



COVERSHEET

Minister	Hon Dr Megan Woods	Portfolio	Energy and Resources
Title of Cabinet paper	Prohibition on the Export of Pounamu	Date to be published	5 July 2021

List of documents that have been proactively released

Date	Title	Author
May 2021	Prohibition on the Export of Pounamu	Office of the Minister of Energy and Resources
19 May 2021	Prohibition on the Export of Pounamu DEV-21-MIN-0100	Cabinet Office

Information redacted

YES / NO

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Some information has been withheld for the reasons of Legal professional privilege and Confidential advice to Government.

In Confidence

Office of the Minister of Energy and Resources
Cabinet Economic Development Committee

Prohibition on the export of pounamu

Proposal

- 1 This paper seeks Cabinet agreement to continue the prohibition on the export of pounamu (which would otherwise expire on 30 September 2021), and for officials to undertake a policy review of the prohibition and provide a report-back to Cabinet on their progress by 30 September 2024.

Relation to government priorities

- 2 Continuing the prohibition on the export of pounamu is consistent with the Government's obligations under the Treaty of Waitangi, and ensuring the sustainable development of natural resources.

Background

- 3 The export of unprocessed pounamu in consignments in excess of five kilograms is currently prohibited without the consent of the Minister of Customs. The Minister of Customs may only provide consent upon the written advice of Te Rūnanga o Ngāi Tahu or the Māwhera Incorporation¹. Articles made from pounamu, including jewellery and sculptures, are exempt.
- 4 Pounamu in its natural state, and partly or wholly processed pounamu, has been prohibited from export since 1947. Since 1996, the prohibition has been made by Order in Council under the Customs and Excise Act 1996. Such orders have had a statutory maximum length of three years.
- 5 The current prohibition on the export of pounamu is contained in the Customs Export Prohibition Order 2017 (made under the Customs and Excise Act 1996) and expires on 30 September 2021.
- 6 The prohibition was originally due to expire on 30 September 2020, but was extended by one year under the COVID-19 Response (Further Management Measures) Legislation Act 2020.
- 7 The Customs and Excise Act 1996 has now been replaced with the Customs and Excise Act 2018 (the 2018 Act). The 2018 Act continues to enable the Governor-General, on recommendation of the Minister of Customs, to make import or export restrictions by way of Order in Council, providing it is considered necessary in the public interest to do so.

¹ The Māwhera Incorporation owns the bed of the Arahura River (as well as various other land blocks on Te Tai Poutini/West Coast) and all pounamu within the Arahura River catchment.

- 8 Under the 2018 Act, there is no statutory maximum duration for import or export restrictions. Prohibitions are permanent by default, unless the Order contains explicit expiry provisions.
- 9 The Minister of Customs will recommend the making of an Order in Council to regulate an import or export restriction based on a Cabinet decision that the policy is necessary in the public interest.
- 10 As policy on this issue is considered most relevant to the Energy and Resources portfolio, I now seek Cabinet's approval to continue the prohibition on an indefinite basis, and for officials to undertake a policy review of the prohibition and provide a report-back to Cabinet within three years on their progress. This will allow for fuller consideration of, and engagement on, the issues set out in the following section.
- 11 Procedurally, on Cabinet's approval, the Minister of Customs will issue instructions to the Parliamentary Counsel Office to draft an Order in Council that will continue the export prohibition. She will then submit this Order to the Executive Council. I recommend this course of action for the reasons set out below.

Analysis

The continuation of the prohibition is necessary in the public interest

- 12 Pounamu is a taonga which holds significant value for Māori and all of Aotearoa New Zealand.
- 13 The export of pounamu in its natural state, and partly or wholly processed pounamu, has been prohibited since a Customs Export Prohibition Order was issued in 1947.
- 14 The prohibition was put in place to protect the cultural, spiritual and economic value of pounamu from being undermined through it being worked or re-worked overseas in a way that is inconsistent with tikanga Māori.
- 15 Prior to 1997 a large proportion of naturally occurring New Zealand pounamu was Crown owned. Ownership of Crown owned pounamu within the Ngāi Tahu takiwā was then transferred to Te Rūnanga o Ngāi Tahu under the Ngāi Tahu (Pounamu Vesting) Act 1997 as part of the Ngāi Tahu Treaty redress. This Act also vested all pounamu in the Arahura River catchment in the Māwhera Incorporation. Privately-owned pounamu remained in private ownership.
- 16 Following this transfer in ownership, the prohibition on the export of pounamu remained in place.
- 17 Ministry of Business, Innovation and Employment (MBIE) officials have engaged with representatives of Ngāi Tahu, including representatives of Ngāi Tahu Pounamu, Ngāti Waewae, and Te Rūnanga o Makaawhio, and the Chair of the Māwhera Incorporation on continuing the export prohibition.

18 Based on this engagement, it is clear that the prohibition remains necessary in the public interest, to protect the cultural, spiritual and economic value of pounamu from being undermined through it being worked or re-worked overseas in a way that is inconsistent with tikanga Māori.

19 On this basis, I recommend the continuation of the prohibition.²

A number of issues have been raised with the prohibition which cannot be addressed before its expiry

20 Ensuring the prohibition remains fit for purpose is important to maintaining a good relationship with iwi, and to meeting the Crown's obligations of active protection in regards to pounamu.

21 Ngāi Tahu has been seeking a broader review of the prohibition on the export of pounamu for a number of years. However, this has been postponed in the past due to competing priorities and the review of the Customs and Excise Act 1996.

22 Confidential advice to Government



23 Officials have advised me that consideration of these issues will require broader engagement with iwi and other stakeholders with an interest in pounamu (such as private owners and artists working with pounamu). Te Arawhiti supports this advice. Due to the large scale of engagement required, officials have been unable to undertake the necessary consultation before 30 September 2021, which is the expiry date of the current prohibition.

Legal professional privilege

Confidential advice to Government

I recommend the new prohibition be without an expiry date, and for officials to undertake a policy review of the prohibition and report back to Cabinet within three years

- 24 Under the 2018 Act, Prohibition Orders are now permanent by default, although they can be written to include explicit expiry provisions.
- 25 Te Rūnanga o Ngāi Tahu has been advocating for the prohibition to be made permanent for a number of years, including through submissions in support of the recent Customs and Excise Bill, prior to the enactment of the 2018 Act. In November 2020, the Māwhera Incorporation expressed the view that having a routine expiry can allow for future generations to have their say, but have not further expressed a concern.⁴
- 26 On balance, I recommend that the prohibition should be made without an expiry date, and that officials undertake a policy review of the prohibition and provide a report-back to Cabinet within three years on their progress. This will allow for fuller consideration of, and engagement on, all issues described above, including the issue of permanency.
- 27 This approach follows what is the default position under the 2018 Act, which I consider to be the most neutral option. It also recognises the long-standing wishes of Te Rūnanga o Ngāi Tahu, owners of the majority of the pounamu resource, while also enabling the views of the Māwhera Incorporation to be fully considered at the time the review takes place.
- 28 The review of the pounamu export prohibition will be undertaken alongside and aligned with the Government's work on Te Pae Tawhiti – Wai 262, which is being led by Te Puni Kōkiri. Te Puni Kōkiri is working with MBIE and other relevant agencies to develop a Te Pae Tawhiti work programme for Cabinet consideration later this year.

Financial Implications

- 29 There are no financial implications to this paper.

Legislative Implications

- 30 The proposal in this paper will require making an Order in Council under section 96 of the Customs and Excise Act 2018 to prohibit the export of pounamu (other than articles made from pounamu) in excess of five kilograms. Consent for otherwise prohibited exports can be sought from the Minister of Customs. The Minister of Customs may provide consent only upon the written advice of Te Rūnanga o Ngāi Tahu, or the Māwhera Incorporation, depending upon the provenance of the pounamu.

Impact Analysis

Proposals exempt from Regulatory Impact Statement

⁴ MBIE officials have made efforts to follow up with the Māwhera Incorporation on the topic of permanency, but have not received a response.

- 31 The Regulatory Impact Analysis Team at the Treasury has determined that the proposal to continue the pounamu export prohibition is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.

Climate implications of Policy Assessment

- 32 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Population Implications

- 33 The proposals in this paper concern the continuation of a long standing prohibition, and I do not consider that this has implications for any particular population group.

Human Rights

- 34 There are no inconsistencies between the proposal in this paper and the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Consultation

- 35 Ngāi Tahu and the Māwhera Incorporation were included in the decision making which lead to the recommendations of this Cabinet paper.
- 36 Te Puni Kōkiri; Te Arawhiti; New Zealand Customs Service; the Treasury; the Department of the Prime Minister and Cabinet and the Ministry of Foreign Affairs and Trade have been consulted on this paper.

Communications

- 37 There are no planned communications for the matters addressed in this paper.

Proactive Release

- 38 The Ministry of Business, Innovation and Employment will proactively release a copy of this paper on their website.

Recommendations

The Minister of Energy and Resources recommends that the Committee:

- 1 **note** that the prohibition on the export of pounamu, given effect under the Customs and Excise Act 1996, by way of the Customs Export Prohibition Order 2017, expires on 30 September 2021;
- 2 **note** that the Crown has ongoing Te Tiriti o Waitangi relationships with Ngāi Tahu and Mawhera Incorporation and the policy work to be undertaken will

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align with the whole-of-government's work on taonga 'Te Pai Tawhiti - Wai 262';

- 3 **note** that pounamu is a taonga of great significance to Ngāi Tahu and Mawhera Incorporation as kaitiaki and that any policy development will seek to uphold the economic and cultural value of pounamu;
- 4 **agree** it is necessary in the public interest for the prohibition on the export of pounamu to continue by way of Order in Council made under the Customs and Excise Act 2018;
- 5 **invite** the Minister of Customs to issue drafting instructions to the Parliamentary Counsel Office to draft an Order in Council under the Customs and Excise Act 2018 to give effect to the continued prohibition agreed above;
- 6 **authorise** the Ministers of Energy and Resources and Customs to make decisions on any minor or technical matters that may arise during the drafting process; and
- 7 **direct** the Ministry of Business, Innovation and Employment to provide a report-back to the Cabinet Economic Development Committee by 30 September 2024 on their progress to review the prohibition to ensure that it remains fit-for-purpose.

Authorised for lodgement

Hon Dr Megan Woods

Minister of Energy and Resources