

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.

Hon Grant Robertson

MP for Wellington Central

Deputy Prime Minister

Minister of Finance

Minister for Infrastructure

Minister for Sport and Recreation



22 November 2022

Sir Brian Roche

[23]

Dear Sir Brian

I have pleasure in formally appointing you as a director of Kiwi Group Capital Ltd for a period from 22 November 2022 up to 31 October 2025.

I should point out that you will hold office at the pleasure of shareholding Ministers, and that you may be removed as a director at any time, and for any reason, by written notice by shareholding Ministers to the company.

Kiwi Group Capital Ltd is a Crown-owned company which is incorporated under the Companies Act 1993 and is listed on Schedule 4 of the Public Finance Act 1989. The appointment is made on the basis that you:

- have consented in writing to be a director
- are not disqualified from being appointed, or holding office as, a director of a Crown-owned company
- have disclosed the nature and extent of the interests that you have, or are likely to have, in matters relating to the company.

If at any time after your appointment you become disqualified from holding office as a director, you must inform the shareholders immediately. A list of the persons who are disqualified from holding office as a board member is set out in Section 30 of the Crown Entities Act 2004. The appointment is also subject to the satisfactory completion of background checks.

You will be aware that responsibilities placed upon directors have increased in recent years and are still subject to significant change from time to time. If you have not already done so, I strongly recommend that you make yourself familiar with the legal rights and obligations of directors. I also expect you to familiarise yourself with the contents of the Owners Expectations Manual (OEM). The manual and related updates are at:

<https://treasury.govt.nz/publications/guide/owners-expectations-manual>. The OEM outlines shareholding Ministers' expectations of the companies fully or partially owned by the Crown. A key element of your obligation as a director is the need for confidentiality with regard to the board and board committee discussions.

Schedule 1 to this letter sets out the shareholders' expectations in regard to the avoidance of conflict of interest situations by directors on Crown entity company boards.

I expect that on taking up this appointment you will ensure that you are appropriately indemnified and insured by the company, which may require a new board resolution and certificate. You could discuss this with the company's management. You are also welcome to take out additional insurance at your own cost if you wish.

It is also possible that you may be placed in a situation where, as a result of circumstances which are not related to your directorship of this particular company, your continuing to act as a director of this company might nevertheless place this company or the shareholders in a difficult or embarrassing position. Consistent with your primary duty to act in the best interests of the company, if you find yourself in such a situation you must take the initiative and raise the matter with your chair or me, if appropriate, in line with a 'no surprises approach'. While there are no set criteria for such situations, examples of the types of issues the shareholders would expect to be advised on include:

- where legal proceedings have been, or are likely to be, brought against the director
- where the director has been, or is likely to be, subject to negative media or public scrutiny
- where the director is placed in a situation of actual or perceived conflict of interest
- any issue affecting the director's ability to contribute to the board (for example, as a result of other time pressures, extended overseas travel (ie more than two months), illness, etc)
- where the director is appointed to any position as an employee of the Crown, or intends to undertake significant contract work for any Crown agency
- any other similar circumstance which may place the company or the shareholders in a difficult or embarrassing position.

Ministers accord board, chair and director performance a high priority in ensuring that shareholder expectations are being met. As a director of Kiwi Group Capital Ltd you are expected to have your performance evaluated in a manner intended to guide you in being a successful, contributing director of the board. These evaluations are conducted, as a minimum, on an annual basis.

Your induction to the company is the responsibility of the chair and the company's management, and they will discuss this directly with you.

I congratulate you on this appointment and look forward to your contribution. I would be grateful if you could sign the enclosed form acknowledging this appointment and return it to me via the email address provided.

Yours sincerely



Hon Grant Robertson
Minister of Finance
On behalf of shareholding Ministers

Enc:

Crown Company Directors Management of Conflicts of Interest - Schedule 1
Declaration & Agreement to Accept Appointment

cc: Kiwi Group Capital Limited, Level 9, 20 Customhouse Quay, Wellington 6011

Crown Company Directors Management of Conflicts of Interest - Schedule 1

It is necessary that new appointees to Crown entity company boards be advised of the expectations of the Minister with regard to the management of conflicts of interest that may arise in the course of their term.

Directors occupy a fiduciary position, which requires them to act bona fide in what the director considers is in the best interests of the company. Accordingly, directors are required not to place themselves in a position of a conflict of interest other than to the extent allowed under the Companies Act 1993 and the company's constitution.

It is expected that all directors make themselves familiar with the obligations required of a director in terms of the Companies Act 1993. Nothing in this statement obviates any director responsibility in this regard. However, it is important that appointees are aware of the additional expectations of the Minister with regards to conflicts of interests.

The Minister expects that no director on the board of a Crown entity company or subsidiaries will undertake work for the company. This expectation is not intended to preclude a director from undertaking assignments for the board which properly fall within the definition of a director's duties, but would preclude the director carrying out, say, a consulting assignment for the management of the company.

The Minister also expects that directors of Crown entity companies should not be placed in a conflict of interest through the involvement of an organisation with which the director has an ongoing substantial commercial or professional interest or employment, with a Crown entity company of which they are a director. Two situations that could create a conflict of interest where Crown entity companies engage organisations in which directors have such an interest are:

1. Where the organisation has been engaged for a one-off, specific assignment
2. Where the organisation engaged has an on-going involvement with the Crown entity company.

With regard to the first situation, the Minister considers that, provided the concerned director declares his/her interest in the organisation to be engaged for the assignment and takes the appropriate actions under the Companies Act 1993 and the company's constitution (eg refraining from voting), it is unlikely that the organisation need be excluded from undertaking the assignment. To exclude the organisation could unduly penalise organisations from competing for business, especially when they are in highly specialised areas.

However, the board of the company will also need to consider whether the affected director should be party to the service to be provided by his/her organisation to the company. The Minister expects a director in this situation to distance themselves from the provision of service or advice although, in a highly specialised sector, this may not always be possible. The company's board should give careful consideration to a director's involvement in deliberations on the assignment.

The second situation referred to above causes the Minister greater concern, ie where the organisation engaged has an on-going involvement with the company.

The situation can arise from the company engaging, say, legal, accounting or other professional advice or services. Many of these firms are sources for a large number of directors and the potential for conflicts of interest is high.

In principle, the conflict of interest provisions in the Companies Act 1993 and the company's constitution should provide adequate direction against allegations of conflicts of interest, but the Minister has additional concerns that those provisions do not entirely remedy the situation. A director who frequently stands aside from board decision-making places a greater burden on the remainder of the board. This can also deny the board the skills and experience of a director, which is not (generally speaking) in the best interests of the company. There is also potential for the Minister and boards to be significantly distracted by allegations of conflicts. The need to address each allegation can be time-consuming.

Accordingly, the Minister wishes to convey to all directors that the company should not engage in an on-going arrangement with an organisation in which a director has an interest of the nature outlined in this letter.

The Minister is of the view that Crown entity companies should be beyond reproach. Following the expectations of the Minister described in this statement should ensure that this is so. In the event that exceptions to these measures appear appropriate, they should be referred to the Minister.

Declaration & Agreement to Accept Appointment

22 November 2022

Hon Grant Robertson
Minister of Finance
PARLIAMENT BUILDINGS
WELLINGTON 6160

Dear Minister

I acknowledge receipt of your letter appointing me as a director of Kiwi Group Capital Ltd for a period from 22 November 2022 up to 31 October 2025.

I accept that I will hold office at the pleasure of shareholding Ministers, and that I may be removed as a director at any time, and for any reason, by written notice by shareholding Ministers to the company.

I will ensure that I keep myself fully familiar with the obligations and responsibilities of the position and ensure that the company has taken any necessary steps to arrange for an indemnity and/or insurance for me in my position as a director.

I undertake to advise you, via Treasury, of any change in my circumstances that may have an impact on my ability to continue to serve on the board.

Yours sincerely

[23]

Sir Brian Joseph ROCHE

Date:

Return via appointments@treasury.govt.nz