

COOK ISLANDS INFRASTRUCTURE TRUST FUND

POLICY ARRANGEMENT

The Trust

Statutory trust

The Cook Islands Infrastructure Trust Fund is a statutory trust under Part X of the Ministry of Finance and Economic Management Act 1995 — 96 (as amended or replaced, MFEM Act). The trust fund is trust money under section 46 (1) (d) of the MFEM Act held in trust for the purposes (trust purposes) of:

- Investing in physical infrastructure to deliver essential services to Cook Islanders;
- Facilitating implementation of the National Infrastructure Investment Pipeline or Medium-Term Fiscal Strategy; and
- Supporting capability development of Cook Islands' infrastructure sector (across government and the private sector).

Trustee

The trustee of the Cook Islands Infrastructure Trust Fund, acting in that capacity for and on behalf of the Government of the Cook Islands (CIG), is the individual who is the most senior official of the Cook Islands Ministry of Finance and Economic Management (which is the department which administers trust money for the CIG, or its successor department in that role) (MFEM) — currently the Financial Secretary.

In connection with the performance of her or his role and function as such, the trustee may take, and rely upon, external professional, expert, technical or other advice, including by way of peer review of a recommendation or advice given to the trustee by the Steering Committee.

The trustee does not have a conflict merely by reason of being, and performing a role and function of, a public servant.

Beneficiaries

The beneficiaries of the Cook Islands Infrastructure Trust Fund are the people of the Cook Islands, represented by the CIG.

Management

For the purposes of section 46 (3) of the MFEM Act the CIG has appointed MFEM to manage the trust fund.

In so far as it concerns the management of the trust fund and the respective roles and functions of the Steering Committee and the Secretariat in respect of the management of the trust fund, this Policy Arrangement:

- is consistent with, the requirements of MFEM as provided for by section 46 (3) of the MFEM Act; and
- is an appointment of the Steering Committee as agent as provided for by section 46 (4) of the MFEM Act.

All relevant provisions of the MFEM Act and, as consistent with this Policy Arrangement, the Cook Islands Financial Procedure Manual will apply in respect of the management of the trust fund as provided for, or contemplated by, this Policy Arrangement.

Other Contributions and Donors

The CIG may contribute to the Cook Islands Infrastructure Trust Fund at any time in any amount.

The CIG may, but is not bound to, accept, receive and account for contributions to the Cook Islands Infrastructure Trust Fund by New Zealand, and (after consultation with the Government of New Zealand (GoNZ)) by another government or multi-lateral organisation.

All such contributions will be:

- paid into the trust account in which the trust fund is held;
- held in trust for the trust purposes; and
- managed and administered to achieve the trust purposes under and in accordance with this Policy Arrangement.

The CIG will not accept any contribution to the Cook Islands Infrastructure Trust Fund on a basis or upon terms which, if given effect, would alter the constitution of the Cook Islands Infrastructure Trust Fund or be inconsistent with this Policy Arrangement.

Trust Fund

Composition

The trust fund, at any time and from time to time, consists of initial and subsequent amounts settled upon the Cook Islands Infrastructure Trust Fund by New Zealand, Cook Islands and other donors and investment returns, less distributions from the trust fund made or authorised by the trustee under this Policy Arrangement.

No borrowing, etc.

Neither the Cook Islands Infrastructure Trust Fund nor the trustee will borrow or raise money, encumber the trust fund, issue any negotiable or transferable instrument, act as surety or give any indemnity.

Distributions

The trustee will not make, or authorise, a distribution from the trust fund unless:

- the trustee is satisfied the distribution is for a trust purpose or for an eligible cost (as defined in Eligible Costs below);
- (in the case of a distribution for a trust purpose) the distribution would be made in accordance with a recommendation made by the Steering Committee;
- (in the case of a distribution for an eligible cost) the trustee is satisfied that that eligible cost is payable in accordance with Eligible Costs below; and
- the distribution has been processed as required by the National budget process and duly appropriated by the Parliament of the Cook Islands.

Trust fund to be distributed

The mutual intention of the GoNZ and CIG is that the whole of the trust fund will be distributed to achieve the trust purposes by or before the vesting date specified in Termination and vesting below. Meanwhile some or all of the trust fund may be invested by, or on behalf of, the trustee in accordance with an investment policy established, adopted and publicised by the Steering Committee or otherwise in accordance with section 48 of the MFEM Act.

Steering Committee

Role and function

There will be a Steering Committee which has, and will have:

- the exclusive right to manage and administer the trust fund as provided for, or contemplated by, this Policy Arrangement and, as and to the extent approved by the trustee, to delegate the management and administration of the trust fund;
- the exclusive right to recommend to the trustee that trust money be disbursed in support of projects and activities which achieve the trust purposes;
- the right to recommend to the trustee that trust money be disbursed in respect of the payment (in whole or part) of eligible costs;
- the right to receive periodic updates, reports and other information about, and to review and evaluate:
 - the performance of the Cook Islands Infrastructure Trust Fund and any projects and activities of the Cook Islands Infrastructure Trust Fund;

- the implementation of this Policy Arrangement and policies and processes established and adopted under it;
- the investment performance of the trust fund;
- the conduct and performance of advisers and managers and others in so far as it may concern or touch upon the Cook Islands Infrastructure Trust Fund; and
- such other acts, matters and circumstances as, in the view of the Steering Committee, concern or touch upon the Cook Islands Infrastructure Trust Fund;
- the right to appoint professional, expert, technical or other advisers, or investment or project managers and to take, and rely upon, advice in connection with the performance of their role and function;
- in cooperation with the trustee, the right to appoint the Secretariat;
- the right to give direction, instructions, guidance and advice to the Secretariat and to receive, review and comment upon the products of work done by or services provided by the Secretariat;
- the right to appoint an independent auditor or investigator for the purposes and functions described in Reporting, Accounting, Audit and Inspection below;
- after consulting with MFEM and the trustee, the right to establish, adopt, publicise and implement:
 - the application criteria, conditions, form, process and decision-making structure in connection with recommendations for distributions from the trust fund for trust purposes;
 - the conditions, processes and decision-making structure in connection with recommendations for distributions from the trust fund in respect of the payment (in whole or part) of eligible costs;
 - the policies for the investment of the trust fund pending distribution;
 - such other policies, procedures and guidelines as the Steering Committee considers useful or necessary in connection with the performance of the Steering Committee's role and function; and
- the right to do such other things as the Steering Committee believes necessary or requisite in connection with, and better to fulfil, its role and function.

Members of the Steering Committee

The Steering Committee will consist of:

- a senior official of the New Zealand Ministry of Foreign Affairs and Trade (MFAT) appointed by MFAT;
- another person (who need not be a public servant) appointed for her or his relevant expertise appointed by MFAT after consultation with MFEM;
- a senior official of MFEM appointed by MFEM; and
- another person (who need not be a public servant) appointed for her or his relevant expertise appointed by MFEM after consultation with MFAT.

Each of MFAT and MFEM may, by notice to the Chair and the Secretariat, appoint, remove, replace or reappoint a member of the Steering Committee appointed by that ministry, after consultation where that is provided for.

A member of the Steering Committee may, by similar notice, appoint an alternate to act in her or his place at a meeting of the Steering Committee.

Chair

The trustee may, by notice to all the members of the Steering Committee and the Secretariat, nominate the Chair of the Steering Committee from among its members for a fixed term stated in the nomination notice. The trustee may, by similar notice, remove, replace or reappoint the Chair.

If, for any reason, no Chair is in office then the members of the Steering Committee present and acting at a meeting of the Steering Committee will elect a Chair for the meeting from among the members appointed by MFEM.

Exculpation and protection of Steering Committee members

The members of the Steering Committee are not, by virtue of such membership or the role and function of the Steering Committee, trustees of the Cook Islands Infrastructure Trust Fund. No member of the Steering Committee will be responsible for:

- a distribution from the trust fund — this being a role and responsibility of the trustee;
- the use or expenditure of all or any part of a distribution in the hands of a person who receives it;
- the success or otherwise of an activity or project in respect of which a distribution from the trust fund is made;
- any loss or depreciation of the value of the assets at any time and from time to time comprising the trust fund; or
- the acts or omissions of MFEM, or of the trustee, the Secretariat or any other member of the Steering Committee in their respective capacities as such.

Every recommendation or decision made by a member of the Steering Committee will be determined to have been made with reasonable care and diligence unless the contrary is proven by affirmative evidence.

A member of the Steering Committee does not have a conflict merely by reason of having been appointed by a ministry or of being, and performing a role and function of, a public servant.

CIG will indemnify each member of the Steering Committee (and each alternate for such a member) from and against any loss, liability, damages, cost or expense that person may suffer

or incur in connection with any act or omission by that member in her or his capacity as a member of the Steering Committee.

Meetings

The Steering Committee will meet at least twice a year — in April and in October - in Rarotonga or in Wellington (or in another location approved by every member of the Steering Committee). The Steering Committee may meet at such other times in Rarotonga or in Wellington as the Chair considers necessary.

Each such meeting will be on at least one month's notice unless every member of the Steering Committee approves a meeting being held on shorter notice. The agenda for, and all papers, information and material for consideration at, a meeting will be distributed to the members of the Steering Committee at least three weeks before the scheduled date of the meeting unless every member of the Steering Committee approves later distribution.

The quorum for a meeting of the Steering Committee is all, being four, members of the Steering Committee (or their alternates) present and acting.

A meeting of the Steering Committee may be held in person, or by secure electronic, telephonic or other means in which every member of the Steering Committee (or their alternates) present and acting can hear, and speak to, every other member of the Steering Committee (or alternate) contemporaneously.

All decisions (including about recommendations to the trustee) of the Steering Committee will be unanimous.

Except as provided in, or not inconsistent with, this Policy Arrangement the Steering Committee will determine and regulate its own meeting procedures.

The Chair of a meeting of the Steering Committee will arrange for a record to be made and kept of the matters considered, noted or decided at the meeting, and for the preparation, distribution and (once approved by the Steering Committee) finalisation and retention of minutes of that meeting.

A written resolution approved by all members of the Steering Committee will be valid as if made at a meeting of the Steering Committee duly convened and held. The resolution may consist of several documents in like form each signed or assented to by one or more members of the Steering Committee.

The records of the Steering Committee will be kept in safe custody by the trustee or the Secretariat.

Eligible Costs

Neither the trustee, nor the members of the Steering Committee, will be paid any salary, fee, honoraria or other remuneration for acting as such by the Cook Islands Infrastructure Trust Fund out of the trust fund.

However, actual and reasonable costs and expenses (eligible costs) of the following kinds may be paid by the Cook Islands Infrastructure Trust Fund out of the trust fund once approved or authorised by the trustee:

- the costs and expenses incurred by, or on behalf of, the trustee for travel, accommodation and sustenance in connection with a meeting of the Steering Committee or other business of the Cook Islands Infrastructure Trust Fund;
- the costs and expenses incurred by, or on behalf of, a member of the Steering Committee (or an alternate) for travel, accommodation and sustenance in connection with a meeting of the Steering Committee or other business of the Cook Islands Infrastructure Trust Fund;
- the fees, costs and expenses of the Secretariat identified and quantified in accordance with an arrangement between the Steering Committee and the Secretariat, which arrangement has been approved or authorised by the trustee;
- the fees, costs and expenses of an external professional, expert, technical or other adviser identified and quantified in accordance with an arrangement between the trustee (or the Secretariat at the direction of the trustee) and the adviser;
- the fees, costs and expenses of a professional, expert, technical or other adviser, or investment or project manager, identified and quantified in accordance with an arrangement between the Steering Committee (or the Secretariat at the direction of the Steering Committee) and the adviser or manager;
- the fees, costs and expenses of a professional, expert, technical or other adviser, or investment or project manager, identified and quantified in accordance with an arrangement between the Secretariat and the adviser or manager, which arrangement has been approved or authorised by the trustee or the Steering Committee;
- the costs and expenses of winding up the Cook Islands Infrastructure Trust Fund; and
- a fee for service (other than of the kind described above) of a kind referred to in section 50 of the MFEM Act.

MFEM confirms that fees, costs and expenses of the kinds described in the paragraph above are fees under, and for the purposes of, section 50 of the MFEM Act. .

Secretariat

With the approval of the trustee, the Steering Committee may appoint a Secretariat to provide administrative, accounting, operational and other services to the trustee and to the Steering Committee. The appointment will be by written arrangement.

The Secretariat is accountable to the trustee. The Secretariat will report to the trustee and the Steering Committee.

The role and function of the Secretariat may include:

- maintaining all Cook Islands Infrastructure Trust Fund, trustee and Steering Committee documents and records;
- reporting to the trustee and the Steering Committee on project and activities of the Cook Islands Infrastructure Trust Fund;
- assisting in the hiring and supervision of the advisers, managers, independent auditor and investigator;
- in accordance with the relevant conditions, processes and decision-making structures established and adopted by the trustee or Steering Committee, recommending to the trustee that trust money be disbursed in respect of the payment (in whole or part) of eligible costs
- drafting written instructions on behalf of the trustee to make or pay out distributions as authorised by the trustee;
- drafting, coordinating and sending official correspondence of the trustee and the Steering Committee;
- drafting and coordinating resolutions, unanimous written consents, recommendations and other official documents of the trustee and the Steering Committee, and monitoring their implementation;
- providing records and other support to the Cook Islands Audit Office, drafting narrative portions of the audit reports and reviewing the draft audit;
- providing records and other support to an independent auditor or investigator of a kind described in ***Reporting, Accounting, Audit and Inspection*** below;
- planning Steering Committee meetings and reviews of investments, obtaining meeting space, inviting participants, recording meetings and reporting on actions;
- drafting an annual report, annual financial statement, annual work plan and budget and annual acquittal statement and disseminating it to the trustee and the Steering Committee for approval;
- assisting with any review or evaluation of the Cook Islands Infrastructure Trust Fund, or any projects and activities of the Cook Islands Infrastructure Trust Fund, as and to the extent requested by the trustee or the Steering Committee;

- providing such other information concerning the Cook Islands Infrastructure Trust Fund, or any projects and activities of the Cook Islands Infrastructure Trust Fund, as the trustee or the Steering Committee may request;
- providing periodic updates of investments, performance and actions by advisers and managers and others;
- performing such other duties and responsibilities and providing such other services as the trustee or Steering Committee may assign; and
- doing, or assisting others to do, anything required by the Cook Islands Financial Procedures Manual to be done in connection with the trust fund or, as provided for, or contemplated by, this Policy Arrangement, its management.

With the approval of the trustee, in the arrangement the Steering Committee and the Secretariat will set and/or agree the ways and means to determine the fees, costs and expenses of the Secretariat.

Advisers/Managers

The Steering Committee may itself, or via the Secretariat, select, appoint and engage a professional, expert, technical or other adviser, or investment or project manager, to assist the Steering Committee in the performance of its role and function, and may negotiate the terms of an arrangement for that purpose.

Such an arrangement will include:

- such terms and conditions as the Steering Committee consider necessary or appropriate in the context of the Cook Islands Infrastructure Trust Fund, any projects and activities of the Cook Islands Infrastructure Trust Fund and the work or assignment; and
- provisions which identify and quantify the fees, costs and expenses of the adviser or manager, but may not include any provision which is inconsistent with this Policy Arrangement.

Reporting, Accounting, Audit and Inspection

The trustee will arrange for each of the following to be prepared for the Cook Islands Infrastructure Trust Fund within 90 days after the end of its financial year:

- an annual report for the financial year just ended;
- annual financial statements for the financial year just ended;
- a work plan and budget for the subsequent financial year;
- an acquittal statement for the financial year just ended;
- progress reports upon and information about each of the projects or activities (each a relevant project) in respect of which the Cook Islands Infrastructure Trust Fund has made, or has decided to make, a distribution; and

- documents and information in respect of particular activities of the Cook Islands Infrastructure Trust Fund for the financial year just ended as requested by CIG, GoNZ or the Steering Committee.

Each report, statement, plan budget or document referred to in this Reporting, Accounting, Audit and Inspection section will:

- include any documents or information requested by CIG, GoNZ or the Steering Committee; and
- be provided to CIG, GoNZ and the Steering Committee promptly after being completed.

CIG, GoNZ or the Steering Committee may request, and the trustee promptly will provide (and require the Secretariat to provide), a report on and access to documents and information about, the Cook Islands Infrastructure Trust Fund, the trust fund or a relevant project at any time.

If a review or evaluation of the Cook Islands Infrastructure Trust Fund, the trust fund or any relevant project, is undertaken, the trustee or Steering Committee (as the case may be) will submit to the CIG, GONZ, trustee or the Steering Committee for information:

- a copy of the terms of reference;
- a copy of the review/evaluation report; and
- the instigator's assessment of the report.

The Cook Islands Infrastructure Trust Fund, the trust fund and each relevant project will be covered by CIG's audit requirements. A copy of such audit and all other audit reports relating to the Cook Islands Infrastructure Trust Fund, the trust fund and each relevant project will be provided to GoNZ, the trustee and the Steering Committee.

GoNZ may audit or investigate the trustee's expenditure in relation to the Cook Islands

Infrastructure Trust Fund, the trust fund and each relevant project. MFEM, the trustee, the

Steering Committee and the Secretariat will allow GoNZ, or any agent acting on behalf of GoNZ, to carry out such an audit or investigation. MFEM, the trustee, the Steering Committee will cooperate, and the trustee will require the Secretariat to cooperate, with any on-site audit or investigation by making available all records and accounts relating to the Cook Islands

Infrastructure Trust Fund, the trust fund and each relevant project. GoNZ will pay all costs and expenses in connection with such an audit or investigation.

CIG, MFEM and the trustee will preserve their financial records for the Cook Islands Infrastructure Trust Fund, the trust fund and each relevant project for the minimum period required by law.

Confidentiality

The fact of, and the documents constituting, the Cook Islands Infrastructure Trust Fund are not confidential.

The work product of CIG, GONZ, MFEM, the trustee, the Steering Committee, the Secretariat and advisers and managers in connection with the Cook Islands Infrastructure Trust Fund, the trust fund or a relevant project may be confidential depending upon the subject matter, nature and content of the work and, where that is so, such confidentiality will be respected.

It is acknowledged that freedom of, and access to, information laws may apply and that CIG and GoNZ will respectively comply with applicable law and constitutional conventions and may disclose information to Ministers and other governmental agencies with a relevant interest.

Differences

CIG and GoNZ will resolve any difference between them in respect of the effect, application or interpretation of this Policy Arrangement, or in respect of any other matter concerning or touching upon the Cook Islands Infrastructure Trust Fund, by discussion between them.

Termination and vesting

Subject to the next paragraph, the Cook Islands Infrastructure Trust Fund will end on the first to occur of the following dates:

- when CIG and GoNZ mutually decide that the trust purposes have been achieved in so far as the trust fund allows;
- when CIG and GoNZ mutually decide that the trust purposes can or should no longer be achieved via the Cook Islands Infrastructure Trust Fund;
- when no trust funds remain to be distributed beyond those estimated to be necessary to meet the costs and expenses of winding up the Cook Islands Infrastructure Trust Fund; and
- 18 December 2034 (the vesting date).

At the end of the Cook Islands Infrastructure Trust Fund the trustee will:

- pay and discharge the costs and expenses of winding up the Cook Islands Infrastructure Trust Fund and any remaining liabilities of the Cook Islands Infrastructure Trust Fund; and
- transfer the trust fund remaining to the CIG.

The receipt of a proper officer of the recipient will discharge the trustee, and neither the trustee nor the Steering Committee will have any further role or function in respect of the trust fund.

Perpetuity Period

The perpetuity period for the Cook Islands Infrastructure Trust Fund is 80 years starting on the date the Cook Islands Infrastructure Trust Fund comes into existence as a statutory trust under Part X of the MFEM Act).

Amendment

This Policy Arrangement may be varied or supplemented only by a written document which refers to this provision and is signed for and on behalf of the GoNZ by MFAT and for and on behalf of the CIG by MFEM.

The CIG will not instigate, introduce, adopt, promote or support any change, from its form and effect as at 18 December 2019, to Part X of the MFEM Act or any measure within that Part — whether directly or indirectly - without first consulting with the GoNZ.

Taxation

The Cook Islands Infrastructure Trust Fund will be subject to Cook Islands tax law as applicable at any time.