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**DEFENCE CABINET PAPER
 COVER SHEET**

To accompany Cabinet papers
 to Hon Dr Wayne Mapp

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| Date: | 3 July 2009 | | |
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| Paper Prepared by | Name: PSR(IC)3 (IDR/MoD) | PSR(IC)3 | PSR(IC)3 |
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Certification by Defence Chief Executives

[Required for ALL Cabinet papers prepared by either the NZDF or MoD]

| | |
|---------------------|---|
| Consultation | <input type="checkbox"/> The proposed timing of this paper has been discussed with the Minister's office. <input type="checkbox"/> Has been subject of consultation with the NZDF/MoD and the views of NZDF/MoD are incorporated into this paper. <input type="checkbox"/> Treasury has been consulted [required for all papers seeking new funding]. <input type="checkbox"/> Has been the subject of consultation with the following Departments/Agencies: |
| Certify | <input type="checkbox"/> This paper complies with all aspects of the Cabinet office manual |
| Copies | <input type="checkbox"/> An electronic copy of the paper has been supplied to the Minister's office. |

J. MATEPARAE
 Lieutenant General
 Chief of Defence Force
 Date: 3 July 2009

J.W. MCKINNON
 Secretary Of Defence
 Date: 3 July 2009

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Office of Hon Dr Wayne Mapp

Minister of Defence

Prime Minister
Minister of Finance
Minister of Foreign Affairs
Minister of Defence

AFGHANISTAN 2009: DEPLOYMENT OF THE NEW ZEALAND SPECIAL AIR SERVICE (OPERATION WĀTEA¹)

Proposal

1. This paper proposes that Ministers with Power to Act approve the deployment of up to 71 personnel (including New Zealand Special Air Service (NZSAS) personnel, NZDF support staff **PSR(R)2, PSR(R)3**

and associated equipment to Kabul, Afghanistan, for up to 18 months from late September 2009. If approved this would significantly raise the level and profile of New Zealand's commitment to Afghanistan at an estimated additional cost of \$ **PSR(R)2, PSR(R)3** over FYs 2009/10 and 2010/11.

Executive Summary

2. New Zealand has received several requests over the past few years from the International Security Assistance Force in Afghanistan (ISAF) and our international partners to redeploy our SAS to Afghanistan. The most recent request, from Commander ISAF (COM ISAF), specifically asked New Zealand to replace the Norwegian Special Forces Task Group (TG) in Kabul while they reconstitute. As part of the current review of New Zealand's contributions to Afghanistan, the NZDF briefed the Prime Minister and the Ministers of Foreign Affairs and Defence in June on the feasibility of meeting COM ISAF's request.

3. This paper outlines the specific details and benefits of this option as part of New Zealand's ongoing commitment to ISAF. The proposed deployment offers New Zealand a very high profile within ISAF and with our international partners, provides a high level of coalition support, and provides an exit strategy that is time-based rather than conditions-based. Furthermore, this deployment would be a positive gesture ahead of any decisions arising from the Afghanistan review on the future of our Provincial Reconstruction Team (PRT) in Bamyan Province.

4. It is proposed that Ministers with Power to Act approve the deployment of the NZSAS to Afghanistan for up to 18 months from mid-September 2009 and agree to increased funding of **PSR(R)2 & 3** to cover the cost of this deployment. The paper also proposes that the Prime Minister approve the specific Rules of Engagement

¹ Meaning 'to free'.

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(ROE) for this deployment and that Ministers note the standing policy on the handling and treatment of detainees.

Background

5. In February 2009 Cabinet approved a 12-month extension of all New Zealand Defence Force commitments to Afghanistan to September 2010. Cabinet also directed officials to conduct a review of New Zealand's commitment to Afghanistan beyond that date, including looking at options for smaller, more focused military commitments [Cab Min (09) 5/3a refers].

6. In April 2009 the United States released its new strategy on Afghanistan and Pakistan (known as the 'Af-Pak Strategy'). That strategy recommended greater numbers of military personnel in order to conduct two priority missions:

- i. to secure the Afghanistan's south and east against Al Qaeda and its allies in order to provide space for the Afghan government to establish effective government control; and
- ii. to provide the Afghan Security Forces with the mentoring required to take the lead in effective counter insurgency operations so that international forces can wind down combat operations.

7. To achieve these objectives the US requested all NATO ISAF contributing nations to increase their commitments. New Zealand received an official request from the US in March 2009 to redeploy the NZSAS.

8. Also in March then COM ISAF, General David McKiernan, sent an official request to the Chief of Defence Force (CDF) for the redeployment of our SAS from September 2009. The request, attached at Annex One, specifically called for the NZSAS to replace the Norwegian TG in Kabul between late 2009 and early 2011.

9. As part of the review of New Zealand's commitments to Afghanistan directed by Ministers, the NZDF briefed the Minister of Defence on this and three other possible future options for the deployment of the NZSAS. The option of replacing the Norwegian TG was favoured as having the greatest profile for New Zealand in Afghanistan, the best support from and access to coalition military assets and the most favourable timeframe. This option was briefed to the Prime Minister and the Ministers of Foreign Affairs and Defence on 8 June where it was decided that a separate paper be submitted prior to the Afghanistan review paper.

10. The Ministers of Defence and Foreign Affairs have indicated to **PSR(R)1** their approval in principle to a NZSAS deployment, and the specific proposal of replacing the Norwegians in Kabul was discussed in the margins of the NATO ISAF Defence Ministers' Meeting in Brussels on 12 June. As directed by the Prime Minister, the NZSAS conducted a reconnaissance visit to Afghanistan in late June and have confirmed that the proposed deployment is manageable and that this submission canvasses all the relevant logistical, financial and legal requirements.

Previous requests

11. Since the last NZSAS deployment to Afghanistan in 2005 our international partners have regularly conveyed how highly regarded our Special Forces are, and stressed the value that would be placed on another deployment. Over the last six months the NZDF have received specific requests for a NZSAS contingent from the PSR(S)1 and NATO (ISAF).

12. This proposed deployment will be very well received by our ISAF partners and would be a positive response to these requests.

Previous deployments

13. The NZSAS has previously deployed to Afghanistan on three separate occasions: for 12-months from December 2001, and for six-months each in 2004 and 2005. NZSAS personnel led the establishment of the PRT in 2003 and have also deployed to Afghanistan as Close Personal Protection (CPP) for visiting officials, for liaison purposes and to undertake security reviews.

Proposed NZSAS Contribution

14. As previously outlined to Ministers, a NZSAS Task Force (TF)² would take over lead responsibility from the Norwegian TG for up to 18 months from mid-September 2009 to early 2011, operating from the Norwegian compound in Kabul and conducting the following tasks:

- i. Special reconnaissance in Kabul and adjacent provinces locating insurgent forces and Improvised Explosive Device (IED) networks;
- ii. 'Support and Influence' tasks, including training support and mentoring to the Afghanistan Crisis Response Unit (CRU);
- iii. 'Direct Action' tasks against insurgent networks in support of ISAF and the Afghanistan government; and
- iv. National tasks including support to NZDF elements in Afghanistan, VIP protection and hostage rescue.

15. Working with local forces ('partnering') is critical to enable the successful transfer of security responsibility to the Government of Afghanistan. Commander ISAF has made it clear that without partnering, operations will not be approved. The PSR(S)1

This is a special policing unit operating as part of the Ministry of the Interior's Counter Terrorist Department. CRU is noted as one of the best developed partnering units in the country.

16. PSR(S)1

² The NZSAS TF PSR(R)2, PSR(R)3 elements, will be known as TF 81. The operation will be called Operation WATEA.

elements, will be known as TF 81. The operation will

Air transport

17. Due to the amount of equipment that would need to be taken into Afghanistan and the current operational schedule of the RNZAF's C130s, it is proposed that the NZSAS TF use commercial charter aircraft for deploying in September 2009 and exiting in early 2011. The cost of a return charter has been factored into the appropriation request (see p.9).

18. The NZDF has, however, had indications from PSR(S)1,
PSR(S)3 that they would provide air transport into and out of Afghanistan if spare capacity exists. Possible options with other coalition partners will also be explored. Should support from PSR(S)3, PSR(S)1 be available, the cost of the commercial air charter would be returned to the Crown.

Strategic Considerations

19. A NZSAS deployment to Afghanistan to replace the Norwegian TG would provide the following strategic benefits:

- i. The deployment would be for a clearly defined time period- withdrawal is not conditions based;
- ii. It would be welcomed by PSR(S)1 and other NATO ISAF partners, and would be a positive gesture ahead of any announcements about the future of our PRT in Bamyán Province;
- iii. It would meet Government of Afghanistan requirements, ISAF campaign objectives and the US 'Af-Pak Strategy' for providing support and mentoring to Afghan Security Forces;
- iv. It would assist Afghan and international efforts to maintain security in a potentially fragile post election period; and
- v. It would provide the NZDF with a high profile with the Government of Afghanistan and amongst all NATO ISAF nations, PSR(S)1

The deployment would also offer the following operational benefits:

- vi. Given the location and high profile of the deployment, it would link the NZDF into the highest level of co-operation with other nations and ensure access to *in extremis* support assets, including intelligence, close air and air movement support, medical evacuation, and logistic support;
- vii. PSR(S)1 which would reduce the cost of the NZDF deployment;
- viii. It would allow for operational support to all other NZDF elements within Afghanistan should the need arise, for VIP protection as required and for PSR(S)2, PSR(S)3 and
- ix. It would further enhance the NZSAS's tier one³ credentials and their international interoperability.

³ Tier one Special Forces are particularly skilful in the covert conduct of Special Reconnaissance and Direct Action tasks in hostile, denied or politically sensitive territory. They are able to employ

20. CDF deployed a reconnaissance team to Afghanistan in mid-June to liaise with the current Norwegian TG, to assess the nature of the operation and to scope logistical, financial and coordination issues. They have reported that this deployment is achievable within the financial, logistical and legal requirements detailed in this paper.

21. Subject to the approval of Ministers with Power to Act and Cabinet, NZDF will send a formal response to COM ISAF's request attached at Annex One.

GCSB and NZSIS Contributions

22. The Government Communications Security Bureau (GCSB) would provide the training and specialist intelligence in support of this proposed deployment, PSR(S)3, PSR(S)4

23. The New Zealand Security Intelligence Service (NZSIS) would provide PSR(S)3, PSR(S)4

Replace with: "Description of NZSIS intelligence support to NZDF."

Legal Implications

24. As a constituent part of ISAF, the NZSAS TF (TF 81) would have legal authority to carry out the ISAF tasks identified in this submission under UN Security Council resolutions 1386 (2001), 1510 (2003) and 1833 (2008). Resolution 1833 expires on 13 October 2009, although it is likely to be extended by the Security Council for a further 12-month period.

25. When conducting ISAF tasks, the NZSAS TF would be covered by the Military Technical Agreement (MTA) between ISAF and Afghanistan, and related agreements and arrangements which have been entered into between New Zealand, NATO and the other Member States of ISAF.

26. The NZSAS TF may also perform national tasks in direct support of the NZPRT, NZDF personnel providing training assistance to the Afghan National Security Forces, and other New Zealand military or civilian personnel who are or may be present in Afghanistan for the purpose of providing humanitarian or reconstruction assistance. They would be covered by the MTA between NZDF and Afghanistan when conducting such tasks.

specialised infiltration and exfiltration techniques and are self-sustaining with minimal requirement for logistic support once deployed into the hostile or denied territory.

27. **PSR(S)2, PSR(S)3**

Command and Control

28. As required by the Defence Act, CDF would retain full command of all NZDF personnel posted or attached as part of this deployment. CDF would exercise National Command through the senior NZSAS officer deployed. For the purpose of ISAF operational tasking, operational control authority will be assigned to Commander ISAF Special Operations Forces (COM ISAF SOF) through COM ISAF.

Rules of Engagement

29. The Rules of Engagement (ROE) for a NZSAS deployment to Afghanistan would be similar to those used for the previous NZSAS deployment in 2005. They have, however, been amended to reflect that the deployment would fall under ISAF authority rather than that of Operation Enduring Freedom (OEF). Prime Ministerial approval of these ROE is sought. They are detailed at Annex Two.

National Caveats

30. Under the command of ISAF Special Operations Forces (SOF) this deployment would be focused primarily on Kabul and the immediate surrounding areas (Regional Command Capital). It would, however, have a pan-Afghanistan remit to conduct operations in other regional commands as requested by COM ISAF SOF but authorised by CDF.

31. The NZDF recommends four national caveats be placed on this deployment. These are:

- Priority may be placed on New Zealand national tasks as and when required;
- NZDF personnel will not conduct any cross border operations⁴;
- NZDF personnel will not be involved in poppy eradication and CDF approval is required for any counter-narcotics operations⁵; and
- **PSR(S)2, PSR(S)3**

Handling of Detainees

32. Any persons detained during NZSAS operations in cooperation with the CRU would be detained and processed by the CRU and other Afghan authorities in accordance with Afghan law. If NZSAS personnel were to detain any persons while conducting national tasks, they will comply with the procedures established during

⁴ In the absence of an internationally recognised border, the Durrand Line will be accepted as the de facto border between Afghanistan and Pakistan for the purposes of this deployment.

⁵ There is a clear nexus between the Taliban and the narcotics industry. In this regard the NZSAS may be requested to undertake specific operations against Taliban or installations involved in the supply or manufacture of narcotics.

previous deployments to Afghanistan, which are consistent with NATO operating procedures and international law. These procedures are detailed at Annex Three.

33. In late 2005, in response to a request from the regional delegate of the International Committee of the Red Cross (ICRC), NZDF decided that the identity of any persons deprived of their liberty (when known) would be provided to the ICRC regardless of the legal status of the individuals concerned, and that where the identity of such persons was not known, the fact of the detention and the general facts relating to it (though not the details of the operation itself) would be provided to the ICRC. This may be done, if practicable, by the NZSAS TF in Afghanistan and/or via the regional delegate by a communication from HQ NZDF.

34. Following the discussions of former Minister of Defence Hon Phil Goff with the PSR(S)1 Minister Goff received assurances that any detainees handed over to Afghan authorities would not be subjected to torture or capital punishment. These assurances have not yet been converted into a written instrument between New Zealand and Afghanistan. The issue is being pursued by the Ministry of Foreign Affairs and Trade. Until such an instrument is concluded, there remains a small risk that a person detained by the NZSAS and transferred to the Afghan authorities could be subjected to torture or capital punishment. The risk is assessed as small because the vast majority of detainees are currently being apprehended by the Afghan authorities with coalition forces in support.

Implications for the NZDF

35. The deployment of a NZSAS TF to Afghanistan can be sustained for up to 18 months. The NZDF will finalise coordinating the detail for this deployment subject to the agreement of Ministers with Power to Act and Cabinet. The size of the deployed force, however, is likely to comprise 71 personnel, including:

- up to 70 personnel, with combinations of:
 - up to 60 1 NZSAS Group personnel,
 - up to 10 NZDF support personnel PSR(R)2, PSR(R)3
and
 - liaison personnel deployed into the Afghanistan Ministry of Interior and other supporting headquarters at Bagram Airforce Base, ISAF and the CRU; and
- PSR(R)2, PSR(R)3

36. The NZSAS maintains a high state of operational readiness (operational level of capability). This proposal is therefore manageable according to the indicative dates and numbers outlined. The NZSAS will retain the capacity for a regional response at short notice and a domestic counter terrorism capability.

37. The timeframe for this deployment would allow for the NZSAS to withdraw and reconstitute (in a counter terrorism role) in time to meet potential Rugby World Cup 2011 security commitments.

Threat assessment

38. Afghanistan continues to experience high levels of violence focused on the south and east of the country. Insurgent groups favour asymmetric tactics, in particular IEDs and suicide attacks, over set-piece battles. An expanded ISAF footprint, particularly in the south and the provinces around Kabul, will lead to a corresponding increase in the scale of violence. **PSR(R)1**

39. Kabul and the surrounding provinces remain a particular focus of insurgent and criminal activity. Sporadic high profile and sophisticated attacks have targeted embassies, hotels, government ministries, Afghan Security Forces and ISAF forces. Kidnapping of wealthy Afghans and western officials by criminal groups continues. The transfer of lead security responsibility in the capital to Afghan security forces in August 2008 does not appear to have had a negative impact on local security conditions. Indeed, Afghan forces, the Ministry of the Interior's CRU and National Directorate of Security (NDS) have been credited with preventing several attacks. ISAF continues to provide significant support and demonstrate a robust and visible presence in Kabul.

40. The NZDF strategic military threat level for Afghanistan is assessed as **HIGH**⁶.

41. Notwithstanding the high threat environment, in more than two years of operations in Kabul and environs, the Norwegian TG has only suffered one casualty. Furthermore there is excellent medical evacuation coverage in the areas in which the TF would be operating⁷, which has greatly improved since the last NZSAS deployment in 2005. There are Role III hospitals⁸ in Kabul and at Bagram Airforce Base, and NATO medical facilities in Germany.

Financial implications

42. The total estimated cost of deploying up to 70 NZSAS personnel, **PSR(R)2, PSR(R)3** and associated equipment to Afghanistan, for up to 18 months from late September 2009 is **PSR(R)2, PSR(R)3** over FYs 2009/10 to 2013/14. The previous deployment of the NZSAS in 2005 was for a 6 month period and did not require commercial air charter, purchase of **PSR(R)2, PSR(R)3** **PSR(R)2, PSR(R)3** When adjusted to match the length of this proposed deployment and incorporating equipment variances, the costs between the two contributions are comparable.

Replace with: "additional capabilities."

43. This paper seeks appropriation increases of \$ **PSR(R)2, PSR(R)3** to meet the costs of this deployment, including GCSB capital depreciation costs (\$ **PSR(R)2, PSR(R)3** per year) and NZDF capital expense charges (\$0.214 million initially then \$0.428 million

⁶ Definition: "There is a significant operational and environmental threat posed to NZDF personnel from multiple sources. NZDF casualties are likely."

⁷ Regional Command (RC) Capital, RC East and RC South.

⁸ Ability to perform surgery on site.

per year) out to FY 2013/14. The increases would be allocated across the following Departments and Votes:

| Department | Vote | \$M |
|-------------------|--|----------------|
| NZDF | Defence Force | 32.226 |
| GCSB | Communications Security and Intelligence | PSR(R)2 & 3 |
| NZSIS | Security Intelligence | |
| Total Cost | | |

NZDF – Vote Defence Force

44. The forecast NZDF costs include capital and operating expenses with an impact to the Crown of \$30.300 million. The capital expense would attract the standard capital expense charge. This charge is without impact to the Crown and would add \$0.214 million to FY 2009/10 and \$0.428 million annually from FY 2010/11. This will bring the total cost of this deployment for FYs 2009/10 to 2013/14 to \$32.226 million, as shown in the following table:

| Cost Category | 2009/10 | 2010/11 | 2011/12 | 2012/13 | 2013/14 & out years | Total |
|---|---------------|---------------|--------------|--------------|---------------------------|---------------|
| | \$M | \$M | \$M | \$M | \$M | \$M |
| Operating (with Crown impact) | 13.180 | 11.420 | - | - | - | 24.600 |
| Capital (with Crown impact) | 5.700 | - | - | - | - | 5.700 |
| Capital expense charge (without Crown impact) | 0.214 | 0.428 | 0.428 | 0.428 | 0.428 | 1.926 |
| Total NZDF Costs | 19.094 | 11.848 | 0.428 | 0.428 | 0.428 | 32.226 |

45. The following table shows the estimated breakdown of the NZDF's capital and operating expenses for this deployment:

| Cost Element | Capital Expense | 18 Month Deployment |
|----------------------------|-----------------|------------------------|
| Personnel | | 5.500 |
| Accommodation/Support | | 2.200 |
| Food | | 2.800 |
| Ammunition | | 2.300 |
| Clothing | | 0.900 |
| Communications | | 0.500 |
| Equipment/Consumables | | 2.500 |
| Rent/Purchase Services | | 4.400 |
| Other | | 0.500 |
| Air Charter (x2) | | 3.000 |
| Mission critical equipment | 3.800 | |

| | | |
|------------------------|--------------|---------------|
| PSR(S)2, PSR(S)3 | 1.900 | |
| NZDF Sub Totals | 5.700 | 24.600 |

46. On 16 March 2009, noting a projected shortfall in the funding required to provide for current Operationally Deployed Forces activity, Cabinet agreed to increase the FY 2009/10 Vote Defence Force baseline by \$31.863 million [CAB Min (09) 9/9 refers].

47. This resulted in a total appropriation of \$81.000 million available for the existing 2009/10 deployments. The FY 2010/11 funding dedicated within NZDF baselines for the Operationally Deployed Forces, however, remained at \$52 million rising to \$63 million by FY 2013/14.

48. Cabinet also noted that there were challenges around operational tempo beyond FY 2009/10 and that the future Operationally Deployed Forces funding requirements would be considered as part of the forthcoming defence assessment and White Paper.

49. The NZDF is currently unable to absorb the additional costs of this proposed deployment within baselines and therefore seeks additional funding. Depending on the outcome of future decisions relating to existing deployments, however, the NZDF may be able to reduce some deployed force costs. These potential savings would be returned to the Crown through a subsequent Supplementary Estimates process [CAB Min (09) 9/9 refers].

GCSB – Vote Communications Security and Intelligence

50. The forecast GCSB costs include capital, depreciation and operating expenses totalling \$PSR(R)2, PSR(R)3 over FYs 2009/10 to 2013/14. The following table provides a breakdown of this cost:

| Cost Category | 2009/10 | 2010/11 | 2011/12 | 2012/13 | 2013/14 & out years | Total |
|--|-----------------|---------|---------|---------|---------------------------|-------|
| | \$M | \$M | \$M | \$M | \$M | \$M |
| Operating (with Crown impact) | PSR(R)2 PSR(R)3 | | | | | |
| Capital (with Crown impact) | | | | | | |
| Depreciation (without Crown impact) | | | | | | |
| Total GCSB Costs | | | | | | |

NZSIS – Vote Security Intelligence

51. The initial estimated cost for an NZ SIS contribution is PSR(R)2, PSR(R)3 for the 18 month period based on a PSR(R)2, PSR(R)3. The following table shows a breakdown of this cost over FYs 2009/10 to 2013/14. Discussions are

PSR(R)2, PSR(R)3

| Cost Category | 2009/10 | 2010/11 | 2011/12 | 2012/13 | 2013/14 & out years | Total |
|----------------------------------|-------------------|---------|---------|---------|---------------------------|-------|
| | \$M | \$M | \$M | \$M | \$M | \$M |
| Operating (with Crown impact) | PSR(R)2 & PSR(R)3 | | | | | |
| Total NZSIS Costs | | | | | | |

Human rights, legislative, regulatory impact compliance cost, disability and gender implications

52. There are no relevant implications.

Consultation

53. This submission was prepared by the Ministry of Defence (MoD) and the NZDF, in consultation with GCSB, NZSIS, MFAT, Treasury and the Department of the Prime Minister and Cabinet (DPMC).

Publicity

54. It is proposed that a short statement, without reference to dates, location, type of task or size of contingent be issued by the Prime Minister at the appropriate time.

Recommendations

55. It is recommended that Ministers with Power to Act:

1. **note** that New Zealand has received several requests from international partners over the past few years to re-commit our SAS to Afghanistan, including most recently in March 2009 from Commander ISAF to replace the Norwegian Special Forces Task Group (TG) in Kabul for up to 18 months from late September 2009 (attached at Annex One);
2. **note** that in February 2009 Cabinet directed a whole-of-government review of New Zealand's commitments to Afghanistan, including looking at options for more focused military commitments [CAB Min (09) 5/3a refers];
3. **note** that in June 2009 Defence officials briefed the Prime Minister and the Ministers of Foreign Affairs and Defence on several potential SAS deployment options, including the preferred option of replacing the Norwegian TG as per Commander ISAF's March request;
4. **note** that the NZSAS has previously deployed to Afghanistan on three separate occasions in 2001/2002, 2004 and 2005;
5. **note** that re-deploying the NZSAS to Afghanistan would provide New Zealand a very high profile within ISAF and with international partners, and would be a positive gesture ahead of any decisions on the future of our Provincial Reconstruction Team in Bamyán;
6. **note** the proposed deployment would be for a fixed term only, with clear exit criteria, allowing time for the NZSAS to return to New Zealand and reconstitute ahead of potential Rugby World Cup 2011 commitments;
7. **note** that commercial charter aircraft and associated costs have been included in planning for this deployment but that there may be an option to use **PSR(S)1, PSR(S)3** in which case the cost of the commercial air charter would be returned to the Crown;
8. **note** the NZSAS Task Force (TF) would have legal authority to carry out their assigned tasks under United Nations Security Council Resolutions 1386 (2001), 1510 (2003) and 1833 (2008), and the Military Technical Agreement (MTA) between ISAF and the Government of Afghanistan;
9. **note** the national caveats for this deployment including that **PSR(S)2, PSR(S)3**
10. **note** the procedures for NZSAS personnel detaining non-ISAF persons at Annex Three and that any persons detained during NZSAS operations with the Crisis Response Unit (CRU) will be handled and processed by the CRU in accordance with Afghan law;

11. **note** that while the CRU will usually be responsible for detaining individuals, should the NZSAS TF be required to, they will endeavour to provide the identity of the persons detained, or the fact of their detention and the general facts surrounding it, to the ICRC;
12. **note** that the Ministry of Foreign Affairs and Trade continues to seek a formal written assurance from the Government of Afghanistan that any detainees handed over to Afghan authorities would not be subjected to torture or capital punishment;
13. **note** the proposed deployment is manageable according to the indicative dates and figures outlined in this paper and would not affect the ability of the NZSAS to provide forces to regional contingencies at short notice or to carry out domestic counter terrorism tasks;
14. **note** the NZDF strategic military threat level for Afghanistan is assessed as **HIGH**;
15. **approve** the deployment of up to 71 personnel (including up to 70 NZSAS personnel and associated NZDF support staff **PSR(R)2, PSR(R)3** and associated equipment to Kabul, Afghanistan, for up to 18 months from late September 2009;
16. **note** the Rules of Engagement (ROE) at Annex Two:

It is further recommended that the Prime Minister:

approve the attached ROE;

Yes / No

17. **agree** to increased funding for this deployment as per the following table:

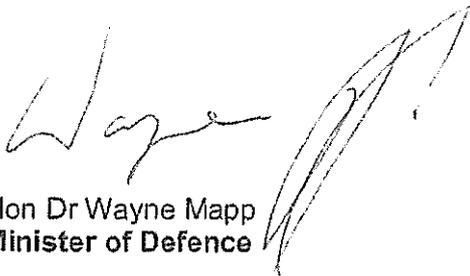
| | \$m – increase/(decrease) | | | | |
|--------------------------|---------------------------|---------|---------|---------|---------------------------|
| | 2009/10 | 2010/11 | 2011/12 | 2012/13 | 2013/14 & out years |
| Operating Balance Impact | PSR(R)2 PSR(R)3 | | | | |
| Debt Impact | | | | | |
| No Impact | | | | | |
| Totals | | | | | |

18. **approve** the following changes to appropriations to put into effect the decisions in recommendation 17 above:

| | \$m – increase/(decrease) | | | | |
|---|---------------------------|---------|---------|---------|---------------------------|
| | 2009/10 | 2010/11 | 2011/12 | 2012/13 | 2013/14 & out years |
| Vote Defence Force Minister of Defence Departmental Output Expense: Operationally Deployed Forces Annual (funded by revenue Crown) | 13.394 | 11.848 | 0.428 | 0.428 | 0.428 |
| Net Asset Schedule of New Zealand Defence Force: Capital Injection | 5.700 | - | - | - | - |
| Vote Communications Security and Intelligence Minister in Charge of Government Communications Security Bureau Intelligence and Security Department Expenses and Capital Expenditure: Communications Security and Intelligence Net Asset Schedule of the Government Communications Security Bureau: Capital Injection | PSR(R)2, PSR(R)3 | | | | |
| Vote Security Intelligence Minister in Charge of the New Zealand Security Intelligence Service Intelligence and Security Departmental Expenses and Capital Expenditure: Security Intelligence | | | | | |
| Total Operating | | | | | |
| Total Capital | | | | | |

19. agree that the proposed changes to appropriations and projected balances of net assets for FY 2009/10 above be included in the FY 2009/10 Supplementary Estimates and that, in the interim, the increases be met from Imprest Supply;

20. **note** that beyond FY 2009/10 there are challenges around operational tempo and funding for the Operationally Deployed Forces intended to be considered within the forthcoming Defence Review and White Paper; and
21. **note** that NZDF deployment savings that become available as a result of any review of existing operational commitments should be returned to the Crown through a subsequent baseline update.



Hon Dr Wayne Mapp
Minister of Defence

Annex One: ISAF Request for the Deployment of the NZSAS

PSR(S)1

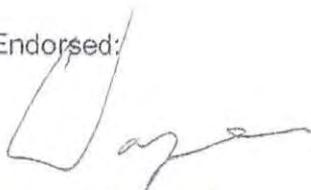
Annex Two: Rules of Engagement (ROE)

ROE and related documents are subject to continuing progress under the Document Classification Review Process

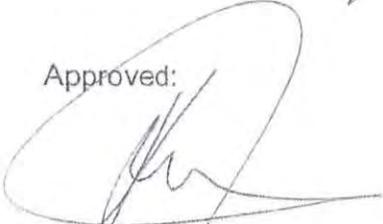
Authorised:


J. MATEPARAE *VCDF.*
Lieutenant General
Chief of Defence Force *Doc*

Endorsed:


Hon Dr Wayne Mapp
Minister of Defence

Approved:


Hon John Key
Prime Minister

Annex Three: Individual Guidance for the Detention of non-ISAF Personnel

Authorisation

1. New Zealand ISAF personnel are only authorised to search and detain a person in accordance with this card where Afghan National Security Forces (ANSF) are not present or reasonably available to do so. If an arrest and/or detention is effected by ANSF in the presence of ISAF personnel, then the individual is not considered to be an ISAF detained person and the provisions of this card do not apply.
2. Authority to Detain. You are authorised to detain non-ISAF personnel if necessary for:
 - i. The defence of any personnel or property you are authorised to protect;
 - ii. The accomplishment of the mission.
3. Detention Authority. As soon as practicable after a detention has taken place, the decision to continue to detain must be considered by an appropriate ISAF Detention Authority. A Detention Authority includes a New Zealand Senior National Officer (SNO), a Provincial Reconstruction Team (PRT) Commander, Base Commander and a Patrol Commander. For Op WATEA the SNO TF 81 and the on site patrol commander are designated as detention authorities.

Immediate Actions at the Scene of Detention

4. Documentation. Full details of the individual and the circumstances surrounding detention are to be recorded including: DTG of detention, place of detention, reasons for detention, name and unit of the detaining soldier/officer, name and unit of officer authorising detention, details of the detained person including name, gender, home and home of record and whether or not the International Committee of the Red Cross (ICRC) have been informed. Such information is to be transmitted to the relevant New Zealand SNO without delay. The New Zealand SNO is to allocate each detainee a national detainee number.
5. Use of Force. Minimum force may be used to effect a detention or restrain a violent detainee. The use of plasticuffs by NZFOR ISAF personnel, who have been trained in their use, is authorised. NZFOR ISAF personnel are authorised to use minimum force to stop a detainee escaping. In any circumstance requiring the use of force against a detainee, deadly force is not to be used unless necessary to prevent an act which constitutes an immediate threat to life of personnel you are authorised to protect. Persons detained by ISAF are to be treated with respect and dignity and in compliance with applicable international law and human rights law standards. No one shall be subjected to torture or to inhumane or degrading treatment or punishment, including the use of stress positions.
6. Search. The detainee is to be searched for any articles of evidential value, or items which may be used to inflict self-injury or injure those effecting the detention. Such items are to be removed. In all cases receipts are to be provided. Weapons or contraband found in a detained person's possession shall be retained for the period

of detention. Direction on the disposal of weapons and contraband, such as drugs, will be issued by the chain of command. Precise details of all searches are to be recorded and retained. In all circumstances the dignity of persons being searched shall be respected.

- i. *Gender Considerations.* Female detainees are only to be searched by female members of NZFOR ISAF (unless there are pressing operational reasons which makes this impracticable, in which case all such searches are to be witnessed by one other member of NZFOR ISAF).
- ii. *Juveniles/Children.* Extreme care is to be taken when searching juveniles and children and all searches are to be witnessed by one other member of NZFOR ISAF.

7. Rights of a Detainee. The detainee must be informed, in a language that he or she understands, of the reasons for detention and given an information sheet detailing his or her rights as a detainee. Where this is not possible, then the detainee is to be given this information at the earliest opportunity.

8. Release. If there is no requirement for continued detention, the detainee is to be released. When a detainee is being released, detainees should be returned to their home, or to their place of original detention. Detainees are not to be left in remote locations to fend for themselves.

Transfer and Movement

9. Personnel detained by NZFOR ISAF personnel are not to be transferred or handed over to ANSF or other ISAF coalition forces without the prior approval of COMJFNZ or CDF.

10. If there is a requirement to transport detained persons between locations, full details of the individual and the circumstances surrounding the detention are to be maintained and are to be transported with the detained individual. As a general rule, the detaining unit/sub unit is required to provide the guards and transport to move a detained person between locations.

11. Wherever possible detained persons should be moved in a vehicle/aircraft. Movement on foot should be a last resort and only conducted over short distances.

12. Where the transfer/movement of a detainee is conducted over a large distance or prolonged period of time, then the guarding unit is to ensure that regular breaks are taken and that food and water is available.

13. A detainee may be restrained by the use of plasticuffs or handcuffs whilst being transported provided that they are fitted only by individuals trained in their use. A detainee is not to be secured to any part of a vehicle or any other static object.