Proactive Release

Date: 14 November 2019

The following Cabinet paper and related Cabinet minute have been proactively released by the Minister of Foreign Affairs:

Legislative Enablers for Hosting and Securing the APEC Meetings in 2021:
(CAB-19-MIN-0048)

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act). Where this is the case, the relevant sections of the Act that would apply have been identified. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

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- 6(a): to avoid prejudicing the international relations of the New Zealand Government;
- 6(b): to protect the passing of information from another government on a confidential basis;
- 6(c): to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial;
- 6(d): to endanger the safety of any person
- 9(2)(g)(i): to protect the free and frank expression of opinions by departments;
- 9(2)(f)(iv): the confidentiality of advice tendered by Ministers of the Crown and officials; and
- 9(2)(h): to maintain legal professional privilege.

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Cabinet

Minute of Decision

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Legislative Enablers for Hosting and Securing the APEC Meetings in 2021

Portfolio Foreign Affairs

On 4 March 2019, following reference from the Cabinet External Relations and Security Committee (ERS), Cabinet:

Background

1 noted that on 27 March 2018, ERS agreed that advice be prepared on possible legislative amendments required to host the Asia-Pacific Economic Cooperation (APEC) meetings in 2021, for consideration in late 2018 [ERS-18MIN-0001];

2 noted that a gap and requirements analysis was conducted to determine what legislative changes may be required to enable hosting of APEC in 2021;

3 noted that as a result of the analysis referred to above, officials have identified seven areas for new or amended legislation;

4 noted that these legislative proposals will be temporary for the purposes of APEC 2021, and are not intended to establish a general precedent, especially for future agency policy development in these areas;

Legislative changes

5 agreed to amend the Defence Act 1990 to enable the New Zealand Defence Force (NZDF) to provide specialist support to the APEC 2021 security operation, with the constabulary powers necessary to undertake any functions and training required;

6 agreed to amend the Arms Act 1983 to enable carriage of weapons by foreign protection officers, subject to approval by the Commissioner of Police and subject to conditions the Commissioner may impose;

New legislation

7 agreed to the creation of a legislative framework to enable the Commissioner of Police to designate ‘appointed persons’ with limited powers that their role requires for fixed periods for the purposes of APEC security;

8 noted that should a situation arise in which the designation of private security staff as appointed persons was required, the Commissioner of Police would inform the Minister of Police as soon as practicable that this was to occur, including the likely timeframe, likely numbers of staff involved, and the reasons why the designation is necessary;
noted that private security staff would be used for lower level security functions, such as venue security guards undertaking identity checks at access control points, or basic screening such as search by x-ray or searching a car or bag;

noted that to effectively perform the functions noted in paragraph 9 above, private security staff would require lower level powers drawn from those set out in paragraphs 16 and 17 below, equivalent to those they could currently exercise as if they were contracted privately;

agreed to enable the New Zealand Police (Police) to create maritime safety and security areas to manage the water areas surrounding hotels or other locations, and maritime transit corridors, located on or adjacent to Auckland harbour;

agreed to enable Police and NZDF and, subject to approval by the Commissioner of Police, foreign protection agencies, to import, export and use wireless electronic countermeasures technology during APEC 2021 events;

agreed that the period of use of wireless electronic countermeasures technology be enabled for three days prior to, and two days after, each APEC 2021 event, and up to five days before and after the Leaders’ Week period, which includes linked State-level bilateral meetings;

agreed to the creation of the following temporary powers for specified enforcement agencies to intervene and respond effectively and appropriately to risks posed by unmanned aerial vehicles as well as from piloted aircraft:

14.1 Police and NZDF powers:

14.1.1 ability to deploy preventative measures to secure APEC 2021 venues, accommodation and transport;

14.1.2 ability to either seize, destroy or bring under control unmanned aerial vehicles posing a threat to the security or safety of APEC 2021, through mechanical, cyber or other electronic means;

14.2 Police powers:

14.2.1 ability to enter premises or vehicle without warrant to seize any unmanned aerial vehicle and/or its control mechanism where the unmanned aerial vehicle is posing a threat to the security or safety of APEC 2021;

14.2.2 power to demand name and address of unmanned aerial vehicle user;

14.2.3 power to seize evidence of offending (such as streamed camera footage);

14.3 Police, NZDF and the Aviation Security Service power:

14.3.1 ability to prevent an aircraft taking off if it were believed that the craft was to be used to disrupt an APEC 2021 event;

agreed that the period of use of the powers outlined in paragraph 14 above be enabled for three days prior to, and two days after, each APEC 2021 event, and up to five days before and after the Leaders’ Week period, which includes linked State-level bilateral meetings;
agreed to the creation of the following temporary policing powers for accommodation, venue and other site security:

16.1 ability to designate buildings, other sites and immediate surrounds as a Security Area;

16.2 requirement to publicly notify Security Areas;

16.3 ability to control presence in a Security Area through:

16.3.1 power to require reason for entry into a Security Area;

16.3.2 power to request personal details or accreditation before entry into a Security Area;

16.3.3 power to require reason for presence in a Security Area;

16.3.4 power to request personal details of persons in a Security Area;

16.3.5 power to prevent or deny entry to a Security Area (person, vehicle or object);

16.3.6 power to remove a person from a Security Area;

16.3.7 power to seize and remove a vehicle or object from a Security Area;

16.3.8 power to give direction for safety or security to persons in a Security Area;

16.4 ability to undertake searches of a person:

16.4.1 basic search (screening), detailing method and who may undertake such a search;

16.4.2 pat-down search, detailing method and who may undertake such a search;

16.5 power to search premises in a Security Area without warrant and who may undertake such a search;

16.6 power to stop and search vehicles, and persons and objects inside vehicle, detailing methods and who may undertake searches;

16.7 power to establish a checkpoint, cordon or road impeder and enable it to remain in place as required for security or safety;

16.8 use of aids to assist in exercising powers, such as an appropriately trained dog, any chemical substance, X-ray or imaging equipment, or any other mechanical, electrical, or electronic device;

16.9 use of reasonable force to exercise any power;

agreed to the creation of the following temporary policing powers to enable road closures for security purposes:

17.1 ability to close a road to use by a person or vehicle (a closed road area);

17.2 requirement to publicly notify closed road area;
17.3 ability to prevent or deny entry to a closed road area (person or vehicle);
17.4 power to remove a person from a closed road area;
17.5 power to seize and remove a vehicle or object from a closed road area;
17.6 power to give direction for safety or security to persons in a closed road area;
17.7 power to stop and search vehicles, and persons and objects inside vehicle, detailing methods and who may undertake searches;
17.8 power to undertake searches of a person in a closed road area:
  17.8.1 basic search (screening), detailing method and who may undertake such a search;
  17.8.2 pat-down search, detailing method and who may undertake such a search;
17.9 power to establish a checkpoint, cordon or road impeder and enable it to remain in place as required for security or safety;
17.10 use of aids to assist in exercising powers, such as an appropriately trained dog, any chemical substance, X-ray or imaging equipment, or any other mechanical, electrical, or electronic device;
17.11 use of reasonable force to exercise any power;
18 agreed to the creation of the following temporary policing powers to enable short duration road closures for motorcade facilitation:
  18.1 ability to temporarily close to use by a person or vehicle any road to facilitate the movement of an APEC 2021 motorcade;
  18.2 power to prevent or deny entry to a closed road to a vehicle or person;
  18.3 power to remove a person from a closed road;
  18.4 power to seize and remove a vehicle or object from closed road;
  18.5 power to give direction for safety or security to persons in a closed road;
  18.6 power to establish a checkpoint, cordon or road impeder and enable it to remain in place as required for motorcade facilitation;
  18.7 use of reasonable force to exercise any power;
19 agreed to the creation of the following temporary offences to support the powers outlined in paragraphs 16 to 18 above:
  19.1 unauthorised entry into Security Area;
  19.2 failing to comply with the requirement to disclose personal details of a person within a Security Area;
  19.3 failing to comply with direction in a security area;
  19.4 unauthorised entry into closed road area;
19.5 failing to comply with direction in a closed road area;
19.6 failing to comply with direction in a road closed for motorcade facilitation;
19.7 climbing onto, under, over or around, or pushing/moving cordons, checkpoints or road impeders protecting APEC 2021 security areas, road closure areas, or a road closed for motorcade facilitation;

20 agreed that the penalties for all offences outlined in paragraph 19 above be set at imprisonment for a term not exceeding three months or to a fine not exceeding $2,000;

Legislative implications

21 noted that it is appropriate for the proposed APEC 2021 Empowering Act to be binding on the Crown because the Act will set out powers and obligations of the Crown and it amends two existing Acts that bind the Crown (the Defence Act 1990 and the Arms Act 1983);

22 agreed that the proposed APEC 2021 Empowering Act include a provision stating that the Act will bind the Crown;

23 invited the Minister of Foreign Affairs to issue drafting instructions to the Parliamentary Counsel Office to prepare new legislation that gives effect to the above decisions;

24 s9(2)(f)(iv)

25 noted that security agencies are seeking that the Bill obtains Royal Assent by mid-2020 to enable required training and exercises to occur;

26 invited the Minister Foreign Affairs to report to Cabinet Legislation Committee with a draft Bill;

27 authorised the Minister of Foreign Affairs, in consultation with the Minister of Police, to make decisions about minor, technical or administrative matters as required to finalise draft legislation;

Publicity

28 noted that announcements around the proposals in the paper under CAB-19-SUB-0048 will be made closer to the introduction of the Bill, and that the Minister of Foreign Affairs will lead this process for the government.

Michael Webster
Secretary of the Cabinet

Hard-copy distribution:
Prime Minister
Deputy Prime Minister
Minister of Foreign Affairs
Minister of Police
Legislative enablers for hosting and securing the Asia-Pacific Economic Cooperation (APEC) Meetings in 2021.

Proposal

1. This paper seeks agreement to a suite of legislative initiatives that are required for New Zealand to host a successful and, in particular, secure APEC in 2021.

Executive Summary

2. In 2021 the New Zealand Government will host the Asia Pacific Economic Cooperation forum (APEC). As well as a year-long series of meetings of officials, international chief executives and senior Ministers, New Zealand will see 21 world leaders together in Auckland from the 8th to 14th of November.

3. Hosting APEC will be of significant public interest and we are expecting a high level of international media coverage. It is important that we host a high-quality APEC year where all world leaders and attendees feel safe, secure and welcome. As well as working to promote public support of the events, we will need to ensure we demonstrate to the world our democratic principles; respecting the rights and freedoms of members of the public, including freedom of expression for those who may wish to demonstrate during certain APEC events.

4. With this in mind, officials were asked to prepare advice on possible legislative amendments required to host APEC in 2021, for consideration in late 2018 [ERS-18-MIN-0001 and CAB-18-MIN-0217 refer].

5. A gap and requirements analysis concluded that legislative change is required to ensure the necessary legal powers to effectively provide security for the APEC events. Security failures could result in harm to individuals and property and/or disruption or cancellation of APEC events. This would result in both international and domestic reputational damage and lost opportunity.

6. s9(2)(g)(i)

7. All of the legislative proposals are linked to security or safety, are temporary and are not intended to establish a general precedent for any future agency work in the areas covered by the proposals. They are reflective of requirements established during initial high level planning for APEC 2021, expectations of world leaders and delegations as well as lessons learnt from previous similar events in New Zealand and overseas.
8. Some of these changes are needed for the entire hosting year. Others are only for the Leaders’ Week\(^1\) period of 8th to 14th of November 2021 which specifically recognises the scale of that event and the enhanced security requirements for attendees. This also recognises that powers can impose some constraints on rights and accordingly any period of use should be as short as practicable.

9. The powers in place for the entire hosting year would only be exercised in the periods when APEC meetings are being held. Enabling the powers also for a few days prior to and after a meeting would enable preventative measures to be established and allow airports to be protected during flight movements that are carrying delegations. There are ten blocks of time when these powers would be needed, totalling approximately 120 days.

10. While the APEC hosting year does not commence until December 2020, and Leaders’ Week is not until November 2021, agencies are seeking for the Bill to obtain Royal Assent by mid-2020. This will enable specialist training and other required exercises to take place.

11. The following table outlines the areas of proposed legislative change and the period in which powers would be used.

<table>
<thead>
<tr>
<th>Legislative proposal</th>
<th>Period of operation</th>
</tr>
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<tbody>
<tr>
<td><strong>Enact an APEC 2021 Empowering Act to temporarily:</strong></td>
<td><strong>Leaders’ Week, and periods of training where constabulary powers are required.</strong></td>
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<tr>
<td>Amend the Defence Act 1990 to ensure that legislation allows the New Zealand Defence Force to provide specialist support to the APEC 2021 security operation while being fully integrated into the NZ Police operation and being under NZ Police control; to undertake any functions and training where constabulary powers are necessary and under any necessary safeguards.</td>
<td>Once the Bill is enacted in 2020 NZDF staff will be able to receive necessary specialist and tactical training.</td>
</tr>
<tr>
<td>Provide a legislative framework to enable the use, if required, of other government agency staff, private security staff and Australian police officers in support of the APEC 2021 security operation; with powers limited to those appropriate to the roles they may undertake and under any necessary safeguards.</td>
<td>Leaders’ Week Once the Bill is enacted in 2020 these staff will be able to receive necessary training.</td>
</tr>
<tr>
<td>Enable the NZ Police to create maritime safety and security areas, which are limited in size and duration to the extent practicable, to manage the water areas surrounding hotels or other locations, and maritime transit corridors, located on or adjacent to Auckland harbour; to manage access and address potential security risks.</td>
<td>Leaders’ Week</td>
</tr>
<tr>
<td>Authorise the NZ Police and NZDF and, subject to approval by the Commissioner of Police, foreign protection services to use wireless electronic countermeasure technology, which would generally be very limited in duration (e.g. a few APEC meetings during Hosting Year)</td>
<td></td>
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\(^{1}\) For these proposals, Leaders’ Week also encompasses the period before and after 8th to 14th of November 2021 to accommodate any State level bilateral visits linked to Leaders’ week. This is estimated to be a week each side of the Leaders’ Week dates.
<table>
<thead>
<tr>
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<th>Period of operation</th>
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<tr>
<td>moments at a time to allow vehicles to pass); to ensure the safety of visiting delegations and world leaders, public safety and the security of APEC venues and accommodation; to ensure that any use of electronic countermeasures are a reasonable and proportional way of meeting the necessary security objectives, consistent with the &quot;justified limitations&quot; in the Bill of Rights Act 1990.</td>
<td>APEC meetings during Hosting Year</td>
</tr>
<tr>
<td>Provide legislative powers for enforcement agencies to prevent and respond effectively and appropriately to risks posed by unmanned aerial vehicles as well as from piloted aircraft.</td>
<td></td>
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<tr>
<td>Create policing powers and associated offences supporting the delivery of the unprecedented scale and complexity of the requirements of the security operation, in these areas:</td>
<td></td>
</tr>
<tr>
<td>• Accommodation and Venue security</td>
<td>Leaders' Week</td>
</tr>
<tr>
<td>• Road closure for security purposes</td>
<td>Leaders' Week</td>
</tr>
<tr>
<td>• Road closure for motorcade facilitation</td>
<td>Ministerial Meetings and Leaders' Week</td>
</tr>
<tr>
<td>s6(a) amending the Arms Act 1983 to enable carriage of weapons by foreign protection officers, subject to approval by the Commissioner of Police and subject to conditions the Commissioner may impose, such as the type and number of weapons that can be brought into New Zealand; similar to the legislative approach taken for APEC 1999.</td>
<td>Leaders' Week</td>
</tr>
</tbody>
</table>

The Scale and Complexity of the Asia Pacific Economic Cooperation forum in 2021

12. The Asia Pacific Economic Cooperation forum (APEC) in 2021 will be the largest event ever hosted by the New Zealand Government. It is a 12 month series of events, culminating in Leaders' Week in Auckland from the 8th to 14th November 2021. Its scale, complexity and cost means the APEC Summit is considered a mega-event². It is an opportunity for New Zealand to host leaders from most of our largest trade partners at the same time.

13. APEC in 2021 is estimated to be four times the size and complexity of when New Zealand last hosted APEC in 1999. This is based on the size of the delegations and workforce required to support the event. The number of attendees expected over the hosting year is 18,000 - 22,000.

14. The APEC21 Programme, led by the Ministry of Foreign Affairs and Trade (MFAT), has been established to plan and deliver the hosting of APEC on an all-of-

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² A mega-event is defined as one that has primarily international participants, usually including New Zealanders, primarily international audience, extensive international media coverage, and significant and widespread benefits within New Zealand.
Government basis. The New Zealand Police (NZ Police) is leading the security operation with significant support from other agencies across the security sector.

15. A key objective is to ensure the event is safe, secure and welcoming for all attendees. Delivering this event will also show that New Zealand has the capability and capacity to host international events of this scale.

16. There are 12 major meetings over the APEC year plus Leaders' Week. The APEC 2021 Leaders' Week in Auckland in November 2021 is the focal point of hosting activities and is the period where maximum agency resourcing and capabilities will be required. In that week alone, 21 world leaders, spouses, Ministers and invited guests along with other high-ranking officials from all over the world will require hosting and protection. An estimated 84 internationally protected persons\(^3\) will require individual security consideration during Leaders' Week.

17. s6(a)

18. Since New Zealand last hosted APEC in 1999, the international threat and risk environment has changed significantly. Changes include proliferation of wireless technology, higher risk of low technology terrorist attacks (such as the use of vehicles against crowded places), and social media and ease of information exchange creating less predictable protest activity.

19. While New Zealand is fortunate in that our threat level is low, meaning terrorist attack is assessed as possible but not expected, the security operation has to be cognisant of all risks and be prepared to deal with them. An APEC specific threat assessment was completed in 2017 and at that time the threat level was also assessed as ‘low’.

20. It is important to note that some world leaders are subject to a higher level of threat than we are used to in New Zealand and this threat can travel with them. Threat assessments will be undertaken periodically and continue to inform operational planning in the lead up to the hosting year.

21. s6(a); s9(2)(g)(i)

22. New Zealand’s reputation as a country that supports democratic freedoms and principles will be enhanced by the way we secure the APEC events whilst enabling lawful and peaceful protest. Accordingly the Police are leading the security operation and will make up the bulk of the security workforce, especially the public face of security activities.

\(^3\) An internationally protected person as defined by the meaning of the Crimes (Internationally Protected Persons, United Nations and Associated Personnel, and Hostages) Act 1980 – being heads of state, heads of government, foreign ministers, ambassadors, other official diplomats, and members of their families.
23. The security operation will be undertaken in the New Zealand style of policing; policing with the consent of the public and based upon the Prevention First operating model. This model is designed to take every opportunity to prevent harm and achieve positive outcomes, rather than policing for arrest and conviction after harm has occurred. The model also recognises the criticality of engaging with all stakeholders and others that will either be part of, or effected by, policing activity.

24. The APEC 2021 security operation will also need to ensure the rights of visitors and the general public are met whilst still ensuring that people are able to exercise their right to protest. As the actions of protestors can often drive the required level of response it is important to work with all parties so that legitimate peaceful protest can occur safely for protestors, the general public and attendees of the APEC events.

Assessing the need for legislation

25. When New Zealand last hosted APEC in 1999, legislation was passed to enable some aspects of security and logistics. These were temporary legislative amendments to allow foreign protection officers for leaders attending APEC to carry weapons under the Arms Act 1983, and to temporarily close the Auckland Domain to host the Leaders Retreat. A school holiday for Auckland to minimise disruption to the public was also declared.

26. These legislative changes were adequate for the scale of the 1999 event and met hosting and security requirements at that time. However, changes in technology, threat and risk environments and higher security expectations of attendees are all factors in the way in which New Zealand will host and secure APEC in 2021.

27. On 27 March 2018, Cabinet was advised that legislation would likely be required to facilitate the hosting of APEC. That paper outlined the types of areas which would need to be considered. This included authorisation for foreign protection officers to carry firearms, ensuring NZ Police has powers to secure key locations, and temporarily blocking radios and cellular services.

28. Cabinet agreed that advice be prepared on possible legislative amendments required to host APEC in 2021, for consideration in late 2018 [ERS-18-MIN-0001 and CAB-18-MIN-0217 refer].

29. Officials undertook a gap and requirements analysis to determine what legislative changes may be required to enable hosting of APEC in 2021. The analysis was conducted across the following key areas:

- Previous legislation for similar events in New Zealand and other jurisdictions.
- Potential legislation to support security objectives and approaches identified through initial high level planning.
• Reviewing all of the likely activities and corresponding logistical and security requirements (and expectations) of visiting world leaders, delegations, and media. This included activities pre-arrival, border controls, transport movements, and accommodation and venue requirements.

30. The analysis concluded that legislative change is required to ensure the necessary legal powers to effectively provide security for the APEC events. Some of these changes are needed for APEC events throughout the entire hosting year. Others are only for the Leaders’ Week period of 8th to 14th November 2021 and any State level bilateral visits linked to this Week, estimated to be a week each side of these dates.

31. Legal powers to provide effective security are essential to hosting a safe and secure APEC. Security failures could result in harm to individuals and property and/or disruption or cancellation of APEC events. s9(2)(g)(i)

Areas identified for legislative amendment

32. Officials have identified seven areas where new or amended legislation are recommended. Changes proposed will be temporary for the purposes of APEC 2021 and are not intended to establish a general precedent, especially for future agency policy development in these areas. All of the areas are linked to security or safety activities. They cover:

• Ensuring that legislation allows the New Zealand Defence Force (NZDF) to provide specialist support to the APEC 2021 security operation, while being fully integrated into the NZ Police operation and being under NZ Police control, to undertake any functions and training required where constabulary powers are necessary and under any necessary safeguards.

• Providing a legislative framework to enable the use, if required, of other government agency staff, private security staff and Australian police officers in support of the APEC 2021 security operation, with powers limited to those appropriate to the roles they may undertake and under any necessary safeguards.

• Enabling the NZ Police to create maritime safety and security areas, which are limited in size and duration to the extent practicable, to manage the water areas surrounding hotels or other locations, and maritime transit corridors, located on or adjacent to Auckland harbour; to manage access and address potential security risks.

• Authorising the NZ Police and NZDF and, subject to approval by the Commissioner of Police, foreign protection services to use wireless electronic countermeasure technology, which would generally be very limited in duration (e.g. a few moments at a time to allow vehicles to pass), to ensure the safety of visiting delegations and world leaders, public safety and the security of APEC venues and accommodation; to ensure that any use of electronic countermeasures are a reasonable and proportional way of meeting the...
necessary security objectives, consistent with the “justified limitations” in the Bill of Rights Act 1990.

- Providing legislative powers for enforcement agencies to prevent and respond effectively and appropriately to risks posed by unmanned aerial vehicles as well as from piloted aircraft.

- amending the Arms Act 1983 to enable carriage of weapons by foreign protection officers, subject to approval by the Commissioner of Police and subject to conditions the Commissioner may impose, such as the type and number of weapons that can be brought into New Zealand; similar to the legislative approach taken for APEC 1999.

- Creating of temporary policing powers and associated offences for the APEC 2021 Leaders’ Week period and associated bilateral events, supporting the delivery of the unprecedented scale and complexity of the requirements of the security operation. The areas of powers and associated offences are:
  - Accommodation, venue and other site security.
  - Road closure for security purposes.
  - Short duration road closures for motorcade facilitation.

Enabling the New Zealand Defence Force to provide specialist support to APEC 2021 security operation

33. During the hosting of APEC in 1999 the security operation used large numbers of NZDF personnel in an overt security role, principally staffing security cordons. These NZDF personnel were acting under the provisions of section 9(1) of the Defence Act 1990 which enables the NZDF to provide any public service. This approach was limiting in that the NZDF staff did not have necessary powers to enforce the security cordon. This was considered acceptable for the security environment at that time.

34. Planning for the security operation in 2021 established a number of options for how required security resources will be provided. The preferred option, recommended to Government, maximises use of police resources. This aligns with New Zealand’s current approach to domestic security with New Zealand Police in all public facing roles. The ‘look’ or branding of the security workforce is important as it impacts upon the perceptions of delegates, visitors and New Zealanders.

35. NZDF personnel will be used to provide support to the APEC 2021 security operation, and other hosting activities, under the existing public service provisions of the Defence Act. For example providing logistical support such as transport.

36. s6(a); s6(c); s9(2)(g)(i)
37. The NZDF have readily available staff with appropriate skills who could be sourced to support the security operation during Leaders’ Week. Using these staff would utilise investment that Government has already made in existing national capabilities. This is considered the most practical and cost effective way to close gaps in capacity and capability. Using NZDF is low risk since they are New Zealand Government staff already compliant with New Zealand Government service requirements and will be sensitive to New Zealand culture as well as NZ Police approaches to hosting and security.

38. Current legislative settings in the Defence Act 1990 do not enable the use of NZDF staff in policing roles with any constabulary powers, outside an emergency situation. This is a strong constitutional convention, acknowledging the primacy of Police in enforcing domestic law and order.

39. Consideration has been given to temporarily swearing NZDF personnel in as New Zealand police officers. s9(2)(h)

40. It is proposed to temporarily amend the Defence Act 1990 to enable the NZDF to assist NZ Police in providing security for APEC 2021, in specialist roles.

41. The legislative proposal would enable the specialist NZDF personnel to exercise the powers of a NZ Police constable that would be appropriate to the roles they were undertaking during, and training for, APEC 2021. They would also have the protections of a NZ Police constable for civil and criminal liability. For example, use of reasonable force when effecting an arrest and taking a person into custody or exercising a warrantless entry power to prevent an offence or respond to a risk to life or safety.

42. NZ Police would not place these personnel in positions where wider business as usual constabulary powers are likely to be needed, for example, road policing functions or alcohol enforcement.

43. s6(a)

44. s6(a); s9(2)(f)(iv)
45. When exercising these powers NZDF personnel will be subject to the full accountability mechanisms that apply to the NZ Police (i.e. to the Commissioner of Police and appointed commanders as well as existing legislative frameworks). In this supporting capacity it is intended that NZDF personnel will integrate fully into the Police operation and be under Police and be under NZ Police supervision and control. For all intents and purposes these personnel will be deployed as part of NZ Police, with constabulary powers for the duration of the operation (including training leading up to APEC 2021 events).

46. Under the proposed amendment, NZDF personnel would not operate as a separate unit in the security operation. Rather they will be under the direction and control of the NZ Police, s6(a)

47. The alternatives to deploying NZDF personnel in this capacity are:

- Training additional NZ Police Officers in these capabilities s9(2)(g)(i)

- Ask Australia to provide more staff s6(a)
Enabling the use of other Government agency staff, private contractors and Australian police officers to provide support to the APEC 2021 security operation

48. It is proposed to enable the Commissioner of Police to designate ‘appointed persons’ with limited powers that their role requires for fixed periods for the purposes of APEC security.

49. When exercising these powers personnel will be subject to the full accountability mechanisms that apply to the NZ Police. All personnel involved in securing APEC, including any ‘appointed persons’, will undergo an accreditation process which includes appropriate consent based security vetting.

50. The legislative approach enables a more transparent and measured approach to application of powers and ensures that the APEC 2021 legislative framework is futureproofed. This approach replicates that undertaken in Australia for similar government-hosted events.

51. High level security planning has included addressing resourcing gaps with Australian police officers and equipment in specialist roles, subject to funding and Australian Government agreement. This is an efficient way of temporarily sourcing niche capabilities and Australia has proven to be a willing and capable partner in the past. NZ Police has also reciprocated support for similar major events in Australia on a number of occasions such as the Commonwealth Heads of Government meeting in 2002, APEC in 2007 and the G20 Summit in 2014.

52. Australian police officers can be sworn in as temporary NZ Police constables under the Policing Act 2008. For some specific roles, such as those that may require the carriage of weapons, swearing in will be appropriate and will be used. However, swearing in Australian Officers may be considered unnecessary as it would give the officers the full suite of NZ Police constabulary powers that they would not likely need. This will be subject to detailed security planning and does not preclude that all Australian police officers may be required to be sworn in as NZ Police constables.

53. Should the security operation require specific personnel to be drawn from other government agencies or private security companies, there may be a need to provide them with limited powers to undertake certain tasks\(^4\). It is not appropriate to swear other government agency or private security company personnel in as NZ police officers with the full suite of constabulary powers.

54. NZ Police are not currently planning to use private security staff in the APEC 2021 security operation. Examples of the factors that might change this are:

- a change in the security situation or threat environment between now and 2021;
- a natural disaster in New Zealand or other significant police operational commitment at the same time as Leaders’ Week that means NZ Police resources are more stretched than currently expected;

\(^4\) Current planning for the security operation has incorporated use of personnel from the Aviation Security Service. However this does not require legislative change as the Civil Aviation Act 1990 already enables this agency to assist Police on request.
56. Should a situation arise in which the designation of private security staff as appointed persons was required the Commissioner of Police would inform the Minister of Police as soon as practicable that this was to occur including the likely timeframe, likely numbers of staff involved and the reasons why the use is necessary.

57. If there were a need to use private security staff, they would be used for lower level security functions such as venue security guards undertaking identity checks at access control points or basic screening such as search by x-ray or searching a car or bag.

58. To perform these sorts of functions effectively they would need some low level powers - such as those specific APEC powers that have been proposed in this paper around the ability to ensure only accredited persons and vehicles to enter APEC 2021 sites and / or the ability to screen or search people or vehicles prior to entry to APEC 2021 sites.

59. While the Police Commissioner would determine what powers would be necessary, if private security staff are designated as appointed persons they would only be authorised to exercise powers equivalent to those they could currently exercise as if they were contracted privately. For example the powers would not include wider policing powers or such powers as arrest or search of a person that involves physical contact.

60. Private security guards would be trained by NZ Police and operate under the direct command and control of NZ police officers.

61. s6(c); s9(2)(g)(i)

62. Note that private security staff cannot be co-opted by NZ Police without powers being established for them to do so. The Policing Act 2008 only enables a Police employee to ask a person to help “apprehend or secure a person and / or convey a person in the employee’s charge to a Police station or other place”. No other powers can be granted without swearing an individual in as a NZ Police Officer.

Creation of maritime security and safety areas

63. Security agencies will need to manage the water areas surrounding hotels or other locations on or adjacent to Auckland harbour, to manage access and address potential security risks. Management of maritime transit corridors across the Auckland harbour may also be required.

64. s6(d)
66. In order to ensure appropriate security in such circumstances it may be necessary to:
   • Limit or exclude access of people or craft in a harbour area for security purposes.
   • Limit activities on or adjacent to an area, such as fishing or diving from a wharf or swimming.
   • Protect a water corridor used for the movement of internationally protected persons from one location to another.

67. Limiting access to, and controlling, a maritime area during a major event is currently achieved through the major events section in the Maritime Transport Act 1994 (MTA). Examples of use of the legislation include creating safety and security areas around America's Cup racing courses and during the Royal New Zealand Navy International Fleet Review in 2016. However, the MTA applies “only to specified maritime events and occasions”. This definition excludes APEC 2021.

68. It is proposed to replicate the enabling legislation, on this same issue, created for the Rugby World Cup in 2011. This legislation enabled the Commissioner of Police to apply to the Minister of Transport to have locations or facilities on, over, or adjacent to water declared as major maritime event areas under the MTA. This was the process used for NZ Police to facilitate security and safety at the waterfront ‘Fan Zone’ in Auckland.

69. The legislation would enable NZ Police to exercise powers to create safety and security areas or maritime transit corridors. These areas would be limited in size and duration to the extent practicable to minimise impact upon the general public. The areas will also vary in that some may restrict access, others may only limit activity.

70. The legislation will need to enable both planned and reactive use.
   • For planned use (when locations and travel routes are known in advance) the process to designate a maritime event area will be the same as for the Rugby World Cup. The Commissioner of Police would apply to the Minister of Transport and the decision, with all area boundaries, would be notified in the New Zealand Gazette and in major local newspapers and relevant websites.

   • For reactive use (securing impromptu activity) the Commissioner of Police would have the ability to temporarily designate a maritime event area for the purposes of security. This would be a similar approach to establishing safety cordon on land during a police operation.
Enabling the use of wireless electronic countermeasures

71. Uses of wireless technology have proliferated in recent years. Most of these uses are socially beneficial, but there are also possibilities for serious misuse. For example, there is a risk that wireless devices could be misused to interfere with communications, detonate an explosive device, or to fly a drone in ways that endanger safety at APEC 2021 events.

72. In certain circumstances, security agencies may wish to use wireless electronic countermeasures (W-ECMs) to reduce or respond to threats in order to ensure the safety of internationally protected persons, public safety or the security of APEC 2021 venues and accommodation.

73. W-ECMs are continually evolving and include technologies intended to block, interrupt, disable or capture the link between a radio transmitter and a receiver. This can be done through jamming equipment making radio transmitters and receivers unable to establish a communications link. This method is most commonly used and is designed to be a preventative protection measure. It does not take control of an individual device, but rather temporarily disrupt signals in an area. Its main use would be the protection of motorcade movements of internationally protected persons. It can also potentially be used to establish a ‘fence’ around an area, for example to stop incursion of wirelessly controlled devices into airspace surrounding airports.

74. Another method is deceptive broadcasting which is more complex and involves transmission of fake messages. These fool a device into accepting commands from someone who isn’t the device operator. The use of deceptive broadcasting is designed to respond to an unlawful action such as a bomb threat or incursion into restricted airspace.

75. Foreign protection services may request permission to use such technology to protect their leader or for New Zealand to provide this. s6(a); s6(d)

76. The Intelligence and Security Act 2017 provides for the use of W-ECMs by security agencies in certain conditions, generally under a judicially issued warrant. However, this Act does not enable rapid response to emergency situations, does not allow employment of W-ECMs for preventative measures such as for the protection of APEC venues and motorcades, and does not enable the use of W-ECMs by foreign protection services.

77. The Radiocommunications Act 1989 also makes W-ECM use difficult in practice, as it makes it hard to procure, import and export W-ECM technologies. The Act does not allow the use of deceptive broadcasting. The Act also creates a licencing regime where users, such as providers of cellular services, have property rights to parts of the radio spectrum.

78. Licensing under the Radiocommunications Act 1989 has been considered but ruled out as not practical given the sensitive nature of W-ECM use in these circumstances.
79. Temporary legislation is proposed to enable the use of W-ECMs by the NZ Police and the NZDF. This would aid the security operation in more effectively protecting visitors, events and the general public. The legislation would be sufficiently flexible to take into account changes in technology and wider wireless proliferation between now and 2021. This proposal also supports the legislative proposals for enforcing restricted airspace.

80. It is acknowledged that the use of such devices will impact upon the general public and in some cases may limit freedom of expression. However, as noted in the Human Rights section of this paper, impact will generally be very limited in duration (a few moments at a time as vehicles pass), usually based around narrow corridors of use such as motorcade routes, and publically notified to the extent possible. This proposal is considered a reasonable and proportional way of meeting the objectives of APEC 2021.

81. The legislation would also enable foreign protection services to request the ability to use W-ECMs for the protection of world leaders or other internationally protected persons. The Commissioner of Police will be authorised to approve the importation and use of W-ECMs by foreign protection services. This would be done in consultation with the Secretary of Foreign Affairs and Trade and the Radio Spectrum Management team at the Ministry of Business, Innovation and Employment (MBIE). The Commissioner of Police would set parameters or requirements on the importation and use of W-ECMs that are consistent with New Zealand law.

82. Use would be authorised for the minimum period necessary to achieve the objective of the use of W-ECMs. This will minimise impact upon legitimate radio spectrum users (such as providers of cellular services). The two circumstances where W-ECMs may be used during APEC 2021 are:

- **Planned use.** e.g. protecting venues and accommodation, during movement by motorcade or to control airspace.
  - Under these circumstances W-ECM users would be required to notify and coordinate with affected radio spectrum rights holders, to the extent possible, before using W-ECMs. This would ensure that negative impacts could be minimised and rights holders could communicate to their customers in a timely manner.

- **Reactive (emergency).** e.g. a bomb threat.
  - Reactive use would still be limited to those W-ECM users who had prior approval for planned use during APEC 2021. Any use would require post-event reporting to MBIE and to affected rights holders, to the extent possible. This enables MBIE and rights holders to confirm to their customers that the cause of any disruption was not failure of the integrity of networks.

83. Critical radiocommunications (such as 111 calling on cellular networks, aircraft landing and radio navigation) and sensitive economic activities will require protection. As part of the preparations for APEC 2021 there will be liaison with critical communications infrastructure users so as not to compromise health and safety of the general public as well as the APEC events.
Enforcement of restricted use airspace for security and safety purposes

84. s6(a); s6(d)

85. s6(a); s6(d)

86. s6(a); s6(d)

87. s6(b)(i)

88. s6(b)(i)

89. Civil Aviation Rule Part 71 allows the Director of Civil Aviation to declare restricted use airspace on the grounds of aviation safety and security, national security or the public interest. Once such an area is declared the fact of this is promulgated by way of a Notice to Airmen (NOTAM) issued by Airways Corporation.

90. Civil Aviation Rule Part 101 sets out rules for the use of UAVs within restricted airspace. The regulatory regime is based upon the premise that ‘law abiding’ UAV pilots will avoid the restricted area.

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5 The terms; ‘Unmanned Aerial Vehicle’ (UAV); ‘Unmanned Aircraft System’ (UAS); ‘Remotely Piloted Aircraft System’ (RPAS); and ‘Drone’ are all references to one and the same thing, this being: "An aircraft [or aircraft-system] that is flown from a remote location without a pilot located in the aircraft itself."

6 For the purposes of APEC 2021 there would be an expectation that the Police will work with the Civil Aviation Authority to ensure that controlled airspace zones are established and notified well in advance of APEC meetings they will apply to.

7 101.7(a) - Person must not operate unmanned aircraft, kite, rocket, gyroglider, or parasail within restricted area unless they have approval of responsible administering authority.
91. It is proposed to create temporary powers, outlined in the table below, that expressly provide for security agencies to treat any UAV entering designated APEC restricted use airspace in breach of Civil Aviation Rules, without express permission of the authorities, as a prima facie security threat and to undertake responsive or preventative measures.

92. This represents a ‘prevention first’ approach to protecting APEC 2021 venues, accommodation and transport and provides the ability for rapid and effective response to restricted use airspace incursion.

<table>
<thead>
<tr>
<th>Powers – NZ Police and NZDF</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ability to deploy preventative measures to secure APEC 2021 venues, accommodation and transport.</td>
</tr>
<tr>
<td>Ability to either seize, destroy or bring under control unmanned aerial vehicles posing a threat to the security or safety of APEC 2021, through mechanical, cyber or other electronic means.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Powers – NZ Police</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ability to enter premises or vehicle without warrant to seize any unmanned aerial vehicle and / or its control mechanism where the unmanned aerial vehicle is posing a threat to the security or safety of APEC 2021.</td>
</tr>
<tr>
<td>Power to demand name and address of unmanned aerial vehicle user.</td>
</tr>
<tr>
<td>Power to seize evidence of offending (such as streamed camera footage).</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Powers – NZ Police, NZDF and the Aviation Security Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ability to prevent an aircraft taking off if it was believed that the craft was to be used to disrupt the APEC 2021 event.</td>
</tr>
</tbody>
</table>

**Enabling the carriage of weapons by foreign protection officers**

93. New Zealand provides security to guests of government on a frequent basis, specifically to internationally protected persons. While they are in New Zealand, foreign leaders will be protected by the NZ Police and their own protection officers. Some leaders will expect their protection officers to carry firearms.

94. The Arms Act 1983 does not allow the carriage of weapons by foreign protection officers in New Zealand. s6(a)

101.11 - Person must not operate unmanned aircraft, kite, rocket, gyroglider, or parasail in controlled airspace without prior authorisation from responsible Air Traffic Control unit.

101.13 - Person must not operate unmanned aircraft, kite, rocket, gyroglider, or parasail without taking all practicable steps to minimise hazards to other aircraft, persons, and property.

101.15 - Person operating unmanned aircraft, kite, rocket, gyroglider, or parasail must not allow object to be dropped in flight if it creates hazard to other persons or property.
During APEC in 1999 the Arms Act 1983 was temporarily amended to enable carriage of weapons by foreign protection officers.

It is proposed to temporarily amend the Arms Act 1983 to enable carriage of weapons by foreign protection officers, similar to the legislative approach taken in...
APEC 1999. Legislating is a more proactive approach to managing any risk associated with foreign protection officers.

104. The NZ Police, in conjunction with other relevant agencies, will manage all requests for foreign protection officers to carry weapons. The Commissioner of Police will be authorised to make the final decision and to place conditions on any approvals. These conditions would include the type and number of weapons and ammunition that can be brought into New Zealand and for the NZ Police to have the ability to inspect, detain or seize weapons and ammunition at any time if necessary.

105. The Commissioner of Police will consult with the Secretary of Foreign Affairs and Trade before making the decision.

106. The NZ Police will ensure risks arising from foreign protection officers carrying weapons will be reduced by limiting the types and numbers of weapons carried and working closely with economies to maximise their understanding of New Zealand’s laws and operational security practices and policies. In particular foreign protection officers will be made aware that they do not have immunity for their actions and that, as with the NZ Police, sections 48 (self-defence and defence of another) and 62 (excess of force) of the Crimes Act 1964 would apply to them should they need to use force or firearms.

**Temporary policing powers and associated offences**

107. Appendix A sets out the security requirements for APEC 2021 that were established during high level security planning. Based on those requirements and the analysis outlined in paragraph 29 the following areas require enhanced powers, reflecting the scale and nature of securing a mega-event:

- Accommodation, venue and other site security.
- Road closure for security purposes.
- Short duration road closures for motorcade facilitation.

108. It is proposed to establish a temporary framework of powers that is based upon, and goes no wider in scope than, similar legislation already in existence in New Zealand that is designed to ensure security or safety at certain sites. Examples of this existing approach include Customs Controlled Areas, Aviation Security Areas, Biosecurity Areas and Defence Areas.

109. The proposed powers and offences also draw on security legislation that was enacted to secure similar events in Australia at G20 in 2014 and the Commonwealth Games in 2018. s6(a)
110. It is recommended that the penalty for all offences proposed in this paper be set at imprisonment for a term not exceeding three months or to a fine not exceeding $2,000. This penalty is based upon similar offences in the Trespass Act 1980, Summary Offences Act 1981, Civil Aviation Act 1990, Biosecurity Act 1993 and Defence Regulations 1990.

**Accommodation, venue and other site security**

111. The ability to secure venues and accommodation and other sites that may be required is paramount to the security and safety of all attendees at APEC 2021.

112. s6(c)

113. During the hosting of APEC in 1999 the Leaders’ Retreat was held at Auckland War Museum in the Auckland Domain. An Act of Parliament was enacted making the Commissioner of Police the occupier of the Domain. This enabled the NZ Police to use the Trespass Act 1980 to limit access and remove persons if required. With a far different threat environment, different expectations from economies and the number of private buildings being used to host APEC 2021 it is not considered viable or effective to use this approach again.

114. The NZ Police has limited ability to carry out the full suite of activities required to secure venues and accommodation without some enabling provisions through temporary legislative change.

115. The proposed powers, outlined in the table below, support core security activities, which are:

- The ability to ensure only accredited persons and vehicles enter APEC 2021 venues, accommodation and other sites.
- The ability to screen or search people or vehicles prior to entry to APEC 2021 venues, accommodation and other sites.
- The ability to search APEC 2021 venues, accommodation and other sites.
- The ability to question, search, or remove persons and vehicles from inside an APEC 2021 venue, accommodation, and other sites if necessary.

s6(a)
• The ability to remove items from people and vehicles from inside an APEC venue, accommodation, and other sites if necessary.

116. The proposed legislation would require public notification of these security areas which ensures the maximum transparency possible.

117. The early accommodation work undertaken by the APEC21 Programme has looked to mitigate any requirement to use mixed hotel / apartment buildings, particularly in situations where high levels of search are required (i.e. specifically to ensure the safety of world leaders). World leaders will be accommodated in hotels used to hosting and dealing with high profile people. It is extremely unlikely that searches of privately owned residences, or their occupants, would be required.

<table>
<thead>
<tr>
<th>Policing Powers</th>
<th>Associated Offence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ability to designate buildings or other sites as a Security Area.</td>
<td>Unauthorised entry into Security Area.</td>
</tr>
<tr>
<td>Requirement to publically notify Security Areas.</td>
<td>Failing to comply with requirement to disclose personal details of person within a Security Area.</td>
</tr>
<tr>
<td>Ability to control presence in a Security Area:</td>
<td></td>
</tr>
<tr>
<td>• Power to require reason for entry into a Security Area.</td>
<td></td>
</tr>
<tr>
<td>• Power to request personal details or accreditation before entry into a Security Area.</td>
<td></td>
</tr>
<tr>
<td>• Power to require reason for presence in a Security Area.</td>
<td></td>
</tr>
<tr>
<td>• Power to request personal details of persons in a Security Area.</td>
<td></td>
</tr>
<tr>
<td>Power to prevent or deny entry to a Security Area (person, vehicle or object).</td>
<td>Failing to comply with direction.</td>
</tr>
<tr>
<td>Power to remove a person from a Security Area.</td>
<td></td>
</tr>
<tr>
<td>Power to seize and remove a vehicle or object from a Security Area.</td>
<td></td>
</tr>
<tr>
<td>Power to give direction for safety or security to persons in a Security Area.</td>
<td></td>
</tr>
<tr>
<td>Searches of the Person:</td>
<td></td>
</tr>
<tr>
<td>• Basic Search (screening) – would detail method and who may undertake such a search.</td>
<td></td>
</tr>
<tr>
<td>• Pat-down Search – would detail method and who may undertake such a search.</td>
<td></td>
</tr>
<tr>
<td>Searches of Premises:</td>
<td></td>
</tr>
<tr>
<td>• Power to search premises in a Security Area without warrant and who may undertake such a search.</td>
<td></td>
</tr>
<tr>
<td>Vehicle Stop and Search Powers:</td>
<td></td>
</tr>
<tr>
<td>• Power to stop and search vehicles – methods and who may undertake searches.</td>
<td></td>
</tr>
<tr>
<td>• Will include the ability to search persons and objects inside vehicle – at entry point and inside Security Area.</td>
<td></td>
</tr>
<tr>
<td>Policing Powers</td>
<td>Associated Offence</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Power to establish a checkpoint, cordon or road impeder(^9) and enable it to remain in place as required for security or safety.</td>
<td>Climbing onto, under, over or around, or pushing / moving cordons, checkpoints or road impeders protecting Security Areas or Road Closure Areas.</td>
</tr>
</tbody>
</table>

**Miscellaneous powers:**

- Use of aids to assist in exercising powers; such as an appropriately trained dog, any chemical substance, X-ray or imaging equipment or any other mechanical, electrical, or electronic device.
- Use of reasonable force when exercising the powers.

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**Road closures for security purposes**

118. The NZ Police may be required to close some roads and limit access to the general public for security purposes during APEC 2021.

119. Currently, the NZ Police powers to close roads are provided under section 35 of the Policing Act 2008. The situations in which section 35 applies are not fit for purpose for securing the APEC 2021 event\(^{10}\).

120. Current legislation also provides authority for local councils to close public streets and exclude people from those areas; however the NZ Police do not have any enforcement powers under this local government legislation and thus cannot enforce any roads closed by a council.

121. The proposed powers, outlined in the table below, will enable the NZ Police to take the actions that may be necessary for ensuring safety and security including:

- restricting access to roads.
- placement and enforcement of cordons or barricades.
- stopping or searching vehicles and persons if necessary.
- removal of vehicles and persons from the closed roads if necessary.

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\(^9\) A checkpoint, cordon, or road impeder may consist of a barrier or other device designed to prevent or limit the passage of persons or vehicles or to slow or stop the entry of persons or vehicles to an area.

- Examples of checkpoints include a fenced area into which vehicles are driven for a search or a gateway into a Security Area or road closure area.
- Examples of road impeders include a Police Officer, fences or similar barriers, moveable road spikes, water filled barriers, or vehicles parked across a road blocking entry to an area.

\(^{10}\) The power requires one of the following precursors where a constable has reason to believe that at or near that place:

- there is existing or imminent public disorder
- there is, or may reasonably be expected to be, danger to any member of the public
- an offence punishable by 10 or more years imprisonment has been committed or discovered at or near that place.
122. The proposed legislation would require public notification of these road closure areas.

<table>
<thead>
<tr>
<th>Policing Powers</th>
<th>Associated Offence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ability to close a road to use by a person or vehicle (a closed road area).</td>
<td>Unauthorised entry into closed road area.</td>
</tr>
<tr>
<td>Requirement to publically notify closed road area.</td>
<td></td>
</tr>
</tbody>
</table>

**Searches of the Person:**
- Basic Search (screening) – would detail method and who may undertake such a search.
- Pat-down Search – would detail method and who may undertake such a search.

**Ability to prevent or deny entry to a closed road area (person or vehicle):**
- Power to remove a person from a closed road area.
- Power to seize and remove a vehicle or object from closed road area.
- Power to give direction for safety or security to persons in a closed road area.

**Vehicle Stop and Search Powers:**
- Power to stop and search vehicles – methods and who may undertake searches.
- Will include the ability to search persons and objects inside vehicle – at entry point and inside closed road area

**Power to establish a checkpoint, cordon or road impeder and enable it to remain in place as required for security or safety.**

**Miscellaneous powers:**
- Use of aids to assist in exercising powers; such as an appropriately trained dog, any chemical substance, X-ray or imaging equipment or any other mechanical, electrical, or electronic device.
- Use of reasonable force when exercising the powers.

**Short duration road closures for motorcade facilitation**

123. To ensure seamless and safe movements of world leaders and other internationally protected persons, vehicle movements of up to 21 delegations in succession are required to be facilitated. Movements involve routes from the Auckland Airport to the Central Business District as well as shorter motorcade movements within Auckland City.
124. Under the Policing Act 2008 (other than in an emergency), the Land Transport Act 1998, and the Land Transport (Road User) Rules 2004, it is not clearly specified that the NZ Police can temporarily close roads for the purpose of facilitating a motorcade.

125. The proposed powers, in the table below, will address this lack of specificity for the APEC 2021 period and ensure the authority for motorcade facilitation.

<table>
<thead>
<tr>
<th>Policing Powers</th>
<th>Associated Offence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Short duration road closures for motorcade facilitation</td>
<td></td>
</tr>
<tr>
<td>Ability to temporarily close to use by a person or vehicle any road to</td>
<td></td>
</tr>
<tr>
<td>facilitate the movement of an APEC 2021 motorcade.</td>
<td></td>
</tr>
<tr>
<td>Power to prevent or deny entry to a closed road to a vehicle or person.</td>
<td>Failing to comply with direction.</td>
</tr>
<tr>
<td>Power to remove a person from a closed road.</td>
<td></td>
</tr>
<tr>
<td>Power to seize and remove a vehicle or object from closed road.</td>
<td></td>
</tr>
<tr>
<td>Power to give direction for safety or security to persons in a closed road.</td>
<td></td>
</tr>
<tr>
<td>Power to establish a road impeder and enable it to remain in place as required</td>
<td>Climbing onto, under, over or around, or pushing / moving, cordons, checkpoints</td>
</tr>
<tr>
<td>for security or safety.</td>
<td>or road impeders protecting APEC Security Areas or Road Closure Areas.</td>
</tr>
</tbody>
</table>

| Miscellaneous powers:                                                        |                                                                                  |
| • Use of reasonable force when exercising the powers.                        |                                                                                  |

**Enactment and duration of legislative proposals**

126. These legislative proposals are only necessary for the hosting and securing of APEC in 2021, and as such are time bound. This replicates the approach to event specific legislation enacted when New Zealand last hosted APEC in 1999, as well as to similar events in Australia.

127. The following table outlines how each legislative proposal will be enacted and its proposed period of operation:

<table>
<thead>
<tr>
<th>Legislative proposal</th>
<th>Period of operation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enact an APEC 2021 Empowering Act to temporarily:</td>
<td></td>
</tr>
<tr>
<td>Amend the Defence Act 1990 to ensure that legislation allows the New</td>
<td>Leaders’ Week, and periods of training where constabulary powers are required.</td>
</tr>
<tr>
<td>Zealand Defence Force to provide specialist support to the APEC 2021 security operation while being fully integrated into the NZ Police operation and being under NZ Police control; to undertake any functions and training where constabulary powers are necessary and under any necessary safeguards.</td>
<td>Once the Bill is enacted in 2020 NZDF staff will be able to receive necessary specialist and tactical training.</td>
</tr>
<tr>
<td>Legislative proposal</td>
<td>Period of operation</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------------------</td>
<td>----------------------------------------------------------</td>
</tr>
<tr>
<td>Provide a legislative framework to enable the use, if required, of other government agency staff, private security staff and Australian police officers in support of the APEC 2021 security operation; with powers limited to those appropriate to the roles they may undertake and under any necessary safeguards.</td>
<td>Leaders’ Week Once the Bill is enacted in early 2020 these staff will be able to receive necessary training.</td>
</tr>
<tr>
<td>Enable the NZ Police to create maritime safety and security areas, which are limited in size and duration to the extent practicable, to manage the water areas surrounding hotels or other locations, and maritime transit corridors, located on or adjacent to Auckland harbour; to manage access and address potential security risks.</td>
<td>Leaders’ Week</td>
</tr>
<tr>
<td>Authorise the NZ Police and NZDF and, subject to approval by the Commissioner of Police, foreign protection services to use wireless electronic countermeasure technology, which would generally be very limited in duration (e.g. a few moments at a time to allow vehicles to pass); to ensure the safety of visiting delegations and world leaders, public safety and the security of APEC 2021 venues and accommodation; to ensure that any use of electronic countermeasures are a reasonable and proportional way of meeting the necessary security objectives, consistent with the “justified limitations” in the Bill of Rights Act 1990.</td>
<td>APEC meetings during Hosting Year</td>
</tr>
<tr>
<td>Provide legislative powers for enforcement agencies to prevent and respond effectively and appropriately to risks posed by unmanned aerial vehicles as well as from piloted aircraft.</td>
<td>APEC meetings during Hosting Year</td>
</tr>
<tr>
<td>Create policing powers and associated offences supporting the delivery of the unprecedented scale and complexity of the requirements of the security operation, in these areas:</td>
<td></td>
</tr>
<tr>
<td>• Accommodation and Venue security</td>
<td>Leaders’ Week</td>
</tr>
<tr>
<td>• Road closure for security purposes</td>
<td>Leaders’ Week</td>
</tr>
<tr>
<td>• Road closure for motorcade facilitation</td>
<td>Ministerial Meetings and Leaders’ Week</td>
</tr>
<tr>
<td>'s6(a) by amending the Arms Act 1983 to enable carriage of weapons by foreign protection officers, subject to approval by the Commissioner of Police and subject to conditions the Commissioner may impose, such as the type and numbers of weapons that can be brought into New Zealand; similar to the legislative approach taken for APEC 1999.</td>
<td>Leaders’ Week</td>
</tr>
</tbody>
</table>

128. Legislation linked to Leaders’ Week recognises the scale of the event and the enhanced security requirements for those attendees. It also recognises that it imposes some constraints on rights during the APEC 2021 operation and that period should be as short as practicable. Leaders’ Week also encompasses the period
before and after 8th to 14th of November 2021 to accommodate any State level bilateral visits either side of this date, estimated to be a week each side.

129. Legislation linked to Ministerial Meetings recognises the scale of the event and the enhanced security requirements for those attendees.

130. Legislation proposed for the entire hosting year supports the large scale events of Leaders’ Week and Ministerial Meetings, but also supports the safety of delegations and any public demonstrations during the Senior Officials Meetings. The powers under such legislation would only be exercised in the periods when APEC meetings are being held. Enabling the powers also for a few days prior to and after a meeting would enable preventative measures to be established and allow airports to be protected during flight movements that are carrying delegations. There are ten blocks of time when these powers would be needed, totalling approximately 110 days.

Consultation


132. During the gap and requirements analysis the following agencies and organisations were also consulted. New Zealand Security Intelligence Service, Government Communications Security Bureau, Auckland City Council (Auckland Tourism, Events and Economic Development), Wellington City Council, Wellington Airport Company, New Zealand Medical Council, and New Zealand Rugby.

133. The APEC21 Programme Board provided governance and approval to the legislative proposals during the policy development. The APEC21 Programme Board consists of senior officials from the Ministry of Foreign Affairs and Trade, New Zealand Police, New Zealand Defence Force, Department of Prime Minister and Cabinet (Security and Intelligence), Department of Internal Affairs, and Ministry of Business Innovation and Employment.

134. The Legislation Design and Advisory Committee has reviewed key aspects of the legislative proposals in this paper. The Committee understood the policy objective behind the proposals but wished to emphasise that the powers being proposed by this paper need to be understood as being both unusual and temporary powers. In particular, the Committee was concerned that the powers proposed should not be considered as an appropriate precedent more generally.

Financial Implications

135. There are no financial implications directly associated with the legislative proposals in this paper. There are financial implications arising from the security operation that
these proposals help enable. A budget bid has been submitted for consideration in Budget 2019 for APEC 2021 security costs.

Legislative Implications

136. Subject to Cabinet approval, the proposals in this paper would form the basis of an APEC 2021 Empowering Bill (the Bill). Drafting instructions would be issued to Parliamentary Counsel Office post Cabinet decisions. I expect to report back to Cabinet Legislation Committee with a draft Bill for introduction to the House by the third quarter of 2019.

137. s9(2)(f)(iv)

138. While the APEC 2021 hosting year does not commence until December 2020, and Leaders’ Week is not until November 2021, agencies are seeking for the Bill to obtain Royal Assent by mid-2020. This will enable training and other required exercises to take place to ensure a seamless security operation. s9(2)(f)(iv)

139. The proposed APEC 2021 Empowering Act will be binding on the Crown. The Act will set out powers and obligations of the Crown and also amends two existing Acts that bind the Crown (the Defence Act 1990 and the Arms Act 1983).

Impact Analysis

140. A Quality Assurance Panel with representatives from the Regulatory Quality Team at The Treasury, the Ministry of Justice and the New Zealand Police has reviewed the Regulatory Impact Assessment "Legislative enablers for hosting and securing the Asia-Pacific Cooperation (APEC) meetings in 2021" produced by the Ministry of Foreign Affairs and Trade and dated November 2018. The Quality Assurance panel considers that it meets the Quality Assurance criteria.

141. The RIA is clear and logical in presenting proposed changes to seven legislative areas. The objectives and decision criteria describe the desired outcome. The impact analysis of the options within each of the seven areas is comprehensive and convincing. MFAT has undertaken extensive consultation with key stakeholders within government. The implementation risks and mitigation steps have been identified and explained.

Human Rights

142. Several of the proposals in this paper engage the New Zealand Bill of Rights Act 1990 (NZBORA). In particular:

- The proposed security areas, road closure areas, and maritime safety and security areas are likely to engage the rights to freedom of movement and expression.

- Electronic countermeasure use is likely to engage the right to freedom of expression.
• The search and seizure proposals could engage the right to be secure against unreasonable search and seizure.

143. Any limitations placed upon rights by the proposals in this paper have been considered against section 5 of NZBORA “justified limitations”. The proposals are intended to support three of the APEC21 Programmes strategic objectives, being:

• SECURE - New Zealand will host a secure APEC year ensuring all APEC world leaders and attendees feel safe, secure and welcome.

• EXPERIENCE - New Zealand will host a high-quality APEC year with all APEC attendees and world leaders experiencing friendly, authentic New Zealand hosting, from the first arrival to the last farewell.

• LOCAL SUPPORT - Promote public support in favour of hosting APEC in New Zealand, and New Zealand’s role and place in the Asia-Pacific.

144. Specific security objectives of these proposals are

• There are no security failures that result in harm to the general public and to attendees.

• There are no security failures that result in damage to property.

• Disruption to, or cancellation of, APEC events does not occur.

• Confidence by foreign authorities in the security settings and arrangements by New Zealand will increase the likelihood of attracting full participation in the Leaders’ Week.

145. The specific limits are proportional, reasonable and connected to the objectives outlined above. The legislative proposals are temporary. Those that engage rights of freedom of movement and, potentially, unreasonable search and seizure will only be in force for a short period during Leaders’ Week (and bilateral events taking place either side) and would be subject to well established NZ Police policy and procedures.

146. Particular emphasis will be given to ensuring that any limitations on the freedoms of movement and expression will be mitigated to the extent possible through planning and liaison, especially to enable lawful and peaceful protest. This will still be subject to hosting a seamless, safe and secure event to ensure that the rights of attendees and other members of the general public are also met.

147. Electronic countermeasure use that impacts upon freedom of expression will generally be very limited in duration (a few moments at a time as vehicles pass), and usually based around narrow corridors of use such as motorcade routes. Longer term electronic countermeasure use for preventative measures, such as any that may be used to secure key venues, will be carefully managed to ensure potential impact is low. This will be achieved through planning, engagement with radio spectrum rights holders and associated Government agencies, as well as public communication.
My officials will continue to work closely with the Ministry of Justice during development of the Bill to ensure that any limitations on the rights contained in the NZBORA are demonstrably justified in a free and democratic society.

**Gender Implications**

151. There are no gender implications associated with this paper.

**Disability Perspective**

152. There are no disability implications associated with this paper.

**Publicity**

153. It is publically known that New Zealand is hosting APEC in 2021 and that Leaders’ Week will be in Auckland between the 8th and 14th of November 2021. Hosting APEC will be of significant public interest. Announcements around the proposals in this paper will be made closer to the introduction of the proposed APEC 2021 Empowering Bill. I will lead for the Government.

**Proactive Release**

154. I intend to release this Cabinet paper and related Cabinet decisions on the Ministry of Foreign Affairs and Trade’s website, subject to consideration of any deletions that would be justified if the information had been requested under the Official Information Act 1982. Because of the nature of this paper I am expecting redactions due to the maintenance of security and international relations considerations.

155. The release of this paper will be delayed to allow for the release to coincide with the introduction of the Bill to the House of Representatives and the announcement foreshadowed in paragraph 153.

**Recommendations**

156. I recommend that Cabinet:

1. **note** that on 27 March 2018 Cabinet agreed that advice be prepared on possible legislative amendments required to host the Asia-Pacific Economic Cooperation (APEC) meetings in 2021, for consideration in late 2018 [ERS-18MIN-0001 and CAB-18-MIN-0217 refer];

2. **note** that a gap and requirements analysis was conducted to determine what legislative changes may be required to enable hosting of APEC in 2021;
3. **note** that as a result of the analysis, officials have identified seven areas for new or amended legislation;

4. **note** that these legislative proposals will be temporary for the purposes of APEC 2021, and are not intended to establish a general precedent, especially for future agency policy development in these areas;

**Legislative changes**

5. **agree** to amend the Defence Act 1990 to enable the New Zealand Defence Force to provide specialist support to the APEC 2021 security operation, with the constabulary powers necessary to undertake any functions and training required;

6. **agree** to amend the Arms Act 1983 to enable carriage of weapons by foreign protection officers subject to approval by the Commissioner of Police and subject to conditions the Commissioner may impose;

**New Legislation**

7. **agree** to the creation of a legislative framework to enable the Commissioner of Police to designate ‘appointed persons’ with limited powers that their role requires for fixed periods for the purposes of APEC security;

8. **note** that should a situation arise in which the designation of private security staff as appointed persons was required the Commissioner of Police would inform the Minister of Police as soon as practicable that this was to occur including the likely timeframe, likely numbers of staff involved and the reasons why the designation is necessary;

9. **note** that private security staff would be used for lower level security functions such as venue security guards undertaking identity checks at access control points or basic screening such as search by x-ray or searching a car or bag;

10. **note** that to effectively perform the functions noted in recommendation 9 private security staff would require lower level powers drawn from those set out in recommendations 16 and 17, equivalent to those they could currently exercise as if they were contracted privately;

11. **agree** to enable the NZ Police to create maritime safety and security areas to manage the water areas surrounding hotels or other locations, and maritime transit corridors, located on or adjacent to Auckland harbour;

12. **agree** to enable the NZ Police and NZDF and, subject to approval by the Commissioner of Police, foreign protection agencies to import, export and use wireless electronic countermeasures technology during APEC 2021 events;

13. **agree** that the period of use of wireless electronic countermeasures technology be enabled for three days prior to and two days after each APEC 2021 event and up to five days before and after the Leaders’ Week period which includes linked State level bilateral meetings;
14. **agree** to the creation of the following temporary powers for specified enforcement agencies to intervene and respond effectively and appropriately to risks posed by unmanned aerial vehicles as well as from piloted aircraft;

14.1. **NZ Police and New Zealand Defence Force powers:**

   14.1.1. Ability to deploy preventative measures to secure APEC 2021 venues, accommodation and transport;

   14.1.2. Ability to either seize, destroy or bring under control unmanned aerial vehicles posing a threat to the security or safety of APEC 2021, through mechanical, cyber or other electronic means;

14.2. **NZ Police powers:**

   14.2.1. Ability to enter premises or vehicle without warrant to seize any unmanned aerial vehicle and / or its control mechanism where the unmanned aerial vehicle is posing a threat to the security or safety of APEC 2021;

   14.2.2. Power to demand name and address of unmanned aerial vehicle user;

   14.2.3. Power to seize evidence of offending (such as streamed camera footage);

14.3. **NZ Police, New Zealand Defence Force and the Aviation Security Service power:**

   14.3.1. Ability to prevent an aircraft taking off if it was believed that the craft was to be used to disrupt an APEC 2021 event;

15. **agree** that the period of use of the powers proposed in recommendation 14 be enabled for three days prior to and two days after each APEC 2021 event and up to five days before and after the Leaders’ Week period which includes linked State level bilateral meetings;

16. **agree** to the creation of the following temporary policing powers for accommodation, venue and other site security;

   16.1. Ability to designate buildings, other sites and immediate surrounds as a Security Area;

   16.2. Requirement to publically notify Security Areas;

   16.3. Ability to control presence in a Security Area through:

     16.3.1. Power to require reason for entry into a Security Area;

     16.3.2. Power to request personal details or accreditation before entry into a Security Area;

     16.3.3. Power to require reason for presence in a Security Area;
16.3.4. Power to request personal details of persons in a Security Area;

16.4. Power to prevent or deny entry to a Security Area (person, vehicle or object);

16.5. Power to remove a person from a Security Area;

16.6. Power to seize and remove a vehicle or object from a Security Area;

16.7. Power to give direction for safety or security to persons in a Security Area;

16.8. Ability to undertake searches of a person:
   
   16.8.1. Basic Search (screening), detailing method and who may undertake such a search;
   
   16.8.2. Pat-down Search, detailing method and who may undertake such a search;

16.9. Power to search premises in a Security Area without warrant and who may undertake such a search;

16.10. Power to stop and search vehicles, and persons and objects inside vehicle, detailing methods and who may undertake searches;

16.11. Power to establish a checkpoint, cordon or road impeder and enable it to remain in place as required for security or safety;

16.12. Use of aids to assist in exercising powers; such as an appropriately trained dog, any chemical substance, X-ray or imaging equipment or any other mechanical, electrical, or electronic device;

16.13. Use of reasonable force to exercise any power;

17. agree to the creation of the following temporary policing powers to enable road closures for security purposes;

17.1. Ability to close a road to use by a person or vehicle (a closed road area);

17.2. Requirement to publically notify closed road area;

17.3. Ability to prevent or deny entry to a closed road area (person or vehicle);

17.4. Power to remove a person from a closed road area;

17.5. Power to seize and remove a vehicle or object from a closed road area;

17.6. Power to give direction for safety or security to persons in a closed road area;

17.7. Power to stop and search vehicles, and persons and objects inside vehicle, detailing methods and who may undertake searches;

17.8. Ability to undertake searches of a person in a closed road area;
17.8.1. Basic Search (screening), detailing method and who may undertake such a search;

17.8.2. Pat-down Search, detailing method and who may undertake such a search;

17.9. Power to establish a checkpoint, cordon or road impeder and enable it to remain in place as required for security or safety;

17.10. Use of aids to assist in exercising powers; such as an appropriately trained dog, any chemical substance, X-ray or imaging equipment or any other mechanical, electrical, or electronic device;

17.11. Use of reasonable force to exercise any power;

18. agree to the creation of the following temporary policing powers to enable short duration road closures for motorcade facilitation;

18.1. Ability to temporarily close to use by a person or vehicle any road to facilitate the movement of an APEC 2021 motorcade;

18.2. Power to prevent or deny entry to a closed road to a vehicle or person;

18.3. Power to remove a person from a closed road;

18.4. Power to seize and remove a vehicle or object from closed road;

18.5. Power to give direction for safety or security to persons in a closed road;

18.6. Power to establish a checkpoint, cordon or road impeder and enable it to remain in place as required for motorcade facilitation;

18.7. Use of reasonable force to exercise any power;

19. agree to the creation of the following temporary offences to support the powers proposed in recommendations 16 to 18;

19.1. Unauthorised entry into Security Area;

19.2. Failing to comply with requirement to disclose personal details of person within a Security Area;

19.3. Failing to comply with direction in a security area;

19.4. Unauthorised entry into closed road area;

19.5. Failing to comply with direction in a closed road area;

19.6. Failing to comply with direction in a road closed for motorcade facilitation;

19.7. Climbing onto, under, over or around, or pushing / moving cordons, checkpoints or road impeders protecting APEC 2021 security areas, road closure areas, or a road closed for motorcade facilitation;
20. **agree** that the penalties for all offences proposed in recommendation 19 be set at imprisonment for a term not exceeding 3 months or to a fine not exceeding $2,000;

**Legislative implications**

21. **note** that it is appropriate for the APEC 2021 Empowering Act to be binding on the Crown because the Act will set out powers and obligations of the Crown and also amends two existing Acts that bind the Crown (the Defence Act 1990 and the Arms Act 1983);

22. **agree** that the APEC 2021 Empowering Act should include a provision stating that the Act will bind the Crown;

23. **invite** the Ministry of Foreign Affairs and Trade to issue drafting instructions to Parliamentary Counsel Office to prepare new legislation that gives effect to the above policy directions;

24. s9(2)(f)(iv)

25. **note** that security agencies are seeking that the APEC 2021 Empowering Bill obtains Royal Assent by mid-2020 to enable required training and exercises to occur;

26. **invite** the Minister Foreign Affairs to report to Cabinet Legislation Committee with a draft APEC 2021 Empowering Bill;

27. **authorise** the Minister of Foreign Affairs, in consultation with the Minister of Police, to make decisions about minor, technical or administrative matters as required to finalise draft legislation;

**Next Steps**

28. **note** that I intend to publish this paper and related Cabinet decisions online, subject to consideration of any deletions that would be justified if the information had been requested under the Official Information Act 1982;

29. **note** that the release of this paper and related Cabinet decisions will be delayed to allow for the release to coincide with the introduction of the APEC 2021 Empowering Bill to the House of Representatives;

**Publicity**

30. **note** that announcements around the proposals in this paper will be made closer to the introduction of the proposed APEC 2021 Empowering Bill and I will lead for the Government.

Authorised for lodgement

Rt Hon Winston Peters

Minister of Foreign Affairs
s6(a); s6(c); s6(d)
s6(a): s6(c); s6(d)