

The Treasury

Project Korimako - Tranche Two Release of Advice

April 2023

This document has been proactively released by the Treasury/Minister of Finance (Hon Grant Robertson) and Minister for State Owned Enterprises (Hon Dr Duncan Webb) on the Treasury website at

<https://treasury.govt.nz/publications/information-release/project-korimako>

Information Withheld

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).

Copyright and Licensing

Cabinet material and advice to Ministers from the Treasury and other public service departments are © **Crown copyright** but are licensed for re-use under **Creative Commons Attribution 4.0 International (CC BY 4.0)** [<https://creativecommons.org/licenses/by/4.0/>].

For material created by other parties, copyright is held by them and they must be consulted on the licensing terms that they apply to their material.

Accessibility

The Treasury can provide an alternate HTML version of this material if requested. Please cite this document's title or PDF file name when you email a request to information@treasury.govt.nz.

Treasury Report: Project Korimako - completion preparation

Date:	3 November 2022	Report No:	T2022/2368
		File Number:	SE-1-3-22-2

Action sought

	Action sought	Deadline
Minister of Finance (Hon Grant Robertson) Acting Minister for State Owned Enterprises (Hon David Parker)	approve the final KGC constitution agree that the Crown's proposed subscription for KGC shares include \$300,000 for initial working capital note that shareholding Ministers will be sent Project Korimako completion documents, to be signed and returned by Monday 21 November 2022	8 November 2022

Contact for telephone discussion (if required)

Name	Position	Telephone	1st Contact
Simon Hay	Principal Advisor, Commercial and Institutional Performance	[39]	[35] ✓
David Stanley	Acting Manager, Commercial and Institutional Performance		

Minister's Office actions (if required)

Return the signed report to Treasury.
--

Note any feedback on the quality of the report

Enclosure: Yes. [Appendix 1. KGC constitution \(marked up\) \(Treasury:4715363v1\)](#)

Treasury Report: Project Korimako - completion preparation

Purpose of Report

1. This report seeks decisions to prepare for a timely incorporation of Kiwi Group Capital Limited (KGC) and its acquisition of shares in Kiwi Group Holdings Limited (KGH) which is an outcome of Project Korimako.

Constitution

2. The Minister of Finance and Associate Minister of Finance have previously approved a draft KGC constitution [T2022/934 refers].
3. A final version of this constitution is now attached at Appendix 1 for shareholding Ministers' approval (marked up against the previous draft). You will see that a small number of relatively minor changes have been made to this final version that are largely either mechanical in nature, or reflect advice officials have previously provided or decisions that Ministers have made:

- [25], [33], [37]

Instead of referring to *KGH and its subsidiaries*, the constitution now refers to *KGC's subsidiaries (including Kiwibank and NZHL)*. This will still capture KGH to the extent it is a KGC subsidiary.

- The reference to the group's business is now simplified to *the provision of banking and financial services*, which captures the operations of both Kiwibank and NZHL, instead of also specifying details such as *the provision of home loans* (see "Business" definition).
- The expectation that all KGC's financial returns be distributed to shareholders has been deleted, as shareholding Ministers have previously agreed [T2022/2132 refers] (see clause 3.2).
- The objective of operating as a successful business is achieved through three sub-objectives, one of which is having regard to the interests of *society and the environment*. This is instead of having regard to the interests of *the community in which it operates*, as in the previous draft. This change has been made to align more closely with Kiwibank's constitution, which requires Kiwibank to have a positive impact on *society and the environment* (as a necessary part of Kiwibank's ongoing B-Corp certification) (see clause 3.2).
- Consistent with some other new Public Finance Act 1989 (PFA) Schedule 4A companies, for administrative ease a new clause allows Directors to remain in office until reappointment, removal or resignation (see clause 7.2).

Share subscription

4. Cabinet has agreed to an appropriation for share [25], [38]
The Crown needs to subscribe for KGC shares, in order to fund KGC to complete the acquisition of KGH shares, and to provide initial working capital.

5. Accordingly, the Project Korimako completion documents (to be provided for your signature in due course) will include a subscription agreement under which shareholding Ministers subscribe for shares in KGC.
6. Under the proposed terms of the agreement, fully paid ordinary shares will be issued at \$1.00 each and held in equal proportions by Shareholding Ministers.
7. The Crown is to provide three tranches of share capital under the agreement:
 - a *Share capital to fund the Project Korimako completion purchase payment.* This equals the amount KGC is required to pay to the KGH vendors as the Purchase Price on completion under the SPA and is to be paid on the Project Korimako SPA Completion Date (expected to be 30 November 2022, subject to RBNZ consent). This amount is expected to be around \$2,050.8 million.
 - b *Share capital to fund the Project Korimako adjustment payment (if any).* This applies if KGC is required to subsequently pay a purchase price adjustment amount to the KGH vendors under the SPA and equals the amount of any such adjustment. Whether it is payable, and in what amount, is dependent on the final Kiwi Wealth sale price. This is to be paid on the date the adjustment amount (if any) is payable by KGC to the vendors under the SPA. [25]
 - c *Operational share capital.* We propose an initial working capital amount of \$300,000. This amount is consistent with the amount envisaged in your earlier Cabinet paper [DEV-22-MIN-0146 and CAB-22-MIN-0250 refers]. In that paper, you noted that as KGC will primarily act in a holding capacity, its direct operational expenses should be limited. It will, however, have expenses such as Board fees and costs associated with legal matters, accounting and financial reporting. Initial level of working capital of \$300,000 will permit KGC to oversee its establishment.

Operational funding would be made available on the date of completion of the KGH share purchase (or another date to be agreed).

This funding can be incorporated within the appropriation to fund KGH share purchases as the appropriation relates to KGC's capitalisation.

Longer term funding can be agreed with KGC directors in due course, with a likely outcome being that KGC's ongoing costs would be fully covered by the dividend revenue received directly or indirectly from subsidiary companies.

KGC consultants

8. The Treasury has engaged Sir Brian Roche (one of Ministers' proposed KGC directors) for a fixed term as a consultant to advise on establishment of KGC and completion of Project Korimako [T2022/1971 refers]. The Treasury has also engaged David McLean (the other proposed KGC director) as a consultant for a fixed term, to ensure a timely project completion process. [25], [26], [37]

Backstop option for Project Korimako completion

9. As discussed in previous reports, a delay in KGC's director appointment process and incorporation would mean that KGH shares are unable to be transferred to KGC on completion of Project Korimako and would instead need to be transferred to shareholding Ministers, and subsequently transferred again from shareholding Ministers to KGC. This would require Ministers to execute a different suite of completion documentation, and to agree to a change in appropriation (under delegated authority from Cabinet). While that backstop option is not recommended, Treasury officials are continuing to prepare for it in parallel and will advise shareholding Ministers if it appears necessary.

Next steps

10. The Treasury will provide shareholding Ministers with a draft KGC letter of expectations once we have consulted with the KGH group and the proposed KGC directors.
11. We will provide Project Korimako completion documents to you for your signature in due course, and will require shareholding Ministers' signatures to those documents by **Monday 21 November 2022**. The documents are:
 - a Letters appointing the proposed KGC directors
 - b Companies Office shareholder consent forms, in which shareholding Ministers consent to be KGC shareholders
 - c Nomination deed, in which shareholding Ministers and KGC agree the terms on which KGC is to be nominated as purchaser under the Project Korimako SPA
 - d Nominated purchaser notice, in which shareholding Ministers effect KGC's nomination as purchaser under the Project Korimako SPA
 - e Subscription agreement, as discussed in this report, and
 - f Shareholder resolutions, in which shareholding Ministers consent to KGC entering into the proposed transactions.
12. Closer to KGC's incorporation, we will also provide to you a draft paper for the LEG Committee in respect of the Order in Council that will list KGC on PFA Schedule 4A. As previously advised [*T2022/707 and T2022/934 refer*], the Treasury considers that the process to make KGC into a PFA Schedule 4A company can proceed in parallel with settlement of the commercial transactions. However, we recommend that it follows as soon as practicable thereafter.

Recommended Action

We recommend that you:

- a **approve** the final KGC constitution attached as Appendix 1

Agree/disagree.

Minister of Finance

Agree/disagree.

Acting Minister for State Owned Enterprises

- b **agree** that the Crown's proposed subscription for KGC shares include \$300,000 for initial working capital

Agree/disagree.

Minister of Finance

Agree/disagree.

Acting Minister for State Owned Enterprises

- c **note** that shareholding Ministers will in due course be sent Project Korimako completion documents, to be signed and returned by **Monday 21 November 2022.**

David Stanley

Acting Manager, Commercial and Institutional Performance

Hon Grant Robertson
Minister of Finance

____/____/____

Hon David Parker
Acting Minister for State Owned Enterprises

____/____/____