

The Treasury

Project Korimako - Tranche Two Release of Advice

April 2023

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Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act).

Where this is the case, the relevant sections of the Act that would apply have been identified.

Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

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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Nomination Deed

The Sovereign in right of New Zealand acting by and through the Minister of Finance and the Minister for State-Owned Enterprises (the **Crown**)

Kiwi Group Capital Limited (the **Company**)

Nomination Deed

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Details

Date 23 November 2022

Parties

Name **The Sovereign in right of New Zealand acting by and through the Minister of Finance and the Minister for State-Owned Enterprises**

Short form name the **Crown**

Notice details
 Attention: Secretary to the Treasury / Treasury Solicitor
 Email: caralee.mcliesh@treasury.govt.nz /
 legalmailbox2@treasury.govt.nz
 Address: 1 The Terrace, Wellington Central, Wellington

Name **Kiwi Group Capital Limited**

Short form name the **Company**

Notice details
 Attention: The Chair
 Email: [23]
 Address: Level 9, 20 Customhouse Quay, Wellington 6011

Background

- A Each of ACC, NZ Post, NZSF Tui, NZSF and the Crown are party to an agreement for sale and purchase of shares in Kiwi Group Holdings Limited (**KGH**) dated 19 August 2022 (the **SPA**).
- B The Crown wishes to nominate the Company as a Purchaser under the SPA, and the Company wishes to accept that nomination.

Agreed terms

1. Defined terms and interpretation

1.1 Defined terms

Capitalised terms used and not otherwise defined in this Deed have the meaning set out in the SPA and:

ACC means Accident Compensation Corporation;

Crown Entities Act means the *Crown Entities Act 2004*;

Effective Date means the date of the Nominated Purchaser Notice;

KGH has the meaning set out in Background A above;

Nominated Purchaser Notice means the notice from the Crown to all Vendors and NZSF in the form set out in Schedule 4 to the SPA;

NZ Post means New Zealand Post Limited;

NZSF means The Guardians of New Zealand Superannuation as Manager and Administrator of the New Zealand Superannuation Fund;

NZSF Tui means NZSF Tui Investments Limited;

Official Information Act means the *Official Information Act 1982*;

SPA has the meaning set out in Background A above; and

Subscription Agreement means the Subscription Agreement dated on or about the date of this Deed between the Crown and the Company.

Vendors means each of ACC, NZ Post and NZSF Tui.

2. Condition precedent

The right and obligations of the parties under clause 3 below are subject to entry by the parties into the Subscription Agreement.

3. Nomination

3.1 Nomination by the Crown

- (a) Subject to the terms of this Deed, and with effect on and from Effective Date, the Crown nominates the Company as a Nominated Purchaser pursuant to clause 2.1 of the SPA.
- (b) The Crown will provide the Nominated Purchaser Notice to the Vendors and NZSF as required under clause 2.1 of the SPA, and will provide a copy of the Nominated Purchaser Notice to the Company on the Effective Date.

3.2 Acceptance of nomination

- (a) The Company accepts the Crown's nomination of it as a Nominated Purchaser for the purposes of the SPA, and the transfer of the Crown's rights and obligations under the SPA to it, with effect from the Effective Date.
- (b) Notwithstanding clause 2.2 of the SPA, with effect on and from the Effective Date, the Company undertakes in favour of the Crown to perform all of the liabilities, obligations and undertakings of the Purchaser under the SPA that remaining outstanding as at the Effective Date.

3.3 Information sharing

- (a) On or before the Effective Date, the Crown will provide to the Company:
 - (i) a copy of the SPA, and all notices and other information formally received from the Vendors and each Group Company under or pursuant to the SPA on or before the Effective Date;
 - (ii) a copy of the Crown's application to the Reserve Bank of New Zealand in relation to the transaction contemplated by the SPA, and formal correspondence with the Reserve Bank of New Zealand in relation to that application received by the Crown on or before the Effective Date;
 - (iii) a copy of each of the Due Diligence Dataroom and the Disclosure Letter;
 - (iv) a copy of the Project Korimako legal due diligence report prepared by MinterEllisonRuddWatts;
 - (v) a copy of the Project Korimako financial due diligence report prepared by Ernst & Young;
 - (vi) a copy of the Project Korimako insurance due diligence report prepared by Marsh PEMA; and
 - (vii) all notices and other information formally provided by the Crown to the Vendors under the SPA up to the Effective Date.
- (b) The Company will provide regular updates to the Crown on its progress towards Completion, and will advise the Crown when Completion has occurred under the SPA. The Company will provide other information to the Crown in accordance with its letter of expectations.
- (c) To the extent that the Crown receives notices and information of the type contemplated by paragraphs (a)(i) and (a)(ii) above that are not copied to the Company after the Effective Date, the Crown will promptly provide a copy of the relevant notices or information to the Company.

3.4 Completion obligations

On or before the Completion Date, the Crown will provide, either to the Company, or to the Vendors on the Company's behalf:

- (a) a counterparty of the Crown Deed Termination Deed duly executed by the Crown (as contemplated by clause 7.3(a) of the SPA);
- (b) a counterpart of the NZ Post Guarantee Assignment Deed duly executed by the Crown (as contemplated by clause 7.3(b) of the SPA); and
- (c) a counterpart of the Crown Indemnity duly executed by the Crown (as contemplated by clause 7.3(c) of the SPA).

4. Miscellaneous

4.1 Notice for purposes of section 96 of the Crown Entities Act

The Company and the Crown agree that this Deed constitutes written notice, for the purposes of section 96 of the Crown Entities Act (which applies or will apply to the Company by virtue of section 45OA(1)(g) of the *Public Finance Act 1989*), that the Company intends to acquire subsidiaries (being KGH and its subsidiaries).

4.2 Alterations

This Deed may be altered only in writing signed by each party.

4.3 Counterparts

This Deed may be executed in counterparts and may be delivered by exchange of originals and/or email copies. All executed counterparts constitute one document.

4.4 No merger

The rights and obligations of the parties under this Deed do not merge on completion of any transaction contemplated by this Deed.

4.5 Entire agreement

This Deed constitutes the entire agreement between the parties in connection with the subject matter of this Deed and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

4.6 Further action

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Deed and the transactions contemplated by it.

4.7 Severability

A term or part of a term of this Deed that is illegal or unenforceable may be severed from this Deed and the remaining terms or parts of the term of this Deed continue in force.

4.8 Waiver

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

4.9 Confidentiality

Subject to clauses 4.10, 4.11 and 4.12, each party must treat the terms of this Deed and all information made available by or on behalf of any other party in connection with this Deed as strictly confidential.

4.10 Exceptions

The obligation of confidentiality under clause 4.9 does not apply to:

- (a) notification by the Crown to the Vendors in accordance with the terms of the SPA that the Crown has nominated the Company as a Purchaser under the SPA;

- (b) information that is generally available to the public at the date of this Deed or subsequently becomes so available other than by reason of breach of any obligation of confidentiality;
- (c) any disclosure of information that is necessary to comply with any law, the order of any Governmental Agency or the rules of any stock exchange;
- (d) information disclosed to a party's employees, officers or advisers (each a **Recipient**) only if the disclosure is made to the Recipient strictly on a "need to know basis" and, prior to the disclosure, the relevant party notifies the Recipient of the confidential nature of the information to be disclosed.

In the event any such announcement or disclosure is required by law, the order of any Governmental Agency or by any stock exchange, the parties agree to consult with each other regarding the contents of any such announcement or disclosure prior to the making thereof.

4.11 Announcements

No party will (except in accordance with clause 4.10) make any public announcement regarding the terms of this Deed except in a form and manner and at such time as the parties agree.

4.12 Constitutional or parliamentary convention

The parties acknowledge and agree that nothing in clause 4.9 restricts any party's ability to meet its obligations under any constitutional or parliamentary convention (or other obligation at law) or in relation to the New Zealand Parliament, the New Zealand House of Representatives or any of its Committees, any Minister of the Crown, or the New Zealand Auditor-General, including any obligations under the "no surprises" policy advised by Ministers of the Crown.

4.13 Official Information requests

Information provided to a party may be official information in terms of the Official Information Act and, in line with the purpose and principles of the Official Information Act, such information may be released to the public unless there is good reason, in terms of the Official Information Act, to withhold it. Following receipt of a request under the Official Information Act relating to such information, the party (as applicable) will:

- (a) consult with the other party as to whether the information sought is official information (as defined in the Official Information Act) and, if so, whether there are valid grounds under the Official Information Act for withholding it; and
- (b) notify the parties if, regardless of any party's views, the party (as applicable) determines that sufficient grounds do not exist under the Official Information Act for withholding the information.

4.14 Delivery

For the purposes of section 9 of the *Property Law Act 2007*, and without limiting any other mode of delivery, this document will be delivered by a party (**A**) immediately on the earlier of:

- (a) physical delivery of an original of this document, executed by A, into the custody of each other party or each other party's solicitors; or
- (b) transmission by A or its solicitors (or any other person authorised in writing by A) of a pdf original of this document (if signed electronically) or a photocopied or scanned copy of an original of this document, executed by A, to each other party's solicitors.

4.15 Governing law and disputes

This Deed is governed by the law of New Zealand and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New Zealand.

Signing page

EXECUTED as a deed

SIGNED by KIWI GROUP CAPITAL LIMITED

Signature of director
[23]

David McLean

Signature of director
[23]

Sir Brian Roche

**SIGNED by THE SOVEREIGN IN RIGHT OF
NEW ZEALAND ACTING BY AND THROUGH
THE MINISTER OF FINANCE AND THE
MINISTER FOR STATE-OWNED
ENTERPRISES**

Signature of Hon Grant Robertson, the Minister
of Finance

Signature of Hon David Parker, the Acting
Minister for State Owned Enterprises

Signature of witness

Signature of witness

Name of witness

Name of witness

Occupation of witness

Occupation of witness

City/town of residence

City/town of residence

Signing page

EXECUTED as a deed

SIGNED by **KIWI GROUP CAPITAL LIMITED**

Signature of director

David McLean

Signature of director

Sir Brian Roche

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NEW ZEALAND ACTING BY AND THROUGH
THE MINISTER OF FINANCE AND THE
MINISTER FOR STATE-OWNED
ENTERPRISES**



Signature of Hon Grant Robertson, the Minister
of Finance
[23]

Signature of Hon David Parker, the Acting
Minister for State Owned Enterprises

Signature of witness

Amanda Wilson

Name of witness

Private Secretary

Occupation of witness

Wellington

City/town of residence

Signature of witness

Name of witness

Occupation of witness

City/town of residence

Signing page

EXECUTED as a deed

SIGNED by **KIWI GROUP CAPITAL LIMITED**

Signature of director

David McLean

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Sir Brian Roche

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THE MINISTER OF FINANCE AND THE
MINISTER FOR STATE-OWNED
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of Finance

Signature of Hon David Parker, the Acting
Minister for State Owned Enterprises
[23]

Signature of witness

Signature of witness

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Name of witness

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