

The Treasury

Project Korimako - Tranche Two Release of Advice

April 2023

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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

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Treasury Report: Project Korimako - completion documents for execution

Date:	14 November 2022	Report No:	T2022/2462
		File Number:	SE-1-3-22-2

Action sought

	Action sought	Deadline
Minister of Finance (Hon Grant Robertson)	sign, but do not date , the enclosed Project Korimako completion documents	12.00pm on 21 November 2022
Acting Minister for State Owned Enterprises (Hon David Parker)	submit to Cabinet Office by 30 November 2022 the attached LEG paper for an Order in Council adding KGC to Schedule 4A of the Public Finance Act 1989 agree to seek Cabinet's approval to waive the 28-day rule	

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 to Treasury the signed report, and the signed (but not dated) documents.

Note any feedback on the quality of the report

Enclosure: Yes

[LEG CAB Paper - Kiwi Group Capital Limited \(Treasury:4694488v1\)](#)

[22.11 KGC Appointment D McLean \(Treasury:4718014v1\)](#)

[22.11 KGC Appointment B Roche \(Treasury:4718013v1\)](#)

[Shareholder consent - Minister of Finance - Kiwi Group Capital Limited \(Treasury:4715762v2\)](#)

[Shareholder consent - Minister for State Owned Enterprises - Kiwi Group Capital Limited \(Treasury:4715764v2\)](#)

[Project Korimako - Nomination Deed\(900580696.2\) \(Treasury:4700540v4\)](#)

[Project Korimako - Nominated Purchaser Notice\(900580574.1\) \(Treasury:4700574v4\)](#)

[Project Korimako - KGC Subscription Agreement\(900605428.3\) \(Treasury:4710606v4\)](#)

[Kiwi Group Capital - Shareholder resolutions on incorporation\(900580761.1\) \(Treasury:4700590v4\)](#)

Treasury Report: Project Korimako - completion documents for execution

Purpose of Report

1. This report seeks shareholding Ministers' execution of the final documents necessary to complete 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.

Documents for Ministers' execution

2. As set out in our previous report [*T2022/2368 refers*], we enclose Project Korimako completion documents for your signature. We require shareholding Ministers' signatures to those documents by 12.00pm on **Monday 21 November 2022** to prepare for a timely incorporation of KGC and its acquisition of KGH shares.
3. The enclosed documents are:
 - a Letter appointing David McLean as KGC director – *signed by Minister of Finance*
 - b Letter appointing Sir Brian Roche as KGC director – *signed by Minister of Finance*
 - c Companies Office shareholder consent form, consenting to be KGC shareholder – *signed by Minister of Finance*
 - d Companies Office shareholder consent form, consenting to be KGC shareholder – *signed by acting Minister for State Owned Enterprises*
 - e 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 – *signed by Minister of Finance and acting Minister for State Owned Enterprises*
 - f Nominated purchaser notice, in which shareholding Ministers effect KGC's nomination as purchaser under the Project Korimako SPA – *signed by Minister of Finance and acting Minister for State Owned Enterprises*
 - g Subscription agreement, as discussed in our previous report [*T2022/2368 refers*] – *signed by Minister of Finance and acting Minister for State Owned Enterprises*, and
 - h Shareholder resolutions, in which shareholding Ministers consent to KGC entering into the proposed transactions – *signed by Minister of Finance and acting Minister for State Owned Enterprises*.
4. We request that you sign, but **do not date**, these documents. These documents will not take effect unless and until APH and Cabinet have approved the appointment of the proposed KGC directors (expected to take place on 21 November 2022). The Treasury, and the Crown's external legal advisors MinterEllisonRuddWatts, will hold these signatures to your order, and only date and release them if/when the Crown director appointment process is complete.

Adding KGC to Schedule 4A of the Public Finance Act 1989

5. On 4 July 2022 Cabinet approved KGC's addition to Schedule 4A of the Public Finance Act 1989 (PFA) [*DEV-22-MIN-0146 and CAB-22-MIN-0250 refers*]. On 31 October 2022 Cabinet subsequently approved that sections 161 to 165 of the Crown Entities Act 2004 should not apply to KGC [*DEV-22-MIN-0245 and CAB-22-MIN-0466 refers*].
6. Section 3AB(1)(a) of the PFA provides that the Minister of Finance can recommend that an Order in Council be made to amend Schedule 4A to add the name of a company that meets the criteria in s 3AB(1)(a)(i)-(iii). Once KGC is incorporated, it will meet the criteria prescribed by that section. KGC's incorporation is planned for around Tuesday 22 November 2022.
7. The draft Cabinet paper is attached. We recommend you submit the paper to Cabinet Office by 10am on **Wednesday 30 November 2022** (before the end of the transfer of the Minister for State Owned Enterprises role), for consideration at the LEG Committee meeting on Thursday 8 December 2022 and Cabinet on Monday 12 December 2022 or provide feedback as necessary.
8. The Cabinet Manual requires that regulations do not come into force until at least 28 days after they have been notified in the New Zealand Gazette unless a waiver is granted by Cabinet. We advise seeking a waiver of the 28-day rule on the grounds that the Order has little or no effect on the public and that the establishment of KGC has already been well publicised, including through the Minister of Finance's announcement on KGC's proposed acquisition of KGH.

Next steps

9. We expect to provide you with a draft letter of expectations for KGC prior to completion for your consideration and feedback.
10. We are planning to incorporate KGC on 22 November. Project Korimako is expected to complete on 30 November 2022, subject to the Reserve Bank of New Zealand consent.

Recommended Action

We recommend that you:

- a **sign, but do not date**, the enclosed Project Korimako completion documents

Agree/disagree.
Minister of Finance

Agree/disagree.
Acting Minister for State Owned Enterprises

- b **authorise** Treasury and MinterEllisonRuddWatts to date and release the documents, subject to APH and Cabinet having approved the appointment of the proposed KGC directors

Agree/disagree.
Minister of Finance

Agree/disagree.
Acting Minister for State Owned Enterprises

- c **submit** the attached draft LEG paper to Cabinet Office by 10am on Wednesday 30 November 2022 for consideration at the LEG Committee meeting on Thursday 8 December 2022 and Cabinet on Monday 12 December 2022

Agree/disagree.
Minister of Finance

Agree/disagree.
Acting Minister for State Owned Enterprises

- d **agree** to recommend that Cabinet waive the 28-day rule on the grounds that the Order has little or no effect on the public and that the establishment of KGC has already been well publicised.

Agree/disagree.
Minister of Finance

Agree/disagree.
Acting Minister for State Owned Enterprises

David Stanley
Acting Manager, Commercial and Institutional Performance

Hon Grant Robertson
Minister of Finance

_____/_____/_____

Hon David Parker
Acting Minister for State Owned Enterprises

_____/_____/_____