

**Christchurch Polytechnic Institute of  
Technology's management of conflicts  
of interest regarding the Computing  
Offered On-Line (COOL) programme**

**November 2004**

*This is the report of an inquiry we carried out under sections 16 and 18 of the Public Audit Act 2001.*

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# Foreword

Managing conflict-of-interest issues in the public sector involves more than consideration of the law. The ethics of the situation must also be considered.

The standard for assessing whether a conflict of interest exists in the public sector is not financial loss to the public entity concerned. It concerns the potential for public money, resources, or time being used by someone to advance their own private interests.

In this regard, the rules and expectations for handling conflicts of interest differ between the public and private sectors.

The existence of a conflict of interest does not necessarily mean that the person concerned has done anything wrong. What it does is create an issue that needs to be managed carefully by the public entity.

In the public sector, simply declaring a conflict of interest may not be enough. Once a conflict of interest has been identified or disclosed, the entity may need to take steps to remove both the perception and the actuality of any potential for taxpayers' funds to be used for private gain.

The findings of my inquiry into how the Christchurch Polytechnic Institute of Technology (CPIT) managed conflicts of interest regarding the Computing Offered On-Line (COOL) programme emphasise the need for public entities to carefully consider the ethical dimensions of conflicts of interest.

I wish to thank CPIT, Brylton Software Limited, Mr Richard Belton, and Ms Vicki Buck for their co-operation throughout the inquiry.

K B Brady  
Controller and Auditor-General

25 November 2004

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# Glossary

The following terms or abbreviations are used in this report:

**BSL:** Brylton Software Limited.

**BSL information technology platform:** This term describes the underlying e-learning system that BSL used to develop the TIME programme and the COOL programme.

**COOL programme:** Computing Offered On-Line programme – an education software programme developed by the Joint Venture, based on the TIME programme (see below), comprising 4 short courses on computing skills.

**CPIT:** Christchurch Polytechnic Institute of Technology.

**CPIT Council:** The governing body of CPIT.

**CPIT representatives:** This term includes employees of CPIT and independent contractors to CPIT.

**EFTS:** Equivalent Full Time Students. This is one of the bases upon which tertiary education organisations receive funding from the Government.

**Joint Venture:** This term refers to the unincorporated joint venture that was formed between CPIT and BSL. It is governed by a written agreement dated 7 October 2003.

**Joint Venture Committee:** The governing body of the Joint Venture.

**Partners in Education:** The 85 organisations that signed Heads of Agreement with the Joint Venture to market the COOL programme and to act as enrolment centres for students.

**TIME programme:** Teachers Integrating Microsoft Efficiently programme – an education software programme designed by BSL, comprising 4 short courses on computing skills for secondary school teachers.

# Summary and recommendations

## Background to our inquiry

Christchurch Polytechnic Institute of Technology (CPIT) is a “polytechnic” as defined in the Education Act 1989. Brylton Software Limited (BSL) is a private Christchurch-based education software company.

During 2003, senior CPIT representatives were introduced to BSL personnel. After a series of meetings and negotiations, the parties entered into an unincorporated joint venture business relationship (the Joint Venture). The Computing Offered On-Line (COOL) programme<sup>1</sup> was created specifically for the Joint Venture during mid-2003, using the information technology platform that BSL had already developed.

In June 2004, both CPIT and the Hon. Bill English MP asked the Auditor-General to inquire into allegations that conflicts of interest existed for certain CPIT representatives who also held shareholding interests in BSL.

This report considers CPIT’s management of two of its representatives – Mr Richard Belton and Ms Vicki Buck – both of whom also had interests in BSL. Mr Belton is employed by CPIT on a fixed-term agreement as the Curriculum Alignment Project Director. Ms Buck is contracted as a part-time Development Manager for CPIT.

Overall, we found that there were two streams of activity occurring from April to December 2003 involving both CPIT and BSL. First, CPIT and BSL were establishing a formal business relationship through a joint venture. Second, the individual parties – and later, the Joint Venture – were preparing to deliver<sup>2</sup> the COOL programme. The development of the COOL programme and the business relationship were separate but closely related activities.

These events formed the background for our considerations of whether conflicts of interest existed.

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<sup>1</sup> The COOL programme is a suite of 4 courses designed to enhance students’ basic computing skills in using 4 Microsoft® software products: Word, Excel, Powerpoint, and Access.

<sup>2</sup> CPIT, as the educational institution, was responsible for delivery of the COOL programme. However, BSL, CPIT and the Joint Venture were all involved in various ways, including marketing the programme. The income from the programme was shared between these 3 parties, in accordance with the Joint Venture Agreement.

## What is a conflict of interest?

Conflicts of interest can have both legal and ethical dimensions.

We consider that there are generally accepted expectations about what constitutes a conflict of interest in the public sector.

In the public sector, a conflict of interest exists where a person's duties or responsibilities to a public entity could be affected by some other separate (and usually private) interest or duty.

Public perceptions are important. It is not enough that public officials must actually be honest and impartial; they should also be clearly seen to be so. Labelling a situation as a "conflict of interest" does not mean that corruption or some other abuse of public office has in fact occurred. But a perception of the possibility for improper conduct – no matter how unfair to the individual – can be just as significant.

The existence of this risk, or a likely perception of this risk, is what creates the conflict of interest. Whether or not the person would actually compromise himself or herself is irrelevant.

In our view, there are two aspects to dealing with a conflict of interest:

- *Identification.* A conflict of interest needs to be identified and disclosed to the necessary people in a timely and effective manner.
- *Management.* Decisions need to be made about what, if anything, needs to be done to adequately avoid or mitigate the conflict of interest.

For this inquiry, there are no specific laws that apply to CPIT or its representatives. Nor do any other regulatory directives bind CPIT. Therefore, we are not investigating any potentially unlawful acts. However, there are public sector ethical conflict-of-interest expectations that would apply to CPIT.

We examined whether CPIT had ensured compliance with relevant internal policies and any contractual obligations. We considered CPIT's further judgements or actions, and whether they were reasonable, based on public sector ethical expectations.

## Did we find conflicts of interest?

Mr Belton has a shareholding in BSL, but his work at CPIT has never brought him into contact with issues regarding BSL. Accordingly, CPIT's activities involving BSL never created a conflict of interest for Mr Belton.

Ms Buck has two different types of interest in BSL, as an investor and as a member of the governing body. Together, her shareholding and directorship show that she has a keen awareness of and involvement with the company. She has been involved in the COOL programme and the Joint Venture.

Ms Buck was present at 2 of the earliest meetings between BSL and CPIT. In fact, she was the person making the introductions. She had a conflict of interest then. However, in our view, it was adequately identified and managed at the time.

The meetings and discussions between CPIT and BSL in June, July, and the beginning of August 2003 were the most critical stage in the establishment of the Joint Venture business relationship. CPIT's Chief Executive, Mr John Scott, excluded Ms Buck – deliberately, it seems to us – from the meetings during this time. This is what we would expect. There was no conflict between her CPIT duties and BSL interests during this period.

Very soon after CPIT and BSL had (at least informally) reached the point where they wished to establish a business relationship and develop the COOL programme, Ms Buck became involved again, and she quickly became a key person. Initially, in her CPIT role, she was involved in preparing to market the COOL programme to Partners in Education and the public (from mid-August). Later, her involvement became broader, particularly once the Joint Venture Committee had a de facto existence (by late-September 2003). In our view, each of these roles raised a conflict of interest.

When it was proposed that Ms Buck become a member of the Joint Venture Committee in early September, CPIT obtained written legal advice about whether this was permissible. Ms Buck also sought her own legal advice at around the same time. These were responsible actions to take.

The tenor of both sets of legal advice was that Ms Buck's membership of the Joint Venture Committee would not be unlawful. We do not take issue with this legal advice. However, in addition to legal requirements, our inquiry has also considered how well CPIT took account of public sector ethical expectations.

We consider that a problem existed because CPIT allowed Ms Buck to be put in a position which gave her the opportunity to use her CPIT-funded time, resources, and position to enhance the value of her private financial interests in BSL.

We wish to emphasise that there is no evidence that Ms Buck acted to misuse her position.

### ***Disclosure of conflict of interest***

It is clear that all the key people in CPIT management were aware that Ms Buck had a connection with BSL when she became involved in marketing the COOL programme from August 2003 onwards.

Ms Buck disclosed her “foot in both camps” – being the Development Manager for CPIT as well as being a company director and shareholder in BSL – a number of times between April and September 2003. While only one of these disclosures was in writing, Ms Buck never attempted to disguise or hide her interests in BSL.

## *CPIT's management of conflict of interest*

Overall, we are satisfied that the conflicts of interest were identified and disclosed. However, these conflicts of interest raised a serious management issue for CPIT. It was up to CPIT to make the decisions, where necessary, about placing limits on Ms Buck's CPIT activities.

CPIT told us that Ms Buck's conflict of interest was "adjudged to not be material or problematic". The belief of CPIT's senior management at the time seems to have been that, so long as her interests were well known, and no-one objected to her involvement, it was acceptable for her to participate.

CPIT stands by the decisions it made at that time.

We consider that it would have been prudent for CPIT management to have:

- excluded Ms Buck from anything other than the most peripheral involvement in the COOL programme; and
- declined to consent to her appointment to the Joint Venture Committee as a representative of BSL.

As of 5 November 2004, Ms Buck resigned her membership of the Joint Venture Committee. She remains the Development Manager for CPIT, and her private interests in BSL still exist. This does not create a conflict of interest at present because her CPIT duties do not intersect with any Joint Venture initiatives.

## **CPIT's policies and procedures**

CPIT has 3 policies that are useful in helping to identify and manage some conflict-of-interest situations. The policies, in some instances, are supported by a set of procedures.

Two of the 3 policies applied to Mr Belton, but raised no issues in this situation. CPIT's corporate policies and procedures relevant to conflicts of interest did not apply at all to Ms Buck because she was not an employee.

We commend the existence of the 3 policies. What this inquiry has highlighted, however, are some areas where the policies could be enhanced. CPIT could do this by either expanding 1 or all of the 3 policies, or drafting a new policy that consolidates the existing policies and addresses our recommendations, which are listed at the end of this Summary.

## CPIT Council involvement

Conflicts of interest can present political or reputation risks for an organisation. Strategic risk management is a legitimate matter of concern for the governing body of an organisation.

We are satisfied that some, albeit brief, mention was made to the CPIT Council about Ms Buck during consideration of the developing business relationship between CPIT and BSL. Councillors were aware – in general terms – of Ms Buck’s role at CPIT, and they would have been aware of her high profile in the community. However, her connections and involvement were not the subject of any discussion by councillors. While the Council certainly took an interest in the Joint Venture agenda item, it focused its attention on other matters.

We consider that it would have been prudent for:

- CPIT management to have told the CPIT Council more about Ms Buck’s connections with BSL, her involvement with both the business relationship and the COOL programme, and how this situation was being managed; and
- the CPIT Council to have asked CPIT management more questions about Ms Buck’s connections with BSL, her involvement with the Joint Venture and the COOL programme, and how this situation was being managed.

## Recommendations

1. We recommend that CPIT review its conflict-of-interest policies, and that any new or expanded policy or policies:
  - apply to independent contractors to CPIT;
  - are supported by a set of procedures (to assist CPIT managers by detailing the possible mitigation actions that can be adopted for different situations, and the process for agreeing and monitoring the effectiveness of mitigation actions when a conflict of interest has been identified and requires managing); and
  - describe the full range of situations that can give rise to conflicts of interest, such as “passive” interests (i.e. shareholdings) and conflicts of interest that can arise at other than governance level and outside formal meetings.
2. If CPIT retains the conflict-of-interest provisions in the *Code of Professional Practice*, we recommend that CPIT:
  - revise the applicability criteria of the *Code of Professional Practice* so that it applies to all independent contractors to CPIT, as well as staff, managers and the Chief Executive;

- draft procedures for how to comply with the expectations of the *Code of Professional Practice*; and
  - ensure that, where relevant, contract templates for independent contractors provide for compliance with all CPIT corporate policies, practices, procedures, and codes of conduct.
3. If CPIT retains the *Staff Involvement in Outside Activities* policy, we recommend that CPIT:
- revise the applicability criteria of the *Staff Involvement in Outside Activities* policy so that it applies to independent contractors to CPIT;
  - draft procedures to assist with implementation of the *Staff Involvement in Outside Activities* policy; and
  - consider requiring CPIT employees and independent contractors to disclose "passive" interests in other entities where those interests could intersect with their CPIT responsibilities.

# Part 1 – Background

## Introduction

- 1.1 In October 2003, the Christchurch Polytechnic Institute of Technology (CPIT) entered into a joint venture arrangement with Brylton Software Limited (BSL). Before the Joint Venture was formally established, the parties designed and began to deliver<sup>3</sup> a programme of 4 free short courses on computing skills.
- 1.2 This programme – Computing Offered On-Line (COOL) – was delivered by the Joint Venture in the 2003 and 2004 academic years. The Joint Venture ceased promotion of the COOL programme on 31 December 2003 and completed the delivery of the programme in March 2004. In that time, the programme drew \$13,874,767 of public funding.
- 1.3 Some concerns were raised in the first half of 2004 that certain CPIT representatives had conflicts of interest by virtue of their relationships with both CPIT and BSL.
- 1.4 In this Part we provide background information about:
  - CPIT and BSL, and their relationship;
  - BSL’s computing skills courses – the TIME and COOL programmes;
  - two individuals with connections to both CPIT and BSL – Mr Richard Belton and Ms Vicki Buck; and
  - how our inquiry came about, the scope of our inquiry, and what we did.

## Christchurch Polytechnic Institute of Technology

- 1.5 CPIT was established in 1965 as the Christchurch Technical Institute. As a “polytechnic” – as defined in the Education Act 1989 – CPIT is a public entity under the Public Audit Act 2001<sup>4</sup>.

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<sup>3</sup> CPIT, as the educational institution, was responsible for delivery of the COOL programme. However, BSL, CPIT and the Joint Venture were all involved in various ways, including marketing the programme. The income from the programme was shared between these 3 parties, in accordance with the Joint Venture Agreement.

<sup>4</sup> This means that the Auditor-General is the auditor of CPIT.

- 1.6 CPIT has stated that it seeks to be a preferred choice for students, through offering a wide range of programmes that contribute to the success of every student<sup>5</sup>. It provides applied and vocational programmes and professional studies up to postgraduate level – in subjects such as hairdressing, travel and tourism, nursing, carpentry, and quantity surveying.
- 1.7 In addition, CPIT sees itself as strengthening New Zealand and international society and as a leader within the tertiary education sector. CPIT’s key strategic goals are:
- student focus;
  - work relevance;
  - productive alliances;
  - flexible delivery;
  - international education;
  - sustained viability; and
  - managed quality.
- 1.8 According to CPIT, its strategic goal of “flexible delivery” has been a key driver for its interest in improving access to tertiary education and e-learning. It has identified both e-learning and commercial activities as key themes<sup>6</sup>, and notes that its “for free” courses in the trades, languages and computing in particular have assisted to attract those who do not usually participate in tertiary education.
- 1.9 CPIT has stated that it is prepared to pursue joint venture and franchise models when the commercial activity is consistent with its *Charter 2004-2008* and has identifiable educational outcomes.
- 1.10 CPIT has a number of campuses within Christchurch city, and 1 campus in Auckland. In 2003, CPIT employed 808 full time equivalent staff and enrolled 50,333 students, which equates to 7724 Equivalent Full Time Students (EFTS). The chief executive of CPIT is Mr John Scott.

## **Brylton Software Limited**

- 1.11 BSL is a private Christchurch-based education software company. Its Managing Director, Mr Adrian McGrath, has been developing an information technology platform to assist with education and learning since 1996. The

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<sup>5</sup> CPIT, *Charter 2004-2008*, see [www.cpit.ac.nz](http://www.cpit.ac.nz).

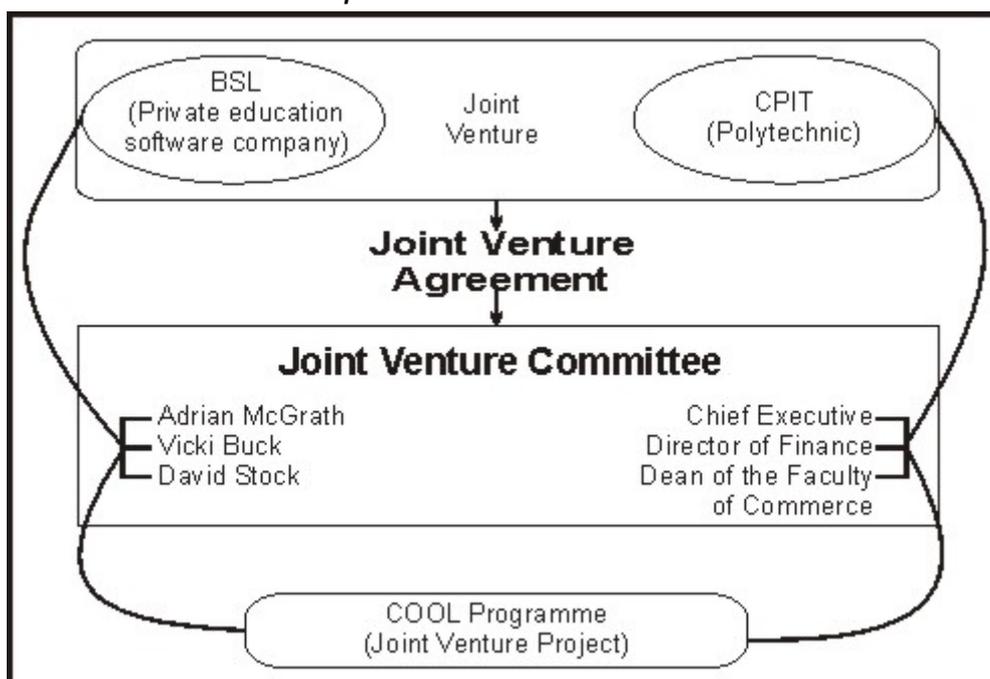
<sup>6</sup> CPIT, *Learn to Prosper, Interim Profile for 2004-6*.

directors of the company are: Mr Adrian McGrath, Mr David Stock, Ms Vicki Buck, and Mr Dennis Chapman.

## Relationship between CPIT and BSL

- 1.12 During 2003, senior CPIT representatives were introduced to BSL personnel. After several meetings (the details of which are discussed in Part 3 of this report), the parties entered into an unincorporated joint venture business relationship.
- 1.13 The Joint Venture Agreement that confirmed the nature of the business relationship between CPIT and BSL was signed on 7 October 2003. Broadly speaking, the purpose of the Joint Venture is to enable the parties to market and deliver existing BSL products, and to develop new products. This would support CPIT's e-learning goals. An amendment to the Joint Venture Agreement was signed by both parties in April 2004.
- 1.14 A Joint Venture Committee governs the Joint Venture. The first meeting of this committee was held on 26 September 2003. Both parties to the Joint Venture have 3 representatives each on the committee. For CPIT, the representatives are the Chief Executive, the Director of Finance, and the Dean of the Faculty of Commerce. Until November 2004, BSL was represented by 3 of its company directors: Mr McGrath, Ms Buck, and Mr Stock. Ms Buck resigned her membership of the committee on 5 November 2004.
- 1.15 The Joint Venture currently has 2 employees and is focusing on new product development. The joint venture relationship between CPIT and BSL is illustrated in Figure 1 below.

*Figure 1*  
*Joint venture relationship between CPIT and BSL until 5/11/04*



## The TIME programme

- 1.16 BSL created the Teachers Integrating Microsoft Efficiently (TIME) programme, which consists of a suite of 4 courses. The TIME programme was specifically designed for Years 9-13 secondary school teachers in State and integrated schools who were leasing laptops under the Government's *Laptops for Secondary Teachers Scheme*. BSL created the TIME programme well before the company became associated with CPIT, and had already sold the TIME programme to other parties.
- 1.17 CPIT bought the "right" from BSL to deliver the TIME programme. The CPIT Faculty of Commerce granted academic approval for two TIME courses in June 2003 and for the full programme in early-September 2003. These approvals meant that CPIT could claim funding from the Tertiary Education Commission for each TIME programme enrolment. This was done through a specific class of tertiary education funding, often known as "5.1 funding" – but more formally known as *Student Component Classification 5.1 - Community Education, Non-Formal Education*<sup>7</sup>.
- 1.18 Consistent with the intent of the TIME programme, CPIT told us that only secondary school teachers leasing laptops under the government scheme were accepted for enrolment.
- 1.19 In 2003, the TIME programme attracted 62.21 EFTS – and 5.32 in 2004 – to CPIT. This equates to \$375,108 (GST-inclusive) in funding from the Government in 2003 and 2004. CPIT ceased to deliver the TIME programme in March 2004.

## The COOL programme

- 1.20 The TIME programme "sparked" the idea within CPIT that similar basic computing courses could be developed and offered on-line to a wider potential student market and to the general public.
- 1.21 The result was the COOL programme, which was created by BSL specifically for CPIT, using the information technology platform that BSL had already developed. The COOL programme comprised a suite of 4 courses designed to enhance students' basic skills in using 4 Microsoft® software products: Word, Excel, Powerpoint, and Access.
- 1.22 The CPIT Faculty of Commerce granted the academic course approvals for the COOL programme at the beginning of September 2003. It was delivered between September 2003 and March 2004.

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<sup>7</sup> External bodies such as NZQA are not required to approve community education short courses funded through "5.1 funding". Some changes to this class of funding were announced as part of Budget 2004. For more details, see <http://www.beehive.govt.nz/ViewDocument.cfm?DocumentID=20313>.

- 1.23 The COOL programme was provided in CD-Rom format, with additional support provided through the BSL website<sup>8</sup>. Students undertook the programme on a computer, by themselves. No classroom or face-to-face teaching was involved.
- 1.24 CPIT designed a marketing approach unique to the COOL programme. This involved the use of external entities (known as Partners in Education) and the commissioning of Agents to enrol students on behalf of the Joint Venture. Overall, 85 Partners in Education and 8 Agents were contracted by the Joint Venture.
- 1.25 When the COOL programme ceased in March 2004, it had generated \$13,874,767 income for CPIT.<sup>9</sup> A total of 18,502 individual students enrolled in the COOL programme (equating to 2775 EFTS).
- 1.26 Tertiary education institutions that receive “5.1 funding” (see paragraph 1.17) for courses such as COOL and TIME are not required by the Government to collect information on completion rates; nor are there any assessment requirements or formal qualifications for students.

## **Individuals with connections to both CPIT and BSL**

- 1.27 Our inquiry found that there are two individuals who have interests in both CPIT and BSL. They are:
- Mr Richard Belton; and
  - Ms Vicki Buck.

### ***Mr Richard Belton***

- 1.28 CPIT’s Chief Executive Mr John Scott approached Mr Richard Belton in late-2002 about an employment opportunity. Mr Scott considered that Mr Belton, a former secondary school principal, could help align CPIT’s curriculum with that taught in secondary schools. Mr Belton is employed on a fixed-term agreement as the Curriculum Alignment Project Director at CPIT, and reports to the Director - Development and Community Education.
- 1.29 The primary objectives of Mr Belton’s role are to oversee curriculum alignment between CPIT and Canterbury secondary schools, and to facilitate

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<sup>8</sup> We understand that the website support was disabled when the COOL programme ceased in March 2004.

<sup>9</sup> Only tertiary education institutions can claim “5.1 funding” from the Government. CPIT drew the \$13,874,767 for the COOL programme during the 2003 and 2004 academic years. A Tertiary Education Commission review in May 2004 (see paragraph 1.45 on page 20) reported that the COOL programme revenue was then distributed to the Joint Venture (20%), and the Joint Venture partners (40% each).

the relationship between CPIT and schools (including providing Canterbury secondary school principals with an overview of what CPIT can offer their schools).

- 1.30 Mr Belton is a shareholder in BSL. He has 4300 shares of a total of 1,059,300 shares, which equates to a shareholding of about 0.41%. Mr Belton expressed an interest in investing in the company after Ms Buck showed him the capabilities of the BSL information technology platform at her house in 2002 at a meeting in relation to the Unlimited Paenga Tawhiti School.<sup>10</sup> At that meeting, Ms Buck advised Mr Belton that she had invested some money in the company.
- 1.31 The exact timing of Mr Belton acquiring his shareholding is not recorded with the Companies Office. However, we were told that his investment was made in late-September 2002. In his initial fixed-term employment agreement with CPIT dated 18 November 2002, Mr Belton declared his shareholding in BSL.
- 1.32 Mr Belton has little interaction with Ms Buck in the context of their CPIT roles. He has only limited contact with BSL's company directors; meeting occasionally with the Managing Director of BSL to discuss company progress.

### *Ms Vicki Buck*

- 1.33 Ms Vicki Buck is a well-known identity in the Canterbury region. She became a Christchurch City Councillor in 1975, and was Mayor of the city from 1989 to 1998. As well as having a high profile as a former local body politician, Ms Buck performs a number of roles within the Christchurch community. Of some relevance to this inquiry are her governance roles on the boards of two State schools in Christchurch – Unlimited Paenga Tawhiti and Discovery One – and as a trustee of a charitable trust called Young Inventionz.
- 1.34 While she was still Mayor of Christchurch, Ms Buck was approached by CPIT's Chief Executive about an employment opportunity. Mr Scott considered that Ms Buck had a very high profile and good relationships that would help CPIT initiate commercial opportunities. Ms Buck was contracted as a part-time Development Advisor for CPIT through her private company, Think Inc Limited, in August 1998.
- 1.35 Ms Buck is an independent contractor to CPIT, not an employee. She is not expected to work regular hours, and the nature of her work means that she does not spend a lot of time in the office. She does not receive all CPIT staff entitlements (for example, discounted educational courses).
- 1.36 Nevertheless, in many respects we consider that the nature of the arrangement is effectively like a part-time employment relationship (rather than like, say, a consultant engaged to provide a specific service in an arm's-length manner). For example, Ms Buck is required to perform the contract personally. She is

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<sup>10</sup> Mr Belton is a member of the Board of Trustees of that school, as is Ms Buck.

publicly associated with CPIT, and has been for more than 6 years. The contract requires her to be identified with CPIT, and to be seen as a representative of CPIT. CPIT provides her with an office, phone expenses, computer, corporate business cards, and an expenses budget. CPIT management told us that they expect her to comply with staff policies.

- 1.37 In our view, in a practical sense Ms Buck can be said to be “working for” CPIT. On this basis, we consider that it is reasonable for public sector expectations to apply to her.
- 1.38 The general goals of Ms Buck’s contract include:
- to improve and enhance the profile and image of CPIT; and
  - to identify entrepreneurial developments which provide potential for income, and to help make these happen.
- 1.39 Ms Buck’s contract has not changed significantly since she began working for CPIT, although her job title is now Development Manager. Her role is varied and includes tasks such as facilitating the sponsorship of events by CPIT, and presenting new business opportunities and ideas to CPIT management. Her remuneration is fixed.
- 1.40 While Ms Buck does have annual performance goals set for her, she is not paid a bonus; nor is she provided with any other contractual incentives to excel in performing her role. We were informed that one of her performance goals is a revenue target. In 2003, this revenue target was \$536,000. CPIT expects such revenue to be generated through new courses, programmes, scholarships and/or the establishment of joint venture arrangements.
- 1.41 While there was no Development Advisor or Development Manager position before Ms Buck was contracted to CPIT in 1998, a team focused on this type of activity now exists at CPIT. This “Development Centre” team is managed by the Director - Development and Community Education. Ms Buck is now directly responsible to the person filling this position, but initially reported to the Chief Executive, Mr Scott.
- 1.42 Ms Buck also has a connection with BSL. She invested in the company in 2002, quite soon after being shown the capabilities of the BSL information technology platform. Ms Buck was particularly impressed with the multi-lingual and learning assessment capabilities of the software.
- 1.43 Ms Buck is currently both a shareholder and director of BSL. She acted as a director of the company from later in 2002, but the official registration of her directorship did not occur until 25 September 2003. Ms Buck invested in BSL in May 2002. Initially, her investment was a mixture of shares and convertible notes, but in February 2004 the convertible notes were converted into shares. She holds 50,000 out of a total 1,059,300 shares, which equates to a shareholding of about 4.7%.

## How our inquiry came about

1.44 In early- to mid-2004, a number of questions were asked in Parliament about CPIT's COOL programme, which had drawn a significant amount of public funding during 2003 and early 2004. There was considerable media interest about the issues raised in Parliament in regard to:

- the appropriateness of the fact of, and level of, public funding drawn for the COOL programme;
- an alleged breach of the tertiary education sector funding guidelines, as "inducements" were offered to potential COOL programme students;
- the academic quality of the COOL programme; and
- allegations of conflicts of interest between certain CPIT representatives who also had interests in BSL.

1.45 In May 2004, the Tertiary Education Commission (TEC) engaged an independent contractor to undertake a review<sup>11</sup> of matters in regard to the COOL programme. The TEC review sought to:

- establish that CPIT had acted in accordance with current Government policy;
- ensure that CPIT complied with current funding provisions in relation to the COOL programme;
- ensure that CPIT had acted appropriately in attracting students to the COOL programme; and
- identify the impact that the COOL programme had on the financial performance of CPIT.

1.46 In addition, in June 2004, both CPIT and the Hon. Bill English MP asked the Auditor-General to inquire into allegations that conflicts of interest existed for certain CPIT representatives who also held shareholding interests in BSL.

1.47 On 21 June 2004 the Auditor-General announced the terms of reference for an inquiry to:

1. *Examine the CPIT's policies and procedures for identifying and managing conflicts of interest including but not limited to whether these were adequate to both identify and then manage situations involving CPIT representatives' private business interests.*

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<sup>11</sup>

The review report is published on the TEC website at [www.tec.govt.nz](http://www.tec.govt.nz).

2. *Examine, in the context of the concerns raised about conflicts of interest emerging from the joint venture arrangement between CPIT and Brylton Software Limited:*
  - *whether there were any potential or actual conflicts of interest, leading up to and at the time of CPIT's decision to enter into the COOL IT arrangement with Brylton Software Limited and, during the establishment phase and operation of the joint venture arrangement between Brylton Software Limited and CPIT;*
  - *whether the CPIT's policies and procedures were adequately followed;*
  - *whether CPIT and any of its representatives acted properly; and*
  - *whether any CPIT representatives continue to have any actual or potential conflicts of interest in the context of the joint venture arrangements with Brylton Software Limited.*
3. *Identify whether any improvements should be made to CPIT's policies and procedures as they relate to conflicts of interest, with the objective of addressing any concerns identified as a consequence of the findings in 1 and 2 above.*
4. *Examine any other issues that the Auditor-General considers relate to or arise out of the above matters.*

## **Scope of our inquiry**

- 1.48 Our inquiry was undertaken under sections 16 and 18 of the Public Audit Act 2001.
- 1.49 We decided that the conflict of interest area was where we could undertake work that would be of most use to the parties involved – Parliament, and the public. However, our inquiry has not sought to determine the size or value of any financial benefit that may have resulted to any individual.
- 1.50 We did not attempt to address the full range of issues raised in the public domain about the COOL programme. We decided not to duplicate work on the matters that were the focus of the TEC review. Further, we have not assessed the educational or technical quality or value of the COOL programme.
- 1.51 We have not inquired into the affairs of BSL. It is a privately owned company.
- 1.52 The broad timeframe under consideration for our inquiry is from 2003 to the date of publication of this report. Most of the inquiry's findings relate to the period from April 2003 to October 2003.

## **What we did**

- 1.53 We began our inquiry by requesting extensive written documentation from CPIT. This documentation was analysed to assess what meetings and interviews were required. A series of meetings and interviews was held in August 2004 with CPIT (councillors and senior management), BSL, Mr Richard Belton, and Ms Vicki Buck.

## **Structure of this report**

- 1.54 In Part 2, we discuss the subject of conflicts of interest and expectations for the public sector, to provide context for the remainder of the report.
- 1.55 In Part 3, we look at the chronology of events relating to the formation of the CPIT and BSL business relationship, and the COOL programme.
- 1.56 Part 4 presents our findings about identification and management of conflicts of interest in regard to Mr Belton and Ms Buck.
- 1.57 Part 5 examines Mr Belton's and Ms Buck's contractual obligations and CPIT's relevant policies and procedures. It also includes our recommendations for improvement.
- 1.58 Part 6 considers the involvement of the CPIT Council in the COOL programme and the Joint Venture.
- 1.59 Appendix 1 provides sources of guidance on the subject of conflicts of interest, and Appendix 2 contains the 3 CPIT policies relevant to conflicts of interest.

## Part 2 – Conflicts of interest

- 2.1 In this Part we discuss conflicts of interest, and set out what we consider to be generally accepted expectations when conflicts of interest arise in the public sector. Our expectations have been derived from the sources of guidance listed in Appendix 1.
- 2.2 Our judgements about CPIT’s management of conflicts of interest are based on these expectations and are presented in Parts 4, 5, and 6. This Part does not contain conclusions or findings about CPIT.

### What is a conflict of interest?

- 2.3 A conflict of interest arises where two different interests intersect. In the public sector, a conflict of interest exists where a person’s duties or responsibilities to a public entity could be affected by some other separate (and usually private) interest or duty that he or she may have.
- 2.4 Conflicts of interest can have both legal and ethical dimensions:
- There may be legislative requirements that set out what must or must not be done in a given situation.<sup>12</sup> Non-compliance may lead to civil or criminal sanctions. Also, a person who exercises powers that can affect the rights and interests of others may be subject to the common law rule about bias.<sup>13</sup> Only some types of conflict of interest involve legal obligations. Most of those relate to formal decision-making by members of governing bodies at meetings or hearings, or persons exercising a specific statutory power. Few of these requirements are relevant to employees or contractors.

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<sup>12</sup> For example, see the Local Authorities (Members’ Interests) Act 1968, sections 3 and 6; Education Act 1989, sections 103A, 175, clause 8(8) of Schedule 6, and clauses 19-23 of Schedule 13A; New Zealand Public Health and Disability Act 2000, section 29(6), clause 6 of Schedule 2; and clause 36 of Schedule 3; Health Practitioners Competence Assurance Act 2003, clauses 11-14 of Schedule 3; Weathertight Homes Resolution Services Act 2002, section 35; Corrections Act 2004, section 167; Health and Disability Services (Safety) Act 2001, section 33; Companies Act 1993, sections 139-149; Securities Markets Act 1988, sections 19T-19ZA and 20-29; and numerous other statutes dealing with the boards of particular entities. See also the Members of Parliament (Pecuniary Interests) Bill; Public Finance (State Sector Management) Bill; and Standing Orders of the House of Representatives, SO 164-166.

<sup>13</sup> Numerous examples could be cited, but see for instance *Calvert & Co v Dunedin City Council* [1993] 2 NZLR 460; *Auckland Casino v Casino Control Authority* [1995] 1 NZLR 142; and *Locabail (UK) v Bayfield Properties* [2000] 1 All ER 65.

- The ethical dimension involves issues of integrity, honesty, and good faith. A high standard of behaviour is expected of those involved in public life. Regardless of whether or not any legal requirement applies, a conflict of interest will always involve ethical considerations.
- 2.5 Appropriate management of conflicts of interest is particularly important in the public sector. Where activities are funded by public money, or are undertaken in the public interest, taxpayers will have strong expectations of probity. Media and the public take a strong interest when they think taxes are being spent irresponsibly or misused for private gain. The *New Zealand Public Service Code of Conduct* says that citizens:
- ...expect official decisions to be made fairly and impartially, public money to be spent wisely, and public assets to be used and cared for responsibly. They expect the conduct of officials to be above reasonable reproach, and official duties to be performed conscientiously and competently at all times. Where the integrity of the government system is concerned, they will accept nothing less than a full measure, and rightly so.*<sup>14</sup>
- 2.6 Public perceptions are important. It is not enough that public officials must actually be honest and impartial; they should also be clearly seen to be so.
- 2.7 Labelling a situation as a “conflict of interest” does not mean that corruption or some other abuse of public office has in fact occurred. Usually, there is no suggestion that the person concerned has actually taken advantage of the situation for their personal benefit, or that the person has been influenced by improper personal motives. But a perception of the possibility for improper conduct – no matter how unfair to the individual – can be just as significant. Impartiality and transparency in administration are essential to maintaining the integrity of the public sector.
- 2.8 The key issue is whether there is a reasonable risk, to an outside observer, that the situation could undermine public trust and confidence in the official or the public entity.

## **How to identify a conflict of interest**

- 2.9 A conflict of interest arises when a particular matter concerning a person in their public role intersects with that person’s other interest.
- 2.10 The mere existence of the other interest, on its own, may not necessarily cause a conflict. Therefore, one must always focus on what the private interest has to do with the particular matter (that is, the question, decision, project or activity) that is being considered by the public entity.

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<sup>14</sup> State Services Commission, *New Zealand Public Service Code of Conduct* (July 2002).

2.11 One way of considering whether a conflict of interest may exist is to ask:

*Does the issue create an incentive for the person to act in a way that may not be in the best interests of the public entity?*

2.12 The existence of this risk, or a likely perception of this risk, is what creates the conflict of interest. Whether or not the person would actually compromise himself or herself is irrelevant.

2.13 A conflict of interest can arise in any number of ways. It can arise from a financial interest, or a non-financial association. It can be professional or personal. It can be caused by, among other things:

- employment with another organisation;
- involvement in another business;
- professional or legal obligations owed to someone else;
- holding another office;
- membership of another organisation;
- investments and property ownership;
- beneficial interests in trusts;
- gifts and hospitality;
- debts;
- family or close personal relationships; and
- strong political or personal beliefs.

2.14 It is not the fact of the private interest alone that constitutes a conflict of interest. A conflict arises only if, in a particular situation, there is a connection between that interest and the person's responsibilities to the public entity.

## **Our expectations**

2.15 When expressed in general terms, the concept of conflicts of interest is well known and accepted, but it can be difficult to know whether and how the concept applies to a particular scenario.

2.16 There are no prescriptive and comprehensive written definitions or "rules" for identifying and dealing with conflicts of interest that apply to all situations

throughout the whole public sector. Nor are there published model guidelines that can be adopted and applied universally.

- 2.17 In part, this is because the concept can cover an infinite range of situations, of varying seriousness. Moreover, each entity's own circumstances are likely to generate different needs and concerns.
- 2.18 Nevertheless, we consider that there is a widely recognised understanding of what constitutes acceptable practice and behaviour in the public sector. We have not sought to create and retrospectively apply standards where none have previously existed.
- 2.19 There are many official publications that discuss different types of conflicts of interest, and which contain some indications of what is and is not acceptable. See Appendix 1 for a list of such publications. Two guidance documents that represent a particularly useful expression of the general expectations in the public sector are recent publications by the State Services Commission. They are the *New Zealand Public Service Code of Conduct* and a resource kit called *Walking the Line: Managing Conflicts of Interest*. The latter document discusses a range of factual examples.
- 2.20 In paragraphs 2.21-2.31 below, we discuss what it is reasonable to expect of a public entity in relation to conflicts of interest. There are two broad elements to our expectations:
- having effective policies and procedures; and
  - making prudent decisions about difficult or novel conflict-of-interest situations on a case-by-case basis.

## **Policies and procedures**

- 2.21 Because the concept of conflicts of interest is complex, compliance with expected standards is often not as simple as creating and enforcing blunt rules. Nevertheless, robust policies and procedures within an entity are an important starting point. They can provide clear rules for the most obvious situations, and establish a process for dealing with the more difficult ones.
- 2.22 Each entity needs to develop its own policies and procedures, taking into account the nature of its structure, functions and activities, and any applicable legislative requirements. We expect public entities to have policies and procedures that provide for most or all of the following matters:
- state principles that emphasise the entity's commitment to addressing conflicts of interest, and the importance of people within the entity being alert for such situations;

- establish rules for the most important and obvious actions that people must or must not take;
- establish a mechanism (such as an interests register) for recording those types of ongoing interests that can commonly give rise to a conflict of interest, and a procedure for putting this into effect and updating it on a regular basis;
- set out a process for identifying instances of conflicts of interest as and when they arise (including a clear explanation of how a person should disclose a conflict of interest, and to whom);
- set out a process for managing conflicts of interest that arise (including who makes decisions, and perhaps detailing the principles, criteria, or options that will be considered);
- provide avenues for training and advice;
- provide a mechanism for handling complaints or breaches of the policy; and
- specify the potential consequences of non-compliance.

2.23 The procedures are just as important as the broad statements of principle that they support. Without them, people will not know whether what they have done is sufficient.

## **Making decisions about particular situations**

2.24 No matter how comprehensive a set of policies and procedures is, not every factual scenario can be predicted and provided for. In addition, some types of conflict might not be able to be dealt with by a firm rule one way or the other. The seriousness of many intersecting interests will be a question of degree. Accordingly, the decision about how to treat some situations may need to be the subject of discretionary judgement on a case-by-case basis.

2.25 There are two aspects to dealing with a conflict of interest:

- *Identification.* A conflict of interest needs to be identified (see paragraphs 2.9-2.14) and disclosed to the necessary people in a timely and effective manner.
- *Management.* Decisions need to be made about what, if anything, needs to be done to adequately avoid or mitigate the conflict of interest.

2.26 The question of what steps to take in any given situation will require careful assessment and judgement. We consider relevant factors to be:

- the type or size of the person's other interest;
- the nature or significance of the particular decision or activity being undertaken by the public entity;
- the degree to which the person's other interest could affect, or be affected by, the public entity's decision or activity;
- the nature or extent of the person's current or intended involvement in the public entity's decision or activity; and
- the practicability of any options for avoiding or mitigating the conflict.

2.27 In cases where the conflict of interest can safely be regarded as remote or insignificant, it will be reasonable to formally record or declare the conflict in some form, but to decide to take no further action. However, it is not generally safe to assume that a disclosure, with nothing more, is adequate.<sup>15</sup>

2.28 In the more serious cases, some further steps will be judged necessary.<sup>16</sup> The range of options for avoiding or mitigating a conflict of interest include:

- enquiring as to whether all affected parties will consent to the person's involvement;
- imposing additional oversight or review over the person;
- withdrawal from discussing or voting on a particular item of business at a meeting;
- exclusion from a committee or working group dealing with the issue;
- re-assigning certain tasks or duties to another person;
- agreement or direction not to do particular acts;
- placing restrictions on access to certain confidential information;
- transferring the person (temporarily or permanently) to another position or task;
- relinquishing the private interest; or
- resignation or dismissal from one or other position or entity.

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<sup>15</sup> The only time when this is a fair assumption to make is when an applicable legislative provision expressly permits full participation after a disclosure. Although some legislation aimed at the private sector permits this (the Companies Act is the best-known example), most legislation specific to the public sector does not.

<sup>16</sup> Occasionally a conflict of interest may be inevitable and unavoidable, and the matter may have to proceed with the person's involvement.

- 2.29 The person with the conflict of interest has the obligation to identify and disclose it properly. Once that is done, we consider that the primary obligation to determine the appropriate steps to take (and to direct the person accordingly) lies with the public entity (unless those steps are already clearly determined by a legal requirement or written policy that the person ought to be aware of).
- 2.30 In the interests of openness and fairness (and to minimise the risk of having to defend allegations of improper conduct), we encourage people to take a cautious approach to these matters and, if in doubt, to err on the side of prudence.
- 2.31 We recognise that, often, a range of different responses could all be within the bounds of reasonableness. The term “conflict of interest” can cover a broad spectrum of situations and conduct, and the answer is not always clear-cut. Because discretionary judgements are involved, it is important to be careful not to be unfairly critical when reviewing others’ decisions with the benefit of hindsight. We have borne these considerations in mind when conducting this inquiry.

## Applying our expectations to CPIT

- 2.32 The Education Act 1989 and the Local Authorities (Members’ Interests) Act 1968 contain provisions about conflicts of interest that apply to Council members of tertiary education institutions. Those provisions are not relevant here. There are no specific laws that apply to CPIT or its representatives for this inquiry.
- 2.33 Nor do any other regulatory directives bind CPIT. The *New Zealand Public Service Code of Conduct*, for instance, applies only to staff of government departments.
- 2.34 So, in the present case we are not investigating potential unlawful acts. Nor are we comparing CPIT’s actions against a set of written external rules.
- 2.35 Nevertheless, documents such as the *New Zealand Public Service Code of Conduct* are of significant persuasive value as an expression of the general standards expected of the wider public sector.
- 2.36 While CPIT is an autonomous institution, it is also a public entity. There are also public sector ethical conflict-of-interest expectations, which would apply to CPIT.<sup>17</sup>

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<sup>17</sup> Section 77A(3) of the State Sector Act 1988 is one reflection of this viewpoint. It requires employers in the education service (which includes polytechnics) to “ensure that all employees maintain proper standards of integrity, conduct, and concern for the public interest”. Similarly, section 181 of the Education Act 1989 requires Councils to ensure that proper standards of integrity, conduct, and concern for the public interest are maintained.

2.37 For this inquiry, we examined whether CPIT had ensured compliance with relevant internal policies and any contractual obligations. We considered CPIT's further judgements or actions, and whether they were reasonable, based on public sector ethical expectations.

## **Part 3 – Chronology of events**

- 3.1 In order to determine whether conflicts of interest emerged from the business relationship between CPIT and BSL, we sought to understand the chronology of events (including key decision-making points) that led to the establishment of the Joint Venture, and the delivery of the COOL programme.
- 3.2 In this Part we provide a summary of those factual events.

### **Introductory meetings between CPIT and BSL**

- 3.3 Up until April 2003, no formal relationship existed between CPIT and BSL. However, the Chief Executive of CPIT, Mr Scott, was aware of both BSL's existence and Ms Buck's association with BSL (in the context of his knowledge about her other directorships and interests).
- 3.4 Ms Buck introduced the Dean of the CPIT Faculty of Commerce to the Managing Director of BSL at a cafe on 30 April 2003. The meeting provided BSL with an opportunity to demonstrate the TIME programme. Each of the participants told us that at this meeting Ms Buck orally disclosed that she had a "foot in both camps". After the meeting, the Dean sought the advice of some of his faculty colleagues about the TIME programme, and arranged for it to be demonstrated to them.
- 3.5 A subsequent meeting attended by these 3 individuals as well as Mr Scott, was held at CPIT on 22 May 2003. Those present told us that early at that meeting, Ms Buck again orally declared her conflict of interest. At that point, Mr Scott asked Ms Buck to leave the meeting – which she did. Mr Scott told the Managing Director of BSL that his interest was in the broader BSL information technology platform and the potential joint business opportunities that could emerge from CPIT and BSL working collaboratively (as opposed to CPIT simply purchasing the "right" to deliver the TIME programme).

### **Meetings between CPIT and BSL from June to August 2003**

- 3.6 Between June and early August 2003, a series of meetings was held between CPIT representatives and BSL to assess the quality of the BSL information technology platform and to discuss the potential for a formal business

relationship between the two parties. The meetings involved staff from CPIT's Academic, Development Centre and Finance Divisions.

- 3.7 This was the most important stage in the development of the business relationship between CPIT and BSL. It was during this time that CPIT senior management conducted some due diligence on BSL. They then came to the conclusion that they wanted to pursue a formal business relationship with BSL. Based on our interviews and CPIT documentation, we are satisfied that Ms Buck was excluded from these discussions in their entirety.
- 3.8 On 20 August 2003, the CPIT Council was advised of CPIT management's intention to "formalise a commercial relationship [with BSL]...while moving forward quickly to develop some successful online products". A draft Joint Venture Agreement was first circulated by BSL to CPIT for its consideration near the end of August 2003.

## **Preparations for the TIME and COOL programmes**

- 3.9 In the meantime, CPIT proceeded to deliver the TIME programme to secondary school teachers. The Faculty of Commerce gave academic approval for the first two courses of the TIME programme in mid-June.
- 3.10 On 16 June 2003, Ms Buck sent an e-mail to the Head of the School of Computing in the Faculty of Commerce in which she offered to assist with CPIT's preparations for delivering the TIME programme, and stated that she had a conflict of interest. There is no evidence that her offer of assistance was taken up. She told us that her role in the TIME programme was only in relation to facilitating the introductions between CPIT and BSL representatives.
- 3.11 A contract between CPIT and BSL for delivery of the TIME programme was signed on 3 July 2003, and delivery of the programme began in mid-August.
- 3.12 At some point during the June-August 2003 discussions, CPIT representatives identified an opportunity for the TIME programme to be adapted to a wider market (see paragraph 1.20). This resulted in the concept of the COOL programme.
- 3.13 During August, preparations began for the delivery of the COOL programme. It became clear in August that the COOL programme was to be run as a "trial between now [August] and December".
- 3.14 CPIT pursued the COOL programme because it was consistent with CPIT's e-learning objectives, was considered to be innovative, and would potentially help CPIT to exceed its 2003 revenue target. Ambitious targets of 1000 EFTS were set for the programme.

- 3.15 The applications for academic approval of the COOL programme are dated 18 August 2003. A contract between CPIT and BSL for the COOL programme was signed on 21 August 2003.
- 3.16 From mid-August 2003, Ms Buck took a lead role in the arrangements to market the COOL programme to stakeholders outside CPIT.
- 3.17 At the start of one CPIT staff planning meeting for the COOL programme on 19 August (the first such meeting that Ms Buck attended), there is evidence that Ms Buck made an oral disclosure of her conflict of interest. Her disclosure was not recorded in the minutes of the meeting. However, based on our interviews, we are satisfied that this disclosure took place. In an e-mail to some of those same CPIT colleagues the day after the planning meeting, Ms Buck made reference to her progress as the CPIT Development Manager in marketing the COOL programme, and developments at BSL “with a different hat”.

## **Negotiations to set up the Joint Venture**

- 3.18 The negotiations between the parties over the details of the Joint Venture Agreement took place from August to mid-September 2003. Based on our interviews and our review of CPIT documentation, we are satisfied that Ms Buck was not involved in these negotiations. She received copies of some e-mails, but there is no evidence of her engaging in the negotiations.
- 3.19 In early September, BSL sought CPIT’s consent for Ms Buck to represent BSL on the Joint Venture Committee. Both Ms Buck and CPIT sought legal advice on this matter at the time. The tenor of both sets of legal advice was that Ms Buck’s membership of the Joint Venture Committee would not be unlawful.
- 3.20 Ms Buck was appointed to represent BSL on the Joint Venture Committee. Both BSL and CPIT told us that she was representing BSL’s, not CPIT’s, interests on the committee.
- 3.21 The CPIT Council considered a paper about the Joint Venture at its 17 September meeting, and was given a demonstration of the capabilities of the BSL information technology platform by the Managing Director of BSL. The minutes of that meeting record the Council being advised that Ms Buck would be representing BSL on the Joint Venture Committee. The Council’s involvement in the Joint Venture establishment process and knowledge about the delivery and scale of the COOL programme is discussed in Part 6.

## **Implementation of the COOL programme**

- 3.22 The COOL programme received academic approval from the CPIT Faculty of Commerce on 5 September 2003. This made the COOL programme eligible for funding from the Government. Further work occurred during September on the implementation arrangements for the COOL programme. Ms Buck was closely involved in these arrangements.
- 3.23 The first enrolment activity for the COOL programme was registered on the CPIT student management system on 22 September 2003. On the same day, the COOL programme was demonstrated to the Chair of the Tertiary Education Commission.
- 3.24 The COOL programme took its final enrolments around the 2004 New Year period.

## **Establishment of the Joint Venture Committee**

- 3.25 The first meeting of the Joint Venture Committee was held on 26 September 2003. At this meeting, Ms Buck reminded those present that she had a conflict of interest as both the Development Manager for CPIT and as a company director and shareholder in BSL. As with the 19 August meeting, this disclosure was not recorded in the meeting minutes. Again, after interviewing the participants, we are satisfied that this declaration of her dual connections was made at this meeting.
- 3.26 The signed Joint Venture Agreement is dated 7 October 2003. The CPIT Council was advised at its November meeting that the Joint Venture was in place, with the agreement details still being finalised. The Council was also told that the COOL programme enrolments were “going extraordinarily well...it is likely that between 2 to 3 million dollars will have been generated by year end”.
- 3.27 The Joint Venture is still operating, and is developing new products to “take to market”. It has always been CPIT’s intention to use the capabilities of the BSL information technology platform to assist CPIT to achieve its e-learning goals.

## **Summary**

- 3.28 Overall, we found that there were two streams of activity occurring from April to December 2003 involving both CPIT and BSL. First, CPIT and BSL were establishing a formal business relationship through a joint venture. Second, the individual parties – and later, the Joint Venture – were preparing to deliver the COOL programme. The two streams of activity ran in parallel – rather than the Joint Venture business relationship being formally established before it was decided that the COOL programme would be delivered. The development of

the COOL programme and the business relationship were separate but closely related activities.

- 3.29 The trail of decision-making is not easy to follow. CPIT representatives found it difficult to pinpoint for us a substantive “go” position for either the Joint Venture or the COOL programme. However, we accept that these types of business arrangements often come out of an evolving process.
- 3.30 Based on the evidence we have, it seems that the parties had effectively committed to developing a substantial business relationship through a joint venture arrangement, and to running the COOL programme as a pilot, by early-August 2003. The substance of the Joint Venture arrangement had effectively been agreed by early-September.
- 3.31 Ms Buck orally disclosed her “foot in both camps” – being the Development Manager for CPIT as well as being a company director and shareholder in BSL – a number of times from April to September 2003. While we found that only one of these disclosures was in writing, Ms Buck never attempted to disguise or hide her interests in BSL. All of the evidence corroborates this.
- 3.32 As soon as Ms Buck had facilitated the introduction of the two parties, a disclosure was made, and then again later (several times) when she became a key CPIT representative in the planning for, and actual delivery of, the COOL programme.
- 3.33 Ms Buck appears to have had little involvement during the critical period when CPIT decided whether to enter into a formal business relationship with BSL. Once this decision was taken, Ms Buck became involved in the governance of the Joint Venture business relationship, and the COOL programme.
- 3.34 A summary of the order of key events is provided in Figure 2 on the next page.
- 3.35 It is clear that Ms Buck identified and disclosed her interest in BSL to CPIT on a number of occasions. In Part 4 we discuss our findings about these interests and how they were managed by CPIT.

**Figure 2**  
**Summary of key events in forming the CPIT and BSL relationship**

| <b>Key Dates</b>          | <b>Key Events</b>  |
|---------------------------|--|
| 30 April 2003             | Ms Buck introduced CPIT and BSL representatives. They discussed the TIME programme. She orally declared her conflict of interest at this meeting.  |
| 22 May 2003               | Mr John Scott (Chief Executive of CPIT) was introduced to BSL by Ms Buck and the Dean of the Faculty of Commerce. Ms Buck orally declared her conflict and left the meeting early at Mr Scott's request. Mr Scott signalled his interest in a broader business relationship between CPIT and BSL (not just the TIME programme).                                    |
| June to early-August 2003 | CPIT assessed the BSL information technology platform and decided to pursue a formal business relationship with BSL. Ms Buck was excluded from these discussions.<br>Academic approval was sought for two TIME courses.<br>CPIT identified an opportunity to develop an on-line computing course (like TIME), but for a broader student market (this became COOL). |
| 16 June 2003              | Ms Buck declared her conflict of interest in writing to the Head of the CPIT School of Computing.  |
| 11 August 2003            | CPIT started delivering the TIME programme.  |
| Mid-August 2003           | Ms Buck began to take a lead role in the development of marketing (and some other) arrangements for the COOL programme.  |
| 18 August 2003            | Applications were submitted to the CPIT Faculty of Commerce for academic approval for all 4 TIME courses, and the COOL programme.  |
| 19 August 2003            | Ms Buck orally declared her conflict of interest at a COOL programme-planning meeting with CPIT colleagues.  |
| 20 August 2003            | The CPIT Council was advised of management's intention to develop a business relationship with BSL.  |
| 21 August 2003            | Contract signed between BSL and CPIT for the COOL programme.   |
| 22 August 2003            | BSL first circulated a draft Joint Venture Agreement to CPIT for comment.  |
| Early September 2003      | BSL asked for CPIT's approval for Ms Buck to represent BSL on the Joint Venture Committee. Ms Buck and CPIT separately sought legal advice on this matter.   |
| 5 September 2003          | Course approvals for the COOL and TIME programmes were granted.  |
| 17 September 2003         | The CPIT Council considered a paper on the BSL/CPIT Joint Venture. BSL demonstrated the BSL information technology platform to the CPIT Council.   |
| 22 September 2003         | Course enrolments began for the COOL programme.  |
| 26 September 2003         | First meeting of the Joint Venture Committee. Ms Buck orally declared her conflict of interest at this meeting.  |
| 7 October 2003            | Joint Venture Agreement signed.  |
| Early-January 2004        | Final enrolments registered for the COOL programme.  |

## **Part 4 – Existence, identification, and CPIT management of conflicts of interest**

- 4.1 In this Part we examine whether a conflict of interest arose for Mr Belton or Ms Buck at various times. In situations where a conflict did exist, we discuss whether the conflict of interest was identified and disclosed. We also consider whether the steps taken by CPIT to manage the conflict of interest were adequate in the circumstances.

### **Did Mr Richard Belton have any conflicts of interest?**

- 4.2 Mr Richard Belton has never had any involvement in the TIME or COOL programmes, nor in the Joint Venture.<sup>18</sup> His work at CPIT has never brought him into contact with issues regarding BSL.
- 4.3 Accordingly, CPIT's activities involving BSL never created a conflict of interest for Mr Belton.

### **Did Ms Vicki Buck have any conflicts of interest?**

- 4.4 Ms Vicki Buck has been involved in the TIME and COOL programmes, and the Joint Venture. We examined the nature of her private interests, and her involvement at various stages to determine whether a conflict of interest existed at any of these times.

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<sup>18</sup> Mr Belton advised us that he had come into contact with the BSL TIME programme when he was working in the secondary school sector, before his employment with CPIT.

- 4.5 Ms Buck has two different types of interest in BSL:
- As a *shareholder* of BSL, she has a financial interest, which is more than merely a nominal or token shareholding.<sup>19</sup> She can be expected to have a desire to maximise the value and profits of the company. This may result in higher dividends, and a higher value of her shareholding if and when she ever sells her shares.
  - As a *director* of BSL, she has a duty to act in the best interests of the company.<sup>20</sup> She can be expected to have a good knowledge of the company's affairs. She is also remunerated for that role.
- 4.6 Ms Buck's interests are both as an investor and as a member of the governing body. Together, her shareholding and directorship show that she has a keen awareness of and involvement with the company.
- 4.7 She also has interests and duties as a member of the governing bodies of 3 Partners in Education to the COOL programme. These are not financial interests. They are all community organisations in which she has no beneficial interest, and she told us that her roles are unpaid. Two of the organisations are State schools, and the third is a charitable trust (see paragraph 1.33). Ms Buck has responsibilities to those organisations as a governor, and might reasonably also be expected to personally wish them to do well. However, these roles give her no personal financial benefit. We consider that any interests she has arising out of these organisations are much less significant than her interests in BSL.
- 4.8 Ms Buck told us that even though she was neither a CPIT Council member nor an employee, she had an established principle in her own mind about the requirements to disclose conflicts of interest. From her experience as a local body politician and as a director of a number of companies, Ms Buck knew of the need to habitually declare interests, and was used to doing so. Ms Buck's contract requires her to tell CPIT about potential conflicts of interest. She acted on this by keeping Mr Scott informed of the various directorships that she held, including BSL. Mr Scott confirmed to us that he knew she had some form of close connection with the company.

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<sup>19</sup> There is no universally applied minimum "threshold" level of materiality for shareholdings. Analogies from similar – albeit non-applicable – laws offer little help. Some statutes set minimum thresholds, but these use various levels. For instance, under the Local Authorities (Members' Interests) Act, a member of a local authority who owns 10% of the shares in a company is deemed to share the pecuniary interests of that company. (The Act does not apply to Ms Buck's situation.) Other statutes have no minimum threshold. The common law rule about bias accepts the principle of a *de minimis* level of significance for a financial interest, but determines it on a case-by-case basis.

<sup>20</sup> Section 131(1) of the Companies Act 1993.

### *The introductory meetings*

- 4.9 Ms Buck was present – at least initially – at the meetings on 30 April and 22 May 2003 when BSL was introduced to CPIT. In fact, she was the person making the introductions. She had a conflict of interest then. However, in our view, it was adequately identified and managed at the time.
- 4.10 We are satisfied that at both the 30 April and 22 May 2003 introductory meetings, Ms Buck made oral disclosures to those present about her connections with BSL. At the 22 May meeting, Mr Scott responded by excluding her from the remainder of the meeting.
- 4.11 We are not concerned that Ms Buck remained throughout the first meeting. At that meeting, the participants were not talking about anything larger than the adoption of the TIME programme. Nor are we concerned about the fact that Ms Buck made the introductions at each of these meetings. We do not consider that conflict-of-interest standards are so strict as to prohibit people from introducing colleagues to other associates. Networking is an everyday part of business. Overall, these meetings were informal and exploratory in nature; no significant decisions or negotiations took place.
- 4.12 It would have been desirable for Ms Buck’s disclosures to be more formally documented in writing – either by her or her superiors – at or around the time of the introductory meetings. The only written record by Ms Buck about her conflict of interest that we have been able to find is in an e-mail to the Head of the CPIT School of Computing on 16 June 2003. However, the failure to document the disclosures in April or May is not significant, because we are in no doubt that these oral disclosures were both clearly made and acknowledged. Therefore, we are satisfied that there was nothing improper about the introductions or the actions of those involved at this point.

### *June to early-August 2003*

- 4.13 The meetings and discussions between CPIT and BSL in June, July, and the beginning of August 2003 were the most critical stage in the establishment of their Joint Venture business relationship. This is when CPIT assessed the technical and academic quality of the BSL information technology platform. It is also when CPIT management and BSL came to a mutual understanding that they wished to establish a business relationship, and that they wished to deliver a computing skills pilot course to the public later that year.
- 4.14 An unacceptable conflict of interest would have existed if Ms Buck had been involved in this stage. But she was not. Nor was she actively involved in the negotiations over the terms of the Joint Venture Agreement, which occurred later. Accordingly, there was no conflict between her CPIT duties and BSL interests during this period.
- 4.15 CPIT management excluded Ms Buck – deliberately, it seems to us – from the meetings during this time. This is what we would expect. Based on what Mr

Scott told us and our understanding of what happened, it seems that he implicitly accepted that CPIT's assessment of BSL and its information technology platform, and decisions about whether to develop a relationship with BSL, ought to take place without her involvement. Ms Buck told us that, at the time, she was not even aware of those meetings.

- 4.16 CPIT's adoption and delivery of the TIME programme was also happening during this period, but Ms Buck had no involvement in this.

### *Mid-August to September 2003*

- 4.17 Very soon after CPIT and BSL had, at least informally, reached the point where they wished to establish a business relationship and develop the COOL programme, Ms Buck became involved again, and she quickly became a key person. She had a conflict of interest during this period.
- 4.18 Initially, in her CPIT role, she was involved in preparing to market the COOL programme to Partners in Education and the public (from mid-August). Later, her involvement became broader, particularly once the Joint Venture Committee had a de facto existence (by late-September). In our view, each of these roles raised a conflict of interest.
- 4.19 It is clear that all the key people in CPIT management were aware that Ms Buck had a connection with BSL when she became involved in marketing the COOL programme from August 2003 onwards. Equally, BSL was aware of her role in CPIT. We accept that Ms Buck never sought to hide or disguise her interests. We were told that she spoke of her BSL connections to various staff on a number of occasions, including an oral disclosure at the beginning of the first meeting of CPIT staff that she attended in relation to the COOL programme (on 19 August 2003). We were told that similar mention was also made at the first meeting of the Joint Venture Committee on 26 September 2003.
- 4.20 When it was proposed that Ms Buck become a member of the Joint Venture Committee in early September, CPIT obtained written legal advice about whether this was permissible. Ms Buck also sought her own legal advice at around the same time. These were responsible actions to take.
- 4.21 As already noted in paragraph 3.19, the tenor of both sets of legal advice was that Ms Buck's membership of the Joint Venture Committee would not be unlawful. We do not take issue with this legal advice. However, in addition to legal requirements, our inquiry has also considered how well CPIT took account of public sector ethical expectations (see Part 2).
- 4.22 Everyone involved in the Joint Venture was acting with knowledge of Ms Buck's interests. CPIT told us that the conflict of interest was "adjudged to not be material or problematic". The belief of CPIT's senior management at the time seems to have been that, as long as her interests were well known, and no-one objected to her involvement, it was acceptable for her to participate.

- 4.23 We do not agree. Knowledge of a conflict of interest does not necessarily make participation acceptable. As well as being disclosed, a conflict of interest needs to be managed.
- 4.24 Despite the widespread knowledge of Ms Buck’s BSL interests, in our view it was unwise for CPIT to allow her to be involved in either the COOL programme or the Joint Venture Committee. This is because, even though she had not participated in the key decisions about whether or not the business relationship or the COOL programme should proceed, the roles she was asked to take on gave her the ability to influence how both the relationship and the programme operated. Her roles could have helped increase the value of her shareholding in BSL.
- 4.25 The business relationship with BSL and the COOL programme were important new activities for CPIT. They presumably also were for BSL. Ms Buck’s involvement began before the decision-making formalities<sup>21</sup> were completed, and her involvement was more than peripheral. By late-September, she was both:
- one of the key CPIT representatives involved in day-to-day operations to implement the COOL programme; and
  - a member of the governing body of the Joint Venture, representing BSL.
- 4.26 Performing either one of these roles under the circumstances was, in our view, problematic. The fact that she was allowed to perform both roles made the situation more complicated.
- 4.27 We do not doubt that Ms Buck had the requisite skill set to handle the marketing for the COOL programme. It was consistent with her CPIT role, and we were told that she had “the best marketing brain”. CPIT decided to involve Ms Buck in the marketing because of her “innovative ideas and energy”, even in the knowledge of her declared conflict of interest. Using her as one of CPIT’s key representatives in “selling” the programme to the outside world seems to have been seen as a positive move.
- 4.28 However, that also increased her profile, and accordingly increased the conflict-of-interest risks for CPIT. The risk was that Ms Buck could be perceived to be spending some of her publicly resourced time working on projects that could also benefit her private interests. In our view, as CPIT has its own marketing division, it could have marketed the COOL programme without her participation.<sup>22</sup>

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<sup>21</sup> The contract between CPIT and BSL for the COOL programme was signed on 21 August 2003. The CPIT Faculty of Commerce granted academic approval for the COOL programme on 5 September 2003, and the Joint Venture Agreement was signed on 7 October 2003.

<sup>22</sup> In fact, there are records of this team’s involvement in aspects of the marketing for the COOL programme, including the initial development of the marketing plan. Ms Buck liaised with the marketing team at various times.

- 4.29 Ms Buck’s position on the Joint Venture Committee elevated her potential for influence further, into a governance role over the business relationship. Here, she was participating in making decisions that affected both CPIT and her private interests. Moreover, once the Joint Venture began operating, we consider that it could have been difficult to tell in which capacity she was acting at any given time.
- 4.30 All the Joint Venture Committee members told us that they were very clear about the capacity in which she was acting. However, to the outside observer, it is not easily possible to demarcate her activities into those undertaken as CPIT Development Manager, and those as Joint Venture Committee member (on behalf of BSL).
- 4.31 Some involvement by Ms Buck may have been more acceptable if both the business relationship and the COOL programme had been expected to be minor activities for CPIT. We were told that the COOL programme became much bigger than was initially envisaged. We accept this, but note that it was always expected to be significant. As early as mid-August – around the time that Ms Buck became involved – CPIT already had hopes of generating 1000 EFTS through the COOL programme. Such a result would have been a major achievement for a brand new short course.
- 4.32 More than one CPIT representative told us that Ms Buck’s position did not really present a problem because the parties are not in conflict but, if anything, have a “*convergence* of interest”. CPIT and BSL, the argument goes, are working for mutual benefit. They are not competing against each other, and there is no potential disadvantage to CPIT from Ms Buck being involved.
- 4.33 We do not agree with this approach in the public sector.
- 4.34 We consider that a problem existed because CPIT allowed Ms Buck to be put in a position which gave her the opportunity to use her CPIT-funded time, resources, and position to enhance the value of her private financial interests in BSL.
- 4.35 We wish to emphasise that there is no evidence that Ms Buck acted to misuse her position.
- 4.36 Overall, we are satisfied that the conflicts of interest were identified and disclosed. However, these conflicts of interest raised a serious management issue for CPIT. It was up to CPIT to make the decisions, where necessary, about placing limits on Ms Buck’s CPIT activities.
- 4.37 We accept that the activities that occurred from mid-August to September 2003 are less significant than those that occurred in June, July, and early-August 2003 (in which Ms Buck took no part). However, they were still important.

4.38 We consider that it would have been prudent for CPIT management to have:

- excluded Ms Buck from anything other than the most peripheral involvement in the COOL programme; and
- declined to consent to Ms Buck's appointment to the Joint Venture Committee by BSL.

4.39 For its part, CPIT stands by the decisions it made at that time.

### *The current situation*

4.40 As of 5 November 2004, Ms Buck resigned her membership of the Joint Venture Committee. She remains the Development Manager for CPIT, and her private interests in BSL still exist. This does not create a conflict of interest at present because her CPIT duties do not intersect with any current Joint Venture initiatives.

## **Part 5 – Contractual obligations and relevant policies and procedures**

- 5.1 In this Part we discuss the contractual obligations on Mr Belton and Ms Buck to declare any conflicts of interest. We also outline CPIT’s relevant corporate policies and procedures and how they apply to the circumstances of this inquiry, and include some recommendations for CPIT.

### **Contractual obligations for Mr Belton and Ms Buck**

#### *Mr Richard Belton*

- 5.2 When negotiating his fixed-term employment agreement with CPIT in 2002, Mr Belton was asked to disclose any interests. This led him to notify CPIT in writing of his shareholding in BSL. His documented disclosure in his employment agreement of his interest in BSL goes over and above any obligations arising from the relevant CPIT policies that apply to him. Our inquiry has found that Mr Belton complied with his contractual requirements.

#### *Ms Vicki Buck*

- 5.3 Ms Buck’s contract requires her to tell CPIT about potential conflicts of interest. The contract states:

*Think Inc Limited shall consult with Christchurch Polytechnic if intending to consider other contract work with any other business or organisation which may have the potential of a conflict of interest. An agreement in regard to the contract being considered must be reached with Christchurch Polytechnic.*

- 5.4 In our view, this clause in Ms Buck’s contract does not apply to the circumstances under review. This is because Ms Buck was not intending to undertake any “contract work” for BSL. It was her ownership interest in the company and company directorship and their conflict with her work for CPIT that were problematic. This said, Ms Buck interpreted her contract to mean that she should notify CPIT of any involvement or directorships in other entities. She told us that she did so. We accept that CPIT, through Mr Scott

and more latterly Ms Buck's other colleagues, was aware of her connections with BSL.

## **CPIT corporate policies and procedures**

- 5.5 All CPIT's corporate policies are summarised in a shortened form in the *User Friendly Guide to CPIT Policies* (the Guide). The Guide is given to all new permanent and fixed-term appointment staff when they start with CPIT, as part of their face-to-face induction with the Human Resources Division. In addition, all new staff are required to accept responsibility for becoming familiar with the staff code of practice by signing a statement to this effect. The Guide is refreshed at reasonably regular intervals and then redistributed to staff. The latest version (fifth edition) of the Guide is dated July 2004.
- 5.6 The full details of all of CPIT's corporate policies and their associated procedures (where applicable) can be found in the *Academic Policies and Procedures Manual* and the *Corporate Policies and Procedures Manual*. Both manuals are also available electronically through the CPIT computer network.

### ***How CPIT policies apply to Mr Belton and Ms Buck***

- 5.7 Mr Belton's fixed-term employment agreement expressly requires him to abide by all of CPIT's policies, practices and procedures, and codes of conduct that are adopted by either the CPIT Council or CPIT management.
- 5.8 Ms Buck advised us that she had received a copy of the Guide. Her contract with CPIT was signed in 1998, before some of the CPIT policies about conflicts of interest were put in place. The contract does not expressly require Ms Buck to abide by any of CPIT's corporate policies, practices and procedures. Moreover, all of CPIT's policies are expressed as applying to "staff". Ms Buck is an independent contractor, not an employee, so none of the policies technically apply to her. Having said this, her arrangement had many similarities to an employment situation, and the members of the CPIT senior management team that we interviewed unanimously agreed that they would expect all contractors, including Ms Buck, to comply with the substance of all policies in any case.

## **CPIT policies and procedures relevant to conflicts of interest**

- 5.9 CPIT has 3 corporate policies that are relevant to the scope of this inquiry. A full copy of each of these policies is provided at Appendix 2 (see pages 57-66). The policies are:
- *Code of Professional Practice;*

- *Staff Involvement in Outside Activities* policy; and
- *Disclosure and Conflicts of Interest* policy.

## **Code of Professional Practice**

5.10 CPIT’s *Code of Professional Practice* (the Code) was adopted on 30 November 2001. The Code has a 3-year review cycle and was designed to promote high ethical standards in CPIT and foster an understanding of CPIT’s expectations of staff. The Code applies to “all CPIT staff including managers and the Chief Executive”. The Code contains 3 particular expectations of staff that we considered pertinent to this inquiry:

*...exercise their best professional and ethical judgement; make decisions based on appropriate, relevant information, without bias...*

*...take care to maintain the confidentiality, accuracy and privacy of official CPIT documentation to which they have access...*

*...ensure there is no actual or perceived conflict between their personal interests (including those of their immediate family) and their CPIT duties and responsibilities.*

- 5.11 There are no documented procedures for ensuring compliance with the Code. It does however set out the broad options that could be followed if staff do not meet their obligations under the Code.
- 5.12 We found that the Code applies to Mr Belton. The written disclosures of Mr Belton’s interests in BSL are consistent with the Code.
- 5.13 The Code does not technically apply to Ms Buck. If it did, Ms Buck would have failed to meet one of the expectations in the Code, based on our view in Part 4 that there was, at times, a conflict of interest between Ms Buck’s private interests and her CPIT duties.
- 5.14 In our view, the Code should be revised as soon as possible to expressly apply to any independent contractors to CPIT who are not employees but who work for CPIT in a similar manner as Ms Buck.
- 5.15 In addition, we consider that all future contracts with companies where the services of one particular individual are being purchased (and contracts with particular individuals) should contain a provision binding those individuals to conduct themselves in accordance with all CPIT corporate policies, practices and procedures, and codes of conduct.
- 5.16 We also consider that it would be helpful to provide some procedures to support the Code. Such procedures would seek to clarify, by way of example, when written declarations are required, the frequency with which any routine

disclosures will be sought from CPIT staff and contractors, and what range of “interests” need to be disclosed.

- 5.17 To supplement this information, we recommend that the procedures also include a comprehensive list of the mitigation options that can be employed when a conflict of interest has been identified. A list of some useful sources for preparing such a list can be found at Appendix 1 on pages 55-56.
- 5.18 In our view, when conflicts of interest have been identified, the proposed mitigation action should be documented, agreed between the relevant parties, filed appropriately, and monitored to ensure that the mitigation action or actions continue to achieve their purpose (as a change in circumstances may require the nature of the action(s) to be reconsidered).

### *Staff Involvement in Outside Activities Policy*

- 5.19 The *Staff Involvement in Outside Activities* policy (the Staff Involvement policy) was established in February 1991, and is currently being reviewed by CPIT.<sup>23</sup> Consideration was given to the appropriate scope of this policy around the same time that CPIT management was discussing the establishment of the *Disclosure and Conflicts of Interest* policy (see paragraphs 5.27-5.33). The Staff Involvement policy states that:

*...Staff members may be involved in business ventures/other work in addition to their primary employment at CPIT provided their outside activities are subordinate to and do not interfere with their primary employment CPIT position. If there is any conflict of interest this must be declared. Staff may be asked to choose between their CPIT position and outside employment.*

- 5.20 The Staff Involvement policy applies to all staff. Of potential interest to this inquiry, the policy states that:

*...if a firm with which a staff member has a financial interest tenders goods or services to CPIT, the interest of the staff member must be declared.*

- 5.21 To support this provision in the Staff Involvement policy, all contracts for services are vetted by the Director of Finance and can be signed only by a member of the CPIT management team. Further, CPIT’s Contract Development Checklist requires the person managing the contracting process to identify any related parties, and to check whether any conflicts of interest have been identified and declared.
- 5.22 The Staff Involvement policy contains a list of some examples of conduct that are automatically considered to be unacceptable and a breach of the policy. Notwithstanding these few statements, the policy is not supported by any other

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<sup>23</sup> The current version of the Staff Involvement policy is dated December 2001.

written procedures (such as, how staff should declare any conflicts of interest, and to whom).

- 5.23 The Staff Involvement policy clearly applies to Mr Belton, but does not raise any issues in this situation.
- 5.24 The Staff Involvement policy does not apply to Ms Buck. Although contractual arrangements like Ms Buck's may be an infrequent set of circumstances for CPIT, we recommend that this policy also be amended to apply to independent contractors who work for CPIT in a similar manner as Ms Buck.
- 5.25 Even if the Staff Involvement policy had applied to Ms Buck, her interests with BSL would still not have had to be formally disclosed under the policy. This is because the Joint Venture arrangement probably does not constitute the "tendering of goods and services" by BSL to CPIT. To this end, we consider that there is good reason for "passive" interests (such as shareholdings) to be better covered by the Staff Involvement policy.
- 5.26 In any case, both Mr Belton and Ms Buck had in fact disclosed their connections in BSL to their supervisors in various ways and at various times.

### *Disclosure and Conflict of Interest Policy*

- 5.27 The *Disclosure and Conflict of Interest* policy (the COI policy) was considered by the CPIT Council in July 2003, and immediately adopted.<sup>24</sup> Broadly speaking, the purpose of the policy is to ensure compliance with the provisions of the Local Authorities (Members' Interests) Act 1968 (the Act) so that "any significant conflicts of interest arising at governance level from any CPIT activities are declared, recorded and addressed".
- 5.28 The Act applies only to CPIT Council members. It therefore has no relevance to the circumstances that are the focus of this inquiry.<sup>25</sup> However, the Act was used as the basis for the COI policy. The Act defines an indirect pecuniary interest as including situations where a member owns a 10% (or more) holding of shares in a company. This threshold has been adopted by CPIT for the COI policy's definition of an "interest" or "concern".
- 5.29 The policy applies to "all CPIT Council members, Council officers, and all members of CPIT's management team and to all CPIT activities". The policy requires declarations of concerns or interests in writing. A conflict of interest is defined as:

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<sup>24</sup> The policy arose from recommendations made as part of the 1997 annual audit.

<sup>25</sup> For more information on the Act, see *Conflicts of Interest: A Guide to the Local Authorities (Members' Interests) Act 1968 and Non-pecuniary Conflicts of Interest*, the Controller and Auditor-General, ISBN 0-478-18121-3, August 2004. This publication is available on our website at [www.oag.govt.nz](http://www.oag.govt.nz).

*...the conflict or potential for conflict arising when a Council member or officer or management team member has a concern or interest in a matter or with a party with which CPIT is negotiating or doing business; that is, where the Council member or officer or Management Team member...has a direct or indirect pecuniary interest or may gain significant personal benefit.*

- 5.30 The procedures for the COI policy provide for an annual disclosure of any interests or concerns. The Council Secretary keeps a register of these disclosures. The procedures also set out the process to follow when the CPIT management team or Council is deliberating or voting on a matter in which a member has declared a concern or interest.
- 5.31 Based on our interpretation of the definitions of “Council member”, “Council officer” and “Management Team member” in the COI policy, this policy does not apply to Mr Belton. While the Chief Executive can determine that the policy apply to other senior CPIT managers, we were not told that this was the case for Mr Belton.
- 5.32 The COI policy does not apply to Ms Buck.
- 5.33 Overall, we consider that CPIT’s COI policy is very good for ensuring compliance with CPIT’s legislative obligations in respect of pecuniary interests for Council members. We also commend CPIT because the COI policy applies to a wider group than just CPIT councillors, and because it has procedures for better ensuring compliance. However, the policy is not relevant to all the sorts of conflicts that can arise at other than governance level, or that arise outside formal meetings.

## **Summary**

- 5.34 CPIT has 3 policies that are useful in helping to identify and manage some conflict-of-interest situations. The policies, in some instances, are supported by a set of procedures.
- 5.35 Two of the 3 policies applied to Mr Belton, but raised no issues in this situation.
- 5.36 CPIT’s corporate policies and procedures relevant to conflicts of interest did not apply at all to Ms Buck because she was not an employee. Because of this, Ms Buck takes the view that the disclosures she did make went over and above anything that she was required to do. In other words, she was being extra cautious and transparent in making the disclosures that she did because she did not technically have to do so. She has noted that, for CPIT councillors, a company shareholding of less than 10% does not need to be disclosed.
- 5.37 We commend the existence of the 3 policies. What this inquiry has highlighted, however, are some areas where the policies could be enhanced. CPIT could do this by either expanding 1 or all of the 3 policies, or drafting a

new policy that consolidates the existing policies and addresses our following recommendations.

## Recommendations

### Recommendation 1

We recommend that CPIT review its conflict-of-interest policies, and that any new or expanded policy or policies:

- apply to independent contractors to CPIT;
- are supported by a set of procedures (to assist CPIT managers by detailing the possible mitigation actions that can be adopted for different situations, and the process for agreeing and monitoring the effectiveness of mitigation actions when a conflict of interest has been identified and requires managing); and
- describe the full range of situations that can give rise to conflicts of interest, such as “passive” interests (i.e. shareholdings) and conflicts of interest that can arise at other than governance level and outside formal meetings.

### Recommendation 2

If CPIT retains the conflict-of-interest provisions in the *Code of Professional Practice*, we recommend that CPIT:

- revise the applicability criteria of the *Code of Professional Practice* so that it applies to all independent contractors to CPIT, as well as staff, managers and the Chief Executive;
- draft procedures for how to comply with the expectations of the *Code of Professional Practice*; and
- ensure that, where relevant, contract templates for independent contractors provide for compliance with all CPIT corporate policies, practices, procedures, and codes of conduct.

### Recommendation 3

If CPIT retains the *Staff Involvement in Outside Activities* policy, we recommend that CPIT:

- revise the applicability criteria of the *Staff Involvement in Outside Activities* policy so that it applies to independent contractors to CPIT;
- draft procedures to assist with implementation of the *Staff Involvement in Outside Activities* policy; and
- consider requiring CPIT employees and independent contractors to disclose “passive” interests in other entities where those interests could intersect with their CPIT responsibilities.

## Part 6 – Involvement of the CPIT Council

- 6.1 Even though the demand for the COOL programme ultimately exceeded CPIT’s expectations, ambitious targets were set quite early for the COOL programme. Therefore, we would have expected the CPIT Council to have a strong interest in, and an appropriate level of oversight of, the COOL programme and the Joint Venture.

### Council consideration of the COOL programme and the Joint Venture

- 6.2 Mr Scott reported to the CPIT Council about the COOL programme and the proposed Joint Venture in August, September, and November 2003. The BSL information technology platform was demonstrated to the Council in September 2003.
- 6.3 The focus of the CPIT Council’s discussion was on the general risks of entering into a joint venture relationship with BSL when information technology is such a rapidly changing area, particularly since CPIT had recently had a negative experience with another of its joint ventures. Ms Buck’s dual involvement in BSL and CPIT was not a focus of discussion.
- 6.4 We obtained a disparate set of views from councillors as to whether, at its September 2003 meeting, the CPIT Council:
- endorsed CPIT management establishing an unincorporated joint venture entity; and
  - was clear in relation to what the next stages were in the development of the BSL/CPIT Joint Venture, and the “trial” of a new course using the BSL information technology platform.
- 6.5 The resolutions from that September meeting read:

*That Council approve in principle the establishment of the proposed CPIT Brylton Company/Joint Venture structure.*

*That Council authorise Management to proceed to prepare all relevant documentation for the incorporation of the proposed entities.*

*That the Council Executive meet to consider the documentation with time being allocated at the October workshop, if necessary, for further discussion prior to the Council authorising the CPIT seal being used to establish the companies required.*

- 6.6 Some councillors considered that this meant the COOL programme and the Joint Venture were to go ahead immediately. Others thought that the basis for any relationship between BSL and CPIT would be “worked through” and brought back to the CPIT Council before any courses were delivered, and before the Joint Venture was established.
- 6.7 The CPIT Council had little other involvement in these matters until after the COOL programme had finished.
- 6.8 No corporate entities have yet been established. We understand that the CPIT Council and management are continuing to deliberate on matters regarding the management and governance framework for joint ventures, and the BSL/CPIT Joint Venture in particular.
- 6.9 We anticipate that the experience of the past 18 months will lead CPIT to more clearly articulate the roles and responsibilities of management and governance in joint venture business relationships. This will help to ensure that clear and transparent decision-making can occur, and that any risks (including reputation risks) of such arrangements are clearly identified, effectively mitigated, and routinely monitored.

## **Awareness and consideration of conflicts of interest**

- 6.10 Generally speaking, Ms Buck’s role did not involve reporting to or advising the CPIT Council, although councillors told us that they were generally aware that she was an independent contractor to CPIT.
- 6.11 It has been difficult to determine the extent of the CPIT Council’s awareness of Ms Buck’s interests in BSL in 2003. The recollections of councillors differ. To some degree, this is understandable. Given the level of subsequent media coverage, it has been difficult for some councillors to disregard what they know now and to recall accurately what they did or did not know at a particular time more than a year ago. Yet this lack of clarity also suggests that the disclosures that were made in 2003 by Ms Buck about her connections with BSL may not have been well promulgated at the Council level.
- 6.12 Having considered all the evidence and recollections that we obtained, on balance we consider that some, albeit brief, mention was made to the CPIT Council about Ms Buck:
  - We are satisfied that Mr Scott informed the Council in August or September 2003 that Ms Buck was a director of BSL. This is supported by the recollections of most – although not all – councillors. In addition,

her proposed appointment to the Joint Venture Committee, as a BSL director, is recorded in the minutes of the September 2003 Council meeting.<sup>26</sup> Mr Scott told us that he would have made a point of mentioning Ms Buck's connection because he considered it was likely to impress councillors about the quality and viability of BSL.

- There are differences in recollection among councillors about whether or not they were informed in 2003 of Ms Buck's or Mr Belton's shareholding. We have concluded that they were not informed. Mr Scott does not recall mentioning this information.
- 6.13 Any mention to the CPIT Council about Ms Buck seems to have been made somewhat "in passing", and certainly not in the context of any announcement or discussion about a conflict of interest. No real attention seems to have been drawn to her conflict of interest.
- 6.14 In particular, no express advice was given to the CPIT Council about whether her connections represented a risk for CPIT; nor about how her conflict of interest was being managed. As a result, Ms Buck's connections and involvement were not the subject of any discussion by councillors. The Council certainly took an interest in the Joint Venture agenda item, but it focused its attention on other matters.
- 6.15 Mr Scott told us that he sees nothing wrong with this situation. His view is that, since he is the employer of staff and contractors, issues such as conflicts of interest for personnel are for him – not the CPIT Council – to manage. He does not feel obliged to advise Council at all about matters regarding staff and contractors. Any information he does give the Council about such matters is offered as a matter of courtesy.
- 6.16 However, we consider that conflicts of interest can present political or reputation risks for an organisation. Strategic risk management is a legitimate matter of concern for the governing body of an organisation.
- 6.17 This situation involved a joint venture and a programme that were hoped to become significant activities, and a conflict of interest for a high-profile individual who was to represent CPIT in "selling" the COOL programme to outside organisations and the public. It could be expected that Ms Buck would be identified as part of the public "face" of CPIT for the COOL programme.

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<sup>26</sup> The reference in the minutes is not entirely free from ambiguity. It says: "*The proposed directorship of the Joint Venture is three directors from Brylton – Adrian McGrath, David Stock and Vicki Buck, and three directors from CPIT – John Scott, [Director of Finance] and [Dean of Commerce].*" This wording doesn't clearly state that Ms Buck is a company director of BSL, because the word "directors" has been used to describe the governors of the Joint Venture. However, at the least, the wording does clearly depict Ms Buck as one of the BSL representatives. Her position on the Joint Venture Committee is undoubtedly portrayed as being on behalf of BSL.

It would therefore have been within the CPIT Council's proper role<sup>27</sup> to have sought positive assurance, or issued directions, as to how her conflict of interest was to be managed.

- 6.18 We consider that it would have been prudent for CPIT management to have told the Council more about Ms Buck's connections with BSL, her involvement with the business relationship and the COOL programme, and how this situation was being managed.
- 6.19 Having said that, we also consider that the little information that the CPIT Council was given was still sufficient to put it on notice that a potential risk existed for the organisation. Councillors were aware – in general terms – of Ms Buck's role at CPIT, and they would have been aware of her high profile in the community.
- 6.20 In our view, it would have been prudent for the CPIT Council to have asked CPIT management more questions about Ms Buck's connections with BSL, her involvement with the Joint Venture and the COOL programme, and how this situation was being managed.

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<sup>27</sup> The legal duties of a Council of a Tertiary Education Institution include ensuring that the institution operates in a financially responsible manner; and ensuring that proper standards of integrity, conduct, and concern for the public interest are maintained (see section 181, Education Act 1989). We also note that, although CPIT policies are not usually presented to the CPIT Council for approval, the "Disclosure and Conflicts of Interest" policy was presented in July 2003.

# Appendix 1 - Sources of guidance on conflicts of interest

Publications by other organisations that contain useful discussions or guidance about some types of conflicts of interest include:

- State Services Commission, *New Zealand Public Service Code of Conduct* (July 2002);
- State Services Commission, *Walking the Line: Managing Conflicts of Interest*, resource kit (June 2003);
- State Services Commission, *Report for State Services Commissioner on Civil Aviation Authority Policies Procedures and Practices relating to Conflicts of Interest and Conduct of Special Purpose Inspections and Investigations* (December 2003);
- State Services Commission, *Board Appointment and Induction Guidelines* (August 1999);
- Securities Commission, *Corporate Governance in New Zealand Principles and Guidelines: A Handbook for Directors, Executives, and Advisers* (March 2004);
- Crown Company Monitoring Advisory Unit, *Crown Company Directors' Fees and Reimbursement Guidelines* (February 2004);
- Cabinet Office, *Cabinet Manual*, paragraphs 2.46-2.77 (2001);
- Institute of Chartered Accountants of New Zealand, *Auditing Standard 510: Related Parties* (1998);
- Tertiary Advisory Monitoring Unit, *Conflicts of Interest in Relation to Tertiary Education Institution Councils* (undated)<sup>28</sup>;
- New South Wales Ombudsman, *Public Sector Agencies Fact Sheet No. 3: Conflict of Interests* (July 2003);
- New South Wales Ombudsman, *Pre-requisites to Avoid or Manage Conflict of Interests* (January 2004).

Publications by the Auditor-General that discuss various aspects of conflicts of interest include:

- *Conflicts of Interest: A Guide to the Local Authorities (Members' Interests) Act and Non-pecuniary Conflicts of Interest* (August 2004);
- *Procurement: A Statement of Good Practice* (June 2001);

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<sup>28</sup> Available at:

<http://www.minedu.govt.nz/index.cfm?layout=document&documentid=7182&CFID=2646106&CFTOKEN=85758537>

- *Inquiry into Public Funding of Organisations Associated with Donna Awatere Huata MP* (November 2003);
- *Local Government: Results of the 2002-03 Audits*, sections 2.7 and 2.8 (June 2004);
- *Local Government: Results of the 2001-02 Audits*, section 2.4 (September 2003);
- *Local Authority Governance of Subsidiary Entities* (March 2001);
- *Report on the Disposal of 17 Kelly Street by The Institute of Environmental Science and Research Limited* (June 2003);
- *Inquiry into Expenses Incurred by Dr Ross Armstrong as Chairperson of Three Public Entities* (December 2003);
- *The Auditor-General's Auditing Standards: AG-3 – The Auditor's Approach to Issues of Performance, Waste and Probity* (May 2002).

All of these publications are available from the websites of the relevant organisations.

## **Appendix 2 - CPIT's policies relevant to conflicts of interest**

- Code of Professional Practice
- Staff Involvement in Outside Activities policy
- Disclosure and Conflict of Interest policy

**Corporate Policies and Procedures Manual**  
**Section 2: Human Resources**

|                  |                 |                |                        |
|------------------|-----------------|----------------|------------------------|
| First Produced:  | 30/11/01        | Authorisation: | Management Team        |
| Current Version: | 30/11/01        | Queries:       | HR Director (P Gibson) |
| Past Revisions:  | See notes below |                |                        |
| Review Cycle:    | 3 years         |                |                        |
| Applies From:    | Immediately     |                |                        |

## Code of Professional Practice

*This policy replaces the policy entitled “Staff Rights & Responsibilities” (see Section 8 Notes, below).*

### Purpose

The purpose of this Code of Practice is to promote high ethical standards, foster understanding of what is expected from all staff, and provide a foundation for staff appraisal, promotion and continuous improvement.

### 1 Application

This policy applies to all CPIT staff, including managers and the Chief Executive. It relates primarily to APNZ Quality Standards 1.1, 1.2, 4.1, 4.2 and 7.1.

### 2 Policy Statement

CPIT management will act honestly and with regard for the welfare and interests of staff, students and its wider communities. Staff will act honestly, conscientiously, reasonably and, at all times, in good faith. They will have regard for the welfare of their colleagues and students, for the interests of CPIT as their employing body and for their responsibilities as employees.

### 3 Definitions

Good faith: As defined in the Employment Relations Act, 2000 (refer “HR Management” policy).

### 4 Procedures

- 4.1 The Code of Professional Practice defines the expected standards of behaviour for CPIT staff.
- 5.2 Non-compliance will be dealt with under the “Complaints Involving CPIT Staff”, “Harassment Complaint Procedure” or other relevant policy.

### 5 Attachments/Further Documentation

- 5.1 Attachment
  - Code of Professional Practice (excerpt from Staff Profile booklet)
- 5.2 Further Documentation
  - Staff Profile for a Learning Organisation (available from Human Resources Division)

### 6 Related Policies

- Student Rights & Responsibilities
- Human Resource Management
- Complaints Involving CPIT Staff
- Harassment Complaint Procedure

### 7 Further Notes

- 7.1 The Staff Rights & Responsibilities policy was first produced on 11/9/95 and revised on 31/10/97. It was authorized by Management Team, with a review cycle of two years. The last revision was in 1997.
- 7.2 A different approach was taken with the development of this code of practice; therefore, this document is considered to be a new policy.

## CODE OF PROFESSIONAL PRACTICE

CPIT is a learning institution. We exist to provide quality learning opportunities for our students. This is at the heart of all our activities and directs our planning, processes and policies.

The purpose of this Code of Practice is to

- promote high ethical standards
- foster understanding of what is expected from all staff, and
- provide a foundation for staff appraisal, promotion and continuous improvement.

Our Charter sets out our overall vision, mission and values, which create the environment and culture in which staff and students work together to meet our goals.

**Vision:** *to be the preferred tertiary education provider for the range of programmes offered, to be an exemplary organisation and to demonstrate leadership within the tertiary sector.*

**Mission:** *to provide continuing education in a wide range of applied, vocational and professional studies to postgraduate level.*

**Goals:** *Within an over-arching goals of 'student focussed', CPIT's broad goals include flexible delivery, work relevance, international education, sustained viability, productive alliances and managed quality.*

### Responsibilities & Expected Behaviour of the Employer (Council and Chief Executive) and Other Managers

CPIT management will act honestly, conscientiously, reasonably and in good faith at all times. Management will have regard for the welfare of staff and students and the interests of CPIT and its communities.

*Management will make its best efforts within available resourcing to:*

- provide a safe working environment
- comply with legislative, industrial and administrative requirements
- recognise our obligations under CPIT's agreement with Ngai Tahu, as embodied in the partnership
- manage diversity and respect cultural differences
- provide an environment conducive to the professional development and effectiveness of staff
- encourage activities and opportunities that enhance job satisfaction
- recognise the need for staff to balance their personal and professional lives
- manage within the framework provided by CPIT's formal policies and procedures, with particular reference to equal opportunity and health & safety practices
- supply the resources necessary for staff to carry out their duties to the expected standard and within their conditions of employment
- uphold the right of staff and students to academic freedom as defined in the Education Act 1989.
- ensure that staff fully understand, when appointed to CPIT, their obligations and requirements under this Code of Practice and as outlined in the CPIT employee profile.

## **Responsibilities and Expected Behaviour of Employees (including the Chief Executive and other managers)**

Staff will act honestly, conscientiously, reasonably and in good faith at all times. They will have regard for the welfare of their colleagues and students, for the interests of CPIT as their employing body and for their responsibilities as employees.

*All staff are expected to*

- continuously develop their knowledge and skills relevant to their area of expertise
- exercise their best professional and ethical judgement; make decisions based on appropriate, relevant information, without bias
- treat students, members of the public and other staff with respect, impartiality, courtesy and sensitivity
- maintain professional staff/student relations and act with integrity fitting to their role
- maintain a co-operative and collaborative approach to working relationships
- take care to maintain the confidentiality, accuracy and privacy of official CPIT documentation to which they have access
- use all CPIT resources in a careful manner, reducing waste and making improvements where possible
- meet their obligations in regard to the CPIT employee profile
- act within the requirements and spirit of CPIT goals, policies and procedures, with particular reference to policies that provide a framework for acceptable behaviour (eg harassment prevention, involvement in outside activities)
- ensure there is no actual or perceived conflict between their personal interests (including those of their immediate family) and their CPIT duties and responsibilities  
not solicit or accept gifts or benefits that might, directly or indirectly, compromise or influence them in their position at CPIT (eg gifts or hospitality offered as an inducement to purchase)
- ensure CPIT resources are not used for private purposes unless formal permission has been granted.

### **Breaches of this Code of Practice**

On the whole, staff at CPIT perform well, act professionally and overcome minor problems without the need for formal procedures. Where difficulties do arise, CPIT's policies and procedures related to handling complaints will be used.

Failing to meet the obligations under this Code of Professional Practice may involve misconduct. In this instance, a staff member's manager will intervene, following the relevant policy and procedures. For example, where a satisfactory standard of performance is not achieved, this could be dealt with through the probation or appraisal procedure. Where there is a complaint of harassment, this would be handled through the Harassment Prevention Policy. Other serious and/or repeated contravention of the obligations set out in this Code would be managed via the Complaints Policy.

All CPIT policies are summarised in the *User Friendly Guide*, distributed to all staff each year. Full details are contained in the Policies & Procedures Manuals, available both in hard copy and electronically on InfoWeb (under 'Official Information'). A contact person is named for each policy so that staff know where they can go if they have questions or need advice.

## Corporate Policies & Procedures Manual Section 2 : Human Resources

|                  |             |                |  |
|------------------|-------------|----------------|--|
| First Produced:  | 14/2/91     | Authorisation: | Management Team                            |
| Current Version: | 14/12/01    | Queries:       | Human Resources Director<br>(Patsy Gibson) |
| Past Revisions:  | 24/2/94     |                |  |
| Review Cycle:    | 5 years     |                |  |
| Applies From:    | Immediately |                |  |

### Staff Involvement in Outside Activities

*This revision updates terminology and clarifies the intention of the previous version.*

#### Purpose

To advise staff, both academic and allied, who are involved in business ventures or consultative work in addition to their primary employment at CPIT.

#### 1 Application

- 2.1 This policy applies to all paid work and consultation that is in addition to a staff member's primary employment at CPIT.
- 2.2 This policy also applies to those employed as tenured proportional staff, for the time they are being paid by CPIT.
- 2.3 It does not apply to activities that are part of a staff member's position. Staff should note that any outside payments for work they undertake as part of their position should be made to CPIT, except in extraordinary and previously negotiated circumstances.
- 2.4 It does not apply to people employed as guest tutors or as casual part-time staff.

#### 3 Policy Statement

Staff members may be involved in business ventures/ other work in addition to their primary employment at CPIT provided their outside activities are subordinate to and do not interfere with their primary employment CPIT position. If there is any conflict of interest this must be declared. Staff may be asked to choose between their CPIT position and outside employment.

#### 4 Definitions

- 4.1 Outside interest: Any activity that could be described as work or consultation for an individual or organisation other than CPIT.
- 4.2 Primary employment: This means that the staff member's position at CPIT is their most significant source of work. Where a staff member is in a proportional or part time position, the provisions of this policy apply for the times they are expected to be performing the duties of their CPIT position.
- 4.3 Competitor (to CPIT): An educational institution or business offering similar programmes or undertakings similar to the activities or services of CPIT.

#### 5 Procedures

- 5.1 Full-time employment at CPIT is paid by salary as a full-time occupation, and all other work activities, therefore, must be subordinate to that position. If a person's effectiveness in any aspect of their work suffers because of outside work or consultation that person may be asked to choose between them. It is recognised that staff employed on less than a full time basis (ie proportional or part time) have a right to undertake other commitments in their own time. If

CPIT work is not at the required standard because of these other activities/commitments, however, the staff member may be asked to choose between the conflicting commitments.

- 5.2 Staff are required by their conditions of service to be on duty for a prescribed number of hours per week, or other arrangements as negotiated. Exceptions must be known to, and authorised in advance by, the relevant Dean or Divisional Head.
- 5.3 CPIT premises must not be used for private consultative work or any outside business enterprise from which a staff member receives payment. Staff may not undertake work with private clients during scheduled work hours. Any exceptions must have written permission from the relevant Dean or Divisional Head.
- 5.4 Under no circumstances may a staff member use any other CPIT staff member for work associated with an outside business enterprise unless that work is done in the staff member's own time and is paid for separately.
- 5.5 The association of a staff member with CPIT should not appear on private letterheads or promotional material nor should CPIT addresses or phone numbers be used for any business that is not part of the staff member's employment at CPIT.
- 5.6 If a firm with which a staff member has a financial interest tenders goods or services to CPIT, the interest of the staff member must be declared.
- 5.7 When a CPIT staff member obtains concurrent employment with a competitor, CPIT reserves the right to investigate the consequences of such dual employment and the staff member may be asked to choose between the two positions. CPIT may also choose not to appoint a particular applicant because of a foreseeable conflict of interest, as determined by the relevant Dean/Director and the Director, HR.
- 5.8 Authority to ensure this policy is implemented and to vary any of its clauses to meet unexpected circumstances is delegated by the Chief Executive (as employer) to the Director, Human Services.

## **6 Attachments/Further Documentation**

Nil.

## **7 Related Policies**

- Human Resource Management
- Code of Professional Practice
- Workload

## Corporate Policies & Procedures Manual Section 1: General Administration

### Disclosure and Conflict Of Interest

|                  |              |                |                               |
|------------------|--------------|----------------|-------------------------------|
| First Produced:  | 16/7/03      | Authorisation: | Council                       |
| Current Version: | 16/7/03      | Queries:       | Council Secretary (R Knowles) |
| Past Revisions:  | Nil          |                |                               |
| Review Cycle:    | 5 year cycle |                |                               |
| Applies From:    | Immediately  |                |                               |

### Section 1: Policy Overview

#### 1.1 Purpose

The purpose of this policy is to ensure compliance with the provisions of the *Local Authorities (Members' Interests) Act 1968*, *s175 of the Education Act 1989*, and the CPIT Council's *Standing Orders* and to ensure that any significant conflicts of interest arising at governance level from any CPIT activities are declared, recorded, and addressed.

#### 1.2 Application

This policy applies to all CPIT Council members, Council officers, and all members of CPIT's Management Team and to all CPIT activities.

#### 1.3 Policy Statement

Any Council member or officer or Management Team member who has a "concern or interest" as defined by the *Local Authorities (Members' Interests) Act 1968* or as defined in this policy must declare that interest in writing.

No Council member or officer or Management Team member may take part in deliberation or voting on a matter in which she or he (or a partner or dependent) has a "concern or interest" as defined.

A Council member is disqualified from office if CPIT does business exceeding \$25,000 inclusive of GST in any financial year with the company in which the member is concerned or interested; prior approval of the Auditor General to exceed this limit can be given.

#### 1.4 Formal Delegations

Council Secretary: collection of declarations, maintenance of the register, and monitoring of payments to companies on the register.

#### 1.5 Definitions

- a Concern or interest - an involvement in a matter which could give rise to an expectation of or an actual significant gain or loss of money on the part of the person concerned or a partner or dependent of the person concerned.

An individual has a concern or interest if she or he OR a partner or dependent, singly or together, owns 10% or more of the shares in a company or in another company which controls that company or is a shareholder in a company or a controlling company AND either the member or officer or a partner or dependent is the managing director or general manager of the company or the controlling company.

- b Conflict of interest: the conflict or potential for conflict arising when a Council member or officer or Management Team member has a concern or interest in a matter or with a party with which CPIT is negotiating or doing business; that is, where the Council member or officer or Management Team member or a partner or dependent has a direct or indirect pecuniary interest or may gain a significant personal benefit.
- c Council member: a member of the CPIT Council as constituted by the Christchurch Polytechnic Notice 1990.
- d Council officer: any employee of the Chief Executive of CPIT who provides advice or executive or secretarial services directly to the Council or any of its committees.
- e Management Team member: the Faculty Deans, Division Directors, and other senior managers as specified by the Chief Executive.
- f Disclosure of interest: the annual declaration by each Council member, officer, and Management Team member of any concern or interest as defined she or he may have.

## 1.6 Attachments

- Disclosure of Concern or Interest
- Disclosure and Conflict of Interest Register

## 1.7 Related Policies

- Legislative Compliance
- Staff Involvement in Outside Activities

## 1.8 Notes

- This policy was authorised by the CPIT Council at its meeting on 16 July 2003

## Section 2: Associated Procedures

- 2.1 Every Council member is required to complete and sign annually a disclosure of interest form on which they declare any “concern or interest” as defined by the Local Authorities (Members’ Interests) Act 1968 or this policy
- 2.2 Every Council officer and member of the Management Team is required to complete and sign annually a disclosure of interest form on which they declare any “concern or interest” as defined in this policy.
- 2.3 The Council Secretary will keep a register of all such disclosures and will prepare a summary of the register. The summary of the register will be available to all members of the Council and staff of the Finance Division.
- 2.4 All companies identified in the register will be marked in the Institute’s financial systems in such a way that payments can not be made to those companies without the knowledge of the Council Secretary.
- 2.5 The Council Secretary will monitor payments to the companies on the register. As payments to any of those companies in which a Council member has a concern or interest approach \$25,000 including GST in any financial year, the Council Secretary will apply to the Office of the Auditor-General for prior approval to exceed the limit.
- 2.6 Any Council member or officer or Management Team member who becomes aware that she or he has a conflict of interest as defined in this policy must declare that conflict of interest immediately and must not take part in any subsequent deliberation or voting on the matter.
- 2.7 The declaration of conflict of interest must include a brief statement of the matter concerned and the nature and extent of the conflict. Every such disclosure of interest must be recorded in the minutes of the meeting at which it was made together with a record of the fact that the member or officer took no part in the deliberation of or decision on the matter. The Council Secretary must be advised of the declaration for the purposes of recording it in the register.

**All policies on CPIT’s INFOWEB are the current version. Please check date of this hard copy before proceeding**

## Disclosure of Concern or Interest

**In terms of the Local Authorities (Members' Interests) Act 1968, s175 of the Education Act 1989, and CPIT's policy on Disclosure and Conflict of Interest, every Council member, Council officer, and Management Team member must make an annual declaration of concerns or interests.**

"Concern or interest" is defined as an involvement in a matter which could give rise to an expectation of or an actual significant gain or loss of money on the part of the person concerned or a partner or dependent of the person concerned.

An individual has a concern or interest if she or he OR a partner or dependent, singly or together, owns 10% or more of the shares in a company or in another company which controls that company or is a shareholder in a company or a controlling company AND either the Council member or officer or Management Tema member or a partner or dependent is the managing director or general manager of the company or the controlling company.

No Council member or officer or Management Team member may take part in deliberation or voting on a matter in which she or he (or a partner or dependent) has a "concern or interest" as defined.

A Council member is disqualified from office if CPIT does business exceeding \$25,000 inclusive of GST in any financial year with the company in which the member is concerned or interested; prior approval of the Auditor General to exceed this limit can be given.

**So that the Institute can monitor compliance and take appropriate action when necessary, please provide the name of any company or companies in which you are "concerned or interested" in the way defined. Remember that the concerns or interests of a partner or dependent may constitute an indirect concern or interest.**

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**Signed** \_\_\_\_\_

**Dated** \_\_\_\_\_

## Disclosure and Conflict of Interest Register

|                     |   |           |                                   |
|---------------------|---|-----------|-----------------------------------|
| Register number     | <i>YYYY/00</i>  | Reference | <i>page number of minutes etc</i> |
| Name                | <i>name of Council member or officer or Management Team member disclosing concern or interest or declaring conflict of interest</i> |           |                                   |
| Date                | <i>date on which disclosure/ declaration was made</i>   |           |                                   |
| Concern or interest | <i>name of company or companies or other detail of concern or interest</i>  |           |                                   |
| Conflict            | <i>brief statement of conflict of interest declared</i>   |           |                                   |
| Notes               | <i>brief record of any special aspects or relevant observations</i>   |           |                                   |
| Filed in            | copied to   | Canofile  |                                   |
|                     |   |           | <i>other copies</i>               |
| Reported to Council | <i>date</i>   |           |                                   |