Developing a regulatory framework for offshore renewable energy

Summary of submissions

May 2024

MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

Te Kāwanatanga o Aotearoa
New Zealand Government

Ministry of Business, Innovation and Employment (MBIE)
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Contents

Developing a regulatory framework for offshore renewable energy

A summary of submissions to the Developing a Regulatory Framework for Offshore Renewable Energy discussion document and relevant feedback from the Consultation on advancing New Zealand's energy transition.

Background

1. In August 2023 the Ministry of Business, Innovation and Employment (MBIE) opened public consultation on the Developing a Regulatory Framework for Offshore Renewable Energy discussion document.

2. We received 48 written submissions and 3 survey responses. This feedback reflects the views of approximately 18 energy industry stakeholders (seven of which are involved in offshore renewable energy developments), 15 iwi and Māori organisations, four environmental advocacy groups and six local governments or regional development organisations. In addition to written submissions, MBIE received feedback through a series of meetings with iwi and key stakeholders which is also reflected in this summary. A list of submitters is included in **Annex One**.

3. The discussion document explored the design of a regulatory framework for offshore renewable energy as well as issues relating to the economics of the regime, links with environmental consenting processes and development of transmission infrastructure. This discussion document builds on the December 2022 discussion document, Enabling Investment in Offshore Renewable Energy, which focused on the feasibility stage of the development pipeline.

4. The discussion document was published as part of a package of consultation documents on New Zealand's energy transition – the Gas Transition Plan Issues Paper, the Interim Hydrogen Roadmap, and the discussion document on Measures for Transition to an Expanded and Highly Renewable Electricity System. Some of the feedback on these documents was relevant to issues relating to offshore renewable energy development and is therefore included in this summary. Summaries of submissions for the other consultations can be found on the MBIE website.

5. The feedback summarised in this document has informed MBIE's policy analysis and advice to the Government on the best approach to regulating offshore renewable energy developments in New Zealand. More information on the development of this regulatory regime and policy decisions taken by the Government can be found on the MBIE website.

NAVIGATING THIS DOCUMENT

6. This document provides a high-level summary of the feedback received to the discussion document. For ease, the structure of this document aligns with the chapters of the discussion document. Where appropriate we have drawn on comments made by submitters, but this does not reflect MBIE's analysis or views of this feedback.

7. For the purposes of this summary, where appropriate, we refer to the number of submissions that shared a similar view. However, it should be noted that submitters did not always answer every question and, in some cases, focused on providing general comments on the overall regime.

8. Numerical values of the terminology used in the document are outlined in Table 1 below.

Table 1: Definitions of numerical terminology

Terminology	Number of responses
One / single / a	**1**
A few / a couple	**2-3**
Some / several	**3-10**
Many / large proportion	**Up to 50% of responses**
Most	**Over 50% of responses**
Unanimously	**All responses**

Summary of submissions

9. Overall, most submitters supported the proposed permitting regime. They indicated that the proposed approach, subject to some suggested changes, provided necessary certainty for development to take place.

10. Several submitters noted the benefit of aligning the regime with the Australian regime to allow developers to streamline developments across the Tasman.

11. The few submitters that did not support a permitting regime either said a government-led, spatially planned approach would be more appropriate, or that a new regime was not necessary. The concerns expressed were generally related to the balance between a regulated and developer-led industry canvassed in our first consultation in 2022.

12. Many submitters provided comments on the value proposition of offshore wind to the New Zealand energy system and enabling measures beyond the regulatory regime. While this feedback has been fed into wider MBIE energy policy processes, we have not covered this feedback in this document as it was not the focus of this consultation process.

CHAPTER 4: FEASIBILITY PERMITS

13. Approximately 25 submitters commented on the proposals relating to feasibility permits.

Feasibility permit allocation process

14. The discussion document sought feedback on whether, following an initial feasibility permit application round, there should only be set feasibility rounds, or whether the regime should allow for both feasibility permit rounds and/or an open-door process.

15. Many submitters supported in principle the proposed approach of having an initial round followed by the option to do subsequent rounds and open door, suggesting that it would provide necessary flexibility for an emerging industry. Submitters highlighted that there may not always be enough interest to hold regular rounds or that developers may not always be ready to participate in a round – resulting in subpar applications.

16. However, a significant proportion of submitters preferred rounds, as they said it would provide greater certainty and encourage competition in a fair way. Submitters suggested rounds could be run every two to three years and recommended that they should be scheduled in advance and spaced out. Submitters said a defined schedule, with a known capacity at different times, would support the industry to prepare good quality applications, and support supply chain development and investment.

17. Submitters supporting an open-door process said it would alleviate administrative burdens. Submitters also noted that it would reduce the risk of creating bottlenecks at the environmental consents stage when multiple projects seek consents at the same time. Submitters opposing an open-door process said it could create a reactive environment and result in an oversupply of permits.

Area to be covered by the feasibility permit

18. The discussion document sought feedback on the appropriate size of developments in New Zealand and whether maximum sizes of projects should be prescribed in legislation or put forward by developers. MBIE indicated that projects of between 500MW and 1GW could be most appropriate for New Zealand's energy system and, in spatial terms, a 1GW development might equate to approximately 150 to 250 square kilometres.

19. Most submitters that commented on the appropriate size of developments said that, in the near term, 500MW – 1GW projects would be most appropriate for New Zealand. Submitters agreed that this figure balances the energy generation needs of a relatively small country with the scale that might be needed for a project to be economic. However, a few submitters said larger projects may be "more efficient given the effort required to secure the critical resources needed in this part of the world". Some submitters, including offshore renewable energy industry submitters, said the regime should not be concerned with the appropriate size of developments, as it will either be considered as part of the commercial decisions of the investments or in the environmental consent regimes.

20. Most submitters agreed with the proposal that any project's size constraints would be best expressed in guidance and not prescribed in legislation. Several submitters suggested that a flexible approach was necessary in an emerging market where the most appropriate size is likely to change over time or between technologies. A few submitters supported a more prescriptive approach where the regulator provides more direction to manage interest in highly sought-after areas to ensure space is used efficiently. Those that preferred a more prescriptive approach had mixed views on the merits of prescribing a maximum or minimum generation capacity for a permit.

21. Submitters generally agreed that 250skm would be a reasonable geographic size to accommodate a 1GW development. However, submitters also suggested the assessment of reasonable size should consider efficient use of space, supply chain, grid impacts, cumulative impacts resulting in wake loss, technology, and the desired energy density/yield.

CHAPTER 5: COMMERCIAL PERMITS

22. Approximately 25 submitters commented on the proposals relating to commercial permits.

Commercial permit allocation process

23. The discussion document sought feedback on the mechanisms for assessing commercial permit applications. Specifically, the document sought views on whether this process should be initiated by developers and whether the assessments should include an option to compare applications received at the same time. MBIE's suggested approach was that developers initiate the commercial assessment with a time limited period for other projects to submit applications for comparison.

24. Almost all submitters supported a developer-initiated commercial assessment. However, these submitters were divided as to whether this should be a comparative or non-comparative or threshold-based assessment.

25. Most expressed a preference for a non-comparative process. Almost all these submitters noted a comparative approach would create too much uncertainty, delay development and undermine the exclusivity provided by feasibility permits. Some submitters also commented that comparative assessments at this stage would duplicate existing regulatory processes or market functions (e.g., connection processes).

26. A minority of other submitters supported MBIE's suggestion of a comparative assessment at the commercial permit stage. These submitters said that such comparison would be necessary and justified to maintain a competitive environment and secure the best outcomes for New Zealand. A few submitters noted that it would be appropriate for the regime to include mechanisms that enable government to prioritise projects with the greatest value, given the potential for competition. Those that supported MBIE's suggested approach noted that risks associated with a comparative process could be reduced by:

    26.1. incorporating strict timeframes for contesting applications;

    26.2. providing clear guidelines around who can contest applications (to avoid frivolous applications);

    26.3. proactively communicating with the industry when developments are expected to seek commercial permits;

    26.4. incorporating a price-based criteria (e.g., an auction for a contract for difference or some other revenue stabilisation mechanism); and

    26.5. establishing a decision-making board that includes iwi and hapū representation.

Commercial permit criteria

27. The discussion document sought feedback on the following proposed permit criteria: capability of the developer; readiness of the project; iwi and hapū involvement; arrangements for decommissioning; energy system impacts; economic development potential; health and safety credentials; and national interest.

28. Most submitters that commented on the criteria supported, at least in part, the proposed criteria and avoiding duplication with other regimes. Submitters supported aligning the criteria with the feasibility permit criteria, except a few that emphasised the focus at the commercial stage should be on the readiness of the project. A few submitters, mainly developers, did not support the inclusion of energy system and economic development criteria at this stage, noting it was 'too late in the process' to be assessing these factors and may create uncertainty for investors (especially if a comparative assessment is retained). Other criteria put forward by submitters included supply chain management and degree of innovation.

29. Some submitters suggested refining the factors considered in each of the criterion to provide greater clarity. Several submitters sought greater clarity around how the

permit criteria would be assessed, with a few submitters preferring a simplified pass/fail assessment over a weighted merit-based assessment at this stage.

Ensuring permit-holders deliver on their commitments

30. The discussion document sought feedback on mechanisms to ensure permit holders deliver on the commitments of their application over the life of the projects. In the document, MBIE proposed that permit holders should provide regular reporting on the progress of their development. Failure to do so could lead to changes in the permit conditions or enforcement actions.

31. All submitters supported, at least in part, including mechanisms to monitor projects, so long as reporting obligations were not too onerous and were proportionate to the risks and commitments being monitored. Submissions referenced several effective mechanisms for monitoring compliance, including the VADE compliance framework, management plans, annual review meetings, permit conditions, performance bonds, independent auditing requirements, and an iwi-regulator review board.

Commercial permit duration

32. The discussion document proposed a 40-year duration for commercial permits, noting that this period should comfortably accommodate the expected life of the infrastructure and decommissioning without being too long.

33. Most submitters agreed with the proposed commercial permit duration of 40 years. A few submitters suggested this may need to be higher, as the typical life of offshore wind assets is expected to increase over time. As such, these submitters noted the regime should provide flexibility for extensions to repower assets as appropriate. A few submitters said the duration should, at least initially, be 35 years to align with the environmental consent durations, or 10-15 years to provide a regular period of review to ensure commitments are evolving over time and permits remain appropriate. A couple of submitters said that it would be best to avoid prescribing a maximum duration in legislation and that permit durations should instead be determined on a case-by-case basis.

34. Several submitters commented on the sequencing of commercial permits and other approvals that will need to be sought – specifically environmental consents and overseas investment consents. Submitters noted that the framing of the 'readiness of project' criteria will need to be carefully considered as there are interdependent approvals and decisions needed before construction can take place (e.g., final investment decisions, environmental consents, overseas investment consents, and securing vessels and personnel).

Approach to requests for permit extensions

35. The discussion document sought feedback on whether extensions to a permit area should be treated as a new permit application.

36. Submitters agreed, in principle, that a developer should require a new feasibility permit and commercial permit application for a geographical extension of an already-

granted permit. However, submitters held differing views on how this should be applied and whether some flexibility should be provided for minor extensions.

37. Submitters representing environmental interests, iwi and the wider energy sector recognised that geographic extensions could have significant implications on the environment and the energy system, which would warrant a full reassessment.

38. However, several submitters, particularly offshore renewable energy developers and energy industry participants and experts, noted that this process would be inefficient for minor or inconsequential extensions. A few submitters noted that there should be flexibility for regulators to allow exceptions where extensions are small or to enable more efficient operations. They proposed an alternative approach where the regulator could exercise some discretion and not consider the full criteria, or it could apply a reasonableness test to determine whether an extension should be granted without a new permit being sought.

Scope of permits

39. The discussion document sought feedback on the scope of feasibility and commercial permits and whether they should apply to research and development activities. MBIE proposed that requiring separate permits to enable research and development activities is not currently appropriate or necessary in the New Zealand context.

40. The few submitters that commented on this issue expressed mixed views:

    40.1. Some submitters agreed research and development projects should not require permits, as this could impede innovation and development. A few submitters also noted that these activities are unlikely to occur in New Zealand.

    40.2. A greater proportion of submitters supported regulating these activities but had differing views on how this could be achieved. These submitters noted that even "small" demonstration projects will still be significant undertakings and may eventually mature to a state of commercial development.

    40.3. A few submitters noted that the regime will need to make clear what distinguishes research and development activities from commercial projects.

CHAPTER 6: ECONOMICS OF THE REGIME

41. Approximately 20 submitters commented on the economics of the regime.

42. The discussion document outlined the various economic models associated with offshore renewable energy and the key trade-offs of revenue support and revenue gathering mechanisms. The discussion document sought feedback on the nature of any interdependencies, how any mechanisms could be structured and the potential risks of offering revenue support for offshore renewables without offering the equivalent to onshore renewables. MBIE did not put forward a preferred approach.

43. Submitters almost unanimously agreed that the case for revenue support mechanisms and any decision to gather revenue from the regime are interdependent. Some submitters also highlighted that this is something that

typically transitions over time, with revenue support being needed for early projects and revenue gathering becoming more of an opportunity as markets mature.

44. Submitters were divided on the issue of revenue support. Most submitters, largely from the energy industry, made the case for a form of revenue support and/or stabilisation. Some submitters focused on the types of barriers a revenue stabilisation mechanism could address, e.g., emphasising the difficulties a typical offshore wind project might experience trying to obtain multiple large, creditworthy offtake agreements. Other submitters focused on the benefits that such a scheme could drive, including lowering costs to consumers; stimulating developer interest to meet renewable energy targets; and enabling government to leverage positive outcomes (such as local supply chains).

45. On the other hand, many submitters (including incumbent gentailers and energy advocacy groups) said revenue support or stabilisation mechanisms were not necessary to enable offshore renewable energy developments. The most common arguments questioned the necessity of having offshore renewables to meet New Zealand's climate goals. Another common argument was the risk of a distortionary impact on wholesale markets or the deployment of other types of renewables. A couple of submitters also suggested that the main benefit of support mechanisms in other countries, such as supply chain development, are less relevant in a New Zealand context.

46. On specific support options, most submitters were in favour of a contract for difference scheme such as that used in the UK and Europe. Several developers highlighted that this would provide stabilisation rather than subsidy support. However, proponents of revenue support mechanisms were divided on whether these mechanisms should apply to offshore developments specifically or be made available across the market based on other criteria, such as project size.

47. Submitters were also divided on whether this is something that government should resolve. While some submitters suggested a decision should be taken as soon as possible, most argued that developers do not need a decision on revenue support to apply for feasibility permits and that a decision on this could be taken once the feasibility process has been launched.

48. Most submitters argued against any revenue flow back to government. Their view was that these additional costs would largely flow back to consumers and that such a mechanism may deter investment in an emerging market. Some submitters suggested that if a revenue flow was to be introduced this should be small, directed at local communities or invested back into the sector. A few submitters stated a fee equivalent to land access fees could be appropriate to achieve parity with onshore renewables.

49. Meanwhile, several submitters (including iwi and some ORE developers) suggested that while there should not be material revenue flow to government, an exception could be made to facilitate a flow back to iwi. Submissions from iwi reflected that the Crown has a responsibility to uphold Te Tīriti and its principles of partnership and active protection of Māori rights which includes enabling active participation throughout the life of these developments.

Recovering the costs of the regime

50. The discussion document sought feedback on the government's proposal to recover the cost of the regime through fees.

51. Submitters almost unanimously supported full cost recovery for government administration of the regime, so long as it is proportionate and moderate. A couple of submitters noted that there should be no costs involved as part of Government support for development of offshore renewables.

CHAPTER 7: MĀORI RIGHTS AND INTERESTS AND ENABLING IWI AND HAPŪ INVOLVEMENT

52. Approximately 21 submissions commented on the ways in which iwi and hapū could be involved in the regime.

53. The discussion document indicated MBIE would work in close collaboration with iwi and hapū on how the regime enables Māori involvement in the development of offshore renewable energy infrastructure. The discussion document sought general feedback on what the Government should consider in the engagement process, legislative design choices that could enable Māori involvement and which Māori groups should be engaged in the policy process.

54. Much of the feedback received on these issues focused on the legislative design choices that should be considered and the perceived risks and benefits of these options.

55. Seven detailed submissions from 15 different iwi and hapū were received, which provided feedback on the scope of their rights and interests as well as recommended policy options to meet obligations under te Tiriti o Waitangi.

56. Submissions from iwi unanimously called for their involvement over the full life of the development and regime to ensure the rights and interests of Māori are not unduly impacted in the various stages of developments. Submissions:

    56.1. Set out importance of ongoing input from mana moana to ensure developments progress appropriately, in the right locations, at the right scale and with the appropriate protections in place to manage any negative impacts.

    56.2. Noted that historically there have been "limited demonstrable positive impacts on the social, cultural, environmental and economic well-being of iwi and hapū from the exploitation of Māori natural resources which has placed iwi and hapū at a disadvantage in terms of engagement in these regulations and other alternative energy regulations as they develop."

    56.3. Emphasised the importance of being able to exercise their own mana, rangatiratanga, kawa and tikanga in their engagement with offshore renewable energy developers and the Crown.

    56.4. Noted that there will be differing views between iwi and there will need to be mechanisms in place for each iwi to determine, for themselves, what is appropriate.

57. Submitters almost unanimously supported iwi and hapū involvement, with several submitters expressing support for direct involvement in decision-making and commercial arrangements. Some options proposed by submitters, predominantly iwi, include:

    57.1. Joint decision-making boards or partnership arrangements for permit decisions, monitoring and any legislative review processes.

    57.2. A clearly defined purpose statement that requires te Tiriti o Waitangi / the Treaty of Waitangi to be upheld.

    57.3. Involving iwi in the drafting of legislation or regulations to ensure that these documents are articulated in a way that sufficiently addresses matters pertaining to te Tīriti o Waitangi.

    57.4. Allocating permit areas to iwi which can be traded with prospective developers.

    57.5. Developing guidelines for engagement with iwi and hapū - similar to the Best Practice Guidelines for Engagement with Māori developed by Te Rūnanga o Ngāti Ruanui for the petroleum industry.

    57.6. Formally recognising of the kaitiaki relationship Māori hold in legislation.

    57.7. Commercial agreements to facilitate partnerships, power purchase, environmental compensation, data sharing or services.

    57.8. Crown funding or cost-recovery through fees for resourcing costs incurred by iwi in their engagement with developers and involvement in decision-making processes, and

    57.9. Establishing technical working groups, memoranda of understanding or kaitiaki forum to enable collaboration and information sharing between affected iwi, permit holders and the Crown.

58. Submitters supported including an assessment of iwi involvement in project developments and economic opportunities for iwi in the permit criteria. One submission from iwi suggested that this assessment should consider contributions made to support iwi and hapū to fulfil their kaitiaki responsibilities, including support for restoration and enhancement work, programmes for taonga species, and cultural monitoring of the marine and coastal environment.

59. Many offshore renewable energy developers emphasised the importance of comprehensive engagement with iwi at the local level at the early stage of development. Feedback from non-iwi submitters identified ways to provide greater certainty to regulated parties and iwi in this regard. This included clearly delineating and identifying what Māori rights and interests are to avoid under-engagement or enabling inappropriate influence, and how conflicts of interest will be managed. A few submitters also noted that any process involving iwi and hapū in decision-making would need to be open and transparent, so developers are aware of how decisions are being made and what influence and weight the Crown gives to input from iwi and hapū.

60. Some submitters noted that while the initial focus on Taranaki and the Waikato is justified, iwi across New Zealand should be engaged (including South Auckland). Others noted that only impacted iwi should be engaged. A couple of submitters also raised the need to think about fisheries interests, including engaging with Te Ohu Kaimoana.

CHAPTER 8: INTERACTION WITH THE PROCESSES FOR ENVIRONMENTAL CONSENTS

61. Approximately 26 submitters commented on issues relating to the proposed regime's interaction with the environmental consents processes.

Decision making for environmental consents

62. The discussion document sought feedback on whether a single consent authority should be responsible for environmental consents under both the Resource Management Act 1991 and Exclusive Economic Zone and Continental Shelf Act 2012.

63. Submitters almost unanimously supported having a single consent authority responsible for environmental consents in both the territorial sea and exclusive economic zone (EEZ). Submitters noted that a single consent authority would ensure consistency and speed up the process, provide a clear pathway for public engagement, reduce duplication, and reduce risk for developers. Some submitters noted the existing provisions that allow for a board of inquiry to consider applications spanning both the territorial sea and EEZ.

Interaction between permits and environmental consents

64. The discussion document stated that, alongside the proposed permits, projects will be required to obtain environmental consents before construction can begin. The discussion document sought feedback on how duplication can be avoided, whether the environmental consent process adequately considers environmental effects and whether the permitting regime should consider the capability of a developer to obtain environmental consents.

65. Most submitters either agreed or partially agreed that the environmental consent processes adequately consider environmental effects. Submitters said that where any overlap between the permit process and the consent processes exists, there should be clear guidance indicating how the overlaps would be considered and addressed. A couple of environmental advocacy groups highlighted that the lack of spatial planning or whole-of-ocean approach may create some difficulties. However, submitters stated that these issues do not need to be addressed in the permitting regime and could be explored as part of changes to environmental consent processes.

66. Most submitters supported including an assessment of the applicant's capability to obtain environmental consents in the criteria for both feasibility and commercial permits. Submitters noted that assessing capability at the feasibility stage is necessary to properly understand the overall suitability of an applicant. Submitters suggested this could involve considering the applicant's ability to fund and submit an environmental impact assessment, understanding of environmental consent processes, environmental data collection to date, prior environmental performance and plans for obtaining a consent. However, some submitters commented these

factors would be difficult to assess at feasibility and would be more appropriately considered as part of the readiness of the project criterion at the commercial stage. Submitters also noted any assessment of a developer's ability to obtain resource consents should not pre-empt or bind the environmental consent processes.

Optimal sequencing of permits and environmental consents

67. The discussion document sought feedback on the optimal sequence of the permitting and environmental consent regimes and environmental consents being obtained before commercial permits.

68. Most submitters supported the proposed sequencing – feasibility permits, then environmental consents, then commercial permits. Submitters noted that this sequence would provide certainty for the project before final investment decisions were made. It would also prevent any period of the commercial permit duration being taken up with obtaining environmental consents. Those who disagreed with the proposed sequencing stated that any prescribed sequence would lead to delays overall. Some submitters suggested there may need to be some flexibility to allow for a parallel process or overlapping of the environmental consent and commercial permit processes. This flexibility would provide the best opportunity to save time in obtaining all necessary permits and consents.

One-stop shop for permitting and consenting

69. A single decision-making body for both environmental consents and permitting decisions was not proposed in the discussion document. However, a few submitters appeared to have interpreted the options discussed in this chapter as proposing a single decision-making body for consenting and permitting decisions. Comments supporting a 'one-stop shop' approach included that such an approach:

    69.1. would streamline the process and minimise costs to developers, as well as provide a clear pathway for public engagement;

    69.2. could avoid both duplication and any gaps that may occur with separate processes; and

    69.3. could lead to greater efficiency for the government, reducing the overall time taken to consider applications.

70. Opponents to a 'one-stop shop' approach expressed some caution that:

    70.1. local government and iwi involvement would be necessary;

    70.2. this option would need a pool of highly specialised decision-makers given the complexity of issues being considered; and

    70.3. the alignment of the purpose and decision-making criteria with the RMA and EEZ Act would need to be carefully considered.

The consent environment for offshore renewable energy

71. The discussion document sought feedback on the potential challenges that might impact offshore renewable energy developments and how the location of developments might impact the environmental consent processes.

72. Several submitters commented on the need for further guidance on the data that will need to be collected to obtain environmental consents and how decisions will be made. Developers also suggested that further consideration be given to the RMA and EEZ Acts, to ensure any requirements for offshore renewable energy apply equally over both jurisdictions. This included suggestions for a National Policy Statement for offshore renewable energy, or amendments to the National Policy Statement on Renewable Electricity Generation (currently being developed) to make it apply to both the territorial sea and the EEZ.

Factors influencing the optimal location of offshore renewable energy developments

73. The discussion document sought feedback on the factors that may influence decisions to pursue development in the EEZ versus the territorial sea. Previous engagement underscored project economics, landscape character, amenity value, environmental impacts and existing or future uses as key considerations.

74. Submitters generally agreed that the factors influencing where offshore renewable energy is developed will be location-specific and driven by economic considerations. Specifically, submitters noted the relationship between greater wind speeds further from shore, which provide greater economic potential for a wind farm but come with greater infrastructure costs compared to sites located closer to shore. Submitters said proximity to ports and existing transmission infrastructure and desire to minimise environmental and cultural impacts were also relevant.

CHAPTER 9: ENABLING TRANSMISSION AND OTHER INFRASTRUCTURE

75. Approximately 14 submitters commented on the issues relating to development of transmission and port infrastructure. The most substantive feedback to this chapter generally came from the energy industry, port owners and Transpower, the state-owned enterprise responsible for the national grid and operating the transmission system.

Connection infrastructure

76. The discussion document outlined international and domestic approaches to enabling transmission for renewable energy infrastructure. It sought feedback on whether developers would be best placed to build offshore connection infrastructure in New Zealand and the potential benefits of connection infrastructure being shared between multiple parties. The discussion document also invited submitters to comment on any potential barriers in the current regulatory system and how these might need to be addressed.

77. Most submitters, including Transpower and offshore renewable energy developers, supported developers being responsible for the funding and building of offshore transmission infrastructure. This was mostly because developers have the relevant experience and are therefore expected to be able to deliver infrastructure at a lower cost and/or faster pace. Some submitters also highlighted that the ability for a developer to manage its own delivery risk for such a material part of the overall project would be better for investment confidence.

78. Most submitters suggested that Transpower should then own and operate the offshore transmission, emphasising that a single, consistent asset owner is important. Offshore renewable energy developers said role sharing would provide developers with greater control over the quality, functionality, durability, and timely delivery of the assets. Transpower was supportive of the hybrid approach, provided it is involved in the design and planning of the offshore grid to ensure assets are built to the appropriate standard and the configuration of the offshore assets is efficient. Transpower noted that this approach has led to more efficient outcomes for electricity systems internationally.

79. The approach above would require a transfer of assets. Submitters were divided on how this transfer should best be managed. Some submitters, particularly offshore renewable energy developers, suggested a clear transfer process would provide greater certainty and transparency and help deliver fair outcomes for both sides. Some of these submitters suggested the regime should set out a transfer process, including factors such as performance requirements, asset valuation methodologies and cooling-off periods. In contrast, some submitters suggested that commercial negotiations between Transpower and developers could be sufficient and would enable flexibility to maintaining best practice with processes for transmission asset transfers used onshore. However, other submitters noted that the asset transfer requirements and obligations for offshore wind will likely be different to those for onshore assets.

80. Most of those that suggested a transfer model emphasised the importance of coordination and cooperation between the developer and the transmission system operator (Transpower). This was a common theme across responses, with many of submitters in favour of an alternative approach advocating for coordination. More specifically, some submitters suggested a role for Transpower in the design of the asset (even when being led by a developer).

81. Most submitters agreed that there could be benefits of joint connection infrastructure, particularly onshore. Several submitters, including Taranaki iwi and energy industry participants, noted that progressing on similar timelines in areas of high interest could result in fewer cables thereby reducing environmental impacts and costs. Several offshore renewable energy developers noted that commercial sensitivities and timing issues could be mitigated by Transpower playing a coordinating role. Transpower also supported facilitating joint connection and noted that a joint regional connection study, covering planning of onshore transmission connection design, was underway.

82. However, most submitters agreed that commercial realities, combined with the requirements of the Commerce Act, means that joint connection is currently unlikely to occur in practice.

Interconnection infrastructure

83. The discussion document acknowledged the interdependency between interconnection infrastructure development and final investment decisions for offshore renewable energy developments. Specifically, it outlined that under the current system interconnection upgrades cannot progress until final investment decisions or regulatory approvals for developing generation assets are obtained, and

final investment decisions cannot be secured until developers have certainty of a grid capacity. The discussion document sought feedback on the importance of these interdependencies given the long timeframes for interconnection upgrades. It also sought feedback on potential opportunities to front-load any planning work to support final investment decisions without exposing electricity consumers to risk.

84. Submitters almost unanimously agreed with the timeline challenge for onshore interconnection assets described in the discussion document. However, submitters were divided on whether this is an issue specific to offshore renewable energy or whether it is a sector-wide issue. Most noted that this is a sector-wide issue and therefore should not be dealt with in the offshore regime. Transpower echoed this view and noted that, in a competitive open-access regime, front loading any planning would not necessarily provide offshore wind developers a guarantee on capacity to market. Submitters suggested a range of routes to alleviate the issue, including:

    84.1. changes to transmission regulatory regimes to better facilitate investment ahead of need;

    84.2. Government being more involved in strategic planning, e.g., by setting clear, location-based targets; and

    84.3. a Renewable Energy Zone structure to help with coordination, faster investment and streamline processes for environmental consents.

85. As mentioned in the discussion document, these sector-wide points are being considered as part of the separate discussion document on Measures for Transition to an Expanded and Highly Renewable Electricity System and associated work programme. Many of our submitters also responded to that consultation. Nevertheless, some submitters commented on potential specific offshore solutions – with some suggesting that it could be reasonable and efficient to get offshore wind developers to fund early investigations to ease timeline challenges. However, others were strongly opposed to this approach, highlighting that it would be inconsistent with other technologies and may not work given it is not possible to reserve capacity in the New Zealand electricity system.

Port infrastructure

86. The discussion document acknowledged port infrastructure would need to be upgraded to support offshore renewable energy developments. It sought feedback on the nature of upgrades that might be needed, the role port owners and operators might play and any regulatory changes that might be needed to deliver these upgrades.

87. Almost all the submitters that commented on port infrastructure agreed that development of ports would be critical to delivery of offshore renewable energy projects. Some submitters emphasised the potential for wider benefits of port upgrades beyond offshore wind, for example helping to support a future hydrogen sector and/or oil and gas decommissioning. However, submitters were divided on the role of government in developing this infrastructure. Views ranged from no involvement, to coordination, to government directly funding upgrades.

CHAPTER 10: DECOMMISSIONING

88. Approximately 20 submitters commented on issues relating to decommissioning of offshore renewable energy infrastructure.

Decommissioning obligations

89. The discussion document proposed that the party who constructs and operates an offshore renewable energy infrastructure should be responsible for ensuring this infrastructure is decommissioned at the end of its useful economic life and should be responsible for meeting the costs of decommissioning activity. The discussion document sought feedback on whether developers should be required to submit a decommissioning plan, financial security and a cost estimate based on the full removal of the infrastructure. In relation to the financial security, the discussion document sought feedback on a range of design options relating to financial security, including the timing of lodgement, key assumptions to be factored into the security value, and acceptable forms of financial security.

90. Most submitters were supportive of a decommissioning plan, cost estimate and financial security being provided at the commercial permit stage. A few individual submitters proposed alternative approaches such as remediation bonds like those used for Tiwai Point; a general decommissioning fund built up via a levy; and assessing the decommissioning plan as part of the environmental consents process instead.

91. Most submitters supported that the cost estimate should be based on the assumption that infrastructure is fully removed during decommissioning. However, many submitters noted it was important that the regime provides flexibility to determine the most appropriate approach at the time, which could include partial removal.

92. Most submitters supported financial securities building up over the course of the commercial permit. Industry submitters highlighted the financial burden if the security had to be provided up front because it would reduce the amount of capital available for development. Many of these submitters suggested that financial security should start low and increase once infrastructure is in place and revenue is generated. Some industry submitters emphasised the importance of taking a proportionate and risk-based approach to financial securities that balances any risks to the government with the costs to the developer. Some submitters also acknowledged that there is a degree of risk during the construction phase that may warrant some degree of security being required at that point, despite commercial incentives to get infrastructure operational.

Timing of assessing decommissioning capability

93. The discussion document sought feedback on what should be provided by developers in relation to their decommissioning plans at the feasibility application stage.

94. Nearly all submitters agreed that neither a full decommissioning plan nor financial security should be required as part of the feasibility permit application. However, some submitters acknowledged that, for a rounded assessment to take place at

feasibility, the application should include some consideration of decommissioning. Various submitters suggested that either a high-level indicative plan should be assessed, or a capability assessment undertaken, at the feasibility permit application stage.

Ongoing monitoring

95. The discussion document sought feedback on regular and ad hoc reporting and assessment requirements to ensure the decommissioning plans, cost estimates and financial security remains suitable over the life of the development.

96. In response to the discussion document's proposals on reporting and assessment requirements relating to decommissioning, submitters generally agreed with the need for regular monitoring, but were divided on the appropriate time period between reviews. Responses ranged from annual reviews to reviews every 10 years. Some submitters said that review periods should become more regular as decommissioning approaches. Alternatively, some industry submitters suggested that reviews could be triggered by material ad hoc changes to the decommissioning plan and financial security, and that regular assessments should only take place if requested by the permit holder or the regulator.

Opportunities for re-use and repowering infrastructure

97. The discussion document sought feedback on ways in which the regulatory regime could encourage the refurbishment of infrastructure or the recycling of materials.

98. Views on recycling varied. Some submitters indicated that existing commercial incentives would be enough, while others said that the government could provide support through mechanisms such as grants, or by coordinating supporting infrastructure.

Alignment with decommissioning obligations in the environmental consents regimes

99. The discussion document sought feedback on two issues regarding the relationship between the proposed permitting regime and the existing environmental consents regimes. Firstly, whether it would be appropriate for a second decommissioning plan to be provided to the consent authority to assess the environmental impacts of decommissioning. Secondly, the proposal that the offshore renewable energy permitting regime would focus on the financial capability of the permit holder to decommission, while decommissioning plans under environmental consent legislation would focus on the environmental impacts of decommissioning.

100. Most submitters agreed that a detailed decommissioning plan focused on environmental effects of the activity should be provided to the environmental consenting authorities for approval. Submitters cited the importance of decommissioning planning reflecting both economic and environmental impacts and argued that environmental consenting authorities are best placed to assess environmental considerations. Some submitters raised the potential for duplication between the permitting and environmental consent processes and emphasised the importance of minimising overlap between decommissioning processes as much as possible. While some submitters were supportive of decommissioning planning and

assessment taking place as early as possible in the lifetime of the project, others noted that it would be more effective and accurate for these plans to be assessed closer to the start of decommissioning.

CHAPTER 11: COMPLIANCE

101. Approximately 12 submitters commented on the issues relating to offences and penalties. However, the responses to this chapter generally contained minimal detail or reasoning behind the preferred positions.

102. The discussion document sought feedback on regulatory design choices that could encourage compliance with the regime and whether a balanced approach informed by the VADE model would be best suited to achieving effective compliance outcomes.

103. Submitters generally agreed that the proposed VADE model was appropriate and emphasised the need for combination of proactive and reactive tools. Submitters noted that trust between all parties, transparency and an incremental approach to enforcement will be important. Several submitters noted the importance of a gradual move up the penalties ladder for serious breaches.

104. Some submitters expressed caution around the inclusion of permit revocation as a penalty – within this group, some suggested it should not be included at all, whereas others suggested it should be used only for serious breaches as a penalty of last resort. The concern amongst submitters appeared to be that it could significantly impact investment certainty and result in projects being abandoned. Submitters noted that in most instances the preference should be to remediate breaches.

CHAPTER 12: OTHER REGULATORY MATTERS

Decision-making within the regime

105. A total of 18 submitters commented on decision-making functions within the regime.

106. The discussion document sought feedback on the following regulatory design choices impacting how permit decisions are made:

    106.1. whether the regulator should be the decision maker with an option for some decisions to be referred to the Minister

    106.2. whether there should be an opportunity for public to input into commercial permit decisions and whether any involvement at this stage would be duplicative of public consultation requirements in the environmental consent processes

    106.3. which decisions, if any, should be subject to a right of appeal and the scope of such appeal rights - including which judicial body should have the jurisdiction to determine the appeal.

107. Most submitters agreed that permit decisions should be made by the regulator and referred to the Minister in a specific set of circumstances. Several submitters noted that the circumstances for ministerial involvement should be clear and narrowly defined to not cause undue delays and limit unwarranted political interference.

However, some submitters preferred there to be no ministerial involvement at all, arguing that it could politicise decisions.

108. 22 submissions addressed consultation during the commercial permitting process. Submitters were divided on the need for consultation at this stage. Most preferred a notification-only process as it would avoid duplication with the consultation carried out during the environmental consent process. All submitters agreed that public consultation on the developments would be better suited to the environmental consent process. However, several submitters said some consultation with affected groups (like the fishing industry and local government) would be appropriate given their involvement in the environmental consents process may not adequately provide for opportunities to comment on the range of issues considered in this regime.

109. Most of the 15 submitters that commented on the appeals process agreed that a limited right of appeal would be fair and reasonable, as similar mechanisms are standard practice in other regulatory regimes. However, some submitters said that either the judicial review process was adequate, or a more comprehensive appeal process should be provided for.

Health and safety considerations

110. 14 submitters commented on health and safety considerations within the regime. The discussion document sought feedback on regulatory mechanisms needed to manage risks to workers and infrastructure and how any requirements might inform investment decisions. It outlined four different approaches to implementing safety zones and sought feedback on the trade-offs between the options presented.

111. Most industry submitters said health and safety requirements would not influence their decision to enter the New Zealand market and indicated their familiarity with health and safety risks and obligations. Submitters suggested that the legislation could signal health and safety requirements and that this should be aligned with relevant international certification standards to the extent possible. Some submitters noted that anything prescribed in legislation would need to be reviewed to ensure it is appropriate for offshore renewable energy and updated where necessary.

112. Of the 17 submitters that commented on the case for safety zones, many agreed that there was a need for safety zones and that these zones should be variable over the life of the project (i.e., larger during construction and smaller during operation where the risks are low to reduce the impact on other marine users). While many submitters acknowledged it might be appropriate to tailor safety zones to suit a particular development's characteristics, some submitters also considered there should be a degree of certainty about the size to ensure a clear understanding of the expected impacts from a safety zone during the environmental consent process.

113. Submitters who favoured the option of the regulator providing guidance on suitable sizes for the safety zone, with the power to consider other sizes, suggested the regime could provide the ability for the regulator to allow persons to undertake certain activities within the zone. Iwi who submitted on this issue suggested that decision-making on safety zones should involve iwi/hapū representation, as safety zones may have impacts on Māori rights and interests in the marine area. Similarly,

fishing industry submitters suggested that the regulator could outline the indicative size of safety zones after engagement with affected parties. The actual size should be confirmed at the commercial permit stage or once environmental consents are granted.

Applicability of regime to technologies beyond wind farms

114. The discussion document acknowledged that the regime would be agnostic to technologies and sought feedback on any views or concerns with the application of these proposals to other offshore renewable energy technologies or energy sources.

115. Submitters were generally comfortable with the permitting process applying to all renewable energy technologies. Some submitters noted that statutory limits to permit duration could create some challenges for technologies that have longer lifespans.

116. A few submitters preferred offshore transmission infrastructure to be managed by a separate permit. Submitters noted that this approach would more closely align with the Australian regime and has the benefit of:

    116.1. allowing transmission assets to be transferred without impacting the commercial permit for the generation infrastructure;

    116.2. accommodating a longer permit duration as transmission infrastructure may have an operational life beyond 40 years;

    116.3. delineating the generation area from the transmission area as the constraints and competition for these areas will differ; and

    116.4. enabling joint connection (where multiple projects share transmission infrastructure).

Annex One: List of submitters

Submitter Name	Submitter type
Advisian Worley	Organisation; Consultant
Arup	Organisation; Consultant
Beca	Organisation; Industry
BlueFloat Elemental	Organisation; Industry - Energy - ORE developer
BusinessNZ Energy Council	Organisation; Advocacy - Energy
Clarus Group (Firstgas Group)	Organisation; Industry - Energy
Climate Justice Taranaki	Organisation; Advocacy – Environmental
Contact Energy	Organisation; Industry - Energy - Gentailer
Dave Bennett	Individual
Dunedin City Council	Organisation; Local Government
Energy Resources Aotearoa	Organisation; Advocacy - Energy
Environmental Defence Society	Organisation; Advocacy - Environmental
Forest & Bird	Organisation; Advocacy - Environmental
Genesis Energy	Organisation; Industry - Energy - Gentailer
Genevra Harker-Klimeš	Individual; ORE expert
GNS Science	Organisation; Academic / CRI
HOW Energy	Organisation; Industry - Energy
Infrastructure New Zealand	Organisation; Industry - Infrastructure
Kakariki (Elemental Group and Energy Estate)	Organisation; Advocacy - Energy
Ko Manawa Solutions	Organisation; Consultant
Major Electricity Users' Group	Organisation; Advocacy - Energy

Mercury	Organisation; Industry - Energy – Gentailer
Meridian	Organisation; Industry - Energy - Gentailer
Murihiku Regeneration	Iwi/Hapū
National Council of Women of New Zealand	Organisation; Advocacy
New Zealand Conservation Authority	Organisation; Crown Entity / SOE
New Zealand Steel	Organisation; Industry - Infrastructure
New Zealand Wind Energy Association	Organisation; Advocacy - Energy
Ngā Iwi o Taranaki & Post Settlement Governance Entities	Iwi/Hapū
Ngāti Rārua	Iwi/Hapū
NIWA	Organisation; Academic / CRI
NZ Rock Lobster Industry Council and the Pāua Industry Council	Organisation; Industry – Fisheries
Oceanex	Organisation; Industry - Energy - ORE developer
Parkwind	Organisation; Industry - Energy - ORE developer
Port Taranaki	Organisation; Industry - Infrastructure
Public Service Association	Organisation; Advocacy
Pure New Energy AG	Organisation; Industry - Energy - ORE developer
Sumitomo Corporation	Organisation; Industry - Energy - ORE developer
Taranaki Mayoral Forum	Organisation; Local Government
Taranaki Offshore Partnership	Organisation; Industry - Energy - ORE developer
Te Nehenehenui - Ngāti Maniapoto	Iwi/Hapū
Te Rūnanga o Ngāi Tahu	Iwi/Hapū
Te Rūnanga o Ngāti Mutunga	Iwi/Hapū
Te Waka - Waikato Economic Development	Organisation; Regional development org
Te Whakakitenga o Waikato Incorporated (Waikato Tainui)	Iwi/Hapū

Transpower	Organisation; Crown Entity / SOE
Venture Taranaki	Organisation; Regional development org
Waikato Regional Council	Organisation; Local Government
West Coast Regional Council	Organisation; Local Government
Will Rayment	Individual; Academic / CRI
Wind Quarry Zealandia	Organisation; Industry - Energy - ORE developer