

# Memorandum of Understanding on Radio Spectrum

2 February 2022

# CONTENTS

|                                                                                 |    |
|---------------------------------------------------------------------------------|----|
| 1. The Parties.....                                                             | 3  |
| 2. Background.....                                                              | 3  |
| 3. Shared objectives .....                                                      | 4  |
| 4. Commitments .....                                                            | 4  |
| 5. Legislation to establish permanent Māori spectrum entity .....               | 5  |
| 6. The new Māori Spectrum Entity .....                                          | 6  |
| 7. Legal Effect .....                                                           | 6  |
| 8. Shared principles .....                                                      | 6  |
| 9. Spectrum Allocation .....                                                    | 7  |
| 10. Funding.....                                                                | 7  |
| 11. Tahua Tautoko (accelerated industry investment initiative) .....            | 8  |
| 12. Ka Hao Māori Digital Technology Fund (Ka Hao Fund) .....                    | 8  |
| 13. Working together on spectrum policy .....                                   | 8  |
| 14. Statutory and contractual obligations .....                                 | 9  |
| 15. Non-exclusive relationship .....                                            | 9  |
| 16. Representations.....                                                        | 9  |
| 17. Confidentiality .....                                                       | 9  |
| 18. Review and variation of MOU .....                                           | 10 |
| 19. Dispute resolution .....                                                    | 10 |
| 20. Term of Memorandum of Understanding .....                                   | 10 |
| 21. Definitions in this Memorandum of Understanding.....                        | 11 |
| 22. Signatories .....                                                           | 12 |
| Appendix A: Historical background of radio spectrum .....                       | 14 |
| Appendix B: Process for future spectrum transfers and renewals .....            | 15 |
| Appendix C: Initial spectrum allocations to the Māori spectrum entity .....     | 17 |
| Appendix D: Operational processes for working together on spectrum policy ..... | 18 |

# 1. The Parties

The Parties to this Memorandum of Understanding are:

**Party A: The Māori Spectrum Working Group (MSWG)** comprising:

- Nga Kaiwhakapūmau i Te Reo (WAI2224 claimant) , represented by Piripi Walker and Andrew Robb
- New Zealand Māori Council (WAI2224 claimant) represented by Peter Fraser
- Te Huarahi Tika Trust represented by Daphne Luke
- National Iwi Chairs Forum represented by Haami Piripi
- Māori telecommunications and technology industry representatives Antony Royal and Robyn Kamira

Through Waitangi Tribunal claims hui and subsequent hui, the MSWG is mandated to work with the Crown towards an enduring agreement for the allocation and management of spectrum and resources for Māori.

This MOU is signed by Piripi Walker, Haami Piripi, Peter Fraser, Daphne Luke, Robyn Kamira, and Antony Royal on behalf of the MSWG.

**Party B: The Crown**

The Crown is represented by Ministers acting under authority delegated by Cabinet. The Crown agencies operate within the mandate provided by legislation, Government policy as set by Cabinet, and the direction of their respective Ministers:

- Minister for the Digital Economy and Communications – The Ministry of Business, Innovation and Employment
- Minister for Māori Development – Te Puni Kōkiri
- Minister of Finance – The Treasury

The Crown manages spectrum on behalf of all New Zealanders. This role is enabled by the Radiocommunications Act 1989 and includes consideration of fairness, certainty, dispute resolution, future and current needs.

The Ministry of Business, Innovation and Employment (MBIE) is responsible for the regulation, administration, and investigation of radio spectrum in Aotearoa New Zealand.

This MOU is signed by Hon Dr David Clark; Minister for the Digital Economy and Communications, Hon Grant Robertson; Minister of Finance; Hon Willie Jackson; Minister for Māori Development on behalf of the Crown.

# 2. Background

- 1) Radio spectrum contributes to wellbeing and a productive, sustainable and inclusive New Zealand. It can provide economic, cultural, social and environmental benefits.
- 2) *Appendix A: Summary of historical background of radio spectrum* provides the historical interaction between Māori and the Crown in relation to radio spectrum.
- 3) The MSWG considers that:

- a) spectrum is a taonga as per *Ko te tuarua (Article 2)* in Te Tiriti o Waitangi and as affirmed by the Waitangi Tribunal in 1999 on the Wai 776 claim.
  - b) spectrum is a means to achieve rangatiratanga and broad regional, economic, cultural, environmental and social outcomes that are enabled by greater Māori participation in, and benefit from digital technologies.
  - c) Māori have already added significant and tangible value to the New Zealand economy as a result of participation in the telecommunications sector.
- 4) The Crown does not accept the conclusions and recommendations of the Wai 776 report, and in particular does not accept that radio spectrum is a taonga.
- 5) Māori and the Crown have engaged in good faith to attempt to address Māori interests in spectrum. More recently:
- a) The Government's recent preparations for the 3.5 GHz band spectrum allocations sparked renewed Crown focus on Māori interests in spectrum, and in May 2019, Māori and Crown formed a joint working group to develop options for an enduring agreement to address Māori interests in spectrum.
  - b) In December 2019, an agreement was reached for an allocation of 3.5 GHz spectrum to Māori as part of a short-term allocation of spectrum for 5G. Crown funding was also pledged for a Māori led programme of work to build capability and technical expertise in spectrum-related activities, and to support broad engagement with Māori as a step towards an enduring agreement between Māori and the Crown.
  - c) A total of \$1.15 million funding was provided from Te Puni Kōkiri (TPK) and MBIE baselines and the Ka Hao fund in 2020, and a subsequent \$2 million from TPK was provided in 2021. \$5.8 million was committed for this work in Budget 2021.
- 6) The Crown and MSWG are now pursuing an outcomes-based engagement.
- 7) The MSWG and the Crown are committed to reaching an enduring agreement on Māori interests in radio spectrum.
- 8) Both parties are committed to growth and shared prosperity by supporting Māori to improve regional, economic, cultural, environmental and social outcomes.
- 9) Māori and the Crown agree that the growth and extension of Māori led initiatives hold the key to a long-lasting step-change in Māori participation in the digital economy.
- 10) The Parties believe that what is set out in this MOU will achieve the shared Māori-Crown objectives set out below; while acknowledging there remain some areas where Māori-Crown views differ.

### 3. Shared objectives

- 1) The parties' shared objectives for this enduring agreement are to
  - a) contribute to an increase in Māori participation and opportunity in spectrum-related industries and the digital economy; and
  - b) enable Māori to contribute their talent and skills to spectrum-related industries.

### 4. Commitments

The Māori Spectrum Working Group commits to:

- 1) working alongside Iwi/Māori to create a permanent entity that leverages the radio spectrum to support Māori regional, economic, cultural, environmental and social wellbeing.
- 2) fulfilling its role of managing the radio spectrum allocated to it on behalf of Māori. This role involves ensuring that:
  - a) spectrum is used efficiently and fairly for a range of commercial, non-commercial and public good purposes
  - b) users of spectrum have certainty about their rights and obligations
  - c) spectrum use is monitored so that legitimate usage rights and obligations are maintained and enforced
  - d) disputes between different spectrum users are resolved fairly, and
  - e) future spectrum needs are accommodated

The Crown commits to:

- 1) fulfilling its stewardship role of managing the radio spectrum on behalf of all New Zealanders. This role involves ensuring that:
  - a) spectrum is used efficiently and fairly for a range of commercial, non-commercial and public good purposes
  - b) users of spectrum have certainty about their rights and obligations
  - c) spectrum use is monitored so that legitimate usage rights and obligations are maintained and enforced
  - d) disputes between different spectrum users are resolved fairly, and
  - e) future spectrum needs are accommodated

## **5. Legislation to establish permanent Māori spectrum entity**

- 1) Both parties agree that legislation will likely be required to establish and give effect to a permanent Māori Spectrum Entity.
- 2) The Crown intends to propose draft legislation to establish a permanent Māori Spectrum Entity for introduction to the House of Representatives.
- 3) The draft legislation that will be proposed for introduction to the House of Representatives:
  - a. Must comply with the drafting standards and conventions of the Parliamentary Counsel Office for Government Bills, as well as the requirements of the Legislature under Standing orders, Speakers' Rulings, and conventions; and
  - b. Must be in a form that is satisfactory to the MSWG and MBIE; and
  - c. Must be consistent with this MOU.
- 4) MBIE and the MSWG will work together from the date of this MOU to support the passage of any draft bill through Parliament.
- 5) Until the permanent entity is established, the Interim Māori Spectrum Commission will undertake the responsibilities of the intended Māori Spectrum Entity.

## 6. The new Māori Spectrum Entity

- 1) The new Māori Spectrum Entity to be established, will seek to build its internal capability to ensure it effectively performs its roles with the view to serving Māori interests and opportunities in spectrum, is sustainable, and is immediately active in the telecommunication sector and industry.
- 2) This will be done through connecting Government initiatives and programmes to the MSE and/or by jointly developing initiatives.
- 3) Joint aspirations for the MSE will include the following:
  - a) be an influential and a significant participant in the telecommunications sector; and
  - b) enable Māori participation and development in the telecommunications sector by:
    - i) helping to create a pipeline of skills and capability for Māori,
    - ii) helping to provide opportunities for jobs, businesses, innovation and partnering in spectrum-related activities.

## 7. Legal Effect

- 1) This MOU:
  - a) is a statement of good intention based on respective roles and responsibilities of each party;
  - b) is entered into on a without prejudice basis;
  - c) is not legally binding;
  - d) does not create a legal relationship;
  - e) does not diminish or extinguish any rights Māori have arising from Te Tiriti o Waitangi / Treaty of Waitangi or any aboriginal or customary rights. The parties acknowledge, however, that the MOU may be relevant to the relationship between the Crown and Māori in the future, including any disputes; and
  - f) does not alter any existing, or create any new legal or equitable rights or obligations.

## 8. Shared principles

- 1) The following represents what the Parties believe are the shared principles, consistent with Te Tiriti o Waitangi / The Treaty of Waitangi and its principles, that underpin the way we work together and how we will achieve our shared objectives:
  - a) We accept that utmost good faith, honour, integrity, honesty, transparency and accountability are the standards necessary to build a future trusting relationship.
  - b) We acknowledge and celebrate the distinct but shared objectives of each other and understand we have different roads to take for the wellbeing of Aotearoa.
  - c) We will work together constructively on our differences and jointly identify and resolve problems as they arise.
  - d) We acknowledge that working together provides more effective use of our resources to achieve our shared objectives.

- 2) We will operate a no surprises approach to the sharing of information under this MOU, subject to any legal constraints.

## 9. Spectrum Allocation

- 1) The Crown will allocate to the MSE to be held for the benefit of all Māori at no cost 20% of all future Commercial Spectrum allocations that are allocated using the Management Rights regime, or any regime that might in the future replace the Management Rights regime.
- 2) To avoid doubt, future commercial allocation refers to allocation of any new spectrum and renewal of existing spectrum.
- 3) The MSWG note and accept that not all spectrum is managed via Management Rights and not all Management Rights are created for commercial purposes.
- 4) The following are excluded from the arrangement set out in this MOU:
  - a) Grants of radio licences for general use and for individual use on a first-come, first-served basis.
  - b) Management Rights that are sub-licensed by the Crown for local or sub-national services.
  - c) Broadcasting licences for sound and television which have been granted to Māori organisations including iwi and Te Mātāwai at the time of this MOU and which are subject to separate agreements, but only to the extent that those separate agreements remain valid and in force.
- 5) *Appendix B: Process for future spectrum transfers and renewals* sets out the process agreed by the parties for determining the specific details of spectrum transfers and renewals.
- 6) Within twelve months of signing this MOU, the Crown will agree to allocate to the MSE to be held for the benefit of all Māori, at no cost, spectrum as set out in *Appendix C: Initial spectrum allocations to the Māori Spectrum Entity*.

## 10. Funding

- 1) The Crown will contribute funding (exclusive of GST) as follows:
  - a) \$2M already provided by TPK,
  - b) \$5.8M appropriated as part of Budget 2021,
  - c) \$32M to be appropriated through Budget 2022 (timing to be confirmed),
  - d) \$25M funding for Tahua Tautoko (accelerated industry investment initiative), subject to further agreement as described in clause 11 of this MOU.
- 2) Funds are subject to Cabinet decisions, Parliamentary appropriation approvals, and funding agreements signed by the parties to this MOU and/or any entity receiving any funding.
- 3) If funds are disbursed prior to the establishment of the MSE, it is anticipated that these will be paid to the IMSC under agreed funding arrangements with the IMSC.
- 4) There will be no further expectation on the Crown to provide any further funding other than as set out above.

## **11. Tahua Tautoko (accelerated industry investment initiative)**

- 1) The purpose of Tahua Tautoko is to accelerate Māori participation into the telecommunications and technology sector via the MSE to create a direct and dedicated gateway for Māori training, jobs, business and leadership pipelines.
- 2) The criteria that the parties to this MOU will use to evaluate the business case for Tahua Tautoko are:
  - a) Generates steady & significant revenue;
  - b) Gives access to assets, expertise, infrastructure and capital;
  - c) Enables significant influence in the industry (credibility, commercially strong) enabling leverage to enter quality partnerships;
  - d) Strategically aligned with government strategies – e.g. economic, digital, telecommunications strategies;
  - e) Seeks to achieve the shared objectives of this MOU (refer clause 3).
- 3) The Crown has agreed to set aside funds (refer clause 10) for this initiative, subject to the development of one or more proposals that (a) seek to achieve the purpose and any agreed criteria, and (b) are agreed by Ministers and MSWG/MSE.
- 4) The parties acknowledge there will be further discussions on the criteria and how this initiative will work in practice. MBIE commits to working with MSWG/MSE on the development of the Tahua Tautoko criteria and proposal(s).
- 5) Reviews of progress under clause 18 of this MOU will include a review of progress on the purpose and criteria for Tahua Tautoko as set out in this clause.

## **12. Ka Hao Māori Digital Technology Fund (Ka Hao Fund)**

- 1) The Parties to this MOU agree that the transfer by TPK of the remaining balance of the Ka Hao Fund (\$17.8 million) will commence either upon the introduction of the legislation to the House or before the end of the 2022 calendar year, whichever comes first. The details of the transfer and future administration of the fund are to be agreed between MSWG and TPK.
- 2) The funding in clause 10 above is exclusive of any funds transferred from the Ka Hao Fund.

## **13. Working together on spectrum policy**

- 1) There will be a programme of regular engagement and information-sharing (subject to any legal constraints) on radio spectrum management work programmes – including the allocation of spectrum to the MSE.
- 2) Engagement will consist of annual meetings between the MSE or MSWG and the Minister responsible for radio spectrum, and quarterly meetings between officials acting on behalf of the Parties. Further details are set out in *Appendix D: operational processes for working together on spectrum policy*.
- 3) Nothing in this MOU restricts the MSE's ability to make direct representations to the decision maker about spectrum policy.

## **14. Statutory and contractual obligations**

- 1) The parties acknowledge that MBIE is a Government department and that this MOU will not require MBIE to act in any way contrary to its obligations pursuant to Ministerial or Cabinet direction, or under its statutory responsibilities, or pursuant to any contractual obligations it has established with other parties.
- 2) The MSWG acknowledge the Crown's obligation to act in the best interests of the public including Iwi, and Māori and other citizens by maximising the amount of spectrum available for the social and economic benefit of all.
- 3) This means that MSWG will not seek to limit Crown spectrum allocations or influence the price that the Crown puts on its spectrum allocations.
- 4) Both parties acknowledge the requirements of the Commerce Act 1986, and will not act in an anti-competitive manner.

## **15. Non-exclusive relationship**

- 1) MSWG acknowledges the agreements under this MOU do not create an exclusive relationship and the Minister(s) and the Crown may develop other relationships with third parties (including external stakeholders, other Māori entities, or international instruments) provided however that where the Crown intends to enter into or enters into relationships with other parties which relate to the relationship between MSWG and the Crown as detailed in this MOU, then the Crown will ensure:
  - a) That it discloses to MSWG in a prior and transparent manner the Crown's intentions and provides MSWG with sufficient information to make an informed response to the Crown as to the implications (if any) of the Crown's proposed relationship with the third party; and
  - b) That any relationship with a third party will not, to the extent possible, undermine this MOU.

## **16. Representations**

- 1) The parties agree they will not make any statement on the other's behalf to any third party without the express authorisation of the other party.

## **17. Confidentiality**

- 1) The parties agree that unless otherwise required by law or by mutual agreement that they will keep confidential all information acquired as a result of this MOU.
- 2) The parties acknowledge that any information held by the Crown may be required to be released under the Official Information Act 1982 or the Privacy Act 2020.
- 3) The parties agree to consult with each other on any proposed release of information where practicable.
- 4) For the avoidance of doubt, the MSWG is entitled to disclose to its members appropriate information, provided that those to whom this information is disclosed are made aware of the

requirements of this confidentiality clause.

## **18. Review and variation of MOU**

- 1) The parties acknowledge that over time this MOU may need to evolve to reflect changing circumstances. Therefore, the parties will meet solely for the purpose of reviewing the progress in achieving the objectives of this MOU every three years, or otherwise more frequently as mutually agreed.
- 2) The parties may at any time and by mutual, written agreement amend this MOU to reflect:
  - a) Changing circumstances; or
  - b) A termination date for this MOU where a legislative and/or contractual relationship between the parties addresses the matters which are the subject of this MOU, including this principle of review.

## **19. Dispute resolution**

- 1) The parties will act at all times in good faith. However, in the event of a dispute the parties agree to the following process:
  - a) If one party considers there has been a breach of this MOU, then that party may give written notice to the other that they are in dispute.
  - b) Before written notice is given under this clause 19.1.a, the parties may agree to participate in a dispute resolution method that reflects the values and principles of tikanga Māori.
  - c) As soon as practicable upon receipt of the notice given under clause 19.1.a, the parties' representatives will meet to work in good faith to resolve the issue.
  - d) If the dispute has not been resolved within 20 working days of receipt of the notice given under 19.1.a, the Chief Executive of MBIE, or their delegate, and a nominated representative of the MSWG and/or MSE will meet in good faith to resolve the issue.
  - e) if the dispute has not been resolved within 20 working days of the meeting set out in clause 19.1.d, the nominated representative of the MSWG and/or MSE will meet in good faith with the Minister for the Digital Economy and Communications to resolve the issue.

## **20. Term of Memorandum of Understanding**

- 1) This MOU:
  - a) commences upon signing by both parties; and
  - b) may be terminated by the mutual written agreement of the parties or by either party, for any reason whatsoever, giving 60 days written notice of termination to the other.

## 21. Definitions in this Memorandum of Understanding

1) In this MOU, the following terms are defined as follows:

| Term                                     | Definition                                                                                                                                                                                                                                                                                                                                                                                  |
|------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Radio spectrum, or spectrum              | The range of electromagnetic frequencies lower than 3000 gigahertz.                                                                                                                                                                                                                                                                                                                         |
| Telecommunication                        | See section 5 of the Telecommunication Act 2001                                                                                                                                                                                                                                                                                                                                             |
| Broadcasting                             | See section 2 of the Broadcasting Act 1989                                                                                                                                                                                                                                                                                                                                                  |
| Ka Hao Fund                              | the Māori Digital Technology Development Fund created after the government allocated \$30 million in 2014 to support initiatives that will create high value jobs and opportunities to advance Māori in digital technologies . Te Puni Kōkiri and the Ministry of Business, Innovation and Employment have joint responsibility for the Ka Hao Fund, and Te Puni Kōkiri is the lead agency. |
| Tahua Tautoko                            | The accelerated industry investment initiative referred to in clause 11 of this MOU.                                                                                                                                                                                                                                                                                                        |
| Management Rights                        | Spectrum property rights described in Parts 4 and 5 of the Radiocommunications Act 1989                                                                                                                                                                                                                                                                                                     |
| Māori Spectrum Entity (MSE)              | means the entity that will be created to hold the assets and fulfil the functions as described in this MOU                                                                                                                                                                                                                                                                                  |
| Interim Māori Spectrum Commission (IMSC) | means the existing entity created by the MSWG in 2020 to fulfil certain functions as directed by MSWG, prior to the establishment of the MSE.                                                                                                                                                                                                                                               |
| Allocation of any new spectrum           | Refers to allocation of frequency ranges under a management right regime for the first time                                                                                                                                                                                                                                                                                                 |
| Renewal of existing spectrum             | Refers to reallocation of frequency ranges that have previously been allocated under a management right regime.                                                                                                                                                                                                                                                                             |
| Radio licence                            | A license granted or deemed to have been granted under Part 13 of the Radiocommunications Act 1989                                                                                                                                                                                                                                                                                          |
| Spectrum licence                         | means a licence created under Part 6 of the Radiocommunications Act 1989                                                                                                                                                                                                                                                                                                                    |
| Commercial Spectrum                      | Spectrum that has been identified for allocation to anyone other than the Crown, in the form of Management Rights.                                                                                                                                                                                                                                                                          |
| New Zealand Radio Sector Group           | An industry group, convened by MBIE, that is consulted before MBIE determines New Zealand's position in international negotiations on spectrum matters.                                                                                                                                                                                                                                     |

## 22. Signatories

SIGNED for and on behalf of **The Crown** by: )  
)  
)  
)

Hon Dr David Clark

Minister for the Digital Economy and Communications

Signature

Date \_\_\_\_\_

Hon Grant Robertson

Minister of Finance

Signature

Date \_\_\_\_\_

Hon Willie Jackson

Minister for Māori Development

Signature

Date \_\_\_\_\_

**SIGNED** for and on behalf of The Māori Spectrum Working Group by: )

Piripi Walker

Nga Kaiwhakapūmau i Te Reo (WAI2224 claimant)

Signature

Date \_\_\_\_\_

Haami Piripi  
National Iwi Chairs Forum

---

Signature

---

Date

Peter Fraser  
New Zealand Māori Council (WAI2224  
claimant)

---

Signature

---

Date

Daphne Luke  
Te Huarahi Tika Trust

---

Signature

---

Date

Robyn Kamira  
Māori telecommunications and  
technology industry representative

---

Signature

---

Date

Antony Royal  
Māori telecommunications and  
technology industry representative

---

Signature

---

Date

## Appendix A: Historical background of radio spectrum

In 1984, the first claims by Māori to radio spectrum arose when Māori sought to secure the third national television channel warrant. This bid, without financial backing, failed, and New Zealand's last VHF television network passed into private hands.

In 1986, the Waitangi Tribunal in the Te Reo Māori claim (Wai 11) found that broadcasting was one way for the Crown to fulfill its obligations under the Treaty to protect and promote te reo Māori as a taonga. Those findings were accepted by the Crown. In 1987, Māori-language radio stations began broadcasting.

In 1989, a Radiocommunications Bill was introduced that had no specific spectrum provisions to address Māori broadcasting. Te Reo Māori claimants remained concerned about the Crown's ability to promote Māori language through broadcasting and about limited Māori access to broadcasting. However, the first spectrum auction saw a block of frequencies retained to meet future requirements for non-commercial broadcasting and the promotion of Māori language and culture.

In 1990 a second spectrum auction was called for AM and FM radio broadcasting licences. This led to a request for an urgent hearing by the Waitangi Tribunal of two claims before it. The claimants maintained that the number of frequencies the Government proposed to reserve for promotion of Māori language and culture through broadcasting were inadequate. The Tribunal recommended postponement of the auction, but this was refused by the Government. This eventually went to the Court of Appeal where most of the Court found that the Minister could not reasonably have decided to proceed with the auction without first awaiting the report of the Waitangi Tribunal. When the auction eventually proceeded, further FM frequencies were reserved nationwide for promotion of Māori language and culture.

In the 1990s, the Government proceeded with plans to sell state-owned broadcasting assets. Māori took the Crown to court to halt these sales. Although their attempts failed, they continued to appeal through the courts and eventually went to the Privy Council in England. The Privy Council recognised that the language was in a 'vulnerable state' and that the Crown would need to 'take especially vigorous action for its protection'. Because of this the Crown amended the Broadcasting Act in 1993 and established Te Māngai Pāho, the Māori language and culture broadcasting funding agency.

From 1996, blocks of 3G spectrum in the 2 GHz band were proposed for auction. Three years of unsuccessful negotiations led the late Rangiahō Everton, on behalf of all Māori, to make a claim (Wai 776) to the Waitangi Tribunal which sought allocations in line with previous Government decisions. The Waitangi Tribunal found in favour of the 3G spectrum claim, but the Government declined to accept its recommendations, and proceeded with auctions.

Following the 3G auction, the Government established Te Huarahi Tika Trust in 2000, and allocated it \$5 million to promote Māori participation in ICT. Te Huarahi Tika Trust had by 2008 succeeded in securing a 20% shareholding in what is now 2degrees. This supported the arrival of a third telco in Aotearoa and increased competition in the market.

In 2009, Māori again contested the sale of 4G spectrum, and again their claims were rejected by the Government. Following the 4G auction in 2013, another fund of \$30 million was allocated to support initiatives that create high value jobs and opportunities to advance Māori in digital technologies. This fund, called the Ka Hao Fund, is administered by Te Puni Kōkiri.

In 2020 Māori agreed to early allocation of 5G spectrum in good faith and to maintain positive Māori-Crown relationships through to an enduring agreement on spectrum issues and beyond. As the planned long-term auction of 5G spectrum looms, Māori claims to spectrum remain unresolved. Māori maintain their views: that a taonga is anything highly valued by iwi; *taonga*, the word used in Article Two of the Treaty of Waitangi, applies to tangible or intangible things; and the spectrum is a

*taonga* of high value, and is of high value to iwi. Māori and the Crown have never reached agreement on this point.

## **Appendix B: Process for future spectrum transfers and renewals**

Spectrum identified in the MOU will be transferred to the MSE through a Management Right Agreement, at no cost.

Ownership of a Management Right gives the ability to grant spectrum licences within a particular frequency range. The Crown sometimes sells Management Rights to third parties. Those rights are particularly useful to companies that wish to operate national networks but may also be used to create a set of regional operations.

In the future, if the Management Rights regime is replaced by an alternative, then the principles in this MOU will apply.

### **‘Overs and unders’ mechanism**

As per clause 9 above, the Crown will allocate to the MSE, to be held for the benefit of all Māori, at no cost, 20% of all future Commercial Spectrum allocations. Spectrum availability and technical constraints mean that it will not always be practical to allocate exactly 20% of any particular spectrum allocation. For example, some technologies operate in 10 MHz increments. If, say, 170 MHz is available then allocating 20% would result in wasted spectrum. That is  $180 \times 20\% = 36$  MHz but only 30 MHz would be usable.

In situations where the spectrum technical limitations make it impractical to split the spectrum into the agreed percentage, a percentage above or below the agreed percentage may be necessary. If this happens, the Crown and the Māori Spectrum Entity will discuss the situation before making allocation decisions. The Crown will decide an allocation amount under or over the agreed percentage of, considering the MSE’s preference and the most efficient use of the band. Over time, the parties intend for all allocations under this MOU to average out at the agreed percentage [20%]. This long term average will be weighted to reflect the relative valuations of different frequencies. That is, 50 MHz in the UHF band is much more valuable than 50 MHz of millimetre wave spectrum. The Crown and MSE will engage in good faith to agree how to reflect different valuation and tracking of ‘overs and unders’. For avoidance of doubt, neither party will attempt to use the ‘overs and unders’ mechanism to reduce or increase the total value of the spectrum being allocated to the Māori Spectrum Entity.

### **Application to renewals and other Management Rights**

Returned or expired spectrum rights that are allocated through the management right regime will be treated as a new allocation and will be in scope of the agreed formula.

### **Other spectrum-related matters**

The position of the Management Right within the band will be determined by the Crown following discussion with the MSE.

If the Crown is planning a sale of rights, the MSE may choose to have the allocated spectrum asset realised in the form of revenue, in which case, MBIE would sell any spectrum on behalf of the MSE as part of the wider allocation process.

MSE spectrum will not be subject to implementation requirements or spectrum caps that may be imposed in other spectrum within the same band.

MSE spectrum will be subject to the same technical requirements as other occupants of the band.

The MSE will have membership in the New Zealand Radio Sector Group. The MSE will be invited to participate in technical working groups and on matters of detail, noting conflicts of interest between

the governance and operational parts of the entity and subject to any confidentiality deeds to be signed.

The MSE will be invited to participate in working groups that determine New Zealand's position to international spectrum meetings and will have the option to have MSE representation in the New Zealand delegation.

## Appendix C: Initial spectrum allocations to the Māori Spectrum Entity

### *Management Rights to be transferred*

The following Management Rights will be made available for the use of the IMSC and ownership transferred to the Māori Spectrum Entity on its establishment.

| Band name | Frequency range                                                     | Commencement date    |
|-----------|---------------------------------------------------------------------|----------------------|
| 2100 MHz  | 1970-1980 and 2160-2170 MHz                                         | As soon as practical |
| 2300 MHz  | 2370-2395 MHz                                                       | As soon as practical |
| 3.5 GHz   | 100 MHz in the range 3.4-3.8 GHz, with specific frequency be agreed | 1 November 2022      |

### *Commitments relating to other frequency bands*

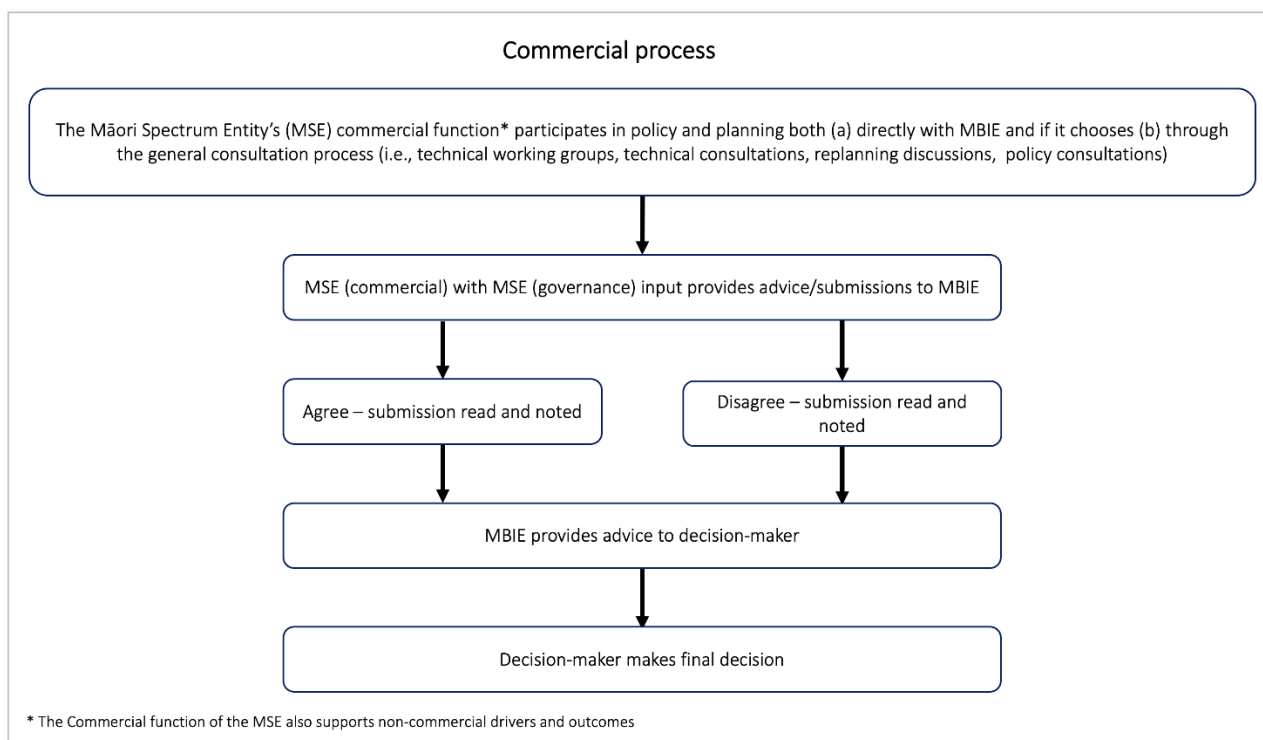
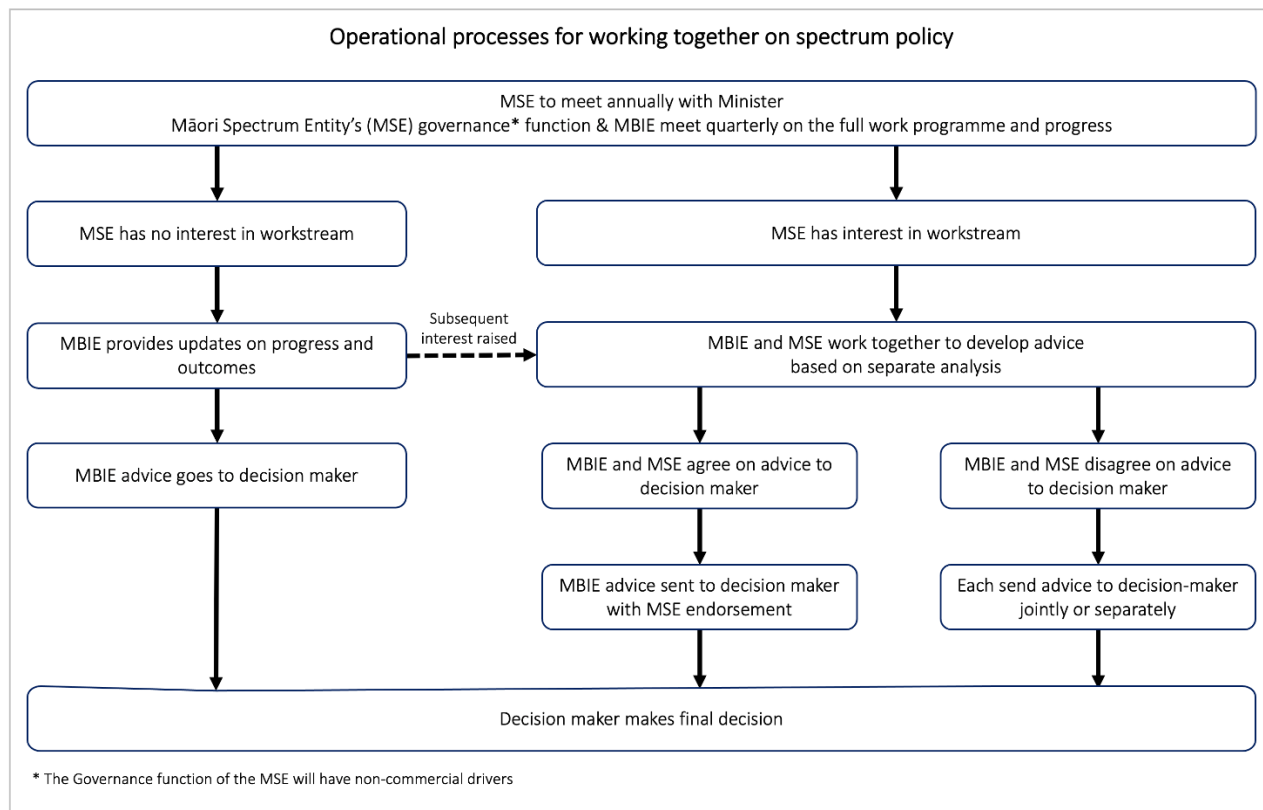
Spectrum in the frequency ranges 1730-1740 and 1825-1835 MHz is currently committed for possible use by a new Emergency Services network and is also being considered for use by KiwiRail for train signaling and control. If further work shows it is not required for emergency services and/or rail the government will transfer this spectrum to the MSE. MBIE and MSE to review the status of this further work, with initial review to be undertaken within 6 months of the date of the MOU, and make a recommendation to the Minister if any further action is required. If this spectrum is required for Emergency Services and/or rail then MBIE will work with the MSE to determine whether sharing is possible between those functions and other uses.

Spectrum in the 600 MHz band is currently being considered for future use by cellular mobile/5G services. MBIE will work with the MSE to develop a model for spectrum allocation or licensing in the band, noting that the future use of this band has yet to be confirmed.

### *Interim arrangements for spectrum ownership pending creation to the Māori spectrum Entity.*

The parties to this MOU will agree legal arrangements that allow the IMSC unimpeded use of the Management Rights [as described above] while enabling the Crown to ensure that the Management Rights will be transferred to the Māori Spectrum Entity, and are not transferred to another party or mortgaged in the interim.

## Appendix D: Operational processes for working together on spectrum policy



Subject to clause 17 above, the parties agree the following information will not be shared by the Crown to the MSWG/MSE, unless to the extent it is otherwise publicly available:

- Advice on issues that the Māori spectrum entity has not flagged interest in
- Advice that the Minister has requested in confidence
- Aide memoires (no new decisions)
- Speech notes
- Event briefings
- Spectrum valuations, prior to a commercial allocation process
- Commercial documents from other MNOs/spectrum operators

**Signed in the presence of:**