**EIS Consultation Response – New College Shetland, June 2020**

**2. Has the proposal made clear the rationale for merger?**
Yes

**3. What do you think are the benefits of merger?**
The main benefits relate to the anticipated substantial financial savings for Shetland Islands Council and to the predicted future financial sustainability of the new merged entity.

Given the relatively small population of Shetland, the ability for the new entity to 'break-even' will be extremely challenging, as evidenced by the fact that no other island-based college in Scotland makes a surplus. It is likely that the new entity will continue to rely on the Scottish Funding Council for the majority of its funding.

The merger may bring potential cost savings from economies of scale.
It is accepted that there is no real curriculum overlap between the three organisations, therefore the proposed creation of new curriculum clusters is not about reducing over-provision and it remains to be seen what benefits, if any, these curriculum clusters bring to students.

There could be benefits through an enhanced student experience, particularly from a greater range of extra-curricular activities. This could provide a more holistic educational experience for students.

If the new merged entity puts in place a much greater emphasis on marketing and promotion this should bring benefits by raising the profile of the new entity and hopefully attracting more students and learners, but these benefits will only be realised if adequate resources are dedicated to marketing and promotion.

**4. Do you support our plans to bring tertiary education in Shetland together in one organisation?**

Yes

**a. Why?**
Yes, in principle.

Shetland Islands Council have already decided to reduce funding and investment to the individual organisations involved in the merger. As such, they would find it difficult, individually, to be financially sustainable. Without merging, it is unlikely that they could continue to provide the required educational and learning opportunities within Shetland.

This is particularly so for NAFC Marine Centre. It has been made clear throughout that NAFC Marine Centre would find it extremely difficult to survive at all, without the merger.

The merger may provide opportunities for attracting additional monies, such as service level agreements with the council for Skills for Work and Adults with additional learning needs provision. There may also be more scope for service level agreements with NHS and providing more employer led learning opportunities e.g. Construction and Hospitality.

It is hoped that the merger will provide an opportunity for tertiary education in Shetland to present a more consistent approach to a range of employers, schools and community groups across the length and breadth of Shetland. The potential educational benefits of the merger to students are detailed in the merger business case. We hope these will be realised but this will only be truly established when the merger has been in place for a few years.

**5. What changes or improvements had you hoped to see in the merger proposal that you think have not been considered?**

The lecturing staff at Shetland College raised a number of concerns and questions about the Ministerial Merger Business Case at a College Lecturers' Joint Consultative Committee on 14th January and 23rd March 2020. A number of these concerns were not addressed in the business case, with the one published being dated 20th March 2020.

Concerns relate, in the main, to governance arrangements which will be noted in further answers. However, the EIS had also hoped to see the following points addressed.

Firstly, as this is a Phoenix model, which has never been in place before for further education, the EIS would have hoped for more concrete information on informal and formal TUPE consultation processes. Whilst the council are progressing some informal TUPE discussions, the EIS believe it is important for all proposed, and potential, changes to staff terms and conditions to be highlighted in the business case in order for full stakeholder scrutiny to be established.

Second, as evidenced by previous college mergers and other organisational restructures, there is a substantial risk of highly experienced, knowledgeable and skilled staff being lost to the new merged college. This disruption and loss of expertise would only make it harder for student numbers to be maintained, far less increased.

Third, in relation to introducing instructor/ trainer posts, the EIS would be very concerned that this would undermine nationally agreed terms and conditions of staff. Whilst there is little detail in the business case about other changes to terms and conditions, this one is highlighted. The EIS will oppose any direct proposals to change nationally agreed terms and conditions of lecturing staff, disguised by the restructuring process.

Lastly, the EIS notes that the financial position of all the merging organisations has not been updated in light of COVID19 and the current and potential economic impact this will have. The EIS believes that further due diligence should be done on the financial figures.

**6. What are your views on the proposed governance arrangements?**
The EIS views on the proposed governance arrangements have been well documented at CLJCCs, in correspondence with the Principal, Principal designate, Council, MSPs, and in the press.

In summary, the EIS nationally and locally are opposed to the non-incorporation of the new entity and the full privatisation of tertiary education in Shetland.

The headlines reasons for this are as follows.

The EIS is concerned that any move to the creation of an unincorporated body essentially results in the delivery of Further Education by a private company.

Given the level of public funding which is invested in FE, this would appear to be contrary to the expressed intention of the Scottish Government to ensure that governance and accounting structures are robust. It seems anomalous that efforts are being made to cut costs in terms of governance arrangements when this new body will be funded by public money.

A privatised college is not accountable in law to the democratically elected Scottish Parliament. Unincorporated colleges can change their governance structures simply by amending their Articles of Association following a decision by the Board of Management. This does not provide the security of regulatory provision which would appear to have been envisaged by Scottish Ministers at the time of reclassification.

At the time of college mergers in 2013, the Scottish Government did not pursue any changes to legislation to remove colleges in Scotland from the public sector and endorsed the accounting practices applicable at that time, with the view being taken that the level of governmental control over colleges was appropriate. Scottish Ministers were clear that the controls, enhanced by the Education (Scotland) Act 2013, were the right solution for Scotland and were a-propriate given the significant public investment in colleges.

It would be anomalous for the Scottish Government to agree the creation of an unincorporated association, distinct from the chosen governance arrangements which the Government itself advocated.

The decision to confirm Scottish colleges as public bodies and to retain their incorporated status ensured the continued level of public accountability and Parliamentary scrutiny in relation to the governance and financial arrangements of the college sector at that time. Audit Scotland continues to have a key role in providing reports to the Scottish Parliament about the financial stability of incorporated colleges and Ministers can ultimately intervene to remove a Board of Management where this is deemed appropriate in terms of statute. Instead, in the privatised model, the members are only liable, if something goes wrong, up to the financial ceiling set when the company is formed (under this proposal - £1 per board member).

The company members can amend the Articles of Association and could, in the future, change the company to being limited by share capital i.e. run for profit.  In future, other individuals representing private interests could become members of the Board of Management. If this private company suffers financial loss and has to be wound up it is unclear how FE will be provided in Shetland. These are unanswerable risks at present.

The Scottish Funding Council will still have oversight in terms of the financial memorandum between colleges and their regional strategic bodies (i.e. UHI), and the Code of Good Governance for Scotland's Colleges.  If the college is assigned to UHI then UHI will also have a responsibility under the Further & Higher Education (Scotland) Act 2005 to monitor performance, including financial performance. This is not the same, however, as being obliged to ascribe to the public sector framework, values, principles, or standards which are being monitored as all other incorporated colleges.

The EIS believes that it would be detrimental to the security of educational provision in Shetland if tertiary education is delivered by a company limited by guarantee which is not subject to the same governance arrangements in place for incorporated colleges in Scotland.

Lastly, there are a number of inconsistencies in the case for non-incorporation which the EIS has consistently raised. The EIS does not believe that there is a solid rationale for non-incorporation of the new entity.

These include the following.

The minute of the Shadow Board from September 2019 notes that the "NAFC Marine Centre cannot transfer undertakings into a body that has not achieved charitable status." All incorporated colleges in Scotland are registered with OSCR and therefore have charitable status.

There is no evidence to suggest that there is a requirement on the new body to be unincorporated. The due diligence report makes reference to several factors relevant to the transfer of the staff and assets of NAFC Marine Centre to the new entity. Whilst reference is made to OSCR approving the transfer in terms of charity law, no reference is made to the new entity being required to be formed as an unincorporated association. The two issues appear to have been conflated.

Question has been raised about the financial sustainability of incorporated colleges as a reason for this new entity to become a private limited company. The EIS contends that it is the duty of the SFC to provide funding for the provision of high quality further and higher education. The Scottish Ministers make grants to the SFC for carrying out this function. Audit Scotland has a key role in providing reports to the Scottish Parliament about the financial stability of incorporated colleges and Ministers can ultimately intervene to remove a Board of Management where this is deemed appropriate in terms of statute. This is not the case with unincorporated colleges. As such, there is no other financing model which could be more sustainable and accountable.

The MMBC indicates that the new body will still rely on significant public sector funding but suggests that public sector funding precludes the college's ability to "secure funding partnerships and long-term collaborations" elsewhere. This is not true. Other incorporated colleges have funding partnerships and long-term collaborations with charitable or voluntary sector groups and City of Glasgow College does extensive commercial work through its Maritime section.

However, the question of financial sustainability and oversight is strengthened in that public sector funding must be secured with public sector 'Best Value' in mind.

Furthermore, the MMBC references Audit Scotland's report on Colleges finances from 2018 to indicate that incorporated colleges are struggling more financially than non-incorporated colleges. The EIS contends that, in fact, the Audit Scotland report illustrates that non-incorporated colleges are actually struggling more financially.

Lastly, there is the issue of reserves. It has been stated that the main reason for wishing the new entity to be non-incorporated as private limited company is in order to hold reserves. This reason has previously been given by the Leader of the Council and in letter by the former UHI Project Manager. The EIS is concerned that this reason does not form part of the

MMBC and believes that this underlying reason has been obfuscated in 'financial flexibility'.

It is true that an incorporated body cannot hold reserves; however, colleges receive a significant level of public funding and the SFC ensures that the sector is appropriately resourced and they can run small surpluses year on year. As such, there is no need to sit on large reserves. A pool of large reserves is, in essence, the same as sitting on profit. This money should be re-invested in education instead.

The reason that incorporated colleges cannot hold reserves is in order to equitably share the funding for further and higher education in a sustainable and proportionate manner, instead of through competition and accumulation of wealth. Since colleges are, in the main, publicly funded it is a real concern that the argument for non-incorporation is that funds should be funnelled away from public education into reserves which, due to non-incorporation, are beyond democratic control. The argument about reserves is one of the strongest reasons to reject non-incorporation and support full use of funds for educational purposes.

**7. The proposed name for the new College is Shetland Institute UHI, are you content with this or if not what would be your suggested name?**

Don’t like it and Would like to make a suggestion
“Shetland UHI” or “New College Shetland UHI”

**8. Do you have any further comments?**

The EIS nationally and locally are committed to ensuring educational integrity. The EIS believes that the best possible education system is created by ensuring that staff terms and conditions are the best they can be. Only by valuing staff can education truly be valued.
The EIS have not been obstructive through this merger process but have asked pertinent questions, queried inconsistent arguments, and asked for further investigation and clarity. The EIS have not had a single response which has indicated that non-incorporation is the best governance model for this new college. The EIS remain completely opposed to all tertiary education in Shetland being offered by a private limited company.

30th June 2020