Design of the Offshore Renewable Energy Regulatory Regime

Purpose and scope of the regime

1 The purpose of the regime will be to:

1.1 give developers greater certainty to invest in offshore renewable energy projects, and

1.2 enable the selection of developments that best meet New Zealand's national interests.

2 The regime will facilitate the development (including construction, operation and decommissioning) of all commercial offshore renewable energy infrastructure (including offshore transmission infrastructure) in New Zealand up to the 200 nautical mile limit from the coastline (i.e. up to and including the exclusive economic zone).

3 The regime will align with, and not duplicate, environmental consenting regimes under the Resource Management Act 1991 and the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.

Design of the permitting regime

4 The regulatory regime will include a permitting regime covering two classes of permits: feasibility permits and commercial permits.

5 A feasibility permit will give the holder the exclusive right to apply for a commercial permit for the area (or a portion of the area) covered by the feasibility permit.

6 Applications for resource or marine consents under the Resource Management Act 1991 and the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 related to the construction and operation of offshore renewable energy infrastructure can only be accepted for consideration under those Acts if a feasibility permit covering the area has been granted to the applicant.

7 A commercial permit must be obtained before construction begins.

8 To avoid the risk of land banking by some developers, applications for resource or marine consents related to the construction and operation of offshore renewable energy infrastructure lodged but not determined before the legislation is in force must be declined if a feasibility permit covering the area is not granted to the applicant in the first round (intended to be in 2026).

9 The Fast-track Approvals legislation will be amended so that applications for marine consents and resource consents relating to offshore renewable energy projects are eligible once the offshore renewable energy regulatory regime is in force.

10 The selection of areas for development will be developer-led (meaning developers will identify and apply for sites), with the ability for the government to select sites if appropriate in future.

11 Feasibility permits will not prevent other authorised non-offshore renewable energy activities (e.g. mining or aquaculture) from gaining environmental consents within the permit area, potentially excluding offshore renewable energy developments from being consented.

Decision-making

12 The Minister for Energy will make decisions on the allocation, variation and revocation of permits. (Decisions can be delegated to the regulator. This approach aligns with decision-making on petroleum and minerals permits issued under the Crown Minerals regime).

13 The allocated permits will have a prescribed area, start date, end date and be subject to such conditions as are necessary to ensure that activities are undertaken in accordance with agreed plans, and avoid or manage any adverse or unauthorised activities over the permit duration and such other relevant conditions the Minister considers appropriate.

Feasibility permits

14 Feasibility permits will:

14.1 be allocated within application rounds initiated by the Minister for Energy, and may be limited by generation capacity, spatial area or technology type,

14.2 be awarded or declined based on an assessment of the following factors to select the projects that are most likely to deliver the greatest benefits for New Zealand:

Primary considerations

14.2.1 energy system benefits

14.2.2 technical and financial capability

Additional considerations

14.2.3 wider economic benefits

14.2.4 decommissioning arrangements

14.2.5 compliance record

14.2.6 iwi and hapū engagement, as outlined in recommendation 26 below

14.2.7 management of existing rights, interests and limitations

14.2.8 national security or public order risks,

14.3 not have a legislated maximum area (although the regulator may issue guidance on this),

14.4 cover a single contiguous area that is reasonable for the proposed development (in New Zealand, this is likely to be around 250km^2 for 1GW developments),

14.5 have a duration of seven years (with the ability for the Minister to approve an extension in limited circumstances), and

14.6 have 'use it or lose it' provisions to enable the Minister to revoke the permit if the holder does not begin feasibility activities within 12 months or make effective use of it, without reasonable justification.

15 There will be a requirement for permit holders to disclose data obtained during their feasibility studies to the regulator either when they obtain a commercial permit or when a feasibility permit expires, is revoked or surrendered.

16 There will be a requirement for the regulator to consult publicly on key details of applications before permitting decisions are made.

17 An applicant may not seek multiple permits within the same geographic area within a feasibility round, to encourage competition and market participation.

Commercial permits

18 Commercial permits may:

18.1 be sought by a feasibility permit holder for any area within the spatial boundaries of the applicant's feasibility permit, at any time within seven years of the award of the feasibility permit,

18.2 be awarded following an application from the feasibility permit holder and an assessment that is independent of other commercial permit applications (i.e. non-comparative).

19 Commercial permits will:

19.1 not be subject to public consultation, and

19.2 have an initial duration of up to 40 years, with the ability to seek extensions up to a further 40 years.

20 Assessment of commercial permits will be based on the following considerations:

20.1 technical and financial readiness,

20.2 decommissioning arrangements,

20.3 iwi and hapū engagement, and

20.4 national security or public order risks.

Permit variation

21 The Minister may approve, on the request of the permit holder, the following variations: minor extensions to permit area, extensions to permit duration, transfers or change of control of the permit holder and permit conditions.

22 Significant extensions to the permit area that alter generation capacity or impact neighbouring developments will require a new permit.

Revenue-gathering

23 The legislation will not provide for a revenue-gathering mechanism, such as a royalty scheme, as this is likely to significantly deter investment and the increased cost of projects would flow through to users.

24 The Minister for Energy intends to separately consider whether there should be a mechanism to ensure New Zealand receives appropriate value from new export products produced from renewable electricity, such as green hydrogen, methanol or ammonia.

Treaty settlements

25 Applicants will be required to identify relevant rights stemming from Treaty settlements as part of applications and must consult relevant iwi, hapū or Māori groups on the proposed development/permit application before applying.

26 Applicants' engagement and identification of relevant rights stemming from Treaty settlements will be considered by the Minister when granting permits.

27 The regime will require the Minister to consult with relevant iwi on the impacts of applications on relevant rights stemming from Treaty settlements.

28 The regime includes a clause reflecting the approach taken in Clause 6 of the Fast-track Approvals Bill 2024, which requires decision-makers to act in a manner consistent with obligations under Treaty settlements and customary rights recognised under the Marine and Coastal Area (Takutai Moana) Act 2011 the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.

29 In addition to judicial review, there will be some limited rights of appeal to the High Court for key permitting decisions (such as a decline of a commercial permit application or the revocation of a permit) with the following limitations:

29.1 appeals would be limited to points of law,

29.2 appeals would be available only to the person who has applied for or holds the permit to which the contested decision relates, and

29.3 the decision to decline a feasibility permit application would not be able to be appealed.

30 Resource and marine consenting processes will provide an opportunity for any affected party to submit on and subsequently appeal consent decisions.

Transmission infrastructure

31 The in-principle approach is that commercial permit-holders will be responsible for planning, building and funding new offshore transmission infrastructure.

32 The in-principle approach is that Transpower will become responsible for owning, operating and decommissioning offshore transmission infrastructure and may be involved in prescribing technical design standards.

Decommissioning

33 The regime will ensure offshore renewable energy assets are decommissioned at the end of their operational lives, by requiring permit holders to decommission and to:

33.1 provide a decommissioning plan to the regulator and to the Environmental Protection Authority (via consequential amendments to the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012), and

33.2 provide a cost estimate to the regulator based on the cost of fully removing infrastructure.

34 Permit holders will be required to obtain and maintain one or more financial securities to enable the Crown to recover decommissioning costs in the event of default by the permit holder.

35 The form of financial security to be obtained, and the amount to be secured, will be determined by the Minister based on the cost estimate and will be required to reach certain proportions of overall decommissioning cost at particular milestones, reflecting points of particular risk in the lifetime of the project.

36 There will be flexibility for the Minister to impose different financial security requirements and conditions depending on the risk profile of the developer and the nature of the project.

37 If a commercial permit is transferred from one party to another:

37.1 the Minister’s approval must have been gained before the transfer occurs,

37.2 the new permit holder must put in place one or more financial securities of combined equal or greater value than the existing security/securities, and

37.3 there will be a continuing obligation on the previous permit holder – either to decommission (i.e. trailing liability) or to maintain financial security, the details of which will be decided by the Minister for Energy before the legislation is drafted. The Minister will have discretion to maintain or remove this obligation on a case-by-case basis.

Safety zones

38 The regime will enable safety zones of up to 500 metres to be established around offshore renewable energy infrastructure, which will prohibit unauthorised persons or vessels from entering the area.

39 The Health and Safety at Work Act 2015 will apply to offshore renewable energy workplaces.

Compliance and enforcement

40 Conditions, similar to those imposed through the Crown Minerals Act 1991 (CMA), may be applied to permits to give effect to the objectives of the regime, manage decommissioning risks, enable the effective administration of the regime and set reporting or disclosure obligations.

41 The regulator will be empowered with a standard set of powers and functions, largely aligned with those in the CMA, to enforce compliance with the regime, including the ability to:

41.1 monitor and request information from permit holders,

41.2 check compliance by authorising officers to conduct inspections of project sites,

41.3 obtain a search warrant and conduct investigations into confirmed or alleged non-compliance,

41.4 enforce compliance by issuing warnings, compliance notices, entering into enforceable undertakings, pursuing civil penalties or prosecuting criminal offences, and

41.5 keep and maintain a public register of permits issued to publicly disclose key details of permit applications and permit decisions, which are not commercially sensitive.

42 The regime will establish, in line with the CMA and the Australian Offshore Energy Infrastructure Act 2021, a set of criminal offences (with corresponding penalties and defences where appropriate) or contraventions liable for civil penalty to address problematic behaviour including but not limited to:

42.1 parties constructing or operating offshore renewable energy infrastructure without holding a commercial permit,

42.2 failures to comply with permitting conditions,

42.3 failures to decommission or to adhere to the decommissioning plan (which includes specific liabilities on directors that knowingly breach their obligations),

42.4 any attempt to deceive, mislead or obstruct the regulator, and

42.5 failures to comply with compliance notices or enforceable undertakings.

43 The most significant offences relate to failures to decommission which should be subject to maximum penalties of $1 million for an individual or $10 million for any other entity, or 3 times the cost of decommissioning or imprisonment of up to two years.

Implementation

44 The regulator will be the Ministry of Business, Innovation and Employment.

45 The regulator may provide and receive information from other government agencies where that information:

45.1 is held for the performance or exercise of either the regulator or the specified entity's functions, duties or powers, and

45.2 would assist the regulator or the specified agencies in the performance or exercise of their functions, duties or powers – including the assessment of permit applications.