

Regulatory Impact Summary:

Legislative enablers for hosting and securing the Asia-Pacific Cooperation (APEC) meetings in 2021

Section 1: General information

Purpose
<p>This Regulatory Impact Summary (RIS) assesses seven legislative areas in relation to New Zealand’s hosting of the APEC meetings in 2021.</p> <p>As the proposals have background material in common, this RIS has single sections covering all proposals for general information, problem definition and objectives, impact analysis, stakeholder views, implementation and operation, monitoring, evaluation and review (sections 1, 2, 4, 5, 6 and 7).</p> <p>Section 3 of the RIS (options identification) presents the problem definition, options and proposed solution separately for each regulatory proposal.</p> <p>The Ministry of Foreign Affairs and Trade is solely responsible for the analysis and advice set out in this RIS, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing key policy decisions to be taken by Cabinet.</p>
Key Limitations or Constraints on Analysis
<p>The key limitations and constraints applying to this analysis are as follows:</p> <p>The analysis is constrained in development of options by the nature of the legislative gaps identified during initial scoping. In some cases the options identified were only the status quo and a single solution.</p> <p>Analysis of options was also constrained by an inability to use a single set of criteria across the entire scope of proposals. Analysis was primarily based upon criteria of effectiveness and practicality. Where required, options were assessed on criteria specific to that issue; such as property rights.</p> <p>Consultation has been undertaken with key agency stakeholders. Public consultation has not taken place during policy development, reflecting the security classification of restricted that has been applied to this programme of work.</p>
Responsible Manager
<p>Andrea Smith Deputy Secretary for APEC21 Ministry of Foreign Affairs and Trade</p>

Section 2: Problem definition and objectives

2.1 What is the policy problem or opportunity?

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-event¹.

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-Government basis. The New Zealand Police is leading the security operation with significant support from other agencies across the security sector.

During the development of the APEC21 Programme's first business case – Operations and Hosting, it was identified there will likely be a need to implement legislation for the purposes of hosting APEC.

Cabinet was advised in June 2017 that advice of legislative requirements would follow and the March 2018 Cabinet Paper – *Hosting the Asia-Pacific Economic Cooperation (APEC) meetings in 2021* outlined the types of areas which would need to be considered. This included: authorisation for foreign personal protection officers to carry firearms, ensuring NZ Police have powers to secure key locations, and temporarily blocking radios and cellular services.

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 security details for leaders attending APEC to carry weapons under the Arms Act 1983, and to temporarily close the Auckland Domain to host the Leaders Retreat. Cabinet also declared a school holiday for Auckland to minimise disruption to the public.

These legislative changes were adequate for the scale of the 1999 event and met 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. Such changes include proliferation of wireless technology, higher risk of low technology terrorist attacks, and social media and ease of information creating less predictable protest activity.

The high level objectives of the legislative analysis are three of the APEC21 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,

¹ 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 <http://www.majorevents.govt.nz/new-zealand-major-events/definition>

and New Zealand's role and place in the Asia-Pacific.

A gap and requirements analysis was undertaken to determine what legislative changes may be required to enable hosting of APEC in 2021. The analysis was conducted across the following areas:

- Previous legislation for similar events in New Zealand and other jurisdictions.
- Existing domestic legislative and policy frameworks including the Major Events Management Act 2007, the Policing Act 2008, the Defence Act 1990, border legislation, the Bill of Rights Act 1990, the Privacy Act 1993, and the New Zealand National Security System risk management framework.
- 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 of visiting world leaders, delegations, and media.

As a result of the gap analysis, seven areas were identified for potential legislative amendments. Changes proposed will be temporary for the purposes of APEC 2021. 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, with the Constabulary powers necessary to undertake any functions required.
- Providing a legislative framework to enable the use of other government agency staff, private contractors and Australian Police Officers in support of the APEC 2021 security operation, with powers appropriate to roles they may undertake.
- Enabling the 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; to restrict public access and manage security risks.
- Authorising the NZ Police and NZDF and, subject to the approval of the Commissioner of Police, foreign protection services to use wireless electronic countermeasures technology to ensure the safety of visiting delegations and world leaders, public safety and the security of APEC venues and accommodation.
- Provide legislative powers for enforcement agencies to intervene and respond effectively and appropriately to risks posed by unmanned aerial vehicles as well as from piloted aircraft.
- 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, replicating the legislative approach taken for APEC 1999.
- Creation of temporary Policing powers and associated offences for the APEC 2021 Leaders' Week period, 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.

2.2 Who is affected and how?

Proposals will impact upon government agencies, visiting economies' delegates and world leaders, APEC accommodation and venue providers and the general public.

Impact will vary upon how closely those affected are involved with APEC. For example there will be very limited impact upon members of the public outside Auckland. For some businesses in the Auckland CBD and members of the public that may wish to demonstrate APEC related issues, impact will be greater.

Disruption to residents and businesses inside, and those transiting through, security areas is likely. The APEC21 security operation will work to ensure that planning and communication minimise disruption to the extent possible.

The APEC 21 Programme is working closely with the Auckland City Council, in particular Auckland Tourism, Events and Economic Development as well as Auckland business associations. It is intended to communicate to affected areas well in advance using the existing communications channels these local organisations already have in place.

With this in mind the proposals are aimed to ensure security and safety of all participants in or around the APEC events, venues and accommodation.

2.3 Are there any constraints on the scope for decision making?

There are no constraints on the scope for decision making.

s9(2)(f)(iv)

Section 3.1: Enabling New Zealand Defence Force (NZDF) support to the APEC 2021 security operation

3.1.1 What is the problem?

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

The NZDF have readily available staff with appropriate skills who could be sourced to support the security operation during APEC Leaders' Week, for example in enhancing Counter Terrorism capability. Using NZDF maximises the investments already made in this national capability and removes the requirement to increase NZ Police specialist capability that may not be needed after the APEC 2021 hosting year.

Current legislative settings do not enable the use of NZDF staff in policing roles with any constabulary powers, outside an emergency situation. Section 9(4) of the Defence Act 1990 authorises the Prime Minister or, if the Prime Minister is unavailable, the next most senior Minister available to authorise any part of the NZDF to assist the Police in dealing with an emergency. This is in a situation when the emergency cannot be dealt with by the NZ Police without the assistance of members of the Armed Forces exercising powers that are available to NZ Constables.

As enacted, Section 9(4) is limited to emergencies only and thus cannot be utilised for APEC 2021.

3.1.2 What options have been considered?

Options

Option 1: Status quo

Use the existing provisions of the Defence Act 1990 to support general operations and hosting activities and acknowledge that the Defence Act 1990 severely limits the range of functions and powers that NZDF personnel could undertake in support of APEC21 security activities.

Option 2: Amend Section 9(4) of the Defence Act 1990

This option would temporarily amend the Defence Act 1990 to enable the Armed Forces to assist the NZ Police in securing APEC 2021. Sections 9(5) and 9(6) would be amended so that the NZDF personnel would act only at the request of the Police operational commander. This option would ensure that the Armed Forces could exercise the powers of a NZ Police Constable and would also have the protections of a NZ Police Constable for civil and criminal liability. NZDF personnel remain employees of the NZDF.

Option 3: Use existing provisions of the Policing Act 2008² to make NZDF personnel Constables under that Act

This option allows the Commissioner of Police to appoint people that the Commissioner thinks necessary for the efficient exercise and performance of the powers, functions, and duties of the NZ Police. This would require NZDF personnel to be 'sworn in' as temporary NZ Constables and become NZ Police employees.

Only by then taking the Constable's oath can those people become a Constable and have all powers and protections of a NZ Police Officer. Before this happens the Commissioner, or person authorised by the Commissioner to administer the oath, must be satisfied that the person is adequately trained to exercise the powers of a NZ Constable and capable of exercising the powers of a NZ Constable.

Ordinarily, this would involve the employee completing recruit training. Given the powers that may be exercised by constables, it is important they meet certain requirements/standards before the oath is administered. It is foreseeable that the taking of the oath and subsequent exercise of powers may be questioned, if the prerequisites are not satisfied.

This potentially exposes the persons and Police to risk; for example, in being called on by the public to intervene in a situation they were not trained or equipped to deal with.

Option 4: Use existing provisions of the Policing Act 2008³ to create APEC21 'Authorised Officers'

Authorised officers (AOs) are a category of non-constabulary NZ Police employee, authorised to exercise limited and specific constabulary powers to do their jobs. This option would require NZDF personnel to become NZ Police employees.

Whereas NZ Constables obtain the full range of statutory and common law constabulary powers by swearing the constabulary oath, AOs are warranted by the Commissioner to wield a limited range of defined statutory powers deemed necessary to effectively perform their specialist role.

AOs were introduced largely to address the risks around using temporary sworn NZ Constables in some policing roles, where NZ Police had already decided fully trained constables were not always necessary, such as in watch houses and as prisoner escorts. Other policing roles for AOs include "Police Guards", "Police Specialist Crime Investigators", and "Police Transport Enforcement Officers".

It would be possible for a number of temporary APEC 2021 AO roles to be created, each linked to certain policing, or other statutory powers (e.g. technical search powers under the Search and Surveillance Act 2012). These roles would be limited to those where very few powers are required.

AO roles are created through Regulation and would not require primary legislative change.

² Sections 18 and 22 of the Policing Act 2008

³ Section 24 of the Policing Act 2008

Option 5: Create ‘Appointed persons’ with a suite of powers under APEC 2021 enabling legislation

As part of any other required legislative change, an APEC 2021 enabling Act could allow the Commissioner of Police (or other person) to appoint a person other than a police officer to be an appointed person for that APEC 2021 Act.

This appointed person would be able to undertake all specified powers that were contained in the APEC 2021 enabling Act. This approach mirrors that taken by Australia in hosting the G20 in 2014.

Option analysis

The above options are assessed against the following criteria:

Criteria 1: Proportional

This assesses the proportionality of the option to the status quo – in essence, is the option necessary and credible?

Criteria 2: Effective

This assesses the extent to which options enable New Zealand to host a secure APEC year and meeting the security investment aim that no people are harmed due to APEC security incidents.

Criteria 3: Practical

This assesses options based on how practical they are to implement.

Assessment of each option against criteria				
	Criteria 1: Proportional	Criteria 2: Effective	Criteria 3: Practical	Net benefit
Option 1: Status quo.	Not Applicable	Low. Severely limits the ability of NZDF to support the security operation.	Low. No change to existing legislation or policy makes the status quo easy to undertake, but is not a practical response to the problem.	Low Severely limits the ability of NZDF to support the security operation and does not enable proposed options in the Security Business Case and does not maximise use of existing Government security resources.
Option 2: Amend Section 9(4) of the Defence Act 1990	Medium / high. Would enable a selective role approach which is proportional to the variety of roles and skills necessary. Visible legislative change would reduce any	Medium/high. Would allow the security operation to draw on selected personnel and match skill to role. Reduces, but does not eliminate the risk of an inability to train all personnel to the	High. A simple approach that ensures appropriate use of skill sets and training while ensuring the NZDF personnel have adequate powers and protections necessary.	Medium / high. Limits operational and perception risk to the highest extent and is relatively easy to undertake and supports the Security Business Case options. Option is preferred

Assessment of each option against criteria				
	Criteria 1: Proportional	Criteria 2: Effective	Criteria 3: Practical	Net benefit
	perception of a 'behind the scenes' use of NZDF resources - transparency of process.	standards required.		by NZ Police, NZDF and MoD.
Option 3: Use existing provisions of the Policing Act 2008 to make NZDF personnel Constables under that Act	Low. A single approach is not proportional to the variety of roles and skills necessary, and could be perceived as excessive or unnecessary.	Low / Medium. Would enable full use of NZDF personnel in any role. Risk of an inability to train all personnel to the standards required. Operational risk that expectations of sworn in personnel would be the same as those of NZ Police. Requires the NZDF staff to become NZ Police employees, which they cannot do as they always retain their Armed Force's employee status unless they resign from the NZDF.	Medium. No change to existing legislation makes this option easier to undertake. Swearing in NZDF personnel as NZ Police gives full powers of a NZ Constable, and subsequent exercise of powers may be questioned, if training and knowledge prerequisites are not satisfied. Knowing Section 9(4) exists; using the Policing Act could be seen as circumventing existing legislation.	Low / Medium. A 'one size fits all' is easy to implement, however creates high training and knowledge requirements, potential operational risk and perception issues.
Option 4: Use existing provisions of the Policing Act 2008 to create APEC21 'Authorised Officers'	Medium / High. A multiple role approach is proportional to the variety of roles and skills necessary.	Medium / High. Would enable full use of NZDF personnel targeted to roles. Gives flexibility to match existing skills with requirements, and reduces amount of training required. Requires the NZDF staff to become NZ Police employees, which they cannot do as they always retain their Armed Force's employee status unless they resign from the NZDF.	Low / medium. No change to existing primary legislation makes this option easier to undertake. Requires some regulatory change. Requirement that AOs are Police employees creates significant complexity as all NZDF personnel would have to be seconded to Police. Use of authorised officers gives flexibility as to what powers are needed for what role. May create some complexity with a large number of AO roles being required. Some roles may not	Low / Medium. Gives the ability to target skills to roles, and minimise training to the extent possible, but has significant implementation complexity.

Assessment of each option against criteria				
	Criteria 1: Proportional	Criteria 2: Effective	Criteria 3: Practical	Net benefit
			<p>suit the AO model.</p> <p>Knowing Section 9(4) exists; using the Policing Act could be seen as circumventing existing legislation.</p>	
<p>Option 5:</p> <p>Create 'Appointed persons' under APEC 2021 enabling legislation</p>	<p>Medium / High.</p> <p>Proportional as it enables a flexible approach, only giving required powers for limited duration.</p>	<p>Medium / High.</p> <p>Would enable full use of NZDF personnel in any role.</p> <p>Reduces, but does not eliminate the risk of an inability to train all personnel to the standards required</p> <p>Operational risk that expectations of sworn in personnel would be the same as those of Police.</p>	<p>Medium / High.</p> <p>Level of practicality would depend on the scale of the associated powers section of the APEC21 legislation.</p> <p>As change is temporary is may be more appropriate to use specialised legislation to aid in clarity and accessibility of the law.</p> <p>Very low unintended consequence risk (untested) that elements of the Defence Act linked section 9 would not apply.</p>	<p>Medium / High.</p> <p>While requiring slightly complex legislation this option is appropriate to the problem and replicates a process already used in a similar jurisdiction to secure a similar scale event.</p>

3.1.3 Which of these options is the proposed approach?

Option 2 is recommended.

Temporarily Amend Section 9(4) of the Defence Act 1990

This removes any need to require NZDF personnel to become Police employees and maximises investments already made in building this national capability and removes need to incur a significant cost burden of major increase in Police specialist capability. It enables resources provided to support security activities to be appropriately trained, equipped and given the powers required for their role.

It is noted that both option two and option five in this analysis are very similar. Both provide a legislative framework for addressing the problem. Both also remove any perception of circumvention of the intent behind section 9 of the Defence Act 1990, through the Parliamentary scrutiny and decision making that is part of the legislative process. The final decision to adopt option two was due to the preference indicated by NZ Police, the NZDF and the Ministry of Defence.

Section 3.2: Enabling the use of other Government agency staff, private contractors and Australian police officers

3.2.1 What is the problem?

Should the security operation require specific personnel to be drawn from other government agencies or private security agencies, there may be a need to provide them with limited powers to undertake certain tasks.

High level security planning has included addressing resourcing gaps with s6(a) Australian Police Officers and equipment in specialist roles. This is an efficient way of temporarily sourcing niche capabilities and Australia has proven to be a willing and capable partner in the past. New Zealand has also reciprocated support for similar major events in Australia on a number of occasions such as APEC in 2007, Commonwealth Heads of Government in 2002 and the G20 Summit in 2014.

3.2.2 What options have been considered?

Options

Option 1: Do not give any powers to other government agencies staff, private security agencies and Australian Police Officers when supporting the security operation.

Option 2: Swear in, as NZ Police Constables, other government agencies staff, private security agencies and Australian Police Officers with the full suite of constabulary powers

This option allows the Commissioner of Police to appoint people that the Commissioner thinks necessary for the efficient exercise and performance of the powers, functions, and duties of the NZ Police. This would require other government agencies staff and private security agency staff to be sworn in as temporary NZ Constables and become NZ Police employees.

Before this happens the Commissioner, or person authorised by the Commissioner to administer the oath, must be satisfied that the person is adequately trained to exercise the powers of a NZ Constable and capable of exercising such powers.

Ordinarily, this would involve the employee completing recruit training. Given the powers that may be exercised by constables, it is important they meet certain requirements/standards before the oath is administered. It is foreseeable that the taking of the oath and subsequent exercise of powers may be questioned, if the prerequisites are not satisfied.

It would not be appropriate to swear other government agencies staff or private security agency staff as NZ Police Officers with the full suite of Constabulary powers. This potentially exposes the persons and Police to risk; for example, in being called on by the public to intervene in a situation they were not trained or equipped to deal with.

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. However, swearing in all ^{s6(a)} 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.

Option 3: Replicate the approach taken during Australia’s hosting of the G20 in 2014 which legislated the ability to designate appointed persons with specified powers

It is proposed to enable the Commissioner of Police to designate appointed persons with required powers for fixed periods for the purposes of APEC security. This would enable the NZ Police to draw upon other government agency or private personnel and Australia Police Officers and give them appropriate powers for the role they will undertake. NZ Police would ensure appropriate training for such personnel

Option analysis

The above options are assessed against the following criteria:

Criteria 1: Proportional

This assesses the proportionality of the option to the status quo – in essence, is the option necessary and credible?

Criteria 2: Effective

This assesses the extent to which options enable New Zealand to host a secure APEC year and meeting the security investment aim that no people are harmed due to APEC security incidents.

Criteria 3: Practical

This assesses options based on how practical they are to implement.

Assessment of each option against criteria				
	Criteria 1: Proportional	Criteria 2: Effective	Criteria 3: Practical	Net benefit
Option 1: Do not give any powers to other government agencies staff, private security agencies and Australian Police Officers when supporting the security operation.	Not Applicable	Low. Limits the ability of other government agencies staff, private security agencies and Australian Police Officers to support the security operation.	Low. No change to existing legislation or policy makes the status quo easy to undertake, but is not a practical response to the problem.	Low Severely limits the ability of other government agencies staff, private security agencies and Australian Police Officers to support the security operation. Does not maximise use of existing security resources.
Option 2: Swear other government agencies staff, private security	Low. A single approach is not proportional to the variety of roles and skills	Low / Medium. Would enable full use of other government agencies staff, private security	Low / Medium. No change to existing legislation makes this option easier to	Low / Medium. A ‘one size fits all’ is easy to implement, however creates high training and

Assessment of each option against criteria				
	Criteria 1: Proportional	Criteria 2: Effective	Criteria 3: Practical	Net benefit
agencies and Australian Police Officers in as NZ Police Constables	necessary, and could be perceived as excessive or unnecessary.	agencies and Australian Police Officers personnel in any role. Risk of an inability to train all personnel to the standards required. Operational risk that expectations of sworn in personnel would be the same as those of NZ Police. Requires the other government agencies staff, private security agencies and Australian Police Officers staff to become NZ Police employees, which is not practical in all circumstances.	undertake. Swearing in these personnel as NZ Police gives full powers of a NZ Constable, and subsequent exercise of powers may be questioned, if training and knowledge prerequisites are not satisfied.	knowledge requirements, operational risk and perception issues.
Option 3: Replicate the approach taken during Australia's hosting of the G20 in 2014 which legislated the ability to designate appointed persons with specified powers	High. Proportional as it enables a flexible approach, only giving required powers for limited duration.	Medium / High. Would enable full use of other government agencies staff, private security agencies and Australian Police Officers personnel in any role with the right suite of required powers. Operational risk that expectations of these personnel would be the same as those of Police.	Medium / High. Level of practicality would depend on the scale of powers needed and how easily they can be assigned. Requires slightly complex legislation, but this can be supported by previous Australian legislative design and lessons learnt.	Medium / High. While requiring slightly complex legislation this option is appropriate to the problem and replicates a process already used in a similar jurisdiction to secure a similar scale event.

3.2.3 Which of these options is the proposed approach?

Option 3 is recommended.

Legislate the ability to designate appointed persons with specified powers.

This would enable the NZ Police to draw upon other government agency or private personnel and Australia Police Officers and give them appropriate powers for the roles they will undertake.

Section 3.3: Enabling the creation of maritime and waterfront safety and security areas

3.3.1 What is the problem?

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

s6(a); s6(d)

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.

3.3.2 What options have been considered?

Option 1 – Status Quo

Currently limiting access to, and controlling, a maritime area during a major event is achieved through the major events section in the Maritime Transport Act 1994 (MTA).

The MTA applies “only to specified maritime events and occasions” and would exclude APEC 2021.

Option 2 – *Replicate the legislative approach taken during the hosting of the Rugby World Cup in 2011*

This 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

⁴ An internationally protected person as defined by the meaning of the Crimes (Internationally Protected Persons, United Nations and Associated Personnel, and Hostages) Act 1980 - heads of state, heads of government, foreign ministers, ambassadors, other official diplomats, and members of their families.

under the MTA. This was the process used for NZ Police to facilitate security and safety at the waterfront 'Fan Zone' in Auckland

The legislation would enable NZ Police to exercise enforcement powers to create safety and security areas or maritime transit corridors. The legislation would 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.

Option analysis

The options are assessed against the following criteria:

Criteria 1: Effective

This assesses the extent to which options address likely threats faced when securing APEC2021. In particular, meeting the security investment aim that no people are harmed due to APEC 2021 security incidents.

Criteria 2: Practical

This assesses options based on how practical they are to implement.

Assessment of each option against criteria			
	Criteria 1: Effective	Criteria 2: Practical	Net benefit
Option 1: Status quo	Low. Does not enable security agencies to respond to effectively secure maritime areas or transit corridors.	Low. No change to existing legislation or policy makes the status quo easy to undertake, but is not a practical response to the problem.	Low. There would not be sufficient ability to fully meet the critical 'safe and secure' APEC21 objective.
Option 2: Replicate the approach taken during the hosting of the Rugby World Cup 2011	High. Would enable security agencies protect sites and visitors on or adjacent to maritime areas and transit corridors.	High. Uses an existing legislative framework and replicates an approach previously undertaken. Flexible enough to account for planned and reactive use.	High. Would enable security agencies to address potential security and safety concerns in or around the maritime environment.

3.3.3 Which of these options is the proposed approach?

Option 2 is recommended.

Replicate the enabling legislation created for the Rugby World Cup (RWC) in 2011.

This approach enables a flexible, effective approach to the protection of sites and visitors on or adjacent to maritime areas and transit corridors.

Uses an existing legislative framework and replicates an approach previously undertaken that set an effective precedent.

Section 3.4: Enabling the use of wireless electronic countermeasures during APEC 2021

3.4.1 What is the problem?

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 the APEC events.

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 venues and accommodation.

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. 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.

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)

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 protection of APEC venues, and does not enable the use of W-ECMs by foreign protection services.

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 use of W-ECMs has the potential to adversely affect other wireless services, such as providers and users of cellular services. Adverse effects are mitigated through a regime which requires potential W-ECM use to be licenced, to minimise interference for existing spectrum users. However in most security circumstances licensing is not practical; for example when the details of W-ECM use are sensitive and would be more secure if not licensed.

3.4.2 What options have been considered?

Options

Option 1: Status quo

Limited scope for W-ECM use by New Zealand's security and intelligence agencies is provided in other legislation through their ability to effectively override other pieces of legislation, but this does not enable rapid response to emergency situations, does not allow employment of W-ECMs for preventative measures such as protection of APEC venues, and does not enable the use of W-ECMs by foreign protection services. The status quo has virtually no impact upon radio spectrum property rights holders and legitimate spectrum users

Option 2: Enable the importation, exportation and use of W-ECMs during APEC 2021

This option authorises the use of W-ECMs by relevant government agencies for the protection of the APEC 2021 event and public safety. For the purposes of APEC the relevant domestic government agencies would be the NZ Police and the NZDF.

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

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 the APEC 2021 period. 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.

Option analysis

The use of W-ECMs by government agencies should be balanced with the preservation of the radio spectrum as an economic and social resource as well as the property rights of spectrum owners. Options to allow the use of W-ECMs for public good are assessed against the following criteria:

Criteria 1: Mitigate the threats arising from malicious use of wireless technology to APEC 2021

This assesses the extent to which options enable use of W-ECMs for security and public safety addressing likely threats faced when hosting APEC 2021.

Criteria 2: Minimise the impact of W-ECMs on legitimate spectrum users

Spectrum right holders have an incentive to provide certainty over customers / clients of the rights holder to enable efficient and full use of their spectrum rights which could be undermined by excessive W-ECM use. This assesses options based on the extent to which W-ECMs impact legitimate spectrum users.

Criteria 3: Minimise the impact of W-ECMs on rights holder's ability to determine the use of their spectrum right

Under the Radiocommunications Act, holders of spectrum rights have full control over how, where and who may use the frequencies covered by their spectrum right. Some W-ECM use would necessarily need to temporarily override this ability.

This assesses options based on the extent to which they retain the autonomy of rights holders to manage their spectrum asset and the property rights regime in the Radiocommunications Act.

Assessment of each option against criteria

	Criteria 1: Mitigate the threats arising from misuse of wireless technology to hosting and securing APEC 2021	Criteria 2: Minimise the impact of public good W-ECMs on legitimate users	Criteria 3: Minimise the impact of W-ECMs on rights holder's ability to determine the use of their spectrum right	Net benefit
Option 1: Status quo	Nil. The Status Quo allows very little public good uses of W-ECMs to deal with misuse of wireless technology.	High. The current Radiocommunications Act provides processes to resolve harmful interference when it occurs	High. The current framework protects the exclusive use of spectrum property rights.	Low. Provides protection against interference and fully protects spectrum property rights, it does not enable the effective use of W-ECMs for public safety and the security of APEC 2021.

<p>Option 2: W-ECMs authorised for importation, exportation and use</p>	<p>High This option provides for W-ECM use to reduce and respond to potential threats to the security of APEC 2021 and public safety.</p>	<p>Medium/high. W-ECM use will be rare or very limited in duration and there is a low risk of interference to legitimate users which can be mitigated through planning.</p>	<p>Medium/high. W-ECM use will be rare or very limited in duration and any reduction in the autonomy of rights holders is low and can be mitigated through planning.</p>	<p>Medium/high. W-ECM use for would be permitted. This option would create only a small amount of interference to other legitimate spectrum users.</p>
--	--	--	---	---

3.4.3 Which of these options is the proposed approach?

Option 2 is recommended.

Temporarily legislate, through an APEC 2021 Empowering Act, to enable the importation, exportation and use of W-ECMs during APEC 2021

Legislation would 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.

Section 3.5: Enabling enforcement of restricted use airspace during APEC 2021

3.5.1 What is the problem?

s6(a); s6(d)

s6(b)(i)

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.

Temporary powers are required that expressly provide for security agencies to treat any UAV entering designated APEC restricted use airspace, without express permission of the authorities, as a prima facie security threat, and to undertake preventative measures.

3.5.2 What options have been considered?

Options

Option 1: Status quo

The status quo would enable the security operation to put restricted or controlled air space measures into place, but have limited ability to employ preventative measures or respond rapidly to incursions when they arise.

Option 2: Legislate enforcement powers

This option would create a temporary legislative regime that expressly provides for security agencies to intervene and respond to airborne threats and UAV incidents during APEC.

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."

A power would also be established for specified agencies to prevent an aircraft taking off, if it was believed that this craft was to be used to disrupt the APEC event.

The proposed powers are detailed in Appendix B.

Option analysis

The options are assessed against the following criteria:

Criteria 1: Effective

This assesses the extent to which options address likely risks faced when securing APEC2021.

Criteria 2: Credible

This assesses options based on how credible they are from the view point or perception of both domestic and foreign security organisations, i.e. is New Zealand seen as taking the security operation seriously.

Criteria 3: Property Rights of UAV users

This assesses options based on the extent to which the legislation impacts upon UAV users.

Criteria 4: Other rights issues

This assesses options based on the extent to which the legislation impacts upon the rights of the public or property owners. This includes the rights of delegates and protestors.

Assessment of each option against criteria					
	Criteria 1: Effective	Criteria 2: Credible	Criteria 3: Rights of UAV users	Criteria 4: Other rights issues	Net benefit
Option 1: Status quo	Low. Does not enable security agencies to respond to UAV incidents when they arise.	Low. A lack of immediate enforcement ability would likely not be viewed as a credible approach to the security situation.	High. Has no impact on the rights of UAV users beyond existing controls.	Low. Threats from UAVs may put the rights of others at risk, including property rights, freedom of assembly and right to life.	Low. While having no impact upon individual owners' rights the status quo means there would not be sufficient ability to fully meet the critical 'safe and secure' APEC21 objective.
Option 2: Legislate enforcement powers	Medium / High. Would enable security agencies to respond to	High. Immediate enforcement ability would be viewed as a credible	Medium. Has no impact on the rights of UAV users beyond existing controls if the	Medium / High. Threats from UAVs may put the rights of others at risk and this would	Medium / High. Would enable security agencies to respond to UAV risk with

Assessment of each option against criteria

	Criteria 1: Effective	Criteria 2: Credible	Criteria 3: Rights of UAV users	Criteria 4: Other rights issues	Net benefit
	<p>aerial incidents when they arise.</p> <p>Some UAV countermeasures run the risk of bringing down a UAV over people or property which would need to be mitigated by technology used.</p>	<p>approach to the security situation.</p>	<p>users are acting lawfully.</p> <p>Would impact upon their property rights if their UAV was seized or destroyed.</p>	<p>be mitigated by this option.</p> <p>If electronic measures were used to bring UAVs under control, or destroy them, then they may be short term loss of property rights for radio spectrum owners and service provision for radio spectrum users. This would need to be managed / mitigated.</p>	<p>minimal impact upon the rights of legitimate UAV users and others.</p>

3.5.3 Which of these options is the proposed approach?

Option 2 is recommended.

Temporarily legislate, through an APEC 2021 Empowering Act, powers for enforcing control of restricted airspace

Temporary powers would expressly provide for security agencies to intervene and respond to UAV incidents and other airborne threats during APEC. The powers would enable rapid decision making and response as well as allowing agencies to take preventative measures to protect APEC venues, accommodation and transport.

Section 3.6: Enabling the carriage of weapons by foreign protection officers (FPOs) at APEC 2021

3.6.1 What is the problem?

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

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

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

s6(a)

3.6.2 What options have been considered?

Options

Option 1: Prohibit all FPOs from carrying weapons with no exceptions.

Under the status quo, all delegations would be advised of New Zealand legislation as part of the accreditation process and during advance visits. There would be an expectation that all FPOs will comply with New Zealand laws and not carry weapons. s6(a); s9(2)(g)(i)

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

Option 2: Use existing provisions of the Policing Act 2008⁶ to temporarily swear in FPOs as NZ Police Officers

This option allows the Commissioner of Police to appoint people that the Commissioner thinks necessary for the efficient exercise and performance of the powers, functions, and duties of the Police. This would require FPOs to be 'sworn in' as temporary NZ Constables. This has been done in a very limited scale in the past.

Only by then taking the NZ Constable's oath can those people become a NZ Police Officer and have all applicable powers and protections. Before this happens the Commissioner, or person authorised by the Commissioner to administer the oath, must be satisfied that the person is adequately trained to exercise the powers of a NZ Constable and capable of exercising the powers of a NZ Constable.

Ordinarily, this would involve the employee completing recruit training. Given the powers that may be exercised by NZ Constables, it is important they meet certain requirements and standards before the oath is administered. It is foreseeable that the taking of the oath and subsequent exercise of powers may be questioned, if the prerequisites are not satisfied.

Option 3: Amend the Arms Act 1983 to enable carriage of weapons by FPOs.

This option would amend the Arms Act 1983 to allow FPOs at APEC to import and carry weapons for the purpose of their duties.

Option 4: Amend the Arms Act 1983 to enable carriage of weapons by FPOs subject to certain conditions.

This option would amend the Arms Act 1983 to allow FPOs at APEC to import and carry weapons for the purpose of their duties.

NZ Police, in conjunction with other relevant agencies, will manage all requests for FPOs to carry weapons. The Commissioner of Police will be authorised to make the final decision.

The Commissioner will also be authorised to place limitations on any approvals. This includes the type and number of weapons that are bought into New Zealand and to have the ability to inspect, detain or seize weapons at any time if necessary.

Option analysis

The above options are assessed against the following criteria:

Criteria 1: Effective

This assesses the extent to which options enable New Zealand to host a secure APEC year and meets the security investment aim that no people are harmed due to APEC security incidents. In particular it looks at the operational considerations of interoperability and health and safety risks.

⁶ Sections 18 and 22 of the Policing Act 2008

Criteria 2: Practical

This assesses options based on how practical they are to implement and monitor or enforce.

Criteria 3: Credible

This assesses options based on how credible they are from the view point or perception of both domestic and foreign security organisations, i.e. is New Zealand seen as taking the security operation seriously. In particular, this means meeting the security investment aim that no World Leader chooses not to attend APEC21 due to security concerns.

Assessment of each option against criteria				
	Criteria 1: Effective	Criteria 2: Practical	Criteria 3: Credible	Net benefit
<p>Option 1:</p> <p>Prohibit all FPOs from carrying weapons with no exceptions.</p>	<p>Low / medium.</p> <p>s6(a); s9(2)(g)(i)</p>	<p>Low / medium.</p> <p>No change to existing legislation or policy makes the status quo easy to undertake.</p> <p>No administrative requirements, as would come from an authorisation process.</p> <p>s6(a); s9(2)(g)(i)</p>	<p>Low.</p> <p>s6(a); s9(2)(g)(i)</p> <p>s6(a)</p>	<p>Low / medium.</p> <p>While the status quo supports securing APEC 2021 it creates s6(a); s9(2)(g)(i)</p> <p>s6(a)</p>
<p>Option 2:</p> <p>Use existing provisions of the Policing Act 2008</p>	<p>Low.</p> <p>s6(a); s9(2)(g)(i)</p>	<p>Medium.</p> <p>No change to existing legislation or policy makes this option easy to undertake.</p> <p>Swearing in FPOs as NZ Police gives full powers of a NZ Constable, and subsequent exercise of powers may be questioned, if training and knowledge prerequisites are not satisfied.</p> <p>With a lower threshold than one created by legislation, more economies may request their FPOs be sworn in, causing administrative impracticability.</p> <p>s6(a); s9(2)(g)(i)</p>	<p>Low.</p> <p>s6(a); s9(2)(g)(i)</p> <p>'Swearing in' requires an oath to the Queen which would not suit non-commonwealth economies.</p> <p>s6(a)</p>	<p>Low / medium.</p> <p>This option supports securing APEC 2021 but it creates s6(a); s9(2)(g)(i)</p> <p>s6(a)</p>

Assessment of each option against criteria				
	Criteria 1: Effective	Criteria 2: Practical	Criteria 3: Credible	Net benefit
		<p>s6(a); s9(2)(g)(i)</p> <p>Swearing in FPOs as NZ Police gives full powers of a NZ Constable, and subsequent exercise of powers may be questioned, if training and knowledge prerequisites are not satisfied.</p>		
<p>Option 3:</p> <p>Amend the Arms Act 1983 to enable carriage of weapons by FPOs</p>	<p>Low.</p> <p>As this option is a 'blanket approval' NZ Police would have limited / no control or knowledge of weapons potentially carried.</p> <p>NZ Police would have no knowledge of quality of the FPOs (training / experience) and no ability to deny permission to carry weapons.</p> <p>This option would create significant operational and health and safety risks.</p>	<p>Low.</p> <p>Changing legislation to a 'blanket approval' makes this option easy to undertake.</p> <p>No controls of types or numbers of weapons carried or imported.</p> <p>With a lower threshold than would be created by more controlling legislation more economies FPOs will likely carry weapons.</p>	<p>Low.</p> <p>s6(a)</p>	<p>Low.</p> <p>A 'blanket approval' creates more risk to the security operation than no legislative controls. It would result in more weapons carried with less control^{s6(a)}</p>
<p>Option 4:</p> <p>Amend the Arms Act 1983 to enable carriage of weapons by FPOs subject to certain conditions</p>	<p>Low / medium.</p> <p>NZ Police would have much higher control and knowledge of weapons potentially carried.</p> <p>NZ Police would have a level of knowledge of quality of the FPOs (training / experience) and also the authority to deny permission to carry weapons.</p> <p>Carriage of weapons still creates operational and health and safety risks, but this option would enable some</p>	<p>Medium / high.</p> <p>Changing legislation to enable carriage of weapons under an approvals process would require strict procedures and some implementation administration.</p> <p>NZ Police would have control of types or numbers of weapons carried or imported.</p> <p>s6(a); s9(2)(g)(i)</p>	<p>Medium / high.</p> <p>s6(a); s9(2)(g)(i)</p> <p>APEC99 Arms Amendment creates precedent.</p> <p>Would likely be viewed as a credible approach by attending economies.</p>	<p>Medium / high.</p> <p>This option maximises control of carriage of weapons and reduces risk to the best extent.</p> <p>Following the same model as APEC99 it would be viewed as a credible approach.</p>

Assessment of each option against criteria				
	Criteria 1: Effective	Criteria 2: Practical	Criteria 3: Credible	Net benefit
	ability to reduce these risks.			

3.6.3 Which of these options is the proposed approach?

Option 4 is recommended.

Temporarily Amend the Arms Act 1983 to enable carriage of weapons by FPOs subject to certain conditions.

This option maximises control of carriage of weapons and reduces risk to the best extent.

Following the same model as APEC in 1999 it would be viewed as a credible approach.

Section 3.7: Temporary Powers and Offences

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 Section 2 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.

Each of the above areas are outlined below. These illustrate that the status quo does not enable security agencies to more effectively deliver a safe and secure APEC 2021 and proposed temporary powers and offences (detailed in Appendix B).

The proposed powers and offences 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); s9(2)(g)(i)

3.7.1 Accommodation, venue and other site security

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

Option 1: Use existing legislative settings and consent based activities

s6(c)

s6(c)

Option 2: Use provisions of the Trespass Act 1980

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 NZ Police to use the Trespass Act 1980 to limit access and remove persons if required. With a far different threat environment, different

⁷ s6(a); s9(2)(g)(i)

expectations from economies and the number of private buildings being used in to host APEC 2021 it is not considered viable or effective to use this approach again.

Option 3: Creation of temporary Police powers and associated offences

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. The proposed powers outlined in Appendix B, support core security activities which are:

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

Option analysis

The options are assessed against the following criteria:

Criteria 1: Effective

This assesses the extent to which options address likely threats faced when securing APEC2021. In particular, meeting the security investment aim that no people are harmed due to APEC 2021 security incidents.

Criteria 2: Practical

This assesses options based on how practical they are to implement.

Assessment of each option against criteria			
	Criteria 1: Effective	Criteria 2: Practical	Net benefit
Option 1: Use existing legislative settings and consent based activities	Low. Would not enable security agencies to effectively undertake all activities required to secure venues, accommodation and other sites. Increases operational and security failure risk.	Low. No change to existing legislation or policy makes this option easy to undertake, but is not a practical response to the problem.	Low. There would not be sufficient ability to fully meet the critical 'safe and secure' APEC21 objective.
Option 2: Use provisions	Low. Would enable security	Low. Since 1999 a different	Low. This option is not practical

Assessment of each option against criteria			
	Criteria 1: Effective	Criteria 2: Practical	Net benefit
of the Trespass Act 1980	agencies to control entry and remove a person, but not undertake other activities required to secure venues, accommodation and other sites.	threat environment, different expectations from economies and the number of private buildings being used in the hosting of APEC 2021 means it would not be practical to use this option again	in application nor is it fully effective in enabling the security activities required.
Option 3: Creation of temporary Police powers and associated offences	High. Would enable security agencies to undertake all required activities required to secure venues, accommodation and other sites. Supports, and is supported by, the full suite of proposed policing powers for APEC 2021 (see appendix B)	High. These powers are similar to those given under other legislation for similar circumstances, such as implementing a search warrant or screening persons entering other secure locations such an airport. As such security agencies have policies and procedures in place as well as familiarity, which make the proposals easy to implement and use.	High. This option is practical in application and enables security activities required.

Option 3 is recommended.

Creation of temporary Police powers and associated offences.

This enables the a full suite of powers, supported by appropriate offences, to secure venues, accommodation and other sites and to provide for the safety of persons in and around the protected locations.

3.7.2 Road closures for security purposes

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

Option 1: Use existing legislation

Currently, 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 event⁸.

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

Option 2: Creation of temporary Police powers and associated offences

The proposed powers, outlined in Appendix B, will enable NZ Police authority to take the actions that may be necessary including:

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

Assessment of each option against criteria			
	Criteria 1: Effective	Criteria 2: Practical	Net benefit
Option 1: Use existing legislative settings	Low. Would not enable security agencies to effectively undertake all activities required to secure roads. Increases operational and security failure risk.	Low. No change to existing legislation or policy makes this option easy to undertake, but is not a practical response to the problem.	Low. There would not be sufficient ability to fully meet the critical 'safe and secure' APEC21 objective.
Option 2: Creation of temporary Police powers and associated offences	High. Would enable security agencies to undertake all required activities required to close roads. Supports, and is supported by, the full suite of proposed policing powers for APEC 2021 (see appendix B)	High. These powers are similar to those given under other legislation for similar circumstances, such as closing a road when establishing a protective cordon As such security agencies have policies and procedures in place as well as familiarity, which make the proposals easy to implement and use.	High. This option is practical in application and enables security activities required.

⁸ 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

Option 2 is recommended.

Creation of temporary Police powers and associated offences.

This enables a full suite of powers, supported by appropriate offences, to secure roads and to provide for the safety of persons in and around the protected locations.

3.7.3 Short duration road closures for motorcade facilitation

To ensure Leader and IPP movements can be seamlessly and safely executed, vehicle movements of up to 21 delegations in succession are required to be facilitated. Movements involve routes from the airport to the CBD as well as shorter motorcade movements within Auckland City.

Option 1: Use existing legislation

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 NZ Police can temporarily close roads for the purpose of facilitating a motorcade.

Option 2: Creation of temporary Police powers and associated offences

The proposed powers, outlined in Appendix B, will enable NZ Police authority to take the actions that may be necessary to facilitate motorcades, such as:

- restricting access to roads
- placing and enforcing cordons or barricades
- stopping or searching vehicles and persons
- removing vehicles and persons from any closed roads

Assessment of each option against criteria

	Criteria 1: Effective	Criteria 2: Practical	Net benefit
Option 1: Use existing legislative settings	Low. Would not enable security agencies to effectively undertake all activities required to secure roads and facilitate motorcades. Increases operational risk. Risk that World Leaders or delegations are delayed or fail to make specific meetings	Low. No change to existing legislation or policy makes this option easy to undertake, but is not a practical response to the problem.	Low. There would not be sufficient ability to fully meet the critical 'safe and secure' APEC21 objective. Could result in a negative attendee's experience.

Assessment of each option against criteria			
	Criteria 1: Effective	Criteria 2: Practical	Net benefit
Option 2: Creation of temporary Police powers and associated offences	High. Would enable security agencies to undertake required activities to facilitated and protect motorcades. Supports, and is supported by, the full suite of proposed policing powers for APEC 2021 (see appendix B)	High. Security agencies have policies and procedures in place for motorcades as well as familiarity, which makes the proposals easy to implement and use. Removes ambiguity in existing legislation.	High. This option is practical in application and enables activities required for effective motorcade movement and protection.

Option 2 is recommended.

Creation of temporary Police powers and associated offences.

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

Section 4: Impact Analysis (Proposed approach)

The proposals in this document are designed to support hosting and security activities. Aside from very minor penalties for any person convicted of a proposed offence, there are no direct costs from these proposals. However, by enabling more effective security activities the benefits applicable in that area can be more fully realised.

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 is being submitted for consideration in Budget 2019 for APEC security costs.

4.1 Summary table of costs and benefits

Affected parties (identify)	Comment: nature of cost or benefit (e.g. ongoing, one-off), evidence and assumption (e.g. compliance rates), risks	Impact <i>\$m present value, for monetised impacts; high, medium or low for non-monetised impacts</i>
--------------------------------	--	--

Additional costs of proposed approach, compared to taking no action

Regulated parties	<p>One-off financial or imprisonment penalty for being convicted of a temporary offence. A criminal conviction would also apply.</p> <p>Monetised impacts will depend on:</p> <ul style="list-style-type: none"> • the volume of infringing conduct; • how compliance is managed (i.e. offending may initially result in a warning rather than a fee or fine); and • the impact of a conviction will vary. <p>Assumption: The volume of infringing conduct will not be large and penalties will tend to be at the lower end of the spectrum.</p>	Very Low
Regulators	<p>NZ Police</p> <p>Temporary.</p> <p>Cost of filing charging documents.</p> <p>Assumption: The volume of infringing conduct will be low.</p> <p>Training and implementation requirements.</p> <p>NZDF</p> <p>Temporary.</p> <p>Training and implementation requirements.</p>	Very Low
Wider government	<p>Ministry of Justice</p> <p>Temporary.</p> <p>Possible impact upon justice system from prosecutions of APEC related offences.</p>	Very Low

	Assumption: The volume of infringing conduct will be low.	
Other parties	Disruption to residents and businesses inside, and those transiting through, security areas is likely. The scale impact of this disruption is unknown and cannot be quantified at this time.	Unknown
Total Monetised Cost		Cannot be fully quantified., but considered to be low
Non-monetised costs		Cannot be fully quantified.

Expected benefits of proposed approach, compared to taking no action	
Regulated parties Regulators Wider government Other parties	<p>As outlined in the APEC21 Security Business Case overarching benefits of effectively securing APEC are:</p> <p>Life, property and the environment is protected</p> <ul style="list-style-type: none"> • The ultimate goal of any security operation is to ensure that, to the extent possible, no harm comes to people, property or the environment as a result of security failures. • For APEC21, security concerns may cause world leaders or other officials to withdraw from events, especially Leaders' Week. This would not just be based on the threat environment but also the perception of the credibility of the New Zealand security operation. Reducing the risk of withdrawal has the benefit of maximising the value of APEC21 to New Zealand. <p>New Zealand's reputation as a safe and welcoming place is protected</p> <ul style="list-style-type: none"> • Meeting the SECURE strategic objective - New Zealand will host a secure APEC year ensuring all APEC World Leaders and attendees feel safe, secure and welcome. • Meeting the EXPERIENCE strategic objective - 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. • We expect that this benefit will ensure that visitors rank New Zealand highly for safety and security. • This benefit will also minimise any criticism of security arrangements, especially in domestic and foreign media. <p>Rights and freedoms are protected</p> <ul style="list-style-type: none"> • The security operation will need to recognise and protect the exercise of fundamental rights such as freedom of assembly and freedom of expression through legitimate and peaceful protest. At the same time public order, safety, security and the rights of those attending events must be maintained. • This benefit will also minimise any justifiable criticism or upheld complaints about the security arrangements and operational tactics.

	<p>Negative impact on New Zealander's is minimised</p> <ul style="list-style-type: none"> • Contributing to the strategic objective of LOCAL SUPPORT - Promote public support in favour of hosting APEC in New Zealand, and New Zealand's role and place in the Asia -Pacific. • The security operation will need to balance effective service delivery against minimal economic and social disruption to the local community, both in and outside hosting regions. 	
Total Monetised Benefit		N/A
Non-monetised benefits		Medium to High

Section 5: Stakeholder views

5.1 What do stakeholders think about the problem and the proposed solution?

Initial inter-agency consultation on the scope of the legislative areas was undertaken with the APEC21 Programme, MFAT Legal, agencies represented on the APEC21 Security Senior Officials Working Group⁹, Ministry for Primary Industries, and Ministry of Justice. Further consultation was sought on specific areas from Auckland Council (Auckland Tourism, Events and Economic Development), Wellington City Council, Wellington Airport Company, Maritime New Zealand, New Zealand Medical Council, and New Zealand Rugby.

The gaps identified were tested with specific agencies or organisations that have a direct interest in the area, including those who have the responsibility for existing legislation.

These agencies / organisations included: New Zealand Police (NZ Police), New Zealand Defence Force (NZDF), Ministry of Defence, Ministry of Business Innovation and Employment (Radio Spectrum Management), Ministry of Transport, Civil Aviation Authority, and Department of Prime Minister and Cabinet (National Security).

The APEC21 Programme, MFAT Corporate Legal Unit, agencies represented on the APEC21 Security Senior Officials Working Group, The Treasury, Ministry of Defence, Ministry of Justice, Ministry of Primary Industries, and the Legislative Design Advisory Committee has also been consulted.

Feedback from agencies at each stage was incorporated.

All agencies have indicated their support for the proposals outlined in this document, including the temporary nature of the legislation.

⁹ Department of Prime Minister and Cabinet, NZ Police, Civil Aviation Authority, New Zealand Customs Service, NZDF, Ministry of Transport, Aviation Security Service, Department of Internal Affairs, MBIE – Immigration and Radio Spectrum Management, New Zealand Transport Agency, GCSB, NZSIS

Section 6: Implementation and operation

6.1 How will the new arrangements be given effect?

The proposals will be given effect by legislation and will be temporary for specified periods during the APEC 2021 hosting year.

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-Government basis. This Programme is led by an MFAT Deputy Secretary. Governance is provided by a Chief Executive Sponsoring Group and an APEC21 Programme Board (both consisting of representatives from agencies with core interests in APEC hosting).

The NZ Police, as lead security agency will be primarily responsible for implementation and have established a group headed by an Assistant Commissioner who has executive responsibility for successfully leading, planning and delivering the APEC security operation.

Other security agencies will also have implementation activities. These are principally operational policy development and training. No agency has raised concern as to their ability to implement the proposals.

Generally the proposals will come into force for the shortest duration necessary. However to allow for to training requirements some may be required in 2020. In particular these would be the support to the security operation from NZDF and other agency personnel.

6.2 Risks and Mitigation

The proposals in this document are designed to support hosting and security activities. As such the proposals enable more effective security activities, aiding mitigating identified risks for the security operation.

Also legal powers are a mitigation in their own right for all other risks and relate to the operational security activities for the event

Risk Description

If New Zealand is targeted by an act of terrorism, violent protests or sabotage by organised groups or individuals this will result in disruption or cancellation of APEC events and/or harm individuals and property.

If security cannot be provided at venues and accommodation for APEC delegates and workforce this will result in delays, disruption to APEC events.

If the APEC21 Programme does not have the necessary legal powers to effectively provide security for the APEC events this will result in disruption or cancellation of APEC events and/or harm individuals and property.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

Benefits realisation as part of the review of the security operation will likely assess the impact of legislation. This will be undertaken by the APEC21 Programme, in conjunction with NZ Police in the first half of 2022.

7.2 When and how will the new arrangements be reviewed?

The arrangements will not be reviewed during operation due to their short duration. Post operation review will likely occur as noted in 7.1 above.

Stakeholders will have opportunities to raise concerns during the parliamentary process.

s6(a); s6(b); s6(d)

Appendix B:

Proposed Temporary Powers and Offences

Enforcement of Restricted Use Airspace Powers – NZ Police and NZDF
<p>Ability to deploy preventative measures to secure APEC venues, accommodation and transport.</p> <p>Ability to either seize, destroy or bring under control UAVs posing a threat to the security or safety of APEC21, through mechanical, cyber or other electronic means.</p>
Enforcement of Restricted Use Airspace Powers – NZ Police
<p>Ability to enter premises or vehicle without warrant to seize any UAV and / or its control mechanism where the UAV is posing a threat to the security or safety of APEC21.</p> <p>Power to demand name and address of UAV user.</p> <p>Power to seize evidence of offending (such as streamed camera footage).</p>
Enforcement of Restricted Use Airspace Powers - NZ Police, NZDF and the Aviation Security Service
<p>Ability to prevent an aircraft taking off if it was believed that the craft was to be used to disrupt the APEC event.</p>

Policing Powers	Associated Offence
Accommodation, venue and other site security	
<p>Ability to designate buildings or other sites as a Security Area.</p> <p>Requirement to publically notify Security Areas.</p>	
<p>Ability to control presence in a Security Area:</p> <ul style="list-style-type: none"> • Power to require reason for entry into a Security Area. • Power to request personal details or accreditation before entry into a Security Area. • Power to require reason for presence in a Security Area. • Power to request personal details of persons in a Security Area. 	<p>Unauthorised entry into security area.</p> <p>Failing to comply with requirement to disclose personal details of person within a security area.</p>
<p>Power to prevent or deny entry to a Security Area (person, vehicle or object).</p> <p>Power to remove a person from a Security Area.</p> <p>Power to seize and remove a vehicle or object from a Security Area.</p> <p>Power to give direction for safety or security to persons in a Security Area.</p>	<p>Failing to comply with direction.</p>
<p>Searches of the Person:</p> <ul style="list-style-type: none"> • 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. 	
<p>Searches of Premises:</p> <ul style="list-style-type: none"> • Power to search premises in a security area without warrant and who may undertake such a search. 	

Policing Powers	Associated Offence
<p>Vehicle Stop and Search Powers:</p> <ul style="list-style-type: none"> • 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 Security Area. 	
<p>Power to establish a checkpoint, cordon or road impeder¹⁰ and enable it to remain in place as required for security or safety.</p>	<p>Climbing onto, under, over or around, or pushing / moving cordons, checkpoints or road impeders protecting APEC Security Areas or Road Closure Areas.</p>
<p>Miscellaneous powers:</p> <ul style="list-style-type: none"> • 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. 	
<p>Road closures for security purposes</p>	
<p>Ability to close a road to use by a person or vehicle (a closed road area).</p> <p>Requirement to publically notify closed road area.</p>	<p>Unauthorised entry into closed road area.</p>
<p>Searches of the Person:</p> <ul style="list-style-type: none"> • 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. 	
<p>Ability to prevent or deny entry to a closed road area (person or vehicle):</p> <ul style="list-style-type: none"> • 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. 	<p>Failing to comply with direction.</p>
<p>Vehicle Stop and Search Powers:</p> <ul style="list-style-type: none"> • 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 	

¹⁰ 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

Policing Powers	Associated Offence
Power to establish a checkpoint, cordon or road impeder and enable it to remain in place as required for security or safety.	Climbing onto, under, over or around, or pushing / moving, cordons, checkpoints or road impeders protecting APEC Security Areas or Road Closure Areas.
<p>Miscellaneous powers:</p> <ul style="list-style-type: none"> • 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	
Ability to temporarily close to use by a person or vehicle any road to facilitate the movement of an APEC motorcade.	
<p>Power to prevent or deny entry to a closed road to a vehicle or person.</p> <p>Power to remove a person from a closed road.</p> <p>Power to seize and remove a vehicle or object from closed road.</p> <p>Power to give direction for safety or security to persons in a closed road.</p>	Failing to comply with direction.
Power to establish a road impeder and enable it to remain in place as required for security or safety.	Climbing onto, under, over or around, or pushing / moving, cordons, checkpoints or road impeders protecting APEC Security Areas or Road Closure Areas.
<p>Miscellaneous powers:</p> <ul style="list-style-type: none"> • Use of reasonable force when exercising the powers. 	