

The Treasury

Project Korimako - Release of advice

December 2022

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Key to sections of the Act under which information has been withheld:

- [23] 9(2)(a) - to protect the privacy of natural persons, including deceased people
- [25] 9(2)(b)(ii) - to protect the commercial position of the person who supplied the information or who is the subject of the information
- [26] 9(2)(ba)(i) - to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied
- [33] 9(2)(f)(iv) - to maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials
- [34] 9(2)(g)(i) - to maintain the effective conduct of public affairs through the free and frank expression of opinions
- [35] 9(2)(g)(ii) - to maintain the effective conduct of public affairs through protecting ministers, members of government organisations, officers and employees from improper pressure or harassment;
- [36] 9(2)(h) - to maintain legal professional privilege
- [37] 9(2)(i) - to enable the Crown to carry out commercial activities without disadvantage or prejudice
- [38] 9(2)(j) - to enable the Crown to negotiate without disadvantage or prejudice
- [39] 9(2)(k) - to prevent the disclosure of official information for improper gain or improper advantage

Where information has been withheld, a numbered reference to the applicable section of the Act has been made, as listed above. For example, a [23] appearing where information has been withheld in a release document refers to section 9(2)(a).

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Treasury Report: Project Korimako - Sale and Purchase Agreement

Date:	14 July 2022	Report No:	T2022/1538
		File Number:	SE-1-3-22-2

Action sought

	Action sought	Deadline
Minister of Finance (Hon Grant Robertson)	Agree that we should continue with our current negotiating approach including the negotiation of mutually agreeable warranties	3.00 pm 19 July 2022
Associate Minister of Finance (Hon David Parker)	Note that we are scheduled to discuss Project Korimako with the Minister of Finance at the WAM meeting at 3.00 pm on 19 July 2022	

Contact for telephone discussion (if required)

Name	Position	Telephone	1st Contact
Simon Hay	Principal Advisor, Commercial and Institutional Performance	[39]	N/A (mob) ✓
Shelley Hollingsworth	Manager, Commercial and Institutional Performance	[35]	

Minister's Office actions (if required)

Return the signed report to Treasury.

Note any feedback on the quality of the report

Enclosure: No

Treasury Report: Project Korimako - Sale and Purchase Agreement

Purpose of Report

- 1. This report updates you on the state of negotiations regarding the Korimako Sale and Purchase Agreement (SPA) [25], [37], [38] [25]

. We are also seeking your input into the commercial strategy as it relates to the extent of warranties to be included in the SPA and the resulting risk allocation between the transaction participants, [25], [37]

Status of [37], [38] and SPA

- 2. [25], [37], [38]

3.

4.

5.

¹ [25], [37], [38]

Warranties

6. There is an asymmetry of information between a vendor and a purchaser in a transaction such as Korimako due to the vendor's greater familiarity with the business. The due diligence process is a means of reducing this asymmetry through the provision of information to the purchaser and its advisors, but it is an imperfect solution. A standard commercial approach is for warranties to be included in the SPA to provide a purchaser with some contractual assurance regarding the state of the business it is purchasing, assurance that the vendor has taken care in disclosing material information, and some financial remedies if these warranties turn out to be inaccurate.
7. [25], [37], [38]
8. Our initial approach has been moderated to reflect:
 - a the vendors being involved in the business only at a high-level governance perspective, rather than at an operational level
 - b all parties being part of the wider Crown, meaning that no new financial risk is being brought into the wider Crown as part of this transaction and, in our view, it is unlikely that the Crown would take action against the vendors
 - c the highly regulated nature of the business (noting that the high level of scrutiny applied to the banking sector by the Reserve Bank of New Zealand, Financial Markets Authority, Office of the Auditor-General, Commerce Commission, NZX and others provides some assurance), and
 - d information gained through the due diligence process, having considered warranties and due diligence in the round as a combined package.
9. Our proposal is to seek a narrower set of warranties that are based on actual knowledge of the asset by appropriate representatives of each shareholder. Less intrusive than a full-blown vendor due diligence exercise, this would apply appropriate incentives on counterparties, and will help give the Crown assurance that prudent process has been followed. This is also informed by the approach taken in the Project Tui transaction [25], [37], [38]
10. [25], [37], [38]
- 11.

[25], [37], [38]

13. [25], [37], [38]

14.

Other transaction documentation

15. The Project Korimako SPA will include a contractual commitment that the Crown will enter into certain documentation in connection with the NZ Post Deed Poll Guarantee.
16. By way of background, NZ Post is party to a 2001 Deed Poll Guarantee, in which it guarantees all payment obligations incurred by Kiwibank and its subsidiaries, in favour of Kiwibank creditors. The Deed Poll Guarantee was terminated with effect from 28 February 2017, but NZ Post retains liability for payment obligations that were owed to creditors at 28 February 2017 and that have not yet been met. The total amount outstanding as at 31 March 2022 [25], [26]
17. As a condition of agreeing to sell its KGH shares to the Crown, NZ Post requires the Crown to:
- a accept a transfer of the guarantee obligations set out in the Deed Poll Guarantee, and
 - b indemnify NZ Post for any residual liabilities that NZ Post is required to meet under the Deed Poll Guarantee (e.g. where the transfer does not take full legal effect in accordance with its terms), and for costs and losses it suffers as a result of a Kiwibank creditor bringing or threatening a claim against NZ Post.
18. Under section 65ZD of the Public Finance Act 1989, the Minister of Finance may, on behalf of the Crown, give indemnities and guarantees if it appears to the Minister to be necessary or expedient in the public interest to do so. In the week commencing 25 July, Treasury intends to provide the Minister of Finance with a report setting out our analysis of the guarantee and indemnity and seeking his agreement to them.

Recommended Action

We recommend that you:

- a **agree** that we should continue with our current negotiating approach including the negotiation of mutually agreeable warranties (Option One)

Agree/disagree.
Minister of Finance

Agree/disagree.
Associate Minister of Finance

- b **note** that we are scheduled to discuss Project Korimako with you at the WAM meeting at 3.00 pm on 19 July 2022

Shelley Hollingsworth
Manager, Commercial and Institutional Performance

Hon Grant Robertson
Minister of Finance

Hon David Parker
Associate Minister of Finance