

# COLLABORATIVE MARKETING APPLICATION GUIDELINES

July 2020

- To export New Zealand grown kiwifruit (which includes kiwiberry), other than for consumption in Australia, you will need to have approval from Kiwifruit New Zealand (KNZ) for a collaborative marketing arrangement.
- This guide details what a collaborative marketing arrangement is, how to make an application, and the assessment process. It also details the application timetable and applicable fees. Multi-year arrangements are subject to an annual review.
- All collaborative marketing applications and multi-year review reports must be received by KNZ no later than **30 September each year**.
- **Collaborative marketing applications and reports should be emailed to [admin@knz.co.nz](mailto:admin@knz.co.nz) or posted to PO Box 4683, Mt Maunganui South 3149.**
- The full regulatory text detailing the legislative framework for collaborative marketing can be read in Part 4 of the Kiwifruit Export Regulations 1999.
- If you have additional questions on collaborative marketing, please contact KNZ on [admin@knz.co.nz](mailto:admin@knz.co.nz) or 07 572 3685.

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## What is a Collaborative Marketing Arrangement?

Although Zespri is authorised as the sole exporter of New Zealand grown kiwifruit internationally (other than to Australia for consumption), KNZ may approve other individuals to export New Zealand grown kiwifruit in collaboration with Zespri. This is called a collaborative marketing arrangement.

Where a collaborative marketing arrangement is approved by KNZ, Zespri is also required to enter into the arrangement “for the purpose of increasing overall wealth of New Zealand kiwifruit producers” and it must enter into a contract with the collaborative marketer that is consistent with the approval.

Collaborative marketing arrangements may be approved for one year or multiple years.

Given the collaborative nature of these arrangements, while not required, the applicant may wish to discuss its proposed arrangement with Zespri prior to submitting an application. Such discussions may better assist applicants to develop a proposed arrangement that may meet the objective of the wealth test highlighted in Section B.

## How to Make an Application

There is no prescribed application form, however, an application must include the applicant's:

- Full legal name (the applicant must be the collaborative marketer and exporter of record). If the applicant is a company, please provide a certificate of incorporation or registration.
- Contact details (including principal contact's, email address, physical address, and phone number).
- Company structure including shareholders and parent company (if applicable). If the entity structure is complex, please provide a detailed organisational chart.
- Most recent audited company accounts. Where the applicant is a new business, please provide financial estimates of the first twelve months operations including a Profit and Loss account and Balance Sheet. The estimates should be supported by a letter from an independent financial advisor.
- Full business plan detailing the proposed arrangement and the duration sought.
- Completed Fruit Return Proposal (see page 5).

Applicants may apply for one year or multi-year arrangements. Further information on multi-year arrangements is detailed in Section D.

## The Wealth Test

The assessment of a collaborative marketing application focuses on whether the arrangement, if approved, **would increase the overall wealth of New Zealand kiwifruit producers.**

Generally, this would involve KNZ assessing the short and long-term interests of New Zealand kiwifruit producers. The assessment may, depending on the arrangement, also need to consider both the individual export market and global market implications of the proposed arrangement. Such considerations are likely to have an economic focus.

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Applicant's business plans should include information on all relevant matters, including the potential risks and gains of the arrangement, and any mitigation measures proposed.

The following provides a non-exhaustive list of the matters KNZ considers should be covered in your business plan and application (where relevant and if possible):

## 1. Sales and marketing plan

- Kiwifruit type, size, and volume
- Countries or regions
- Labelling, branding, and packaging
- Shipping details (including ports of discharge and final destination)
- Distribution channel and customers (identify both retail and wholesale where relevant)
- Pricing and promotion
- Supply chain details
- Timing and dates (e.g. shipping and sales)
- Alignment with Zespri marketing strategy (both local and global considerations may be relevant)
- Fruit Return Proposal (see page 5)
- Any other factors relevant to your proposal

## 2. How the arrangement may meet the “wealth test”

- New or niche market, an expansion opportunity, or other innovation
- Distinct supply or customer channel
- Growth potential
- Business capability and investment
- Financial returns and allocation of returns to New Zealand kiwifruit producers
- Prior performance of previous collaborative marketing arrangements
- Any other factors relevant to your proposal

### 3. Risks and Mitigation

- Credit, FX, and entity risk
- Potential for, and mitigation of, fruit leakage outside distribution channel
- Supply chain measures/controls to ensure compliance of the programme including distributors
- Substitution of other New Zealand grown kiwifruit
- Quality assurance, including phytosanitary compliance, traceability, and fruit loss
- Documentation compliance (including customs)
- Compliance issues
- Any other risk and mitigation factors relevant to your proposal

**Fruit Return Proposal (FRP)** – All applications must include an FRP (downloaded from the KNZ website <http://www.knz.co.nz/collaborative-marketing/>). The FRP spreadsheet captures the business case figures presented in the application. Applicant's should ensure that the FRP includes accurate information in all relevant cells. This includes data on fruit variety size, volumes, markets, price levels, expected costs and expected sales to provide the likely market contribution (at FOB) and the likely Orchard Gate Returns (OGR). A detailed shipping and sales plan is also included in the FRP. All figures are in New Zealand Dollars (NZD).

## Assessment and Decision Process

### 1. Receipt on application and initial process

On KNZ's receipt of an application, the applicant will be sent an acknowledgement.

The nature of collaborative marketing arrangements means that all applications are sent to Zespri for its consideration and written response. A copy of Zespri's written response will in turn be provided to the applicant.

KNZ may also release application information to third parties and agents acting on behalf of KNZ for the purposes of conducting credit checks, market assessments, or other purposes directly related to the application.

The KNZ CEO will prepare a report for the KNZ Committee deciding the application ("the Committee"). The report provides an initial analysis which may assist the Committee and the applicant by highlighting relevant factors/information and providing details of past performance. A copy of this report will be provided to the applicant and Zespri.

Applicants are given the opportunity to respond in writing to both the KNZ CEO report and Zespri's response.

### 2. Committee decision making

**On the papers** – The Committee will receive the application, the KNZ CEO's report, Zespri's response and any further written response from the applicant. The Committee will consider this material "on the papers" meaning the Committee will decide based on the above written material whether:

- To approve the application; or
- It needs minor clarifications to decide the application; or
- A hearing is needed to ask further questions of the applicant and/or Zespri before reaching a decision.

**Committee Hearing** – If an application is not approved on the papers it will automatically go to a hearing – no application will be declined on the papers. The applicant and Zespri will be advised of the hearing details once a time and date has been allocated. Most hearings take place in person at the KNZ offices but where necessary a teleconference or video conference may be possible. Most hearings will be held for between 1 or 2 hours depending on the complexity of the application.

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Where the Committee holds a hearing, the applicant and Zespri may be invited to make further written submissions on any matters highlighted by the Committee. These written submissions will also be provided to the other party.

At the hearing, the applicant will be asked to present its application in person to the Committee. Zespri will also be given the opportunity to present its position. Both parties may only present information that has previously been submitted to the Committee and the other party. In exceptional circumstances, the Committee may use its discretion to receive any additional evidence it considers appropriate. Throughout the hearing the Committee may ask both the applicant and Zespri additional questions on the application.

The Committee will then make its decision to either approve or decline the application. The applicant and Zespri will be notified of the Committee's decision in due course.

At any stage before deciding whether to approve an application, the Committee may use its discretion to indicate to the applicant possible changes to the application which may improve the prospects of the application being approved.

Where an application is approved, the Committee may impose any reasonable and necessary conditions.

Where an application is declined, the Committee will provide a written decision detailing its reasons.

### 3. Review Process

An applicant may request a review of the Committee's decision to decline its application. Where possible that review will be undertaken by a different committee appointed by KNZ.

The review is not an opportunity to submit a new application and, other than in exceptional circumstances, new evidence will not be permitted.

The request for review must be received by KNZ within five working days of the date of the KNZ Collaborative Marketing Committee's written decision. The grounds of review relied on must be clearly stated in the request for review. The Review Committee's consideration of the matter will be limited to a consideration of whether the first committee's decision was illegal, unreasonable, or whether there was procedural unfairness. The review will generally be done on the papers unless the Review Committee is of the view that an in-person hearing is required.

There is a review filing fee of \$500 (incl GST). The Review Committee retains the discretion to refund all or part of the fee.

## Multi-Year Arrangements

Applicants may apply for a one year or a multi-year arrangement. Where an application is the first application for a multi-year arrangement, the process detailed in Section C will apply. Where a multi-year application is made, the applicant's business case should clearly identify why a multi-year arrangement is sought.

Where KNZ has previously approved a multi-year arrangement, and it continues to be approved for the forthcoming year, collaborative marketers are subject to an annual review. This takes the form of a review of the arrangement rather than a new assessment.

Multi-year collaborative marketers are required to submit a report containing information to enable KNZ to assess whether the arrangement continues to meet the wealth test, whether amendments to the conditions are necessary, and the applicant's and Zespri's compliance with the arrangement. This report must be provided to KNZ no later than 30 September each year of the multi-year approval.

Multi-year approval holders are required to provide information on the following:

- Do the collaborative marketing opportunities previously presented to and approved by KNZ still exist? Identify any changes to those opportunities.
- Are there any significant changes to the information previously provided.
- A comparison of performance against the previous year's FRP (including fruit volumes, sizes and returns).
- Provide an updated FRP for the forthcoming year (including fruit volumes, sizes and returns).
- Are changes proposed to the business plan for the remaining years of the approval? Provide specific information on any changes.

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- Information on compliance with the terms and conditions of the approval including the compliance of its agents, distributors, and customers.
- Any new challenges or risks to the arrangement.
- Any other information the collaborative marketer considers relevant to the review.

On KNZ's receipt of the report, the collaborative marketer will be sent an acknowledgement. A copy of the report will be forwarded to Zespri for its consideration and written response, which will in turn be provided to the collaborative marketer and the Committee.

The KNZ CEO will prepare a report for the Committee providing an initial analysis which may assist the Committee and the collaborative marketer by highlighting relevant factors and providing details of past performance (which may include operational or relevant compliance matters). A copy of this report will be provided to the collaborative marketer and Zespri.

Collaborative marketers will be given the opportunity to respond to both the KNZ CEO report and Zespri's written response.

The Committee will then follow the decision-making process as detailed in Section C.2. Where minimal changes are required to the arrangement, the Committee may approve any amendments on the papers. However, where the issues are more significant, a hearing may be required.

Where a multi-year arrangement is cancelled, the collaborative marketer has a right of review. The review will follow the same process as detailed in Section C.3. There is no automatic right of review for other variations made to multi-year arrangements.

## Timetable

KNZ conducts an annual collaborative marketing application assessment and multi-year review process (the two processes run together).

Applications for collaborative marketing arrangements for the next year must be received by KNZ no later than 30 September 2020.

Existing multi-year collaborative arrangement holders must also provide their multi-year reports to KNZ no later than 30 September 2020.

All supporting information must be provided with the application or report.

The following dates apply to the 2021 collaborative marketing process (please note the dates highlighted in green require action from applicants and/or multi-year collaborative marketers):

**Table 1 – Collaborative marketing applications and multi-year review timetable**

30 September 2020	Applications and review reports to be received by KNZ. Copies will be provided to Zespri thereafter.
21 October 2020	Zespri response to be provided to KNZ. Zespri response and KNZ CEO report will be provided to the parties thereafter.
By 28 October 2020	Applicant or multi-year collaborative marketer to provide KNZ with a written response to Zespri and KNZ CEO reports.
Early Nov 2020	Committee meets to consider applications and reviews on the papers. KNZ will advise the parties whether the application is approved, and in the case of multi-year reviews, whether the arrangement has been amended. If a hearing is required, the parties will be advised of the hearing date and, if required, the parties will be invited to make further written submissions.
9-13 November 2020	Committee hearings
27 November 2020	Committee decisions
By 04 December 2020	Request to review declined applications received by KNZ
December 2020	CM Review Committee considers the request

*This timetable may be modified by KNZ upon notice if it deems necessary.*

## **Timetable** *(continued)*

**Late applications** – KNZ may, at its sole discretion, consider an application submitted outside the prescribed dates. In general, late applications will only be considered in special circumstances. In exercising that discretion, KNZ may consider matters including, but not limited to, whether there are exceptional circumstances beyond the applicant's control which meant the dates could not be met, and/or whether there is a significant new collaborative marketing opportunity which has arisen outside the prescribed dates.

*A fee of \$500 (incl GST) may apply to late applications.*

## **Regulation 15 – Public Disclosure**

By 30 June each year, KNZ must publicly disclose, for the previous season -

- The identity of each approved collaborative marketing approval holder.
- The volume of kiwifruit marketed by each approved collaborative marketing holder.
- Financial information to enable an assessment to be made as to whether the net returns to suppliers in respect of each collaborative marketing arrangement were greater than if the arrangement had not been approved.

Previous years Regulation 15 disclosures can be found at <https://www.knz.co.nz/regulation-15-collaborative-marketing-results/>

## Fees

KNZ operates on a cost recovery basis by charging applicants and Zespri under the collaborative marketing regime. KNZ does not make a profit. If surplus funds are collected, refunds are made at the end of the financial year. KNZ may deduct any amounts owed to it from amounts that would otherwise be owed to a collaborative marketer.

KNZ reserves the right to reduce or waive fees where it considers there are circumstances that warrant an exception to the stated fees.

KNZ may charge an additional late application fee of \$500.

There is a filing fee of \$500 for a decline decision review.

Final fees may be subject to supplementary or other fees as applicable. Fees are due and payable within 14 days of the date of KNZ's invoice. Failure to pay may result in enforcement action being taken.

### 1. **Kiwifruit**

Fees are charged as either a non-refundable flat fee of \$2,500 or against the volume of fruit applied for (weighted tray fee) – whichever is the greater.

Where an applicant is charged a weighted tray fee, payments are spread out over three instalments (33.3% each). The first instalment, due on application, is capped to a maximum of \$15,000. Two further instalments are calculated at 33.3% of the weighted tray fee.

Where an application is declined, the maximum fee due is \$2,500 (where the applicant was charged a flat fee) or 25% of the weighted tray fee.

There is a fee calculator available on the KNZ website at;

<https://www.knz.co.nz/wordpress/wp-content/uploads/2021-22-CM-Fee-Calculator.xls>

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a) **Table 3 – Kiwifruit Fees**

Initial application fee (due on application and no later than 30 September 2020)	Flat fee of \$2,500 (excl GST) or 33.3% of weighted tray fee, capped to a maximum of \$15,000 (excl GST)
Fee for approved application (due 20 December 2020)	33.3% weighted tray fee
Final balance (due 20 February 2021)	33.3% weighted tray fee

**Table 4 – Weighted tray fees examples (excluding GST)**

	For new (including multiple year) on time applications			Second and subsequent year of a multiple year application (10% decrease on year 1 fees)	
Trays applied for:	25,000	500,000	1,000,000	500,000	1,000,000
Weighted trays	25,000	345,000	470,000	345,000	470,000
Initial application fee (\$)	2,500	15,000	15,000	15,000	15,000
On approval:					
Trays approved	25,000	500,000	1,000,000	500,000	1,000,000
Weighted trays	25,000	345,000	470,000	345,000	470,000
Final fee (\$)	4,500	62,100	84,600	55,890	76,140
Amount payable (\$)	2,000	47,100	69,600	40,890	61,140
On decline:					
Trays approved	Nil	Nil	Nil	As determined by KNZ	As determined by KNZ
Final fee (\$)	2,500	15,525	21,150	As determined by KNZ	As determined by KNZ
Amount payable	0	525	6,150	As determined by KNZ	As determined by KNZ

All numbers exclusive of GST

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## 2. Kiwiberry

### b) *Table 5 – Kiwiberry fees*

Application fee	A flat fee of \$1,500 (excluding GST) per application
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## 3. Multi-year fee

A 10% reduction on the above fee structure applies for the second and subsequent years of a multi-year arrangement.

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## Summary of Collaborative Marketing Application Process

