



30 June 2017

Mr Rod Burgoyne
fyi-request-5959-46353915@requests.fyi.org.nz

Dear Mr Burgoyne

I refer to your email of 2 June 2017 requesting under the Official Information Act 1982 (the Act) the following:

“would you please provide a copy of the application and funding agreement between MBIE and Queen Charlotte Track Inc to access funding from ‘Maintain the Great Rides Fund’.

A copy of the documents that fall within the scope of your request is attached. Some information in these documents has been refused under the following section of the Act:

- *Section 9(2)(a) as withholding the information is necessary to “protect the privacy of natural persons, including that of deceased natural persons.”*

The grounds for withholding are marked on each exclusion.

Under section 9(1) of the Act, no public interest in releasing the withheld information has been identified, that would be sufficient to override the reasons for withholding it.

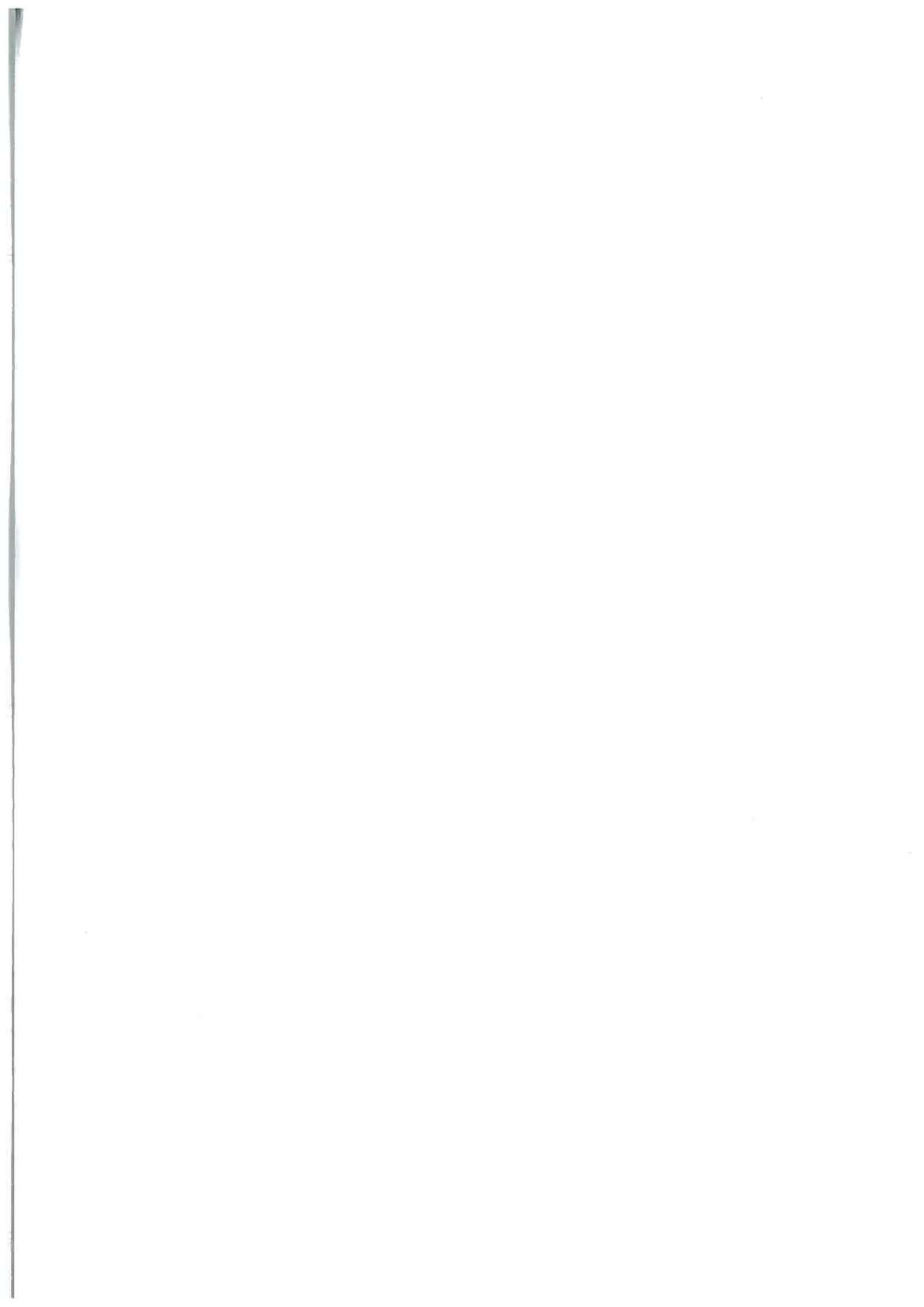
You are entitled to ask the Ombudsman to review my decision to refuse some information under section 28(3) of the Official Information Act 1982.

You are entitled to ask the Ombudsman to review this response under section 28(3) of the Act.

Yours sincerely

Kate West
Tourism Policy Manager
TOURISM, SECTORS, REGIONS & CITIES







Nga Haerenga, the New Zealand Cycle Trail

Maintaining the Quality of Great Rides Fund

Application Form
Version 2.2 August 2016

Released under the Official Information Act

Maintaining the Quality of Great Rides Fund

Application Form Version 2.2

The Assessment Panel will use the information provided in this form to determine which applications are successful in obtaining funding to maintain the quality of Great Rides as part of Nga Haerenga – the New Zealand Cycle Trail. It is therefore essential that you provide all the information requested as fully and completely as you can. Incomplete proposals cannot be assessed.

How to complete this form:

- Type your answer into each answer space in each section. The answer spaces will expand to fit the amount of text you need to answer each question. They are not a guide to the expected size of your answer
- Where the answer space has pre-loaded guidance or instructions, delete this text before you submit the proposal

Once you have completed this form:

- email a copy of the completed proposal to nzct@mbie.govt.nz; and
- post a copy of the completed and signed proposal to:

Maintaining the Quality of Great Rides
Ministry of Business, Innovation and Employment
PO Box 1473
Wellington 6140
- send by the specified closing date and time advertised on the MBIE New Zealand Cycle Trail website (<http://www.mbie.govt.nz/info-services/sectors-industries/tourism/nga-haerenga-new-zealand-cycle-trail>).

Questions

Please visit the Frequently Asked Questions (FAQ) page on the MBIE website. If you have any other questions please email nzct@mbie.govt.nz

Term	Definition
Applicant/s	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).
Assessment Panel	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.
Co-funder	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.
Extreme Event	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 Applications for funding to repair damage to a trail caused by an Extreme Event can be submitted at any time
Great Ride	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).
Master Track Builder	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.
MBIE	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: nzct@mbie.govt.nz
MGR	Maintaining the Quality of Great Rides Fund
Project	Encompasses all activities, steps, tasks or elements for which an applicant is seeking funding.
Proposal	A description of a proposed project developed by an applicant or consortia of applicants for assessment by the Assessment Panel to decide whether it should be funded.
NZCT	Nga Haerenga, the New Zealand Cycle Trail.
NZCT Design Guide	Located at http://nzcycletrail.com/public-resources/
NZCT Inc.	Incorporated Society formed to take responsibility for the governance and management of Nga Haerenga, the New Zealand Cycle Trail.
MBIE website	Located at: http://www.mbie.govt.nz/info-services/sectors-industries/tourism/nga-haerenga-new-zealand-cycle-trail
Shovel ready	A project that is ready for construction and has obtained all the required land access and resource consent permissions. The MGR decision-making process for funding is expected to take approximately 12 weeks from the close of the funding round. Projects are expected to commence following signing of the funding agreement.

Name of Great Ride	The Queen Charlotte Track (QCT)
Trading name of applicant	Queen Charlotte Track Incorporated (QCT Inc)
Legal status of applicant	Incorporated Society
Estimated total cost of project (excl. GST)	\$510,000
Amount of funding sought (excl. GST)	\$255,000
Project time frame	from December 2016 to May 2017
Are all components of this application 'shovel ready'?	Yes – subject to a suitable contractor being appointed by Department of Conservation (DOC).

Summary of proposal	
<p>QCT Inc seeks funding support for the most significant investment in the future of the Queen Charlotte Track since its inception in the early 1990s.</p> <p>This application seeks \$300,000 from the MGR fund to match \$290,000 already committed by the Marlborough District Council and \$10,000 in-kind contributions from the private sector.</p> <p>Department of Conservation's Queen Charlotte Track Operational Plan 2011 seeks to bring the Track up to Grade 3 cycle trail/Easy Tramping Track standard. The Ship Cove Historic Reserve to Schoolhouse Bay section of track via Ship Cove Saddle is well below this standard.</p> <p>Ship Cove is well known as one of New Zealand's iconic historic sites and the high standard of facilities there is in direct conflict to the track standard out of Ship Cove which is steep, eroded and the clay surface glazed and slippery.</p> <p>With the funds, it is proposed to reroute this section of track to meet the gradient requirements of 9.5 degrees or less – this will involve extending the length of the track to meet current NZCT track construction guidelines. The deterioration of this section of the track is well highlighted in Jonathan Kennett's Queen Charlotte Track Inspection Report June 2015 and also in the Queen Charlotte Track WOF.</p>	

This project will remedy environmental and safety issues such as ruts and holes and channels in the centre of the track, user dissatisfaction with the quality of the track (most of this section is un-rideable even for the most experienced rider) and a slippery, glazed clay surface especially prevalent in the cooler months resulting in track widening as people avoid the slippery areas.

In addition to this, some funds will be spent on remedial works and signage on other identified sections of the track to enhance track safety for shared use according to NZCT design guidelines. This work will benefit all trail users.

It is essential to have this work underway immediately in order to be completed, including regrowth and regeneration, well before the Captain Cook 250 celebrations commencing in 2019 when the eyes of the world will be on Ship Cove.

3.1 Project rationale

Problem definition and proposed solution

Alignment of your trail with NZCT Design Guide criteria:

The proposed rerouted track will be built to the NZ Handbook for Tracks/NZCT Design Guide criteria and Outdoor Visitor Structures standards and will be supervised by DOC track builder and manager Willie Abel with advice and assistance from NZCT's Jonathan Kennett. Further assistance from DOC master track builder Mel Hanson can be used as part of the design phase and he has already prepared a report on the proposed reroute for DOC's Sounds Area Office.

Target Market:

Our target market is the Grade 3 cyclist who has experienced the Grade 1-2 cycle trails and is now looking to extend themselves to a Grade 3 ride. This will include the baby boomer 55+ market, families and couples. Currently approximately 20% of track users are cyclists and the majority are advanced riders able to cope with the challenge. QCT Inc seeks to broaden this market to include the Grade 3 cyclist. The work will also benefit walkers – being Day Visitors and Overnight users from DOC's Easier Tramping Track standard.

Problem/issue being addressed:

This application seeks funding for the reroute of 6.4km of the QCT between Merepoint/Ship Cove and Schoolhouse Bay Campsite. The reroute is required to remedy the 12 to 19 degree gradients on this section and the resulting severe erosion from water management issues as well as user dissatisfaction from the steep, slippery and un-rideable track encountered in the first minutes of the user experience from Ship Cove.

The rerouted track will use culverts rather than bridges and boardwalks where necessary and form the track as required to adequately serve its two major user groups, walkers and cyclists. The work will be undertaken by contractors supervised by local DOC staff; the cost of this reroute only is estimated at \$420,000 (including contingency). This is in line with the cost of comparable track work in the outer Sounds and is the best estimate available.

This section has been identified in Jonathan Kennett's Queen Charlotte Track Inspection Report June 2015 as an un-rideable section of the track which limits the ability of the trail to reach its full potential.

Proposed solution:

The completed work will reduce maintenance costs and make the track more sustainable by preventing long term damage & erosion.

This work will also bring this section of the Track to Grade 3 cycle trail/Easy Tramping Track standard and is part of the planned upgrades and realignments noted in DOC's Queen Charlotte Track Operational Plan 2011-2021.

In addition, the redesign of other identified sections will enhance the safety of users and address any perceived or potential user issues.

How you will measure success:

The Track will meet DOC and NZCT track standards.

The gradient will be lowered to below 6 degrees and erosion will be either non-existent or minimal.

This reroute will enable this first section of the Queen Charlotte to be more accessible to a wider range of user groups, some of whom are currently put off by the difficulty of this part of the track. Shared use will be widely accepted with greater courtesy and positive interaction shown by all user groups.

The last major economic study for the Queen Charlotte Track was the 2005 Butcher Report which identified the track as contributing \$9.4 million to the wider Marlborough economy. The track improvements above stand to grow this contribution significantly and will be shown in the next economic impact report which DOC have committed to undertake.

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3.2 Importance of project work

Priority of project in respect to other potential work on the Great Ride

Please refer to DOC's 2011 Operational Plan (attached) and Jonathan Kennett's Queen Charlotte Track Inspection Report June 2011 which cover further recommended works for the Track.

The reroute for which funding is sought is the number one priority for any work to be done on the QCT as highlighted by DOC's Operational Plan and Jonathan Kennett's Queen Charlotte Track Inspection Report and as detailed in the Queen Charlotte Track WOF.

Any surplus funds will be carried over to future section reroutes and improvements as identified in the above reports.

3.3 Project Management

Planning and permissions

Our capability to deliver:

Financial – The MGR funding with co-funding and support from our local authority, a 27% stakeholder in the QCT, will give this project the financial stability it requires.

Technical – DOC's Master Track Builder Mel Hanson has produced a detailed report including costings for the proposed reroute and there is sufficient budget for accessing outside expertise. Technical support has been offered by Jonathan Kennett and DOC will accept this help to align their trail building process with NZCT guidelines.

Operational - DOC's Sounds Area Office have appointed Willie Abel to manage the project and he has more than 20 years' experience in building and maintaining the QCT, limited only by lack of funding.

Trail Design

Has the applicant engaged a Master Track Builder to approve the completed works?

- YES

Land access:

- YES

The land is conservation estate managed by DOC.

Resource consents:

- YES

Initial indications are that resource consents are not necessary but at the time of application we are awaiting a consultant's report commissioned by Marlborough District Council to confirm this. If resource consents are required, this process will be managed by DOC working with the council as principle track stakeholders.

Risks that could stop delivery:

There are no risks identified that could stop delivery of this project; poor weather and possible resource consent processes could initially delay the project but not stop it.

Health and Safety:

DOC have a robust Health & Safety Plan and all work will adhere to their approved policies and principles. The project will be under their direct supervision.

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3.4 Project breakdown

Project funding

Please indicate the level of funding sought for each component of the project.

Note: Funding will be paid in arrears, on production of receipts.

* Please allow for a 12 week timeframe from the close of the funding round until the final decision on funding is confirmed (Add additional rows if necessary).

Project Milestone	Description of project component (including NZCT Design Guideline Trail Grade that works will meet)	Status	Completion date*	Total estimated costs (excl. GST)	Funding sought from MGR (excl. GST)	Total applicant/s' co-funding – including other sources (excl. GST)	Is any co-funding from other central government sources? If so - how much?
Ship Cove Reroute	Reroute and regrade of track from Ship Cove to Resolution Bay to meet NZCT Design Guidelines Grade 3 cycle trail		May 2017	\$418,440	\$209,220	\$209,220 (MDC & Operator Contribution)	N/A
QCT Improvements	Remedial works and signage on other identified sections of the track to enhance track safety for shared use according to NZCT design guidelines.		May 2017	\$91,560	\$45,780	\$45,780 (MDC)	N/A
			TOTAL	\$510,000	\$255,000	\$255,000	

3.5 Other avenues of funding have been explored

Other funding avenues

Work of this nature would normally have been funded by DOC but to date funding to complete the objectives of their 2011 Operational Plan has been insufficient. It is only since the Queen Charlotte Track has achieved Great Ride status and the advent of the MGR fund, that QCT stakeholders have an opportunity to secure sufficient funding needed to implement a project of this scale and cost.

QCT Inc has had favourable discussions with the Lion Foundation with a view towards co-funding future MGR fund applications. This option will be investigated for future rounds.

As a 27% stakeholder, the Marlborough District Council is the preferred partner for this first round of MGR funding.

QCT Inc represents 53 operator members, the majority of which are smaller owner operator businesses with limited means to co-fund this sort of significant capital expenditure. However, they will be prepared to contribute in-kind including labour, water transport and accommodation as well as other ancillary services needed during the project.

There is widespread support for this project amongst QCT Inc members and wider stakeholders and supporters are listed in the MDC Submission (Page 14) supplied with this application. Copies of support letters can be supplied on request.

Applicant information		
Contact person	Rob Burn	
Great Ride name	The Queen Charlotte Track	
Title	Chairperson	
Phone	9(2)(a)	
Contact email	9(2)(a)	
Postal address	Organisation or Building (if required)	Queen Charlotte Track Incorporated
	Street, Bag, or Box	PO Box 529
	Suburb	7220
	Town, Postcode	Picton
Legal name of organisation funding contract will be with, if application is successful		
Name	Queen Charlotte Track Inc	
NZCT Inc. Membership Requirements		
<input checked="" type="checkbox"/>	Is the Great Ride a financial member of NZCT Inc.?	
<input checked="" type="checkbox"/>	Is Great Ride track counter data regularly provided to NZCT Inc.?	
<input checked="" type="checkbox"/>	Has the Great Ride completed and submitted a NZCT Trail Warrant of Fitness (WOF) to NZCT Inc.?	

Section 5: Declaration

I declare on behalf of the applicant(s):

- that I have read this form, and the Guidelines for Applicants, and fully understand the procedures, terms, conditions and criteria.
- that this application form and the Guidelines for Applicants together outline the basis on which this proposal is made and the procedures, terms, conditions and criteria for the fund to maintain the quality of the Great Rides
- that I have read and understand MBIE's standard form funding agreement including the attached terms and conditions, a copy of which is attached as Schedule 1 in the Guidelines for Applicants
- that the statements in this application are true and the information provided is complete and correct and there have been no misleading statements, omission of any relevant facts nor any misrepresentation made.
- that MBIE and its advisers may disclose to or obtain from any government department or agency, private person or organisation, any information about the applicant or project for the purposes of gaining or providing information related to the processing and assessment of this application.
- that the applicant will, if requested by MBIE, the Assessment Panel or its advisers in connection with this funding process, provide any additional information sought and provide access to its records and suitable personnel.
- that I consent to the public release, including publishing on the Internet, of the name of the applicant, the amount of grant sought, contact details of the applicant and a general statement of the nature of the activity/project, and undertake to cooperate with MBIE on communications relating to this application.
- that I understand MBIE's obligations under the Official Information Act 1982 and that, notwithstanding any relationship of confidence created as a result of this application, the provisions of this Act apply to all of the information provided in this application.
- the application involves an activity/project that is a lawful activity that will be carried out lawfully.
- the applicant is not in receivership or liquidation nor will the project be managed by an undischarged bankrupt or someone prohibited from managing a business.
- where external providers are being employed as part of the project/activity, the relevant providers are not employees or directors of the applicant, and nor do they have any other direct or indirect interest in the applicant, whether financial or personal unless specifically stated in the application.
- that MBIE has sole discretion to determine which proposals (if any) will receive funding to maintain the quality of the Great Rides and that I understand that there is no agreement for MBIE to provide funding until both parties have signed a contract.
- I am authorised to make this application on behalf of the applicant/s identified in section 4.

The Applicant to sign and complete details below

Name of Authorised Signatory:	Rob Burn	Signature:	
Title:	Chair	Date:	31 st August 2016
Organisation:	Queen Charlotte Track Inc		



**FUNDING AGREEMENT
FOR
MAINTAINING THE QUALITY OF GREAT RIDES**

DATED the _____ day of _____ 2017

BETWEEN HER MAJESTY THE QUEEN in right of New Zealand acting by and through Iain Cossar General Manager, Tourism, Sectors, Regions and Cities branch; Labour, Science and Enterprise group, Ministry of Business, Innovation & Employment ("**Ministry**")

AND QUEEN CHARLOTTE TRACK INCORPORATED (companies registration number 1009165) having its registered address at c/- 2 Weka Place, Picton, New Zealand ("**Recipient**")

BACKGROUND

The Ministry wishes to contribute to the Project by providing funding from the appropriation set out in the Details on the terms set out in this Agreement.

AGREEMENT

The Ministry will pay the Funding to the Recipient, and the Recipient accepts the Funding, on the terms and conditions set out in Schedule 1 (Details), Schedule 2 (Funding Agreement Standard Terms and Conditions), Appendix 1 (Project Tasks), Appendix 2 (Project Report Template) and Appendix 3 (Claim Form) [together the Agreement].

EXECUTION

Signed for and on behalf of HER MAJESTY THE QUEEN in right of New Zealand by Iain Cossar, General Manager, Tourism, Sectors, Regions and Cities, Ministry of Business, Innovation & Employment:

Signature _____

Date: 3-03-17

Signed for and on behalf of Queen Charlotte Track Incorporated by: Rob Burn, Chairperson.

Signature _____

Date: 07-03-17

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SCHEDULE 1 – DETAILS

1 Context

In April 2009, the Government allocated \$50 million to implement cycle trails throughout New Zealand, to be known as Nga Haerenga, The New Zealand Cycle Trail project (NZCT).

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; and
- 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 Cabinet agreed to establish a contestable fund of \$8 million over four years for the purpose of maintaining and enhancing the Great Rides of Nga Haerenga ("MGR Fund").

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

The Ministry will evaluate the effectiveness of the fund in July/August 2017 to determine if it should be considered for continuation beyond the 2017/18 financial year.

2 Appropriation and approval process (Background)

A non-Departmental, four-year multi-year appropriation of \$8 million was authorised by Cabinet for the purpose of maintaining and enhancing the Great Rides of Nga Haerenga, the New Zealand Cycle Trail. The Chief Executive (CE) of the Ministry (or their delegate) makes the funding decisions on the basis of recommendations made by an independent assessment panel.



3 Funding (clause 2.1, Schedule 2)

The maximum amount of Funding available for this Project is \$255,000.00 (plus GST (if any)).

4 Project (clause 2, Schedule 2)

Funding is for works to reroute 6.4km of the Queen Charlotte Track between Ship Cove and Schoolhouse Bay campsite and trail enhancements in the vicinity of the 'Pines' to help reduce the speed of cyclists. Works and construction should meet the Grade 3 standard and be in line with the NZCT Cycle Trail Design Guide – February 2015, 4th edition <http://nzcycletrail.com/public-resource/> and to the satisfaction of the Ministry.

5 Project Tasks (clause 2.3(a), Schedule 2)

The Recipient must complete the Project Tasks in accordance with the project stages as set out in Appendix 1.

6 Payment terms (clause 2.1, Schedule 2)

Payments will be made in accordance with the table below, subject to clause 6.1. Payments will be made once the Ministry has approved that the relevant Milestone has been completed to its satisfaction.

Instalment value (plus GST, if any)	Relevant milestone number	Milestone due date	Milestone
\$209,220	1	30/06/18	• Completed claim form
\$45,780	2	30/06/18	• Completed project report

6.1 Before the Ministry is required to make any payments under the table in Clause 6 above, the following requirements must be fulfilled:

(a) The Recipient must provide the Ministry with the report(s) for the relevant Instalment value by the due date in accordance with clauses 6 and 10 of this agreement.

6.2 The Recipient must send a claim form in the format in Appendix 3 ("the Claim Form") that includes:

(a) details of all expenditure incurred by the Recipient in performance of the Project Tasks relevant to this Agreement for the relevant period;

(b) invoices from third parties or receipts showing expenditure incurred that is greater than \$1,000 (excl GST) by the Recipient in performance of the Project for the relevant period. Receipts for lesser expenditure should be kept by the Recipient for audit purposes;

RB



- (c) any evidence available to show that the Project Tasks have been met or, where applicable and approved, partly met; and
- (d) any other information requested by the Ministry.

6.3 Funding will be paid to the Recipient subject to clause 6.5 and subject to the Ministry's satisfaction with the final report (Appendix 2) and the relevant Claim Form (Appendix 3) provided in accordance with clause 10.

6.4 To avoid doubt, in respect of any Project Tasks, the Ministry is not required to pay any funding to the Recipient that exceeds the maximum Funding amount stated under clause 3 of this Schedule.

6.5 Without limiting Schedule 2 (Standard Terms and Conditions):

The Ministry may withhold payment of any amount where it believes, on reasonable grounds, that the Recipient has failed to comply with its obligations under this Agreement until the Recipient has completed such work or actions as may be required in writing by the Ministry.

7 Standards

7.1 The Recipient must ensure that:

- (a) fair, transparent and prudent procurement practices are used when appointing any third party to undertake Project Tasks; and
- (b) good processes are in place to manage conflicts of interest.

7.2 The Recipient must complete the Project in a manner consistent with good engineering and building industry standards and in a good and workmanlike manner.

7.3 The Recipient must complete the Project in line with the NZCT Cycle Trail Design Guide (<http://nzccycletrail.com/public-resources/>) and to the satisfaction of the Ministry.

8 Commencement Date (clause 1.1, 3.1 Schedule 2)

1 December 2016

9 Completion Date (clause 2.3(b), Schedule 2)

30 June 2018

10 Reporting Requirements (clause 4.1, Schedule 2)

The Recipient must provide to the satisfaction of the Ministry:



10.1 a completed Claim Form (Appendix 2) and completed Project Report (Appendix 3) with each claim.

10.2 A Final Report must be prepared and submitted no later than (20 July 2018). The Final Report must include, but is not limited to a completed Project Report (Appendix 2) and a completed Claim Form (Appendix 3).

11 Content of Report (clause 4.1, Schedule 2)

11.1 Each Project Report and the Final Report must contain:

(a) a summary of expenditure to date, including actual expenditure against budgeted expenditure (including an explanation for any variance) and identification of any other sources of contributions (source name and amount)

(b) details of how the Project Tasks were completed, including, where appropriate, photographic evidence that works meet specified design standards;

(c) a description of any problems that arose with the Project, the Project Tasks or the operation of this Agreement;

(d) details of any changes to the Health and Safety policy and procedures relating to this project; including a register of any incidents/accidents that have occurred; and

(e) any other information as may reasonably be requested by the Ministry.

12 Address for Notices (clause 11.5, Schedule 2)

Ministry:	Recipient:
Ministry of Business, Innovation & Employment 15 Stout Street PO Box 1473 WELLINGTON Phone number: 9(2)(a) Attention: Ime Tavite, Senior Investment Coordinator	Queen Charlotte Track Incorporated PO Box 529 PICTON 7220 Phone number: 9(2)(a) Attention: Rob Burn, Chairperson

RB

**SCHEDULE 2 -
FUNDING AGREEMENT STANDARD TERMS AND CONDITIONS**

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 trademarks 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;

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- (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 material 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;
 - (e) becomes insolvent, bankrupt or subject to any form of insolvency action or administration; or
 - (f) the Ministry has what it considers are material concerns about the Recipient's health and safety practices and, if the concerns are capable of being rectified, the Ministry has suspended the Agreement and given the Recipient the opportunity to rectify the concerns in accordance with clause 12.2 of Schedule 2.
- 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.

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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 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.

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- 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.

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11.8 This Agreement will be governed by and construed in accordance with New Zealand law.

Health and Safety

- 12.1 The Recipient must promptly notify the Ministry of any notifiable events under the Health and Safety at Work Act 2015 that occur in the performance of the Agreement or that have the potential to impact the performance of the Agreement.
- 12.2 The Ministry may suspend this Agreement immediately by giving written notice to the Recipient if the Ministry has what it considers are material concerns about the Recipient's health and safety practices. Upon notice of the suspension, the Recipient will have an opportunity to rectify the health and safety issue(s) specified in the notice to the satisfaction of the Ministry. If the health and safety issue(s) raised in the suspension notice are not rectified to the satisfaction of the Ministry within 20 Business Days, the Ministry may terminate the Agreement immediately under clause 3.3 of Schedule 2.

Released under the Official Information Act



**APPENDIX 1
PROJECT TASKS AND BUDGET**

#	Project Task	Key Performance Indicator	Start Date	Completion Date	Total Cost	Maximum Ministry Contribution	Co-Funding Contribution
1	Ship Cove Reroute	Reroute and regrade of track from Ship Cove to Resolution Bay to meet NZCT Design Guidelines Gate 3 cycle trail.	01/12/16	30/06/18	\$418,440	\$209,220	\$209,220
2	QCT Improvements	Remedial works and signage on other identified sections of the track to enhance track safety for shared use according to NZCT Design Guidelines.	01/12/16	30/06/18	\$91,560	\$45,780	\$45,780
			TOTAL		\$510,000	\$255,000	\$255,000

Released under the Official Information Act

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APPENDIX 2 PROJECT REPORT TEMPLATE	
NZCT MGR Claim Report	Date:
Trail Name: Queen Charlotte Track Incorporate: Queen Charlotte Track - MGR 05 04	
Completed by:	
Description of project: <i>Provide summary details about the planned work and cost, and which milestone this relates to.</i>	
Work completed so far: <i>Summarise how much of the work has been done.</i>	
Issues and Risks (including Health & Safety): <i>Identify any problems or risks arising or expected to arise with the project and how these will be mitigated, including details of any changes to the Health and Safety policy and procedures relating to this project; including a register of any incidents/accidents that have occurred;</i>	
Land Access: <i>Provide an update on progress with achieving any land access required for this work.</i>	
Total number of workers: <i>How many people have worked on this project.</i>	
Work required to complete the project and expected completion date: <i>Provide summary of remaining work.</i>	
<i>Attach photos as per clause 11.1(b), Schedule 1</i>	

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