknowledge this has seemed a long and drawn out process, and has been costly, combined with a lot of media and public commentary.

The inquiry by Simon Mount QC has cost Wintec \$152,000 (excluding GST) and the audit assurance work has cost Wintec \$130,000 (excluding GST). However, ensuring due process was followed, and thoroughness of the work conducted, has been a key focus throughout.

As you know Mark has been unwell for some time now, and resigned last year as CE with the intention of retiring. He officially finishes with Wintec at the end of this month and Council is currently working with him on organising a farewell.

Wintec would like to acknowledge Mark's 16 years at the helm. His innovative approach, his committed service and long standing passion for Wintec, its staff and stakeholders, has been integral to Wintec's achievements.

The recruitment process for a new Wintec Chief Executive is currently underway, with Dave Christiansen remaining as Wintec's Acting Chief Executive.

It is significant that these matters are now at a stage where there are clear outcomes and actions to remedy as a result. I applaud all staff, at all levels, for their professionalism in ensuring your focus has been to get the best results for our students and stakeholders.

Wintec remains a strong performing institute of technology and all of you, have worked diligently to ensure we have a great reputation of being a quality education provider for our thousands of students, and our many stakeholders in industry and the community.

Regards
Barry Harris

[Date]

Media Statement from Barry Harris, Wintec Chair of Council

The media statement attached/below is to update you on the outcomes of the inquiry and the audit assurance work, both of which were commissioned by the Wintec Council in late 2017 to respond to extensive public commentary and coverage over allegations of complaints against Chief Executive Mark Flowers, and serious concerns raised around expenditure and restructuring costs.

For transparency, I've attached the inquiry's summary findings and the full audit assurance report. These documents will be also be shared with our staff and stakeholders.

Regards Barry Harris.

Media Statement from Barry Harris, Wintec Chair of Council.

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The recruitment process for a new Wintec Chief Executive is currently underway, with Dave Christiansen remaining as Wintec's Acting Chief Executive.

It is significant that these matters are now at a stage where there are clear outcomes and actions to remedy as a result. It is the focus of the Wintec Council and for all Wintec staff to address these matters, and continue to focus on ensuring Wintec remains a strong performing institute of technology.

Barry Harris
Wintec Council Chair