



## COVERSHEET

<b>Minister</b>	Hon Stuart Nash	<b>Portfolio</b>	Economic and Regional Development
<b>Title of Cabinet Paper</b>	Framework Agreement with the US on Space Cooperation: Approval for Signature	<b>Date to be published</b>	15 November 2022

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
May 2022	Framework Agreement with the US on Space Cooperation: Approval for Signature	Office of the Minister of Economic and Regional Development
11 May 2022	Framework Agreement with the US on Space Cooperation: Approval for Signature DEV-22MIN-0106 Minute	Cabinet Office

### Information redacted

**YES**

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld for the reason of International Relations.

[In Confidence]

Office of the Minister for Economic and Regional Development

Cabinet Economic Development Committee

## **Framework Agreement with the US on Space Cooperation: Approval for Signature**

### **Proposal**

1. This paper seeks Cabinet approval to sign and bring into force a treaty-level framework agreement with the US to facilitate space science, technology and education cooperation with the US National Aeronautics and Space Administration (NASA).
2. The paper also seeks Cabinet approval of a National Interest Analysis for presenting to the House of Representatives, for examination alongside the text of agreement.

### *Issue identification*

3. The US is a very significant space cooperation partner for New Zealand. We benefit from an active dialogue with the US and other like-minded countries on space policy issues, including on ensuring sustainable access to space, responsible behaviours in space and how to approach novel commercial space activities. The framework agreement proposed in this paper will streamline the mechanics of collaboration and raise New Zealand's profile as a partner of choice for NASA.

### **Executive summary**

4. New Zealand has developed a close space cooperation relationship with the US covering policy, regulatory and sector development interests. Within this relationship, the science, innovation and education engagements with NASA have been growing strongly.
5. New Zealand and US officials have agreed the text of a treaty level framework agreement that would deepen the relationship by streamlining the mechanics of collaboration and raising New Zealand's profile as a partner of choice for NASA. The agreement would also help formalise and streamline the granting of customs duties and tax exemptions for NASA scientific equipment temporarily imported into New Zealand.
6. The agreed text is for an enabling science and innovation cooperation agreement and follows the model of similar agreements. No legislative changes are required, and any new expenditure would only be agreed on an initiative-by-initiative basis.
7. Parliamentary Treaty Examination (PTE) will be required prior to New Zealand being ready to exchange diplomatic notes with the US to confirm that all domestic procedures have been completed and thus bringing the framework agreement into force.

New Zealand and US officials are in discussions about holding a signing ceremony during the Prime Minister's visit to the US in May 2022. PTE should take place after the signing of the framework agreement.

## Background

### *Strong cooperation with the US benefits New Zealand's space sector*

8. The US is a very significant space cooperation partner for New Zealand. We benefit from an active dialogue with the US and other like-minded countries on space policy issues, including on ensuring sustainable access to space, responsible behaviours in space and how to approach novel commercial space activities.
9. A bilateral technology safeguards agreement with the US underpins the ability of Rocket Lab to import controlled technology into New Zealand for its spacecraft manufacturing and launch operations.<sup>1</sup>
10. The Outer Space and High-altitude Activities Act 2017 allows me to recognise parts of overseas licenses. This enables the Ministry of Business Innovation and Employment (MBIE) to effectively co-regulate Rocket Lab launches from New Zealand with the US Federal Aviation Administration (FAA). The FAA is also assisting MBIE to lift its capacity to be able to advise me on license applications by launch companies that do not hold US licences.

### *Science and education cooperation with NASA has been accelerating*

11. The fastest growing area of bilateral engagement has been in science, technology and education cooperation with NASA. Under the Rongowai project, Air New Zealand will fly a new sensor on domestic air routes in cooperation with NASA's Cyclone Global Navigation Satellite System (CYGNSS) mission. This will enable the sensor to be tested for the next generation of CYGNSS satellites that make use of signals from GPS and similar systems for an innovative type of remote sensing. Through an MBIE-funded science operations centre at the University of Auckland, New Zealand scientists will work with the high-resolution soil moisture data collected to understand the impacts of climate change and to feed into global water cycle models.
12. We are also negotiating an arrangement with NASA that will enable a research team, led by the University of Canterbury, to access telemetry data from NASA's CAPSTONE, a pathfinder mission to test the proposed orbit for the Artemis Program's Lunar Gateway (a space station orbiting the Moon). The data will be used to validate a research approach to tracking spacecraft between the Earth and the Moon and those orbiting the Moon.
13. CAPSTONE itself is intended to be launched from New Zealand by Rocket Lab in the first half of this year, though officials' advice regarding necessary licences and permits is still pending.
14. We have recently nominated our tenth NASA intern. Since signing an agreement with NASA and announcing the New Zealand Space Scholarship in 2018, we have had

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<sup>1</sup> Agreement between the Government of New Zealand and the Government of the United States of America on Technology Safeguards Associated with United States Participation in Space Launches from New Zealand

seven high-calibre students complete internships at the NASA Ames Research Center in Silicon Valley. While COVID closed access for interns to NASA centres, an additional three New Zealand students were selected by NASA's Jet Propulsion Laboratory for ICT-focused distance internships.

15. New Zealand is host to important NASA astronomy programmes. After a two-year absence, a NASA team has returned to Wanaka for a super pressure balloon astronomy campaign. During winter months, Christchurch is normally the base for the southern hemisphere flights of the Stratospheric Observatory for Infrared Astronomy (SOFIA). This has, however, been disrupted by COVID-related border restrictions over the last two years.
16. In May 2021, New Zealand became the 11<sup>th</sup> country to sign up to the NASA-led Artemis Accords. The Accords set out principles around the peaceful exploration of space, including transparency, inter-operability, release of scientific data, and safe and sustainable use of resources. They also set out principles to guide space exploration cooperation, in particular in support of NASA's Artemis program to return humans to the Moon, and to explore Mars and beyond.

*Cabinet agreed in 2020 to negotiating a bilateral agreement*

17. Given the increasing extent of engagement, in 2019, NASA officials suggested negotiating a treaty-level framework agreement on bilateral space cooperation.
18. On 18 March 2020, the Minister of Research, Science and Innovation and the previous Minister for Economic Development took the following paper to the Cabinet Economic Development Committee:

*Proposal to negotiate a treaty-level Framework Agreement with the United States on space to advance New Zealand's cooperation with NASA.*

19. Cabinet agreed on 23 March 2020 to the recommendations in that paper and gave officials the mandate to negotiate the text of the agreement.<sup>2</sup>

International relations

21. New Zealand and US officials have now reached consensus (subject to any minor or technical changes) on the text entitled:

*Framework Agreement Between the Government of the United States of America and the Government of New Zealand on Cooperation in Aeronautics and the Exploration and Use of Airspace and Outer Space for Peaceful Purposes (Framework Agreement).*

22. A copy of the agreed Framework Agreement text is attached at Annex One

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<sup>2</sup> DEV-20-MIN-0053

## Comment

### *Proposal and decisions sought*

23. The Framework Agreement is a treaty level instrument with binding international law obligations.
24. I am seeking Cabinet approval for non-binding signature of this treaty and its entry into force after completion of parliamentary treaty examination (PTE).
25. A National Interest Analysis (NIA) is attached to this paper. An NIA is required to initiate the PTE process.
26. The treaty does not have any regulatory implications, nor does it impose any immediate costs.

### *The agreement would facilitate deeper cooperation with NASA*

27. There are three key benefits from signing the framework agreement:
  - it would reduce the need to negotiate complex one-off contractual arrangements for specific missions and research projects (many of which may be small scale)
  - it would enable NASA to enter into more collaborative missions, research, and industry partnerships with New Zealand companies and institutions and it provides NASA the ability to fund these activities
  - it would formalise and streamline GST and customs duty exemptions, providing NASA with certainty about how their scientific equipment will be treated on import into New Zealand.
28. As well as lowering transaction costs, the Framework Agreement would increase New Zealand's visibility as a priority space partner within the US. Deepening cooperation with NASA would help advance our objectives under the Aerospace Strategy which is currently in the public consultation phase.

### *This agreement follows the model of enabling science and innovation treaties*

29. The text is based on a NASA template used in framework agreements with other countries. It also takes a very similar approach to other bilateral science and innovation cooperation treaties signed by New Zealand, including in respect of topics such as customs clearances, intellectual property, exchange of data, and compliance with international guidelines.
30. The text sets out, at a high level, potential topics of cooperation. These include space science, Earth observation, education and space sustainability. It sets out a number of modes of cooperation, including exchanges of data and personnel, flying instruments on aircraft and spacecraft, and education and public outreach. Joint activities will be implemented through implementing arrangements that are less onerous than the bespoke documents we need currently to negotiate each time.

31. Neither side has had to make any concessions of the type that arise in free trade negotiations or similar processes. For instance, the agreement does not affect the operation of the Outer Space and High-altitude Activities Act 2017. Any NASA payload would go through the same assessment process as for any other applicant.
32. There are various provisions in the text on matters such as cross-waivers of liability, intellectual property and public release of information that are in line with the language in other international space cooperation treaties and with language in New Zealand's other bilateral agreements and arrangements.
33. The Framework Agreement would require joint activity to be compliant with international guidelines on mitigating orbital debris and preventing harmful biological contamination on other planets. While these guidelines would otherwise be non-binding, as a responsible space actor, New Zealand would choose to follow them in all relevant space activities.
34. The Framework Agreement would enable joint activity with the US on the International Space Station, but this would have to be done consistently with the Inter-governmental Agreement<sup>3</sup> (to which the US, though not New Zealand, is a party).
35. No new legislation would be required for the Framework Agreement to enter into force and for New Zealand to be able to fulfil its treaty obligations.

*Parliamentary Treaty Examination would be required before entry into force*

36. Officials have advised that this agreement would not be eligible for a PTE waiver as it is a "bilateral treaty of particular significance".<sup>4</sup> This is due to the likely level of public interest in formalising space cooperation with NASA, coupled with the precedent for PTE set in another treaty with the US on security technology cooperation.<sup>5</sup>
37. In this case, the Framework Agreement will enter into force after PTE is successfully complete and once both parties have exchanged diplomatic notes confirming that all required domestic procedures have been completed.<sup>6</sup> In New Zealand's case, since no new legislation is required, PTE is the only domestic procedure. US officials have confirmed that after signature, no further procedure is required at their end.

*The agreement could be signed during the Prime Minister's US visit in May*

38. The Prime Minister will be undertaking a bilateral visit to the US in late May. I consider that signing the agreement during that visit to be a valuable opportunity to highlight the bilateral space relationship and to give additional profile to the New Zealand space sector. New Zealand officials are in discussion with US counterparts on signing options.

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<sup>3</sup> Agreement among the Government of Canada, the Governments of the Member States of the European Space Agency, the Government of Japan, the Government of the Russian Federation, and the Government of the United States of America concerning Cooperation on the Civil International Space Station

<sup>4</sup> According to Standing Order 405 and Cabinet Manual para 7.124.

<sup>5</sup> Agreement between the Government of New Zealand and the Government of the United States of America on Science and Technology Cooperation Contributing to Domestic and External Security Capabilities.

<sup>6</sup> As set out in Article 19(1) of the Agreement

39. The Prime Minister (along with the Minister of Foreign Affairs) has authority to sign treaties on behalf of New Zealand so no authorising Instrument of Full Powers would be required once Cabinet has given approval to sign.
40. The Framework Agreement and attached NIA should be presented to the House after the signing to commence the PTE process.

### **Financial implications**

41. The agreement creates no immediate new financial impacts. Expenditure in connection with this treaty could only be agreed on an initiative-by-initiative basis. To date cooperation with NASA has been supported under existing mechanisms such as the Catalyst Fund managed by MBIE to progress international science partnerships.
42. The agreement does create legally-binding obligations for customs duties and GST exemptions for visiting NASA missions. To date such exemptions have been granted by the New Zealand Customs Service under discretionary powers. However, officials advise that it would be preferable to formalise these exemptions through concluding a bilateral instrument such as the framework agreement. These exemptions would all be granted in accordance with existing legislation.<sup>7</sup>
43. Border clearance fees, on the other hand, would still need to be paid because Customs' and MPI's border processing costs are fully cost-recovered from users. The practical effect of Article 12(1) of the Framework Agreement is that MBIE will cover the border clearance fees.
44. The relevant fees are very small (Import Entry Transaction Fee is \$28.72 excluding GST, the Export Entry Transaction Fee is \$5.93 excluding GST, and the Biosecurity System Entry Levy is \$23.00 excluding GST).

### **Impact analysis**

45. A National Interest Analysis (NIA) has been prepared and is attached as Annex Two. I am seeking Cabinet's approval for the NIA to be presented to the House alongside the agreed text for PTE. Depending on when it is presented to the House, minor updates to some sections of the NIA may be required.
46. A regulatory impact analysis is not required as there are no regulatory impacts created by the Framework Agreement.

### **Publicity**

47. Should we reach agreement with the US government on a signing ceremony when the Prime Minister travels to the US, we will include this as part of the overall communications plan for the visit.

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<sup>7</sup> Section 136(8) of the Customs and Excise Act 2018; section 12(1A)(a) of the Goods and Services Tax Act 1985, clause 2(1) in the Tariff Exemption (Inter-Governmental Agreements) Order 1996, and clause 2 in the Excise and Excise-equivalent Exemption (Inter-Governmental Agreements) Order 1996.

## Proactive Release

48. This paper will be published on MBIE's website after signature has taken place and after MBIE has completed consultations with US officials on the proactive release. Publication of this paper will be subject to withholdings as appropriate and consistent with the Official Information Act 1982.

## Consultation

49. The case for engaging in negotiations with the US was partly developed in response to approaches from researchers and firms identifying procedural barriers to furthering R&D connections with NASA. MBIE has kept interested parties updated, at a high level, on progress in the negotiations through in-person meetings and larger group presentations. The limited extent of consultations reflects the narrow range of organisations directly impacted by operation of the Framework Agreement, specifically research institutions and firms engaged in the space sector.
50. MBIE has consulted with the Ministry of Foreign Affairs and Trade and the New Zealand Customs Service throughout the negotiation process. Other agencies with an interest in space policy have been provided updates on the process.
51. The Minister of Research, Science and Innovation, the Minister of Foreign Affairs and the Minister of Customs have been briefed on the outcomes of the negotiations.

## Recommendations

The Minister for Economic and Regional Development recommends that the Committee

1. **note** that in March 2020, Cabinet agreed that officials should negotiate a treaty-level framework agreement with the US to advance New Zealand's cooperation with NASA;
2. **note** that the negotiations have now been completed;
3. **approve** the text of the *Framework Agreement Between the Government of the United States of America and the Government of New Zealand on Cooperation in Aeronautics and the Exploration and Use of Airspace and Outer Space for Peaceful Purposes* (Framework Agreement), which is attached to this paper;
4. **agree** that New Zealand sign the Framework Agreement;
5. **authorise** New Zealand officials to agree to minor editorial amendments to the Framework Agreement before its signature;
6. **note** discussions between New Zealand and US officials on a possible signing ceremony during the Prime Minister's visit to the US in May this year;
7. **note** that the Framework agreement would enter into force after the parliamentary treaty examination process has taken place and once New Zealand and the US have exchanged diplomatic notes confirming that all domestic procedures have been completed;
8. **approve**, subject to any minor updates, the content of the National Interest Analysis (NIA), which is attached to this paper;



**I N C O N F I D E N C E**

9. **agree** to present the Framework Agreement and the NIA to the House of Representatives for the purposes of the parliamentary treaty examination process under Standing Order 405, after the Framework Agreement has been signed;
10. **agree** to the exchange of diplomatic notes to bring the Framework Agreement into force subject to the satisfactory completion of the parliamentary treaty examination process

Authorised for lodgement

Hon Stuart Nash  
Minister for Economic and Regional Development

**I N C O N F I D E N C E**

**Annexes**

Annex One Agreed text of the Framework Agreement

Annex Two National Interest Analysis