



**MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT**  
HĪKINA WHAKATUTUKI



**Nga Haerenga, the New Zealand Cycle Trail**

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# **Maintaining the Quality of Great Rides Fund**

**Guidelines for Applicants**  
**Version 2.2 February 2017**

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# Maintaining the Quality of Great Rides Fund Guidelines for Applicants Version 2.2

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## Legal disclaimer

The information provided on or through these guidelines (“the information”) is intended to provide general guidance to the public and every effort has been taken to ensure that the information provided is accurate and current. However, users of these guidelines are advised that:

- the information provided does not replace or alter the laws of New Zealand and other official guidelines or requirements
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MBIE has sole discretion to determine which proposed projects (if any) will receive funding for maintaining the quality of Great Rides.

# Maintaining the Quality of Great Rides Fund (MGR) Guidelines for Applicants

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# 1. Glossary

<i>Term</i>	<i>Definition</i>
<b>Applicant/s</b>	One or more of the governance organisations with delegated responsibility for a Great Ride as part of Nga Haerenga, the New Zealand Cycle Trail (NZCT).
<b>Assessment Panel</b>	Comprised of persons with experience in Nga Haerenga, the New Zealand Cycle Trail. The Assessment Panel assesses, and makes decisions about proposals; advises the Chief Executive of MBIE as to which applicants should receive funding to maintain the quality of Great Rides; and, once projects are underway, assists with the monitoring and review of these projects.
<b>Co-funder</b>	One or more organisations or other parties that have entered into a formal contractual agreement with the applicant to fund project work on a Great Ride.
<b>Extreme Event</b>	<p>Means a rare extreme occurrence where an event has significant implications that close the trail or section(s) of the trail e.g. extreme storm damage, single-event vandalism, fire, and severe flooding etc.</p> <p>Applications for funding to repair damage to a trail caused by an Extreme Event can be submitted at any time</p>
<b>Great Ride</b>	A cycle trail included in the NZCT network as approved by MBIE or NZCT Inc. and provided with Great Ride status as a full member of NZCT Inc. This includes complying with all NZCT Inc. membership requirements such as payment of membership fees, provision of trail counter data and completion of trail Warrant of Fitness (WOF).
<b>Master Track Builder</b>	A track builder who is recognised by MBIE and NZCT Inc. as having adequate experience in designing and building cycle trails to NZCT Design Guide standards.
<b>MBIE</b>	Abbreviation for the Ministry of Business, Innovation and Employment. MBIE administers the fund for maintaining the quality of Great Rides and provides resource to support the Assessment Panel. The Chief Executive of MBIE makes final decisions as to which projects will receive funding. Provides the first point of contact for enquiries about the funding. Contactable by emailing: <a href="mailto:MGRFund@mbie.govt.nz">MGRFund@mbie.govt.nz</a>
<b>MGR</b>	Maintaining the Quality of Great Rides Fund
<b>Project</b>	Encompasses all activities, steps, tasks or elements for which an applicant is seeking funding.
<b>Proposal</b>	A description of a proposed project developed by an applicant for assessment by the Assessment Panel to decide whether it should be funded.
<b>NZCT</b>	Nga Haerenga, the New Zealand Cycle Trail.
<b>NZCT Design Guide</b>	Located at <a href="http://nzcycletrail.com/public-resources/">http://nzcycletrail.com/public-resources/</a>

<b>NZCT Inc.</b>	Incorporated Society formed to take responsibility for the governance and management of Nga Haerenga, the New Zealand Cycle Trail.
<b>MBIE website</b>	Located at: <a href="http://www.mbie.govt.nz/info-services/sectors-industries/tourism/nga-haerenga-new-zealand-cycle-trail">http://www.mbie.govt.nz/info-services/sectors-industries/tourism/nga-haerenga-new-zealand-cycle-trail</a>
<b>Shovel ready</b>	A project that is ready for construction and has obtained all the required land access and resource consent permissions.

## 2. How to use this document

This document provides guidance on the process for applying for funding to maintain the quality of Great Rides (MGR) and the eligibility and assessment criteria that will be used to determine which projects will be approved for MGR investment.

These guidelines are subject to revision. Please ensure you have a copy of the latest version of these guidelines, which will be available on the MBIE website at <http://www.mbie.govt.nz/info-services/sectors-industries/tourism/nga-haerenga-new-zealand-cycle-trail>

It is recommended that applicants make use of these guidelines when completing the *MGR Application Form*.

## 3. Overview

### 3.1 Purpose and context

The purpose of the MGR is to provide funding assistance to Great Ride governance organisations to maintain and enhance the quality of Great Rides.

In April 2009, the Government allocated \$50 million to implement cycle trails throughout New Zealand, to be known as the NZCT project. In addition to this funding, \$30 million of co-funding was secured from regional stakeholders towards the construction of these cycle trails.

The primary objectives of the NZCT are:

- To create jobs through the design, construction and maintenance of the cycle network
- To create a high-quality tourism asset which will enhance New Zealand's competitiveness as a tourism destination and provide on-going employment and economic development opportunities for regional economies
- To maximise the range of complementary benefits that the cycle network provides to a wide range of New Zealanders. This includes events, recreational, health and other benefits.

Nineteen trails have been funded through this project, and a further four trails have received approval or approval in principle to join the NZCT network. Each of these trails is called a "Great Ride", recognising that they are premier rides, predominately off-road, that showcase the best of New Zealand, including our landscapes, our environment and our culture and heritage.

One of Government's main objectives was that the Great Rides would be a high-quality tourism asset. There is a risk this objective will be compromised where the providers of the Great Rides are unable to maintain their trails to the expected quality standard.

In February 2014 the Government agreed to establish a contestable fund of \$8 million over four years for the purpose of maintaining and enhancing the Great Rides of NZCT.

In May 2016, Prime Minister John Key announced an additional \$25 million over four years in Budget 2016 for the next phase of the New Zealand Cycle Trail. The new funding will enable the enhancement and extension of Great Rides and also the development of cycle-safe connections that will enable cyclists to cycle even more safely between some of the Great Rides. Further details of the funding are available on the MBIE website.

### **3.2 Scope**

The MGR is open to proposals from Great Rides that are part of NZCT and that are full members of NZCT Inc.

The focus of the fund is to refine, improve and maintain completed sections of the Great Rides. Funding is only available for projects on sections of trail that are open and hold approved Great Ride status. Applications should be for well-defined projects with tight timeframes that can be delivered within agreed deadlines. Applications should therefore be 'shovel ready' and not in the planning process. In addition, the fund is not intended for normal day-to-day maintenance. There has always been a clear contractual obligation of the NZCT project that organisations responsible for Great Rides are responsible for day-to-day maintenance of their trails to Great Ride standards.

### **3.3 Contestability**

The MGR is a contestable fund. To attract MGR funding, applicants must satisfy the MGR eligibility and assessment criteria (refer section 4) and be ranked highly compared to other projects seeking funding. The primary contestability test will be at the proposal assessment stage (refer Figure 1, section 6).

### **3.4 Funding levels for projects**

The maximum level of MGR funding available for a proposal is \$300,000. There is no upper limit on the level of co-funding.

The minimum level for MGR co-funding available for a proposal is \$10,000, i.e. the minimum total cost of the application is \$20,000.

MBIE has sole discretion to determine which proposal (if any) will receive MGR funding and the value of any MGR funding.

### **3.5 Co-funding**

MGR projects will be jointly funded by MBIE and the Great Ride governance organisations. Matched funding of at least 50 per cent from applicants is required, except in exceptional unforeseen and unavoidable circumstances:

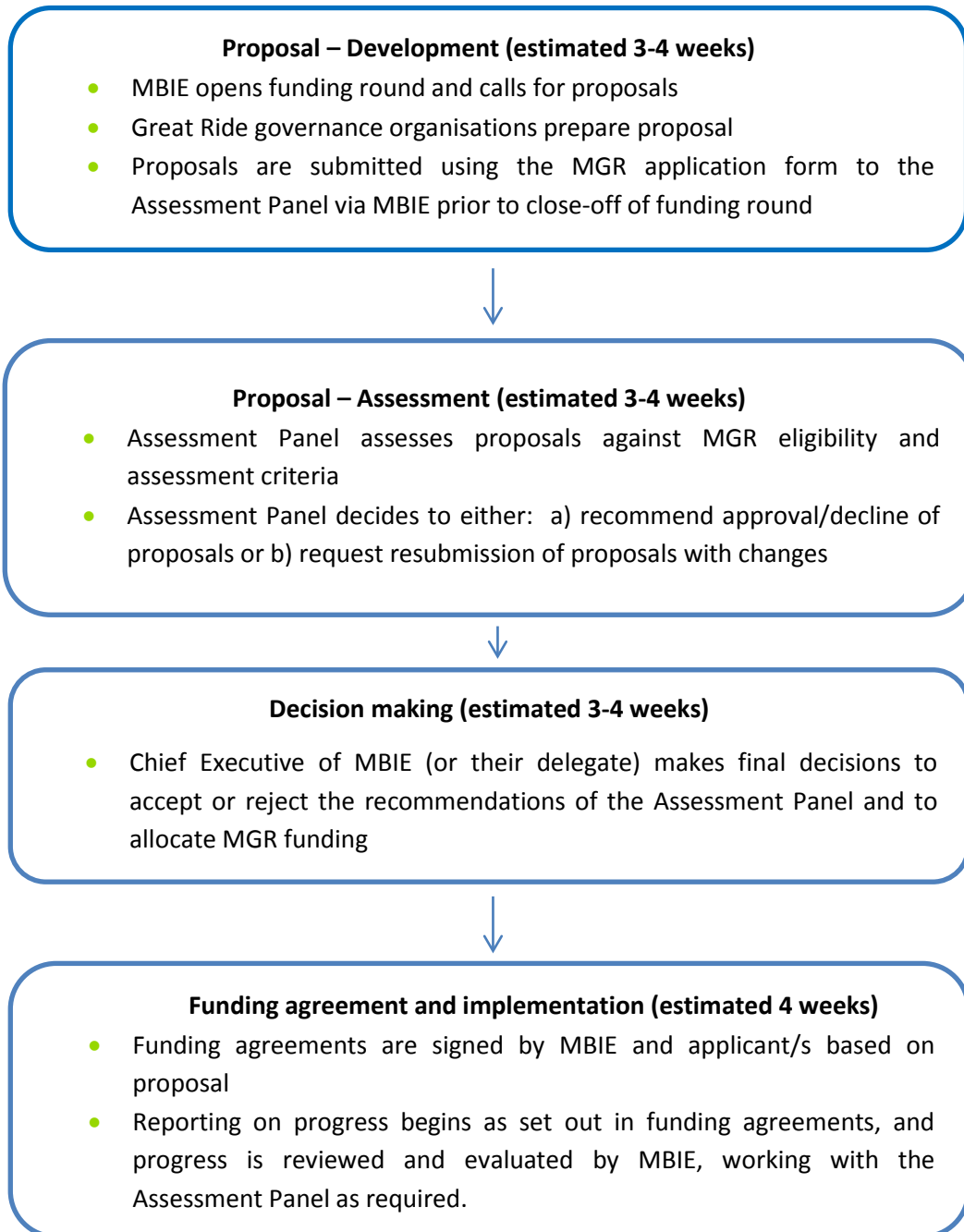
- co-funding should be monetary, however, at the discretion of the panel, where a trail governance organisation can demonstrate that they do not have recourse to sufficient monetary funding, in-kind funding of up to 25 per cent of the total application's costs may be considered as contributing to co-funding
- matched funding may be waived in very limited circumstances where immediate or time-limited action is required due to extreme events (e.g. storm damage, fire, single-event vandalism, and flooding).

### **3.6 Who is eligible to be a co-funder?**

While we anticipate that proposals will be submitted by Great Ride governance organisations, co-funding can include contributions from organisations such as local government, individual businesses, and Trusts. Other central government funding does not qualify as co-funding.

### 3.7 The MGR Process

The steps in the process of securing MGR funding in any funding round are as follows:



### 3.8 Key parties

Applicants will work with several parties during the process of applying for MGR funding.

#### 3.8.1 MBIE MGR Administrator

The MGR Administrator within MBIE administers the MGR and provides assistance to the Assessment Panel and the Chief Executive of MBIE.



The Administrator should be the first point of contact for applicants with queries. The Administrator can:

- help with information on dates and deadlines
- help with information on the purpose and objectives of the MGR; the MGR eligibility and assessment criteria; and the application, assessment and approval processes
- act as a central co-ordination and communication point for applicants.

The Administrator will not coach applicants on the content of their proposals. As the Chief Executive of MBIE makes the decisions on which projects will receive MGR funding, the Administrator needs to avoid conflicts of interest and maintain independence.

The Administrator can be contacted by sending an email to: [MGRFund@mbie.govt.nz](mailto:MGRFund@mbie.govt.nz)

### **3.8.2 Assessment Panel**

The Assessment Panel will consider proposals for MGR funding. The Assessment Panel will make recommendations for funding to the Chief Executive of MBIE (or their delegate). The Assessment Panel will be appointed by MBIE, and will include the Chair of NZCT Inc. (or their representative), a cycle trail technical expert, and a representative from each of the following government agencies: Department of Conservation; NZ Transport Agency; and MBIE. The Chair of NZCT Inc. will be appointed as the Chair of the Assessment Panel.

Once projects have been approved for MGR funding and funding agreements signed, the Assessment Panel will provide advice to MBIE on assessing progress in achieving project milestones and any proposed changes to funding agreements.

### **3.8.3 Limitation of advice**

All information or advice given by any of these parties about the content of proposals does not commit MBIE to make a particular decision about a proposal. Proposals will be fully assessed by the Panel in accordance with MGR criteria and processes.

This limitation extends to members of the Assessment Panel. Decisions made and advice formulated by the Assessment Panel in its formal sessions, and any views expressed by individual members of the Assessment Panel outside of these, do not commit the Assessment Panel to make any recommendations to the Chief Executive of MBIE regarding the allocation of MGR funds.

MBIE has sole discretion to determine which proposed projects (if any) will receive MGR funding.

## **4. MGR Eligibility and Assessment Criteria**

### **4.1 Eligibility criteria**

To be eligible for co-funding under the MGR, proposals will need to satisfy the following requirements:

- a. applicants must be a full member of NZCT Inc. i.e. a Great Ride
- b. funding is only available for work on sections of trail that have Great Ride status, and have been approved for opening by either MBIE or NZCT Inc.
- c. funding cannot be used to extend Great Rides beyond their approved start and/or end points, as approved by either MBIE or NZCT Inc.
- d. funding cannot be used for costs associated with land access or resource consent processes
- e. the maximum level of government funding available for an application is \$300,000 (Note: there is no upper limit on the level of co-funding)
- f. the minimum level for government co-funding available for an application is \$10,000 (i.e. the minimum total cost of the application is \$20,000)
- g. other central government funding does not qualify as co-funding
- h. Great Rides will not be eligible for more than two successful funding applications per year.

### **4.2 Assessment criteria**

It is not possible to identify all possible situations in which applications for funding might be made. As such, allowing for some discretion is important to enable informed judgements on assessments of funding applications.

Therefore, in addition to the eligibility criteria, assessment guidelines have been developed to help the Assessment Panel make recommendations to the Chief Executive of MBIE (or their delegate) on who should receive funding. The criteria below provide matters the Assessment Panel should take into account to help guide its discretionary assessment of applications for funding.

- a) Matched funding of at least 50 per cent from applicants is required, except in exceptional unforeseen and unavoidable circumstances:
  - i. co-funding should be monetary, however, at the discretion of the panel, where a trail governance organisation can demonstrate that they do not have recourse to sufficient monetary funding, in-kind funding of up to 25 per

- cent of the total application's costs may be considered as contributing to co-funding
- ii. matched funding may be waived in very limited circumstances where immediate or time-limited action is required due to extreme events (e.g. storm damage, fire, single-event vandalism, and flooding).
- b) Priority may be given to proposals that improve the safety and/or the quality of the trail for users (Note: this includes work to fix issues raised in any trail inspection reports provided by MBIE or NZCT Inc. and work that helps trails address issues that do not meet NZCT Design Guide criteria).
  - c) First time applicants may be given preference over repeat applicants.
  - d) It is expected that successful projects will take no more than six months to complete.
  - e) Applicants must have completed all previous funding agreements with MBIE for construction of a Great Ride (except in exceptional circumstances, e.g. where the application is for funding to repair damage caused by extreme events).
  - f) Applicants must be able to demonstrate that they have taken reasonable steps to access all other avenues for funding. It is not the intent of the fund to 'crowd out' local funding.

## **5. Proposal Development**

### **5.1 MBIE calls for proposals**

There are likely to be two funding rounds in each financial year, one in August and one in February. MBIE will open a funding round and call for proposals.

When a round is opened, it will be announced on the MBIE website and an email will be sent to Great Ride Governance organisations and parties that have requested MGR notifications.

### **5.2 Preparing proposals**

To apply for MGR funding, applicants will need to develop proposals. The proposal is a description of a proposed project for assessment by the Assessment Panel

The information that will need to be provided is set out in the MGR application form, available on the MBIE website. This documentation must be completed when proposals are submitted to MBIE. The proposal form has been designed to minimise compliance costs for applicants, whilst still giving applicants sufficient opportunity to demonstrate how they will meet the MGR eligibility and assessment criteria.

### **5.3 Submitting the proposal**

When applicants are ready to submit their proposals, they should ensure they have read and fully understand the MGR eligibility and assessment criteria, these guidelines and other fund information on the MBIE website, and that they have completed the MGR Proposal Form to the best of their ability.

All proposals must be submitted to the MGR Fund Administrator using the MGR Application Form on the MBIE website. Any proposal received by MBIE that does not use the proposal form will be returned to the applicant.

#### **5.4 Out-of-round applications for Extreme Events**

There is scope within the MGR process to assess out-of-round applications for funding that relate to repairing trail damage caused by extreme events, such as storm damage, single-event vandalism, fire, and flooding.

As with standard funding round applications, all proposals must be submitted to the MGR Fund Administrator using the MGR Application Form on the MBIE website. Any proposal received by MBIE that does not use the proposal form will be returned to the applicant.

### **6. Assessment Process**

The Assessment Panel will assess all completed proposals that are submitted within the timeframe set for funding rounds. The Assessment Panel will then provide recommendations to the Chief Executive of MBIE (or their delegate), who decides which projects will receive MGR funding and approve funding agreements.

Proposals must satisfy eligibility requirements and will be considered against assessment criteria. The eligibility and assessment criteria, and the guidelines used by the Assessment Panel to apply them, are set out in section 4.

When assessing applications, the Assessment Panel will take into account:

- how well it performed against the assessment criteria
- how well it performed compared to other proposals submitted
- the total amount of MGR funding available (taking into account the amount of MGR funding already committed to, or held in reserve, for other projects)
- matters that a prudent investor could be expected to take into account, such as the capability or experience of the co-funder/s.

The Assessment Panel has developed the following Prioritisation Pyramid (figure 1) to help them assess and prioritise proposals.

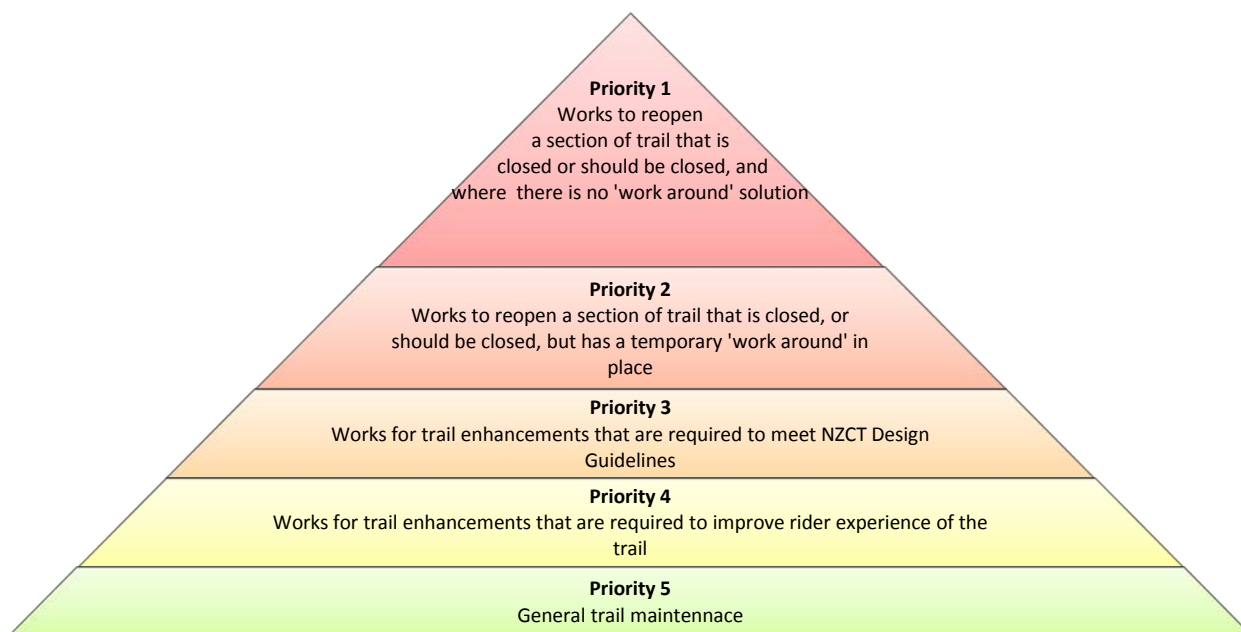


Figure 1 Prioritisation pyramid for assessing applications to the MGR Fund

## 6.1 Assessment Panel Decisions on proposals

The Assessment Panel may make one of three decisions about proposals. In all cases, the Assessment Panel will provide the applicants with feedback on the reason for its decisions. The decisions that the Assessment Panel will take about proposals will be one of the following:

- **Approval.** The Assessment Panel will approve a proposal and make a recommendation for funding to the Chief Executive of MBIE (or their delegate) if it satisfies the eligibility criteria; there is sufficient funding (MGR and co-funder/s') available to ensure it can be successfully implemented; and the Assessment Panel considers it is of sufficient merit when assessed against criteria (including in comparison to other proposals under consideration).
- **Request resubmission:** The Assessment Panel will request resubmission of a proposal for reconsideration if it considers a proposal has potential but requires further work or information. When the Assessment Panel requests resubmission, it will:
  - provide guidance on what additional information or changes are required prior to resubmission
  - at its discretion, make suggestions for amendments or enhancements to the proposal.
  - If an applicant is asked to resubmit a proposal, this does not guarantee that their proposal will be subsequently approved, even if the suggested changes are made. Resubmission may also result in a proposal being considered in a later MGR funding round.
- **Decline:** The Assessment Panel will recommend that a proposal be declined if it determines that it fails to meet the eligibility requirements; and/or insufficient funding (MGR or co-funder/s') is available to enable it to be undertaken with success; and/or a proposal is of insufficient merit (including in comparison to other proposals under

consideration). A decision to decline a proposal does not preclude an applicant from submitting a similar or different proposal in future funding rounds.

Regardless of whether or not the Assessment Panel has requested resubmission, an applicant can reapply in a future round for funding for the same project, provided they have addressed any concerns previously outlined by the Assessment Panel or MBIE staff.

## 7. Final Decision

After the Assessment Panel has assessed a proposal and made a recommendation to the Chief Executive of MBIE (or their delegate), the proposal and the recommendation are considered by the Chief Executive of MBIE (or their delegate), who decides whether to accept or reject the Assessment Panel's recommendation. A recommendation by the Assessment Panel does not in any way commit the Chief Executive of MBIE (or their delegate) to a particular decision.

Applicants will then be advised of the final decision by the Chief Executive of MBIE (or their delegate), which will have one of two outcomes:

- **Approval for MGR funding:** If a proposal is approved, applicants will be asked to finalise and sign a funding agreement with MBIE.
- **Decline for MGR funding:** If a proposal is declined, applicants will be provided with feedback outlining the reasons for the decline.

## 8. The Funding Agreement

### 8.1 The funding agreement between MBIE and the applicant

Once a proposal has been approved, MBIE and the applicant will enter into a funding agreement that commits the applicant to implement the project. The funding agreement will detail the obligations on the applicant for the duration of the project, which must be met in order to receive funding from the MGR.

All funding agreements will comprise MBIE's standard terms and conditions (see example attached as Schedule 1); and details of the individual project being funded, including (but not limited to): any conditions that must be met as required by MBIE, the total funding package (funds supplied by applicant and the MGR), project tasks, targets and measures, payment terms, reporting requirements, and the duration of the funding agreement.

Some specific information relating to the funding agreement is detailed below.

### 8.2 Monitoring – Reporting and audit requirements

MBIE will monitor the implementation of the project by the applicant and the application of the funds provided from the MGR, with the assistance of any other person that MBIE chooses to use for this purpose at its discretion. Among other things, successful applicants will be required to provide regular progress reports to MBIE.

### **8.3 Final approval of completed works**

MBIE will require that completed projects are signed off by a Master Track Builder confirming that the works have been completed to NZCT Design Guidelines. For the purposes of the MGR fund, a Master Track Builder is defined as a track builder who is recognised by MBIE and NZCT Inc. as having adequate experience in designing and building cycle trails to NZCT Design Guide standards. Applicants may consider obtaining input from a Master Track Builder during the project design stage.

### **8.4 Funding payments**

Funding will be paid on the completion of the agreed components of the project to MBIE's satisfaction. Applicants (who have entered into a funding agreement) must submit claims to MBIE against funding awarded, as detailed in the funding agreement. In all but exceptional circumstances, payment of funding will be in arrears on receipt of proof of expenditure in accordance with the funding agreement.

### **8.5 Conflicts of interest and procurement processes**

Throughout the duration of the funding agreement, conflicts of interest can arise. Applicants must disclose any conflict of interest (real or perceived) to MBIE, as and when it arises, for the duration of the funding agreement. If in doubt, applicants must disclose the situation to MBIE.

Examples of conflicts of interest include: financial interest in the supply of goods or services; any friends or relatives with a financial interest in the supply of goods or services; and any personal bias, inclination, personal obligation, allegiance or loyalty that could affect the impartiality (or perceived impartiality) of decisions or actions.

Applicants must ensure that fair and appropriate procurement processes are used in order to ensure value for money and to manage conflicts of interest. For example, when appointing a third party to undertake project tasks, the appointment process should be open and transparent. Applicants should keep adequate records on how third parties are selected to deliver the goods or services, why they are qualified to deliver these, and how the price was agreed. The funding agreement may require particular procurement processes to be followed.

Applicants should be aware that MBIE may audit the records of the applicants relevant to the funding agreement at any time, as per the standard terms and conditions of the funding agreements. Applicants must maintain true and accurate records in connection with the use of the funding and retain those records for at least seven years after the expiry of the relevant funding agreement or final funding agreement.

If the funding has been misused or misappropriated by the applicant, MBIE may terminate the funding agreement and, without limiting MBIE's other rights and remedies (which are expressly reserved), may also require the applicant to refund all funding paid up to the date of termination, together with interest at the rate of 10% per annum from the date the applicants were paid the money to the date the applicants return the money.

## **8.6 Media releases and press statements**

Co-funders are advised to obtain MBIE's prior written approval to the form and content of any public statement that they wish to make relating to their proposals or projects. Failure to obtain MBIE's prior written approval may impact on funding decisions made by MBIE.

## **9. General information**

### **9.1 Commercial-in-Confidence nature of MGR material**

All information collected and held during the MGR process will be held in the strictest confidence. This information will include:

- the identity of entities engaging with the MGR and related parties at any stage prior to a contract being signed
- information provided to or by MBIE and the Assessment Panel prior to proposals being submitted
- proposals
- working papers
- material used to comment on and assess proposals.

#### **9.1.1 Publication of decisions**

MBIE may make public all MGR applicants, including who the applicants are, the amounts invested, and a brief description of each project, following the approval of the project by the Chief Executive or following the signing of a funding agreement. The content and method of publication will be agreed with each applicant.

### **9.2 Assessment Panel and conflicts of interest**

The Assessment Panel operates a robust conflict of interest policy under which conflicts of interest are declared and managed.

If applicants consider there are any conflicts of interest relating to their interests and/or their applications and members of the Assessment Panel, they are advised to contact the MGR Administrator who will determine how to manage the matter, following a discussion with the Chair of the Assessment Panel.

### **9.3 Official Information Act**

MBIE is bound by the Official Information Act 1982 (OIA) and subject to other public law obligations. Accordingly, while the information provided by applicants is intended to be held in the strictest confidence, the information that MBIE holds can be requested by third parties and MBIE must provide information as required to do so by law.

The OIA does enable MBIE to withhold information under certain conditions. Where possible, MBIE will consult with the relevant applicant when it receives an OIA request.



## **9.4 Declaration**

As part of the MGR process, applicants will be required to sign and submit declarations to confirm that the information they provide is accurate and to acknowledge that they have read and understood these guidelines, including the information relating to obligations under the Official Information Act.

## **9.5 Due diligence**

Before entering contracts, MBIE may undertake due diligence checks on applicants as needed to meet government requirements. Signing and submitting the proposal form is considered consent to these checks taking place.

## **9.6 Financial matters**

### **9.6.1 GST**

All amounts included in proposals should be GST exclusive. The funding figures cited in this document are GST exclusive.

### **9.6.2 Tax advice**

MBIE does not provide tax advice. If needed, applicants should seek advice from tax specialists about how any funding granted may affect their tax positions.

# Schedule 1: MBIE Sample Funding Agreement Standard Terms and Conditions

See below for an example of a MBIE funding agreement.

(N.B. the “Details” will differ according to the individual project being funded. “Details” are not included in this example).

## 1. Interpretation

1.1 In this Agreement, the following terms have the following meanings:

“**Agreement**” means this agreement, including Schedule 1 and this Schedule 2;

“**Business Day**” means any day not being a Saturday or Sunday or public holiday within the meaning of section 44 of the Holidays Act 2003;

“**Commencement Date**” means the commencement date set out in the Details or, if no commencement date is set out, the date of this Agreement;

“**Committed**” means funding that has been spent with a third party or that the Recipient has contractually agreed to spend with a third party for the purpose of carrying out the Project and the Recipient, after using reasonable endeavours, is unable to secure a refund or release from its obligations to the third party in relation to that funding;

“**Completion Date**” has the meaning given in the Details;

“**Confidential Information**” means any information that is disclosed by the Ministry in connection with this Agreement and that the Ministry makes known is confidential or that would reasonably be expected to be confidential;

“**Details**” means Schedule 1;

“**Funding**” means the funding amount set out in the Details;

“**GST**” means goods and services tax within the meaning of the Goods and Services Tax Act 1985;

“**Intellectual Property Rights**” includes copyright and all rights conferred under statute, common law or equity in relation to inventions (including patents), registered or unregistered trade marks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity;

“**Parties**” means the Ministry and the Recipient;

“**Project**” means the project described in the Details;

“**Project Tasks**” means the project tasks (if any) set out in the Details which must be completed by the Recipient before a Funding payment is made by the Ministry; and

“**Uncommitted Funding**” means any Funding that is not Committed.

1.2 References to clauses and Schedules are to clauses and Schedules of this Agreement and references to persons include bodies corporate, unincorporated associations or partnerships.

1.3 The headings in this Agreement are for convenience only and have no legal effect.

1.4 The singular includes the plural and vice versa.

1.5 “Including” and similar words do not imply any limitation.

1.6 References to a statute include references to that statute as amended or replaced from time to time.

1.7 Monetary references are references to New Zealand currency, except where expressly stated otherwise.

1.8 If there is any conflict of meaning between the Details and Schedule 2, Schedule 2 will prevail, except where the Details expressly state otherwise.

## **2. Funding**

- 2.1 The Ministry must pay the Funding at the rate and in the manner set out in the Details. The Funding is the total amount payable by the Ministry for the Project.
- 2.2 The Recipient must use the Funding only to carry out the Project in accordance with this Agreement.
- 2.3 In consideration of the Funding, the Recipient must:
- (a) complete each Project Task (if any) by the relevant payment date set out in the Details;
  - (b) complete the Project to the Ministry's satisfaction by the Completion Date;
  - (c) carry out the Project in accordance with:
    - (i) the methodology (if any) set out in the Details;
    - (ii) the best currently accepted principles and practice applicable to the field(s) of expertise relating to the Project; and
    - (iii) all applicable laws, regulations, rules and professional codes of conduct or practice; and
  - (d) refund any unspent Funding to the Ministry within 10 Business Days of the Completion Date.
- 2.4 Where the total of the Funding under this Agreement and any other money received by the Recipient to carry out the Project exceeds the total cost of the Project, the Recipient must upon request refund to the Ministry the excess amount.

## **3. Term and Termination**

- 3.1 Subject to clauses 3.2 and 3.3, this Agreement will commence on the Commencement Date and expire when:
- (a) the final report is completed and provided to the Ministry; and
  - (b) the Project is completed,
- to the satisfaction of the Ministry.
- 3.2 The Ministry may terminate this Agreement at any time by giving at least 20 Business Days' notice to the Recipient. Without limiting this clause 3.2, the Ministry may give notice of termination if the Project has not been completed within any timeframe that is specified in this Agreement or in the Recipient's funding application documents or, where no such timeframe was specified, within a reasonable period from the date of this Agreement.
- 3.3 The Ministry may terminate this Agreement immediately by giving notice to the Recipient, if the Recipient:
- (a) is in breach of any of its obligations under this Agreement and that breach is not capable of being remedied;
  - (b) fails to remedy any breach of its obligations under this Agreement within 5 Business Days of receipt of notice of the breach from the Ministry;
  - (c) does or omits to do something, or any matter concerning the Recipient comes to the Ministry's attention, which in the Ministry's opinion may cause damage to the business or reputation of the Ministry or of the Government of New Zealand;
  - (d) has given or gives any information to the Ministry which is misleading or inaccurate in any material respect; or
  - (e) becomes insolvent, bankrupt or subject to any form of insolvency action or administration.
- 3.4 Termination of this Agreement is without prejudice to the rights and obligations of the Parties accrued up to and including the date of termination.
- 3.5 On termination of this Agreement:
- (a) the Ministry may require the Recipient to provide evidence of how the Funding has been spent;
  - (b) any Funding that has not yet been paid by the Ministry will not be paid;
  - (c) the Ministry may require the Recipient to refund to the Ministry:

- (i) any Uncommitted Funding; and/or
  - (ii) where this Agreement is terminated under clause 3.3, the proportion of the Funding that equates to the uncompleted part of the Project, as reasonably determined by the Ministry;
  - (d) if the Funding has been misused or misappropriated by the Recipient, the Ministry may also require the Recipient to refund all Funding paid up to the date of termination, together with interest at the rate of 10% per annum from the date the Recipient was paid the money to the date the Recipient returns the money.
- 3.6 The provisions of this Agreement relating to termination (clause 3), audit and record-keeping (clause 4.2(b), (c) and (d)), warranties (clause 5), intellectual property (clause 6), confidentiality (clause 7), and liability (clause 8) will continue after the expiry or termination of this Agreement.

#### **4. Reporting Requirements and Audit**

- 4.1 The Recipient must report on the progress of the Project to the Ministry:
- (a) as set out in the Details;
  - (b) as otherwise reasonably required by the Ministry; and
  - (c) in any format and on any medium reasonably required by the Ministry.
- 4.2 The Recipient must:
- (a) maintain true and accurate records in connection with the use of the Funding and the carrying out of the Project sufficient to enable the Ministry to meet its obligations under the Public Finance Act 1989 and retain such records for at least 7 years after termination or expiry of this Agreement;
  - (b) permit the Ministry, at the Ministry's expense, to inspect or audit (using an auditor nominated by the Ministry), from time to time until 7 years after termination or expiry of this Agreement, all records relevant to this Agreement;
  - (c) allow the Ministry reasonable access to the Recipient's premises or other premises where the Project is being carried out; and
  - (d) appoint a reputable firm of chartered accountants as auditors to audit its financial statements in relation to the use of the Funding;

#### **5. Warranties**

- 5.1 Each Party warrants to the other Party that it has full power and authority to enter into and perform its obligations under this Agreement which, when executed, will constitute binding obligations on it in accordance with this Agreement's terms.
- 5.2 The Recipient warrants that:
- (a) it is not insolvent or bankrupt and no action has been taken to initiate any form of insolvency or administration in relation to the Recipient;
  - (b) all information provided by it to the Ministry in connection with this Agreement (including any funding application, proposal, business plan or similar documents) was, at the time it was provided, true, complete and accurate in all material respects; and
  - (c) it is not aware of any material information that has not been disclosed to the Ministry which may, if disclosed, materially adversely affect the decision of the Ministry whether to provide the Funding.

#### **6. Intellectual Property**

- 6.1 All Intellectual Property Rights in the reports provided under clause 4.1 will be owned by the Ministry from the date the reports are created or developed.
- 6.2 All Intellectual Property Rights in any documentation produced by the Recipient or its employees or contractors and provided to the Ministry in relation to the Project is, on creation, jointly owned by the Ministry and the Recipient. Each Party may use (which includes modifying, developing, assigning, or licensing) such intellectual property without obtaining the prior

consent of the other Party. On request, the Recipient must provide to the Ministry such documentation in any format, and on any medium, reasonably requested by the Ministry.

6.3 Except as set out in clauses 6.1 and 6.2, the Ministry will not obtain any Intellectual Property Rights in relation to any intellectual property that is developed by the Recipient in the course of the Project.

6.4 The Recipient must ensure that material created or developed in connection with the Project does not infringe the Intellectual Property Rights of any person.

## **7. Confidentiality**

7.1 The Recipient must:

- (a) keep the Confidential Information confidential at all times;
- (b) not disclose any Confidential Information to any person other than its employees or contractors to whom disclosure is necessary for purposes of the Project or this Agreement;
- (c) effect and maintain adequate security measures to safeguard the Confidential Information from access or use by unauthorised persons; and
- (d) ensure that any employees or contractors to whom it discloses the Confidential information are aware of, and comply with, the provisions of this clause 7.

7.2 The obligations of confidentiality in clause 7.1 do not apply to any disclosure of Confidential Information:

- (a) to the extent that such disclosure is necessary for the purposes of completing the Project;
- (b) required by law; or
- (c) where the information has become public other than through a breach of the obligation of confidentiality in this clause 7 by the Recipient, or its employees or contractors, or was disclosed to a Party on a non-confidential basis by a third party.

7.3 The Recipient must obtain the Ministry's prior written agreement over the form and content of any public statement made by the Recipient relating to this Agreement, the Funding, or the Project.

## **8 Liability**

8.1 The Ministry is not liable for any loss of profit, loss of revenue or other indirect, consequential or incidental loss or damage arising under or in connection with this Agreement.

8.2 The maximum liability of the Ministry under or in connection with this Agreement whether arising in contract, tort (including negligence) or otherwise is the total amount which would be payable under this Agreement if the Project had been carried out in accordance with this Agreement.

8.3 The Recipient (including its employees, agents, and contractors, if any) is not an employee, agent or partner of the Ministry or of the Chief Executive of the Ministry. At no time will the Ministry have any liability to meet any of the Recipient's obligations under the Health and Safety in Employment Act 1992 or to pay to the Recipient:

- (a) holiday pay, sick pay or any other payment under the Holidays Act 2003; or
- (b) redundancy or any other form of severance pay; or
- (c) taxes or levies, including any levies under the Injury Prevention, Rehabilitation and Compensation Act 2001.

8.4 The Recipient indemnifies the Ministry against:

- (a) any taxes, levies, penalties, damages or compensation which the Ministry may be liable to deduct, withhold or pay by reason of the Recipient, or any person used by the Recipient to carry out the Project, being held to be an employee of the Ministry or of the Chief Executive of the Ministry; and
- (b) any claim, liability, loss or expense (including legal fees on a solicitor own client basis) brought or threatened against, or incurred by the Ministry, arising from or in connection with a breach of this Agreement by the Recipient or the Project, or from the negligence or misconduct of the Recipient, its employees or contractors.

8.5 Where the Recipient is a trustee, the Ministry acknowledges that the Recipient has entered into this Agreement as a trustee of the trust named in the Details in an independent capacity without any interest in any of the assets of the trust other than as trustee. Except where the Recipient acts fraudulently, the Recipient is liable under this Agreement only to the extent of the value of the assets of the trust available to meet the Recipient's liability, plus any amount by which the value of those assets has been diminished by any breach of trust caused by the Recipient's wilful default or dishonesty.

## **9. Dispute Resolution**

9.1 The Parties will attempt to resolve any dispute or difference that may arise under or in connection with this Agreement amicably and in good faith, referring the dispute to the Parties' senior managers for resolution if necessary.

9.2 If the Parties' senior managers are unable to resolve the dispute within 10 Business Days of it being referred to them, the Parties will refer the dispute to mediation or another form of alternative dispute resolution agreed between the Parties.

9.3 If a dispute is referred to mediation, the mediation will be conducted by a single mediator appointed by the Parties (or if they cannot agree, appointed by the Chair of LEADR New Zealand Inc.) and on the terms of the LEADR New Zealand Inc. standard mediation agreement (unless the Parties agree otherwise). The Parties will pay their own costs relating to any mediation or other form of alternative dispute resolution (unless they agree otherwise).

9.4 The Parties must continue to perform their obligations under this Agreement as far as possible as if no dispute had arisen pending final resolution of the dispute.

9.5 Nothing in this clause 9 precludes either Party from taking immediate steps to seek urgent relief before a New Zealand Court.

## **10 Force Majeure**

10.1 Neither Party will be liable to the other for any failure to perform its obligations under this Agreement by reason of any cause or circumstance beyond the Party's reasonable control including acts of God, communication line failures, power failures, riots, strikes, lock-outs, labour disputes, fires, war, flood, earthquake or other disaster, or governmental action after the date of this Agreement ("Force Majeure Event"). The Party affected must:

- (a) notify the other Party as soon as practicable after the Force Majeure Event occurs and provide full information concerning the Force Majeure Event including an estimate of the time likely to be required to overcome it;
- (b) use its best endeavours to overcome the Force Majeure Event; and
- (c) continue to perform its obligations as far as practicable.

10.2 If by reason of a Force Majeure Event a Party has been unable to perform any material obligation under this Agreement for a period of one month, the other Party may give the first Party one month's notice terminating this Agreement.

## **11 General**

11.1 A waiver by either Party of any rights arising from any breach of any term of this Agreement will not be a continuing waiver of any other rights arising from any other breaches of the same or other terms or conditions of this Agreement. No failure or delay on the part of either Party in the exercise of any right or remedy in this Agreement will operate as a waiver. No single or partial exercise of any such right or remedy will preclude any other or further exercise of that or any other right or remedy.

11.2 Assignment:

- (a) The rights and obligations of the Recipient under this Agreement are personal to the Recipient and may only be assigned, delegated or subcontracted with the prior approval in writing of the Ministry (which may be given, declined, or given subject to conditions, in the Ministry's sole discretion). The Recipient remains liable for performance of its obligations under this Agreement despite any approved assignment, subcontracting or delegation.

- (b) If the Recipient is a company, any transfer of shares, or other arrangement affecting the Recipient or its holding company which results in a change in the effective control of the Recipient is deemed to be an assignment subject to clause 11.2(a).
- 11.3 This Agreement may only be varied by agreement in writing signed by the Parties.
- 11.4 If any part or provision of this Agreement is invalid, unenforceable or in conflict with the law, the invalid or unenforceable part or provision will be replaced with a provision which, as far as possible, accomplishes the original purpose of the part or provision. The remainder of the Agreement will be binding on the Parties.
- 11.5 Any notice to be given under this Agreement must be in writing and hand delivered or sent by facsimile or post to the Parties' respective addresses or facsimile numbers as set out in the Details. A notice is deemed to be received:
- (a) if personally delivered when delivered;
  - (b) if posted, three Business Days after posting; or
  - (c) if sent by facsimile, at the time of transmission specified in a transmission report by the machine from which the facsimile was sent which indicates the facsimile was sent in its entirety to the facsimile number of the recipient,
- provided that any notice received after 5pm or on a day which is not a Business Day shall be deemed not to have been received until the next Business Day.
- 11.6 This Agreement sets out the entire agreement and understanding of the Parties and supersedes all prior oral or written agreements, understandings or arrangements relating to its subject matter. This clause does not limit clause 5.2(b).
- 11.7 This Agreement may be signed in any number of counterparts (including facsimile copies) and provided that each Party has signed a counterpart, the counterparts, when taken together, will constitute a binding and enforceable agreement between the Parties.
- 11.8 This Agreement will be governed by and construed in accordance with New Zealand law.