

COLLABORATIVE MARKETING APPLICATION GUIDELINES

July 2021

- 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 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 ('Regulations').
- If you have additional questions on collaborative marketing, please contact KNZ on 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 ('CM Arrangement').

Each application and any multi-year annual review will be considered and determined by a KNZ Collaborative Marketing Committee ('KNZ Committee') comprised of members of the KNZ Board and an independent convenor.

Where a CM Arrangement is approved by the KNZ Committee, Zespri is also required to enter into a contract with the collaborative marketer that is consistent with the KNZ approval.

CM 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 (see further details below).
- Completed Fruit Return Proposal (see further details below).

An application may be for one year or for a multi-year CM Arrangement. Where a multi-year application is made, the applicant's business case should clearly identify why a multi-year arrangement is sought. Further information on multi-year CM Arrangements is detailed in Section C.

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 (see Regulation 24).**

Generally, this would involve an assessment of 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.

Business Plan

An applicant's business plan should include information on all relevant matters, including the potential risks and gains of the CM Arrangement, and any risk 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
- Any other factors relevant to your proposal

How the CM 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 (higher returns and/or lower costs)
- Prior performance of previous CM Arrangements
- Any other factors relevant to your proposal

2. 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 CM Arrangement including distributors
- Substitution of other New Zealand grown kiwifruit
- Quality assurance, including phytosanitary compliance, traceability, and fruit loss
- Documentation compliance (including customs)
- Trade compliance plan (import/export regulations)
- 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).

Multi-Year Arrangements

Multi-Year Annual Review

After the initial year of a multi-year CM Arrangement, the multi-year arrangement is subject to an annual review ('Multi-year Annual Review').

The purpose of the Multi-year Annual Review is to:

- ensure the business plan and information submitted and approved by the KNZ Committee in the initial application remains accurate;
- enable the KNZ Committee to assess whether the CM Arrangement continues to meet the wealth test; and
- to confirm ongoing compliance with the approved CM Arrangement.

For a Multi-year Annual Review, the collaborative marketer is required to submit a report. The report must be provided to KNZ no later than 30 September each year of the multi-year approval and should include information on the following:

- Whether the collaborative marketing opportunities presented in the original application still exist? Identify any changes to those opportunities.
- Whether there are any significant changes to the information provided in the original application or previous Multi-year Annual Review reports?
- A comparison of performance against the previous year's FRP (including fruit volumes, sizes and returns).
- An updated FRP for the forthcoming year (including fruit volumes, sizes and returns).
- Any changes proposed to the business plan for the remaining years of the approval(including specific information on any changes)?
- 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 CM Arrangement.
- Any other information the collaborative marketer considers relevant to the Multi-year Annual Review.

Decision Process

1. Receipt of an application or Multi-year Annual Review report and initial process

On KNZ's receipt of an application or Multi-year Annual Review report, the applicant/collaborative marketer will be sent an acknowledgement.

The nature of CM Arrangements means that all applications and reports 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/collaborative marketer.

KNZ may also release information provided by the application/collaborative marketer 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 (Refer to Section G.1 for further details on confidential or commercially sensitive information).

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

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

2. KNZ Committee decision making

- a) **“On the papers”** – The KNZ Committee will receive the application/report, the KNZ CEO's report, Zespri's response and any further written response from the applicant/collaborative marketer. The KNZ Committee will consider this material “on the papers” meaning the KNZ Committee will make a decision, based on written material provided.

In respect of an application the KNZ Committee will determine whether:

- to approve the application; or
- minor clarifications are required to reach a decision; or
- a KNZ Committee hearing is required to ask further questions of the applicant and/or Zespri to reach a decision.

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In respect of a Multi-year Annual Review the KNZ Committee will determine whether:

- the multi-year arrangement can continue without any changes to the KNZ approval;
- any minor changes required to the KNZ approval;
- a KNZ Committee hearing is required to ask further questions of the collaborative marketer and/or Zespri.

b) KNZ Committee Hearing – If an application or Multi-year Annual Review is not approved “on the papers” it will automatically go to a hearing – no application will be declined “on the papers” and no multi-year CM Arrangement will be cancelled “on the papers”.

The applicant/collaborative marketer 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 matters to be discussed.

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

At the hearing, the applicant/collaborative marketer will be asked to present its application/report to the KNZ 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 KNZ Committee and the other party. In exceptional circumstances, the KNZ Committee may request or may use its discretion to receive any additional information it considers appropriate. At any stage before deciding whether to approve an application, the KNZ 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.

3. Decision

Once the KNZ Committee has made a decision in respect of an application or Multi-year Annual Review, KNZ will notify the applicant/collaborative marketer and Zespri.

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

Where an application is declined or a multi-year CM Arrangement is cancelled, the Committee will provide a written decision detailing its reasons.

4. Review Process

If the KNZ Committee has:

- declined an application; or
- cancelled a multi-year CM Arrangement after a Multi-year Annual Review, an applicant/collaborative marketer may request a review of the KNZ Committee's decision.

Where possible that review will be undertaken by a different KNZ committee comprised of the KNZ Chair and a member of the KNZ Board ('Review Committee').

The request for review must be received by KNZ within five working days of the date of the KNZ Committee's written decision to decline the application or cancel the multi-year CM Arrangement. The grounds for the review must be clearly stated in the request for review. The Review Committee will determine whether there are sufficient grounds for a review to be conducted. The review is not an opportunity to submit a new application or report and, other than in exceptional circumstances, the Review Committee will not receive or consider new information. The review will generally be done "on the papers" unless the Review Committee is of the view that an in-person hearing is required.

The Review Committee will be limited to considering whether the KNZ Committee's decision was illegal, unreasonable, or whether there was procedural unfairness.

A review filing fee of \$500 is payable by the applicant/collaborative marketer. The Review Committee retains the discretion to refund all or part of the fee.

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Timetable

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

Applications for CM Arrangements for the next year must be received by KNZ no later than 30 September.

Existing multi-year CM Arrangement holders must also provide their reports for the Multi-year Annual Review to KNZ no later than 30 September each year.

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

The following dates apply to the 2022 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 2021	Applications and Multi-year Annual Review reports to be received by KNZ. Copies will be provided to Zespri thereafter.
21 October 2021	Zespri response to be provided to KNZ. Zespri response and KNZ CEO report will be provided to the parties thereafter.
By 28 October 2021	Applicant or multi-year collaborative marketer to provide KNZ with a written response to Zespri and KNZ CEO reports.
Early Nov 2021	KNZ Committee meet to consider applications and Multi-year Annual Reviews “on the papers”. KNZ will advise the parties whether the application is approved, and in the case of Multi-year Annual Reviews, whether any amendments are required to the KNZ approval. If a hearing is required, the parties will be advised of the hearing date (in person or by video conference) and, if required, the parties will be invited to make further written submissions.
8-12 November 2021	KNZ Committee hearings
26 November 2021	KNZ Committee decisions
Within 5 working days of the date of KNZ decision	Applicant or collaborative marketer may request a review of declined application or cancelled multi-year CM Arrangement.
December 2021	Review Committee reviews KNZ Committee decision

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

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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, any allocation of volume of kiwifruit made in respect of CM Arrangements under Regulation 26, any exceptional circumstances beyond the applicant's control that prevented the timetable deadline being met, or a significant new collaborative marketing opportunity which has arisen outside the prescribed dates.

An additional fee of \$500 (plus GST) may apply to late applications.

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 set off any amount owed to KNZ that would otherwise payable 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.

If a review process is undertaken under Section C.4, a review filing fee of \$500 is payable by the applicant or collaborative marketer. The Review Committee retains the discretion to refund all or part of the fee.

Final fees may be subject to supplementary or other fees as applicable. All fees are expressed on New Zealand dollars, are exclusive of GST 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 per application 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 the submission of an 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 fee due is the higher of \$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 2021)	Flat fee of \$2,500 (excl GST) or 33.3% of weighted tray fee, capped to a maximum of \$15,000 (excl GST)
Second installment (due 20 December 2021)	33.3% weighted tray fee
Final balance (due 20 February 2022)	33.3% weighted tray fee

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

	For new (including multiple year) on time applications			Multi-year Annual Review fees (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
Balance Remaining:					
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 (\$)	3,750	51,750	70,500	46,575	63,450
Amount payable (\$)	1,250	36,750	55,500	31,575	48,450
On decline:					
Trays approved	Nil	Nil	Nil	As determined by KNZ	As determined by KNZ
Final fee (\$)	2,500	12,937	17,625	As determined by KNZ	As determined by KNZ
Amount payable (refund)	0	(2,063)	2,625	As determined by KNZ	As determined by KNZ

All numbers exclusive of GST

Kiwiberry

a) *Table 5 – Kiwiberry fees*

Application fee	A flat fee of \$1,500 (excluding GST) per application
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Kiwiberry fees are a flat fee payable on application and no later than 30 September 2021. KNZ do not pay any refunds on Kiwiberry fees at the end of the financial year.

2. Multi-year discount

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

3. Long-duration CM Arrangement discount

A 10% reduction on the applicable fee structure applies if the collaborative marketer has had a CM Arrangement in the same market for 10 years or more.

Where applicable, the long duration CM Arrangement discount can be used with a multi-year discount to achieve a 20% reduction in fees for the year.

General

1. Confidential or commercially sensitive information

If an applicant is providing confidential or commercially sensitive information in the application process, the applicant can make a request to the KNZ Committee for restrictions or conditions on the disclosure of such information to Zespri or any third party.

If the KNZ Committee receives a request, the KNZ committee will not disclose that information without the applicant's consent. However, if the KNZ Committee determines that the information needs to be disclosed to Zespri (or any other third party) to progress the application, the applicant will be given an opportunity to withdraw its reliance on that information or withdraw its application.

2. 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 CM 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/>

3. Audit and Compliance

KNZ may at its sole discretion, review, inspect or audit a collaborative marketer's compliance with the KNZ CM approval, including export documentation used by importers for clearing Kiwifruit imports.

4. Review and amendments to KNZ Approval

- a) The collaborative marketer must obtain KNZ's prior written approval for any changes to the terms or conditions of the KNZ approval (including any volume increases over 20% of the approved volume).
- b) Zespri, KNZ and the collaborative marketer will undertake a review of the approved volume in June each year to confirm fruit availability for the remainder of the season for the CM Arrangement. Any requests for increased volume after the review will be assessed on a case-by-case basis by the KNZ Committee.

SECTION H

Summary of CM Application or Multi-year Annual Review Process

