

HON RON MARK, MINISTER OF DEFENCE

Asia Pacific Economic Cooperation 2018 in Papua New Guinea: New Zealand Security Assistance to Leaders' Week

June 2019

This publication provides documents on Cabinet's September 2018 decision in principle to provide an NZDF package of support to Papua New Guinea for the 2018 APEC Leaders' Week, as well as the subsequent submission to delegated Ministers on the final form of this package.

The pack comprises the following documents:

- the 25 October 2018 submission from Defence and the Ministry of Foreign Affairs and Trade to the Prime Minister, Minister of Foreign Affairs and Minister of Defence seeking final approval for a package of security assistance *Asia Pacific Economic Cooperation 2018 in Papua New Guinea: New Zealand Security Assistance to Leaders' Week*
- the 11 September 2018 Cabinet minute: *Asia Pacific Economic Cooperation 2018 in Papua New Guinea: New Zealand Security Assistance to Leaders' Week* [ERS-18-MIN-0019]
- the associated Cabinet paper: *Asia Pacific Economic Cooperation 2018 in Papua New Guinea: New Zealand Security Assistance to Leaders' Week* [ERS-18-SUB-0019].

This pack has been released on the Ministry of Defence website, available at: www.defence.govt.nz/publications.

It has been necessary to withhold certain information in accordance with the following provisions of the Official Information Act 1982. Where information is withheld, the relevant sections of the Act are indicated in the body of the document. Where information has been withheld in accordance with section 9(2) of the Act, no public interest has been identified that would outweigh the reasons for withholding it.

Information is withheld where making it available would be likely to prejudice:

- the security or defence of New Zealand or the international relations of the Government of New Zealand [section 6(a)]
- the entrusting of information to the Government of New Zealand on the basis of confidence by the Government of any other country [section 6(b)(i)].

Information is also withheld in order to:

- maintain legal professional privilege [s9(2)(h)].



NZDF 3304/DSC/4/APEC 18 PNG

25 October 2018

Prime Minister
Minister of Foreign Affairs
Minister of Defence

ASIA PACIFIC ECONOMIC COOPERATION 2018 IN PAPUA NEW GUINEA: NEW ZEALAND SECURITY ASSISTANCE TO LEADERS' WEEK

Purpose

1. This submission seeks final approval for a package of security assistance for Papua New Guinea's hosting of the Asia Pacific Economic Cooperation (APEC) Leaders' Week (12-18 November 2018). The assistance includes the deployment of New Zealand Defence Force (NZDF) maritime and air support as well as Special Operations Forces (SOF) personnel to Port Moresby.

Background

2. On 17 September 2018, Cabinet agreed *in principle* to provide a package of NZDF security assistance for APEC Leaders' Week [CAB-18-MIN-0444 refers]. Key drivers for the deployment are to [REDACTED] s6(a)
[REDACTED] assist Papua New Guinea to meet international expectations that Leaders' Week will proceed safely and securely.
3. The package includes the deployment of the Offshore Patrol Vessel HMNZS *Otago* with embarked Rigid Hull Inflatable Boats (RHIBs) to support maritime security, a P-3K2 Orion for aerial surveillance, and a national command element to provide direction to the deployed New Zealand forces. Up to 30 NZDF SOF personnel will also be deployed [REDACTED] s6(a)
[REDACTED]
4. As part of the in principle agreement, Cabinet delegated authority for the Prime Minister and Joint Ministers (Foreign Affairs and Defence) to provide final approval for the NZDF assistance, upon finalisation of a legal framework, which comprises: the Status of Forces Agreement, a non-binding memorandum that at that time was still to be finalised, and Papua New Guinea's domestic legislation.

The legal framework

5. New Zealand officials have now finalised the text of the non-binding memorandum. The Commander of Papua New Guinea's Joint Security Task Force (JSTF) signed the document on Wednesday 24 October 2018 and the Commander Joint Forces New Zealand is expected to sign the document on Monday 28 October 2018. Once signed, the non-binding memorandum, in addition to the Status of Forces Agreement and Papua New Guinea's domestic legislation, completes the legal framework required for the deployment of NZDF personnel.
6. New Zealand officials consider that the negotiated legal framework is robust and affords a high level of legal protection for NZDF personnel. [REDACTED] s6(a)
[REDACTED]
[REDACTED]
[REDACTED] (Further detail is provided in annexes A and B).
7. In addition to this submission, NZDF has provided 'Rules of Conduct' (Rules) to the Prime Minister, through the Minister of Defence for approval. These Rules provide NZDF personnel with the framework for their actions while conducting or assisting with law enforcement operations for APEC 2018. They are based upon, and adhere to, New Zealand domestic law, Papua New Guinean domestic law and are sufficiently aligned to the orders given by the Commander of the JSTF for the conduct of operations specific to APEC 2018. This alignment is required to attract the immunities and privileges of Papua New Guinea's APEC Act.

Publicity

8. Should Ministers provide final approval for the deployment, New Zealand officials recommend that a media statement is released to outline the New Zealand support to Papua New Guinea for Leaders' Week. The media statement would acknowledge the assistance is at the request of the Government of Papua New Guinea, in support of that country as a longstanding defence partner in the Pacific region, and of APEC.
9. We propose that the media statement references the deployment of NZDF SOF to support the PNGDF IRG, but provide no further comment on their role. There are established NZDF guidelines on the control of information relating to SOF under which governments generally choose to provide no comment to queries about NZDF SOF. The guidelines have been established in order to protect, as much as possible, the individuals and families of those who serve or have served with the unit, to safeguard operational tactics, training, procedures and capabilities, and to support New Zealand's good relations with other countries.
10. The deployment Cabinet paper and this final submission provide a higher level of detail on the SOF deployment and relationships with partners. On that basis, we advise that the documents not be proactively released prior to Leaders' Week. Release of the papers could be reconsidered following Leaders' Week.

Next steps

11. Should you provide final approval for the deployment, New Zealand officials will confirm this with Papua New Guinea and Australia.

Recommendations

12. It is recommended that you:
 - a. **Note** that on 17 September 2018, Cabinet agreed *in principle* to provide a NZDF package of security assistance for APEC Leaders' Week and delegated authority for final approval to the Prime Minister and Joint Ministers (Foreign Affairs and Defence), pending the finalisation of a legal framework;
 - b. **Note** officials have now finalised the legal framework with Papua New Guinea;
 - c. **Agree** to provide a NZDF package of support for Leaders' Week, including the deployment of:
 - i. the Offshore Patrol Vessel HMNZS Otago with embarked RHIBs, and a P-3K2 Orion for aerial surveillance, along with a national command element to provide direction to the New Zealand forces;
 - ii. up to 30 NZDF SOF personnel to Port Moresby [redacted] s6(a) [redacted]; and
 - d. **Agree** that a media statement be issued acknowledging New Zealand's support, including the presence of SOF as part of the deployment.

K.R. SHORT
Air Marshal
Chief of Defence Force
Date:

HELENE QUILTER
Secretary of Defence
Date:

BERNADETTE CAVANAGH
for Secretary of Foreign
Affairs and Trade
Date:

OPERATION APEC ASSIST 2018, PNG

LEGAL FRAMEWORK PRIMER

Key: PNG considerations NZ considerations

Policy and legal framework s6(a)

Legal framework* applying to NZDF personnel

International instruments

- NZ-PNG Status of Forces Agreement
- NZ-PNG APEC Arrangement

NZ authorities

- Armed Forces Discipline Act
- Crimes Act

PNG authorities

- PNG domestic legislation: Constitution, APEC Act, Search Act
- Joint Security Task Force Rules of Engagement

**Laws of armed conflict do not apply*

Conduct of NZDF personnel s6(a)

Operating under PNG authorities s6(a)

Examples s6(a)

ANNEX B: SUMMARY OF THE PAPUA NEW GUINEA AND NEW ZEALAND NON-BINDING MEMORANDUM

Purpose

1. The purpose of this Annex is to summarise the key aspects of the *Arrangement between Papua New Guinea and New Zealand Regarding Safety and Security Assistance for the Hosting of APEC in 2018* (hereafter, the 'non-binding memorandum').

Background

2. Papua New Guinea's APEC Act 2017 and the APEC (Amendment) Act 2018 (collectively referred to as the APEC Act) are the primary domestic statutes that provide for the conduct of safety and security operations relating to APEC. The APEC Act provides for Papua New Guinea to enter into specific international arrangements with other States for assistance in safety and security operations; the form and legal nature of which is at the discretion of the negotiating States.
3. Accordingly, NZDF and MFAT officials drafted a non-binding memorandum that supplements the Status of Forces Agreement between New Zealand and Papua New Guinea. Negotiations with the State Solicitor's Office followed and on 22 October 2018 New Zealand officials were informed that Papua New Guinea's National Executive Council approved the memorandum. The Commander of the Joint Security Task Force signed the memorandum on 24 October 2018 and Commander Joint Forces New Zealand is in the process of signing.

Summary

4. The memorandum is not legally binding. However, it outlines fundamental understandings (for example, that NZDF will respect local laws) and it provides a high level of assurance to New Zealand officials that:
 - a. [REDACTED] s6(a)
 - b. the safety and security tasks that NZDF personnel may conduct are acceptable to Papua New Guinea's officials; and
 - c. the participants share a common understanding of the practical application of the domestic legal framework.

Protection of NZDF personnel

5. [REDACTED] s6(a)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] The NZDF Rules of Conduct, which govern the actions of NZDF personnel, have therefore been drafted to be in alignment as far as practicable with the orders that will be issued by the Commander JSTF.

6. [Redacted] s6(a)
[Redacted]
[Redacted]
[Redacted]

Safety and security operations

7. The non-binding memorandum provides for the entry and stay of NZDF personnel in Papua New Guinea, [Redacted] s6(a)
[Redacted] Such provisions are common for arrangements with other States which have NZDF personnel operating within their territories.
8. The non-binding memorandum also outlines the cooperative and operational activities NZDF personnel may conduct specific to APEC, including information sharing, tactical actions and logistical support.

Application of the domestic legal framework

9. [Redacted] s6(a)
- a. [Redacted] s6(a)
[Redacted]
[Redacted]
- b. [Redacted] s6(a)
[Redacted]
[Redacted]
- c. [Redacted] s6(a)
[Redacted]

Released by the Minister of Defence



Cabinet External Relations and Security Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Asia Pacific Economic Cooperation 2018 in Papua New Guinea: New Zealand Security Assistance to Leaders' Week

Portfolio Foreign Affairs / Defence

On 11 September 2018, the Cabinet External Relations and Security Committee:

- 1 [REDACTED] s6(a)
- 2 [REDACTED] s6(a)
- 3 **noted** that NZDF assistance would help [REDACTED] s6(a) the PNG Defence Force's [REDACTED] s6(a) during Leaders' Week [REDACTED] s6(a)
- 4 **agreed in principle** to provide a NZDF package of support for Leaders' Week, including the deployment of:
 - 4.1 the Offshore Patrol Vessel HMNZS Otago with embarked RHIBs, and a P-3K2 Orion for aerial surveillance, along with a national command element to provide direction to the New Zealand forces;
 - 4.2 up to 30 NZDF SOF personnel to Port Moresby to [REDACTED] s6(a)
- 5 **authorised** the Prime Minister and Joint Ministers (Foreign Affairs and Defence) to provide final approval for the NZDF security support pending finalisation of the legal framework for deployed personnel and approval of the guidelines for the use of force; and
- 6 **noted** that the total estimated cost of the maritime support package (NZ\$1.21 million) and the NZDF SOF commitment (NZ\$0.15 million) would be charged against the MFAT APEC 2018 Support Fund.

Vivien Meek
Committee Secretary

Hard-copy distribution (see over)

Hard-copy distribution:

Present:

Rt Hon Jacinda Ardern
Rt Hon Winston Peters
Hon Grant Robertson
Hon Andrew Little
Hon Stuart Nash
Hon Ron Mark

Officials present from:

Officials Committee for ERS
Office of the Prime Minister
Department of the Prime Minister and Cabinet
Office of the Chair

Hard-copy distribution:

Minister of Foreign Affairs
Minister of Defence

Released by the Minister of Defence

Chair, Cabinet External Relations and Security Committee

**ASIA PACIFIC ECONOMIC COOPERATION 2018 IN PAPUA NEW GUINEA:
NEW ZEALAND SECURITY ASSISTANCE TO LEADERS' WEEK**

Proposal

1. This paper seeks Cabinet's agreement *in principle* to a package of security assistance for Papua New Guinea's hosting of the Asia Pacific Economic Cooperation (APEC) Leaders' Week (12-18 November 2018). That includes the deployment of New Zealand Defence Force (NZDF) maritime and air support as well as Special Operations Forces (SOF) personnel to Port Moresby. The purpose of the deployment is to assist Papua New Guinea to meet expectations that Leaders' Week will proceed safely and securely and to respond to significant security threats that might arise.

2. Additionally, it is proposed that the Prime Minister and Joint Ministers (Foreign Affairs and Defence) be delegated authority to provide final approval for the NZDF assistance, pending finalisation of a legal framework.

Executive Summary

3. An important focus of Papua New Guinea's hosting of APEC 2018 is ensuring the main event – Leaders' Week (12-18 November) – is safe and secure. s6(a)

[Redacted]

4. s6(a)

| | |
|------------|----------|
| [Redacted] | s6(b)(i) |
| [Redacted] | s6(a) |

5. New Zealand has coordinated with Papua New Guinea and Australia to develop and deliver a range of security assistance for APEC 2018. As part of that, NZDF has provided capacity building to the Papua New Guinea Defence Force (PNGDF) s6(a) and has developed a package of maritime security assistance for APEC 2018 Leaders' Week. s6(b)(i)

[Redacted] Papua New Guinea has also endorsed both of these elements.

6. The proposed maritime support package would include deploying the Offshore Patrol Vessel (OPV) HMNZS *Otago* to Port Moresby and operating a P-3K2 Orion out of Northern Australia. The role of HMNZS *Otago* would be to provide harbour security and surveillance. The P-3K2 Orion would be available to provide supporting aerial surveillance where required.

7. To meet the request s6(a) up to 30 NZDF SOF would be deployed. s6(a)

s6(a)

8. We recommend that New Zealand respond positively to the requests for a maritime support package and NZDF SOF personnel for APEC Leaders' Week security. The support would s6(a) complement our overall support to Papua New Guinea's APEC hosting. s6(a)

Furthermore, it would align with the principles of the *Pacific Reset* and the *Strategic Defence Policy Statement* and, looking ahead, would inform our preparations for hosting APEC 2021.

Background

Papua New Guinea's preparedness for APEC 2018

9. Papua New Guinea's year as host of APEC 2018 will culminate with Leaders' Week in Port Moresby (12-18 November). Ensuring sufficient security and logistical preparedness is a fundamental undertaking for any APEC host. APEC Economies expect that there will be a security framework in place during Leaders' Week that will cover all contingencies.

10. s6(a)

11. For Papua New Guinea, the size and scale of Leaders' Week will be a vastly more difficult undertaking than any of the preceding ministerial meetings. s6(a)

12. The Royal Papua New Guinea Constabulary (RPNGC) as the lead agency for APEC security, has created a Joint Security Task Force (JSTF) to coordinate the interagency and international contributions. While security for APEC is a law enforcement-led task, it requires the support of military forces and the additional capacity they provide s6(a)

s6(b)(i)

NZDF assistance to Papua New Guinea's APEC security plan

13. Planning for New Zealand's security assistance to support Papua New Guinea's APEC 2018 hosting has been underway since 2014. More recently, NZDF efforts have focused on delivering capacity building to the PNGDF in advance of APEC and working with the PNGDF and the Australian Defence Force (ADF) to identify how New Zealand might support Papua New Guinea's safety and security operations during APEC 2018 Leaders' Week.

14. [Redacted] s6(a)

15. The three areas of NZDF's ongoing and possible support are outlined below.
Capacity building and planning support

16. Throughout 2017 and 2018 NZDF has provided capacity building and planning support for the PNGDF's APEC 2018 preparations to assist the lead agency (RPNGC), under the approval of the Chief of Defence Force. Activities have included: [Redacted] s6(a) [Redacted] the provision of Defence Staff Officers and Liaison Officers to the JSTF; and training and capacity building [Redacted] s6(a)

17. [Redacted] s6(a)

The proposed maritime support package

18. NZDF has worked with Australia and Papua New Guinea to develop a package of contributions to assist with harbour patrol and aerial surveillance during Leaders' Week. NZDF proposes to deploy the OPV HMNZS *Otago* with three embarked rigid hull inflatable boats (RHIBS) and a P-3K2 Orion. In addition, a national command element of up to six personnel would be established in Port Moresby to provide in country command and control of NZDF assets, working alongside the ADF JTF and the RPNGC JSTF.

19. [Redacted] s6(a)

20. [Redacted] s6(a)
[Redacted]
[Redacted]
[Redacted]
[Redacted]

[Redacted] s6(a)

21. [Redacted] s6(a)
[Redacted]
[Redacted]
[Redacted]
[Redacted]

22. [Redacted] s6(a)
[Redacted]
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23. [Redacted] s6(a)
[Redacted]
[Redacted]
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24. [Redacted] s6(a)
[Redacted]
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25. [Redacted] s6(a)
[Redacted]
[Redacted]
[Redacted]

[Redacted] s6(a)
[Redacted]
[Redacted]
[Redacted]

s6(a)

Guidelines on use of force

26. Guidance on the use of force for all NZDF deployed personnel (SOF and maritime) will be developed and provided to the Prime Minister and the Minister of Defence for approval in due course. Actions taken by NZDF personnel would be in accordance with this guidance.

Funding

27. Funding for New Zealand's broader APEC support has been drawn from Official Development Assistance and Vote Foreign Affairs. The main source for NZDF activities has been a dedicated \$8 million APEC 2018 Support Fund, which is managed by MFAT. This Fund was established for agencies, including NZDF, to respond to requests from Papua New Guinea and Australia. This assistance is separate from New Zealand's arrangements for the Prime Minister-led delegation to Leaders' Week.

Rationale for contributing

s6(a)

28. Ensuring a safe Leaders' Week in a coastal city requires a range of security assets,

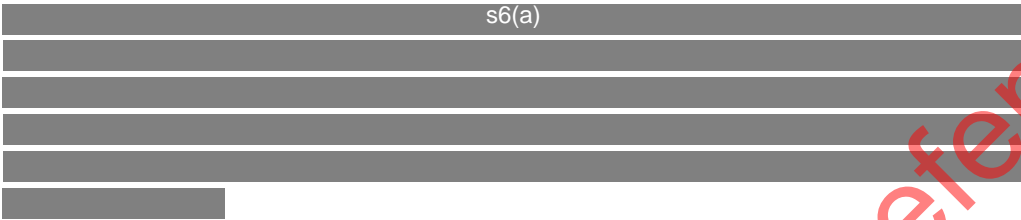
29.

Strategic and foreign policy considerations

30. At a high level, assisting Papua New Guinea is consistent with the principles and priorities articulated in the *Pacific Reset* and the *Strategic Defence Policy Statement 2018*. Other drivers include:

- The bilateral relationship: Papua New Guinea considers New Zealand a trusted partner – with the defence relationship an important element of that.
- The trans-Tasman relationship: New Zealand's support for APEC 2018 is important to Australia. We have committed to provide support to the successful hosting of APEC 2018 and (with Papua New

Guinea's support) are calibrated to the capabilities of the NZDF and its ability to operate effectively with both Papua New Guinea and Australia.

- The broader context:
 - The success of the 2018 APEC year – realised in part through a safe and secure Leaders' Week – is important to APEC's continued status as the region's premier, rules-based economic forum.
 -  s6(a)
 - Finally, the NZDF experiences in Leaders' Week security would also inform our own preparations for APEC 2021.

The legal framework

31. An overarching legal framework for the NZDF's contribution to APEC 2018 safety and security operations is being developed by officials. Prior to sending NZDF personnel on any activity in another State, confirmation of the legal framework is required. To do this, officials confirm there is an international mandate so that it is clear that NZDF personnel have the support of the State to which they are going, and to be within their territory. This activity then occurs on the direction of the New Zealand Government, through either standing direction or specific Cabinet approval. In consultation with the host State (here Papua New Guinea), officials jointly determine which legislative provisions of that host State will or will not apply to NZDF personnel. These cover a wide range of areas, for example, immigration, customs, the tasks to be performed and jurisdiction. Once both countries reach mutual understandings on these provisions, the understandings are recorded in a number of ways, including in Status of Forces Agreements (SOFA) or memoranda.

32. The legal framework for this activity comprises of:

- The SOFA: Papua New Guinea and New Zealand Ministers of Defence signed this in March 2018, and it was brought into force in August 2018. It records the general provisions that apply for all types of deployments of either States' Armed Forces into either States' territory. Notably, the SOFA does not apply in preparation for, or execution of, public security unless mutually determined with the host nation.
- A non-binding memorandum: this is specific to NZDF's support to APEC 2018 safety and security operations. The memorandum is currently being negotiated by New Zealand and Papua New Guinea officials. It will satisfy both Acts (referred to below) and the SOFA, in their requirement for an international arrangement by recording all terms that call for mutual determination. It will also record any deviations or expansions from the obligations as they are recorded in the SOFA, and confer powers, privileges and exemptions to NZDF personnel.
- Papua New Guinea's domestic legislation (detailed at paragraphs 32-33).

33. There are two key pieces of the Papua New Guinea legislation which are relevant to the APEC 2018 legal framework. Firstly, the Defence (Visiting Forces) Act

1975 (PNG) (hereafter Visiting Forces Act), which includes general provisions as they relate to visiting forces. Secondly, the APEC Safety and Security Act 2017 (PNG) (“APEC Act”) provides for the specific powers to be exercised during APEC 2018. It also allows for the PNGDF (and visiting forces) to assist the RPNGC, similar to New Zealand. Both Acts require an international arrangement (the non-binding memorandum) for the specific activity which is to provide assistance with APEC 2018 safety and security operations.

34. [Redacted] s6(a), s9(2)(h)

- [Redacted] s6(a), s9(2)(h)
- [Redacted] s6(a), s9(2)(h)
- [Redacted] s6(a), s9(2)(h)
- [Redacted] s6(a), s9(2)(h)

35. [Redacted] s6(a), s9(2)(h)

Consultation

36. This paper has been prepared by MFAT, the Ministry of Defence and the NZDF. The Department of the Prime Minister and Cabinet (Policy Advisory Group), New Zealand Police and the Treasury were consulted.

Financial Implications

37. The estimated cost of NZDF maritime support is \$1.21 million and includes the deployment of HMNZS *Otago* and RHIBS as well as a P-3K2 Orion. The cost of the expanded NZDF SOF role is NZ\$0.15 million and would cover the deployment of up to 30 personnel, logistics support, a small headquarters and additional stores.

38. Funding would be provided from the APEC 2018 Support Fund. Both the requests meet the criteria of the Fund that the proposed assistance is in support of Papua New Guinea or Australia APEC preparations. Sufficient funding is currently available.

Publicity

39. No publicity is planned.

Recommendations

40. The Ministers of Foreign Affairs and Defence recommend that Ministers:

1. [Redacted] s6(b)(i)

2. [REDACTED] s6(a)
[REDACTED]
[REDACTED]
3. [REDACTED] s6(a)
[REDACTED]
[REDACTED]
[REDACTED]
4. **Agree** in principle to provide a NZDF package of support for Leaders' Week, including the deployment of:
- i. the Offshore Patrol Vessel HMNZS *Otago* with embarked RHIBs, and a P-3K2 Orion for aerial surveillance, along with a national command element to provide direction to the New Zealand forces;
 - ii. up to 30 NZDF SOF personnel to Port Moresby [REDACTED] s6(a)
[REDACTED]
5. **Delegate** authority to the Prime Minister and Joint Ministers (Foreign Affairs and Defence) to provide final approval for the NZDF security support pending finalisation of the legal framework for deployed personnel and approval of the guidelines for the use of force; and
6. **Note** that the total estimated cost of the maritime support package (NZ\$1.21 million) and the NZDF SOF commitment (NZ\$0.15 million) would be charged against the MFAT APEC 2018 Support Fund.

Rt Hon Winston Peters
MINISTER OF FOREIGN AFFAIRS

Hon Ron Mark
MINISTER OF DEFENCE