

HON PEENI HENARE, MINISTER OF DEFENCE

Short-Term Extension for New Zealand's Deployment to Operation Gallant Phoenix

September 2021

This publication provides documents on Cabinet's agreement to a short-term extension of the existing mandate for New Zealand's deployment to Operation Gallant Phoenix by six months, until 30 June 2021.

The pack comprises the following documents:

- the 2 December 2020 Cabinet Business Committee minute: *Operation Gallant Phoenix: Short-Term Extension for New Zealand's Deployment* [CBC-20-MIN-0089]
- the redacted Cabinet paper: *Short-Term Extension for New Zealand's Deployment to Operation Gallant Phoenix* [CBC-20-SUB-0089].

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)]
- the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial [section 6(c)].

Information is also withheld in order to:

- maintain the constitutional conventions for the timing being which protect the confidentiality of advice tendered by Ministers of the Crown and officials [section 9(2)(f)(iv)]
- maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any department or organisation in the course of their duty [section 9(2)(g)(i)].



Cabinet Business 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.

Operation Gallant Phoenix: Short-Term Extension for New Zealand's Deployment

Portfolios NZSIS / Police / Defence

On 2 December 2020, the Cabinet Business Committee:

- 1 **noted** that the mandate for New Zealand's [REDACTED] s6(a) deployed to Operation Gallant Phoenix will expire on 31 December 2020 [CAB-19-MIN-0260.02];
- 2 **agreed** to defer Cabinet's substantive consideration of the future of New Zealand's multi-agency deployment to Operation Gallant Phoenix to ensure that advice can reflect the Report of the Royal Commission of Inquiry into the Terrorist Attack on Christchurch Mosques and the government's response to that Report;
- 3 **agreed** to a short-term extension of the existing mandate for New Zealand's deployment to Operation Gallant Phoenix by six months, until 30 June 2021;
- 4 **agreed** that the New Zealand Defence Force may temporarily exceed Cabinet-mandated personnel numbers in this deployment for the purposes of command reconnaissance, rotation and extraction of forces from theatre [CAB-18-MIN-0346];
- 5 **noted** that the Chief of the Defence Force will inform the Prime Minister, the Minister of Foreign Affairs and the Minister of Defence in advance whenever Cabinet-mandated personnel numbers are exceeded for the reasons set out in paragraph 4 above;
- 6 **noted** that over this period, Ministers with Power to Act would continue to have authority to approve surge deployments to Operation Gallant Phoenix [REDACTED] s6(a) for short periods [REDACTED] s6(a) as agreed by Cabinet on 4 June 2019 [CAB-19-MIN-0260.02];
- 7 **noted** that the unmitigated overall operational threat to New Zealand personnel in Jordan is [REDACTED] s6(a)

Financial implications

- 8 **noted** that the estimated costs, including the contingent surge capability, for the short-term extension referred to in paragraph 3 above are up to \$0.958 million;
- 9 **noted** that the total estimated costs, including the contingency surge capability, can be funded from within the existing unallocated baseline for Vote Defence Force: Operations Contributing to New Zealand's Security, Stability and Interests MCA;

- 10 **noted** that the Minister for Veterans has declared this deployment to be ‘qualifying operational service’ under the Veterans Support Act 2014, meaning any NZDF personnel that are deployed will become a ‘veteran’ eligible for veterans’ support entitlements under that Act, if they do not have veteran status already;
- 11 **noted** that this deployment decision is estimated to increase the value of the veterans’ support entitlements liability by a maximum of \$0.500 million, depending on the option agreed;
- 12 **noted** that the total expenses associated with paragraph 11 above can be met from within the existing amount of the Vote Defence Force Non-Departmental Other Expenses appropriation: Service Cost – Veterans’ Entitlements, regardless of which option is chosen.

Janine Harvey
Committee Secretary

Present:

Hon Grant Robertson (Chair)
Hon Kelvin Davis
Hon Dr Megan Woods
Hon Chris Hipkins
Hon Carmel Sepuloni
Hon Andrew Little
Hon David Parker
Hon Nanaia Mahuta
Hon Poto Williams
Hon Damien O’Connor

Officials present from:

Office of the Prime Minister
Department of the Prime Minister and Cabinet

Released by the Minister of Defence

Office of the Minister Responsible for the NZSIS

Office of the Minister of Police

Office of the Minister of Defence

Chair, Cabinet Business Committee

SHORT-TERM EXTENSION FOR NEW ZEALAND'S DEPLOYMENT TO OPERATION GALLANT PHOENIX

Proposal

1. This paper seeks Cabinet agreement to a short-term extension for New Zealand's multi-agency deployment to Operation Gallant Phoenix, which expires on 31 December 2020. This would allow advice on the longer term future of the deployment to reflect the Royal Commission of Inquiry Report into the Terrorist Attack on Christchurch Mosques, currently scheduled to be presented to the Governor General on 26 November 2020, and the Government's response.

Relation to Government priorities

2. New Zealand's multi-agency deployment to Operation Gallant Phoenix (OGP) supports New Zealand's Counter-Terrorism Strategy, the National Security and Intelligence Priorities (NSIPs), and the Strategic Defence Policy Statement 2018.

Executive summary

3. Cabinet is asked to consider extending New Zealand's existing OGP mandate by either four or six months. This is an interim measure to ensure that the Royal Commission of Inquiry into the Terrorist Attack on Christchurch Mosques (RCOI) Report and the Government's response are reflected in substantive advice to Cabinet on the longer term future of the deployment.
4. OGP is a counter violent extremism intelligence fusion facility in Amman, Jordan. In May 2019, Cabinet approved an 18-month mandate extension for New Zealand's deployment to OGP [CAB-19-MIN-0260.02]. That mandate will expire on 31 December 2020. New Zealand's deployment to OGP currently consists of s6(a) from the New Zealand Defence Force (NZDF) and s6(a) the New Zealand Police (NZP).

Operation Gallant Phoenix supports New Zealand's national security objectives

5. Originally founded to share intelligence on the flow of foreign terrorist fighters into Iraq and Syria, OGP has evolved into a platform where partners can collect, monitor, process and share material in accordance with national priorities. s6(a)
s6(a) contributes a blend of military, intelligence, and law enforcement personnel to OGP (refer Appendix A for position descriptions).
6. New Zealand has benefited from access to intelligence and data tools gained through the deployment to OGP (refer classified Appendix B for further details). For example:

6.1. [REDACTED] s(6)(a), s(6)(b)(i)
[REDACTED]
[REDACTED]

6.2. [REDACTED] s6(a)
[REDACTED]

6.3. More recently, New Zealand personnel at OGP have identified further information in support of New Zealand's national security objectives, s6(a), s6(c)
[REDACTED]
[REDACTED]
[REDACTED]

Rationale for an interim short-term extension

7. The RCOI Report will likely include recommendations pertaining to New Zealand's approach to counter-terrorism. New Zealand's multi-agency deployment to OGP is a counter-terrorist deployment, and played a role in New Zealand's response to the 2019 Christchurch mosque attacks. Officials therefore consider it feasible that OGP will be included in the scope of the RCOI Report. The Report is currently scheduled to be presented to the Governor General on 26 November 2020. The timeframes for the Government response will be confirmed once the Report has been presented, and advice will be provided to Ministers in the first week of December.

8. Without a short-term extension of the existing mandate, Cabinet would be considering the future of the OGP deployment around the time of the RCOI Report's release, and therefore without the benefit of substantive advice on the impacts and consequences of the RCOI's recommendations.

9. Therefore it is proposed that Cabinet agree to a short-term extension of the current OGP mandate as an interim measure to ensure the RCOI Report can be considered and its findings reflected in substantive advice to Cabinet on the future of New Zealand's deployment to OGP in early 2021.

10. [REDACTED] s6(a), s9(2)(f)(iv)
[REDACTED]
[REDACTED]

11. A temporary withdrawal (rather than a short-term extension) until Cabinet can consider the substantive paper is not recommended. A temporary withdrawal would have logistical and financial implications associated with [REDACTED] s6(a)
[REDACTED] movement of personnel and interruptions to existing workflows.

12. Cabinet is asked to consider approving one of two options:

12.1. **Option 1: four month extension to 30 April 2021**

A four month extension of the existing mandate until 30 April 2021 would involve presenting substantive advice for Cabinet consideration in February/March 2021. This would allow Cabinet to consider the RCOI findings and recommendations in making its decision. It might, however, pre-empt the Government's formal response to the RCOI Report.

Or

12.2. Option 2: six month extension to 30 June 2021

Assuming the RCOI reports by its 26 November deadline, this timeframe should allow for consideration of the Government's formal response to the RCOI Report in preparing advice to Cabinet. The six month extension would also allow for better planning of personnel rotations and minimise disruption to the deployment, should a longer-term mandate extension be approved.

Next steps

13. Should Cabinet agree to a short-term extension, officials would consider the RCOI Report and (if available) the Government's response before preparing comprehensive advice for Cabinet in early 2021. Partners would be notified of Cabinet's decision to extend the mandate for the OGP by either four or six months.
14. Should Cabinet not approve the short-term extension of the OGP mandate, officials would prepare advice for Cabinet's consideration prior to the 31 December 2020 mandate expiry. That advice would not reflect the RCOI Report or the Government's response.

Threat assessment

15. The unmitigated overall threat assessment for New Zealand personnel in Jordan is s6(a)

Rotations and surges

16. In March 2012, Cabinet agreed to the inclusion in all NZDF deployment papers of a provision that allows NZDF to temporarily exceed Cabinet-mandated personnel numbers for the purposes of command reconnaissance, rotation, and extraction of forces in and out of theatre [CAB Min (12) 10/2 refers]. In July 2018, Cabinet noted the 2012 decision and agreed that this convention should continue [CAB 18-MIN-0346 refers]. The Chief of Defence Force would inform the Prime Minister, Minister of Foreign Affairs and Minister of Defence in advance whenever a rotation, extraction or command reconnaissance is planned above the mandated numbers for specific contributions.
17. In May 2019 [CAB-19-MIN-0260.02], Cabinet delegated authority to approve surge deployments to OGP s6(a) for periods s6(a) to the Prime Minister and Ministers of Defence, Finance, Foreign Affairs, Police, and the Minister responsible for the New Zealand Security Intelligence Service (NZSIS) and the Government Communications Security Bureau (Ministers with Power to Act). While it is unlikely that further surges would occur during the proposed short-term extension period, it is important to maintain the ability to surge in the event of a national security crisis (such as the terrorist attack on Christchurch mosques).

The impact of COVID-19

18. Jordan has 55,055 confirmed cases of COVID-19 (46,923 active) with 624 attributed deaths.¹ A surge in cases numbers since September (+2000 daily) [s6(a), s6(b)(i)]
19. OGP currently has no current cases of COVID-19 and the pandemic has had no significant impact on the New Zealand contingent's ability to carry out its assigned tasks. [s6(a), s6(b)(i)]
20. Officials will continue to monitor the situation and the Minister responsible for the NZSIS, Minister of Police and Minister of Defence will be advised of any significant developments relating to or caused by the COVID-19 pandemic.

Legal basis for the deployment

21. Each New Zealand agency involved in New Zealand's contribution to OGP operates under its own statutory mandate and policies. The NZDF is statutorily authorised to assist the NZP and NZSIS with their lawful functions under section 9(1) of the Defence Act 1990. New Zealand's commitment to OGP actively complies with all relevant domestic and international legal obligations.
22. The New Zealand presence is in Jordan with the consent of the Government of Jordan. New Zealand does not have a Status of Forces Agreement with Jordan. All New Zealand personnel on OGP remain subject to Jordanian law, and do not enjoy any legal privileges or immunities.

Human rights

23. The NZDF, NZP and NZSIS assess that New Zealand's commitments to OGP comply with all relevant domestic and international legal obligations, as agreed by Cabinet in June 2019 [CAB-19-MIN-0260.02].
24. Should Cabinet agree to defer substantive consideration of the OGP deployment through a short-term extension, updated Human Rights complicity assessments would be carried out and reflected in substantive advice to Cabinet in early 2021.
25. Under international law, New Zealand has an obligation not to aid or assist (or be complicit in) an internationally wrongful act by another State. Internationally wrongful acts include human rights breaches, such as acts of torture, inhumane and degrading treatment or punishment, and the imposition of the death penalty.

Financial implications

26. Both proposed options can be funded from within the existing appropriation for Operations Contributing to New Zealand's Security, Stability and Interests.

¹ As of 27 October 2020

27. **Option 1** involves the extension of the deployment for four months from 1 January 2021 to 30 April 2021. The estimated cost of a four month extension to the deployment is \$0.605M. The estimated cost of the contingent surge capacity [redacted] s6(a) [redacted] is \$0.204M. The total cost of this option is up to \$0.809M if the surge capability is used.

28. **Option 2** involves the extension of the deployment for six months from 1 January 2021 to 30 June 2021. The estimated cost of a six month extension to the deployment is \$0.754M. The estimated cost of the contingent surge capacity [redacted] s6(a) [redacted] is \$0.204M. The total cost of this option is up to \$0.958M if the surge capability is used.

Vote Defence Force	NZ \$million					Total
	2020/21	2021/22	2022/23	2023/24	2024/25	
Option 1: The extension of the deployment for four months	0.809	-	-	-	-	0.809
Option 2: The extension of the deployment for six months	0.958	-	-	-	-	0.958
Additional Funding Required	-	-	-	-	-	-

Impact on veterans' support entitlement liability

29. As a result of a recent change to accounting standards on employee entitlements, NZDF is now required to recognise veterans' support entitlements at the point the veteran becomes eligible to receive financial support from the Crown. A liability for these entitlements was established on the non-departmental schedule of assets and liabilities of NZDF on 1 April 2020 as a result. The change in accounting approach requires the recognition of an upfront expense (being all the relevant expected future costs discounted to today's dollars) with a corresponding increase in liabilities when a policy decision (such as a deployment) increases the value of the liability, even though the settlement of this liability occurs over a period of time.

30. NZDF personnel meet the definition of a 'veteran' under the Veterans' Support Act 2014, and thereby become eligible for veterans' support entitlements, when they undertake 'qualifying operational service'. The Minister for Veterans has declared this deployment to be 'qualifying operational service' under the Act, so any NZDF personnel who serve on this deployment who do not already have 'veteran' status, will become eligible.

31. The impact of this deployment decision is an estimated increase in the veterans' support entitlement liability of \$0.3 million in 2020/21 (\$0.5m if surge capability is included). The expense is able to be funded within the existing appropriation for Service Cost – Veterans' Entitlements. No additional funding is required.

Consultation

Jointly prepared by	The Ministry of Defence; New Zealand Defence Force; New Zealand Security Intelligence Service; New Zealand Police
Consulted	Department of the Prime Minister and Cabinet (NSG, NAB); the Treasury; Ministry of Foreign Affairs and Trade
Informed	Department of Prime Minister and Cabinet (PAG)

Communications

32. As this paper proposes a short-term extension, it is recommended that the outcome of this Cabinet decision is not publicly communicated before the proactive release. New Zealand officials would, however, notify key partners of Cabinet's decision to extend the mandate for the OGP by either four or six months through official channels.

33. While the existence of OGP is public knowledge, [redacted] s6(a), s6(b)(i) New Zealand publicly announced its participation in OGP in 2019. [redacted] s6(a), s6(b)(i)

Proactive release

34. A redacted version of this Cabinet paper will be proactively released following Cabinet's substantive consideration of the OGP mandate in early 2021.

Recommendations

35. We recommend that Cabinet:

- 1) **Note** that the mandate for New Zealand's [redacted] s6(a) deployed to Operation Gallant Phoenix will expire on 31 December 2020.
- 2) **Agree** to defer Cabinet's substantive consideration of the future of New Zealand's multi-agency deployment to Operation Gallant Phoenix to ensure that advice can reflect the Report of the Royal Commission of Inquiry into the Terrorist Attack on Christchurch Mosques and the Government's response.
- 3) **Agree** to a short-term extension of the existing mandate for New Zealand's deployment to Operation Gallant Phoenix by either:
 - (a) **Option 1: Four months until 30 April 2021;**

OR

 - (b) **Option 2: Six months until 30 June 2021.**

- 4) **Agree** that the New Zealand Defence Force may temporarily exceed Cabinet-mandated personnel numbers in this deployment for the purposes of command reconnaissance, rotation and extraction of forces from theatre.
- 5) **Note** that the Chief of the Defence Force will inform the Prime Minister, the Minister of Foreign Affairs and Minister of Defence in advance whenever Cabinet-mandated personnel numbers are exceeded for reasons set out in paragraph 16.
- 6) **Note** that over this period Ministers with Power to Act would continue to have authority to approve surge deployments to Operation Gallant Phoenix [redacted] s6(a) [redacted] for short periods [redacted] s6(a) [redacted] as agreed by Cabinet in June 2019.
- 7) **Note** that the unmitigated overall operational threat to New Zealand personnel in Jordan is [redacted] s6(a) [redacted]
- 8) **Note** the estimated costs for Option 1 including the contingent surge capability are up to \$0.809M
- 9) **Note** the estimated costs for Option 2 including the contingent surge capability are up to \$0.958M
- 10) **Note** that the total estimated costs for both options, including the contingency surge capability, can be funded from within the existing unallocated baseline for Vote Defence Force: Operations Contributing to New Zealand's Security, Stability and Interests MCA.
- 11) **Note** the Minister for Veterans has declared this deployment to be 'qualifying operational service' under the Veterans Support Act 2014, meaning any NZDF personnel that are deployed will become a 'veteran' eligible for veterans' support entitlements under the Veterans' Support Act 2014, if they do not have veteran status already.
- 12) **Note** this deployment decision is estimated to increase the value of the veterans' support entitlements liability by a maximum of \$0.500 million depending on the option agreed.
- 13) **Note** that the total expenses associated with recommendation 12 can be met from within the existing amount of the Vote Defence Force Non-Departmental Other Expenses appropriation: Service Cost – Veterans' Entitlements regardless of which option is chosen.

Authorised for lodgement

HON ANDREW LITTLE
Minister Responsible for the
NZSIS

HON POTO WILLIAMS
Minister of Police

HON PEENI HENARE
Minister of Defence

Appendix A: Current New Zealand roles in Operation Gallant Phoenix

s6(a)

Released by the Minister of Defence

s6(a)

Released by the Minister of Defence

Released by the Minister of Defence