



## BRIEFING

### Updating the national interest assessment process

<b>Date:</b>	14 March 2024	<b>Priority:</b>	Medium
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2324-2515

Action sought		
	Action sought	Deadline
Hon Judith Collins <b>Minister for Space</b>	<p><b>Agree</b> both this briefing and the updated risk review template be publicly released onto MBIE's website</p> <p><b>Agree</b> that the revised national interest process satisfies the National Space Policy workstream to "<i>clarify (including through national interest policy processes) and communicate space activities which are deemed inconsistent with the national interest as these are considered</i>" and that no further work in this area is therefore required</p>	29 March 2024

Contact for telephone discussion (if required)				
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Andrew Johnson	Manager, Space Policy and Sector Development	Privacy of natural persons	04 896 5877	✓
Joe Harbridge	Principal Policy Advisor		-	

The following departments/agencies have been consulted
Ministry of Foreign Affairs and Trade, Ministry of Transport, Te Arawhiti, Land Information New Zealand, New Zealand Defence Force, Government Communications Security Bureau and New Zealand Security Intelligence Service

- Minister's office to complete:**
- |   |                                       |
|---|---------------------------------------|
| <input type="checkbox"/> Approved             | <input type="checkbox"/> Declined     |
| <input type="checkbox"/> Noted                | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen                 | <input type="checkbox"/> Overtaken by |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn    |

### Comments



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### Purpose

This briefing advises you on the process officials use to assess national interest implications for permits and licences issued under the Outer Space and High-altitude Activities Act 2017.

### Recommendations

The Ministry of Business, Innovation and Employment (MBIE) recommends that you:

- a **Note** in 2023, Cabinet agreed to adopt a National Space Policy [DEV-23-MIN-0034] and that officials were to begin a workstream to clarify “what space activities are inconsistent with New Zealand’s national interest” including through applying the NSP values and objectives to existing regulatory processes.

*Noted*

- b **Note** officials have recently updated the process used to assess national interest implications of permit applications and have made some minor changes to ensure the values and objectives of the National Space Policy are appropriately incorporated.

*Noted*

- c **Note** the revised process has been provided for your information, but we welcome any feedback you may have.

*Noted*

- d **Agree** both this briefing and the updated risk review template be publicly released onto MBIE’s website.

*Agree / Disagree*

- e **Agree** the revised national interest process satisfies the National Space Policy workstream to “clarify (including through national interest policy processes) and communicate space activities which are deemed inconsistent with the national interest as these are considered” and that no further work in this area is required.

*Agree / Disagree*

Andrew Johnson  
**Manager, Space Policy and  
Sector Development**  
Labour, Science and Enterprise, MBIE  
14 / 3 / 2024

Hon Judith Collins  
**Minister for Space**

01/04/2024

## **National interests are a factor for permit and licence applications**

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1. The Outer Space and High-altitude Activities Act 2017 (the Act) sets out the criteria for granting permits and licences.<sup>1</sup> You cannot grant a permit or licence if these criteria are not met. Criteria include the safe management and operation of the activity, an orbital debris mitigation plan that meets prescribed requirements, consistency with New Zealand's international obligations, and any other prescribed requirements. The assessment processes for these criteria informs the standard permit application assessment but are outside of the scope of this briefing.
2. However, even where the criteria are met, the Act allows you to decline a permit or licence if you are not satisfied that the proposed activity is in the national interest. In considering the national interest, the Act states you may have regard to:
  - economic or other benefits to New Zealand of the proposed operation;
  - any risks to national security, public safety, international relations, or other national interests;
  - the extent to which the risks can be mitigated by licence or permit conditions; and
  - any other matters that the Minister considers relevant.
3. The national interest test was intentionally framed as a final backstop to give you broad discretion to decide on a case-by-case basis whether granting a permit or licence would be contrary to the national interest.
4. Ultimately, any permit or licence may be declined if you are not satisfied that the proposed activity is in the national interest. The Act and previous Cabinet decisions provides guidance on matters you may have regard to, but you may also take into account any other matters you consider relevant to the national interest.
5. At the same time, national interest is not a standard criterion requiring in depth analysis for every permit – the ideal approach is to right-size the level of analysis required to match the risk profile of applications.

### **Cabinet has agreed to principles to guide national interest considerations**

6. In 2019, Cabinet agreed to principles to inform your consideration of national interest for decisions on space activities authorised by New Zealand as well as setting out some specific activities that are not in New Zealand's national interests [CBC-19-MIN-0048].
7. These principles are based on responsibility, sustainability, safety, New Zealand's values and interests, and alignment with broader policy settings. Cabinet also agreed several specific activities that are clearly not in New Zealand's national interest including payloads that contribute to nuclear weapons programmes or capabilities, or payloads where the intended end use is likely to cause serious or irreversible harm to the environment.

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<sup>1</sup> Most applications you will consider will be for payload permits, but national interest considerations apply to any payload or overseas payload permit, or a high-altitude, launch, overseas launch, or facility licence.

8. More information on the principles and prohibited activities is available in annex one.

### **The National Space Policy has a workstream to clarify national interest considerations**

9. In May 2023, New Zealand adopted a National Space Policy (NSP) which is attached at annex two. The NSP sets out values and objectives for our space industry. As part of this, the government agreed to several on-going workstreams, including to *“further clarify (including through national interest policy processes) and communicate space activities which are deemed inconsistent with the national interest as these are considered”*.
10. As a result, MBIE has reviewed the process for considering its advice on national interests and has made some changes to the process set out below.

### **Process for considering national interests**

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11. To support your consideration of permit or licence applications, officials undertake analysis on national interest implications for each application. This process has up to three stages:
  - a. Technical Capability and Intended End Use Summary (on all applications)
  - b. National Interest Risk Review (on all applications)
  - c. National Interest Assessment (on high-risk applications only).

### **Technical Capability and Intended End Use (TCIEU) Summary**

12. MBIE prepares a summary of technical capabilities and intended end uses of the proposed activity, following an assessment of the information provided in application materials, further investigation (where appropriate) and technical expertise.
13. The TCIEU includes mission and purpose; country of jurisdiction; altitude and inclination; technical capability of the payload (i.e. physical dimensions, primary system, power subsystem, communications, attitude control (e.g. how it stabilises and orients itself), propulsion, remote sensing); and intended end use of the payload.

### **National Interest Risk review**

14. MBIE produces the TCIEU and conducts an initial risk assessment, which is then consulted with agencies<sup>2</sup> to provide input based on their areas of interest. Agencies have up to 10 working days to provide feedback and recommendations on their areas of responsibility. For example, the Ministry of Foreign Affairs and Trade provides advice on any potential impact on New Zealand’s international reputation.

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<sup>2</sup> The Ministry of Foreign Affairs and Trade is always consulted, but other agencies consulted will depend on which risks, if any, have been identified. For example, if specific environmental risks are identified, the Ministry for the Environment would be consulted.

15. The Government Communications Security Bureau and the New Zealand Security Intelligence Service do not have a specified role in national interest risk assessments. However, they can pass on information and intelligence they have found while undertaking their national security risk assessments for MBIE to consider if it is relevant to the national interest.
16. MBIE reviews any risks identified through the TCIEU or interagency consultation and makes an overall assessment of the risk. If, after the risk review and interagency consultation, all risks are medium or lower then MBIE will proceed to put the application to you for approval.
17. The application briefing includes a short summary of risks identified and a description of the proposed mitigations. Where medium risks have been identified, additional detail will be provided in the application briefing to ensure you have all relevant information.

### **National Interest Assessment**

18. Where MBIE considers the national interest risk to be high or very high a National Interest Assessment is carried out. This threshold can be reached if any category of risk is high, or if the cumulative risk across multiple criteria means the overall risk is high.<sup>3</sup>
19. The National Interest Assessment allows detailed consideration of the full risks and benefits associated with an activity at an interagency level through a complex and bespoke policy process. As part of this, MBIE will analyse the risks and benefits and make a recommendation to you on whether to grant an application.
20. To date no applications have required a full National Interest Assessment.

### **Considering national interests in an efficient and cost-effective way**

21. Our experience to date is that the majority of payload applications present minimal risk or issues that would conflict with our national interest. Given this, the process has been designed to impose minimal compliance costs for applicants and officials where the risks are likely to be low, and to involve increasing levels of scrutiny and resources as risks increase.
22. While to date we are yet to have an application considered high risk, there have been activities (e.g. a payload intended to deploy an artificial meteor shower or payloads with national security applications) where we identified additional risk. In these cases, there has been more analysis and engagement with officials from other agencies and in some cases our international partners.

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<sup>3</sup> This is in addition to, and does not alter, the existing national security review process set out in the Act.

23. Where the risk is for a class of payloads rather than specific to a particular payload, our preference is to seek a policy decision to apply across similar payloads. For example, in 2019, in response to applications for commercial remote sensing payloads MBIE sought agreement from the previous Minister to a policy for managing risks for these payloads appropriately. This allowed for future payloads to be considered and mitigated in a consistent way, while also minimising costs to MBIE and delays to applicants.
24. In the case of payloads with national security applications, submissions to the Space Policy Review led to Cabinet consideration of a ban of such payloads in April 2023. After considering the issues, Cabinet agreed that there would be no blanket ban on these payloads, as this would preclude considering New Zealand's interests on a case-by-case basis.

## **Recent changes to the national interest risk review process**

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25. Based on feedback from agencies and within MBIE, we are proposing to provide more information on any issues identified in previous applications from the same applicant and/or on similar issues to agencies as part of the TCIEU, and to update the risk assessment template.
26. Subject to your agreement, this concludes our process to review the national interest risk review process to respond to the workstream in the NSP.
27. To provide more clarity to the public and stakeholders, we are seeking your agreement to publish this briefing and the updated risk assessment template (provided as annex three) on our website.

## **Next steps**

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28. We welcome any questions or feedback you may have on the national interest risk assessment process.
29. We will continue to consider national interest considerations as they arise through permit applications and will provide you advice on any emerging issues as necessary.
30. Subject to your agreement, we will publish this briefing and the updated risk assessment template on our website.

## **Annexes**

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Annex One: Cabinet guidance on national interest considerations

Annex Two: National Space Policy

Annex Three: National interest risk assessment template

## **Annex one – Cabinet guidance on national interest considerations**

In 2019, Cabinet agreed to principles to inform your consideration of national interest for decisions on space activities authorised by New Zealand as well as setting out some specific activities that are not in New Zealand's national interests [CBC-19-MIN-0048]:

These principles are:

- a. ***The principle of responsibility***, i.e. that space activities from New Zealand should be conducted with due care and in such a way as to promote an orbital environment where actors avoid causing harm or interference with the activities of others.
- b. ***The principle of sustainability***, i.e. New Zealand should promote sustainable space practices that preserve the benefits of space for future generations.
- c. ***The principle of safety***, i.e. space activities from New Zealand should be conducted in a way that does not jeopardise human safety (including the safety of people in space).
- d. ***New Zealand's values and interests, and align with broader policy settings***, i.e. space activity from New Zealand should uphold the policies and values supported by New Zealand.

Cabinet also agreed the following activities are not in New Zealand's national interest:

- a. Payloads that contribute to nuclear weapons programmes or capabilities.
- b. Payloads with the intended end use of harming, interfering with, or destroying other spacecraft or space systems on Earth.
- c. Payloads with the intended end use of enabling or supporting specific defence, security or intelligence operations that are contrary to government policy.
- d. Payloads where the intended end use is likely to cause serious or irreversible harm to the environment.

Cabinet noted these categories were intended to act as a guide, and that some applications will raise complex legal and policy issues that may not neatly fit the categories above.

## **Annex two – National Space Policy**

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Available online here: <https://www.mbie.govt.nz/dmsdocument/26656-national-space-policy>



## Annex three: national interest risk assessment template

Identify whether the application has any prohibited capabilities / intended end uses					
<p><b>Are any capabilities or intended end uses present, which Cabinet has deemed to be against the national interest?</b></p> <p><b>If yes:</b> Recommend Minister decline the application.  <b>If no – or unsure:</b> Proceed to risk review below.</p>	<p>Identify whether the payload/activity:</p> <ul style="list-style-type: none"> <li>• contributes to nuclear weapon programmes or capabilities;</li> <li>• has the intended end use of harming, interfering with, or destroying other spacecraft, or space systems on Earth;</li> <li>• has an intended end use of supporting or enabling specific defence, security or intelligence operations that are contrary to New Zealand government policy;</li> <li>• has the intended end use that is likely to cause serious or irreversible harm to the environment.</li> </ul>				
Identify Risks	If risk identified, describe it and any mitigating factors	Risk Rating incorporating proposed mitigations			Review outcome
		Impact	Likelihood	Risk-Rating	
<p><b>Have any national security issues been identified?<sup>4</sup></b>            (Refer to outcome of national security assessment and/or any intelligence provided by the Government Communications Security Bureau and the New Zealand Security Intelligence Service).</p>					
<p><b>Have any inconsistencies with the principles agreed by Cabinet been identified?</b>            (Responsibility, Sustainability, Safety, and Values and Interests)</p>					
<p><b>Have any specific risks to public safety been identified?</b>            (Refer to outcome of public safety assessment and orbital debris mitigation plan)</p>					
<p><b>Have any specific environmental risks been identified?</b>            (Refer to outcome of orbital debris mitigation plan)</p>					
<p><b>Does the activity involve commercial remote sensing activities?</b>            (Refer to commercial remote sensing policy for risks and mitigations)</p>					
<p><b>Have any impacts on our international reputation or relationships been identified?</b></p>					
<p><b>Have any impacts on the New Zealand public's perception of the industry or government been identified?</b></p>					
<p><b>Have any other risks been identified?</b></p>					

<sup>4</sup> Note: unless strong mitigations can be developed and effectively implemented in consultation with the New Zealand Intelligence Community and other agencies, any identified "national security risk" will be considered a high or very high risk and trigger a National Interest Assessment. This is in addition to, and does not alter, the existing national security review process set out in the Act.