MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

COVERSHEET

Minister	Hon Simeon Brown	**Portfolio**	Energy
Title of Cabinet paper	Offshore Renewable Energy Regulatory Regime: Policy Decisions	**Date to be published**	26 August 2024

List of documents that have been proactively released		
Date	**Title**	**Author**
June 2024	Offshore Renewable Energy Regulatory Regime: Policy Decisions	Office of the Minister for Energy
4 June 2024	Offshore renewable energy regulatory regime: policy decisions ECO-24-MIN-0041 Minute	Cabinet Office

Information redacted **YES**

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Some information has been withheld for the reasons of confidentiality and confidential advice to the Government.

In Confidence

Office of the Minister for Energy

Cabinet Business Committee

Offshore renewable energy regulatory regime policy decisions

Proposal

1 This paper seeks:

1.1 agreement to proposals for regulating offshore renewable energy developments; and

1.2 authority to issue drafting instructions to the Parliamentary Counsel Office to draft primary and secondary legislation for the offshore renewable energy regime.

Relation to government priorities

2 Electrify NZ outlines the Government's plan to drive a surge of investment in renewable electricity generation to double the supply of affordable, clean energy and enable New Zealand to become a low emissions economy. One of the key components is to 'fast-track' rules to unleash investment in offshore renewable energy, particularly offshore wind to deliver clean energy at scale. In May 2024, Cabinet considered a work programme to deliver Electrify NZ [ECO-24-MIN-0065].

Executive Summary

3 The Cabinet Economic Policy Committee (ECO) considered a paper on 1 May 2024 setting out my intentions for regulating offshore renewable energy developments [ECO-24-MIN-0062]. I committed to returning to Cabinet after Budget to seek approval to the proposals following the Budget moratorium.

4 The analysis contained in the paper considered by ECO has been repeated in this paper for completeness. There have been no substantive changes to the design of the regime apart from the introduction of a form of trailing liability or an ongoing requirement to maintain financial security that the Minister could remove when approving the transfer of a permit.

5 Offshore renewable energy generation could contribute significantly to *Electrify NZ*. I am proposing to establish dedicated legislation to regulate offshore renewable energy. The legislation will establish a permitting regime that builds on existing regulatory systems, including the environmental consenting regimes.

6 The legislation will be designed to (a) give developers greater certainty to invest in offshore renewable energy projects, and (b) enable the selection of

developments that best meet New Zealand's national interests. It will introduce two dedicated offshore renewable energy permits:

6.1 A **feasibility permit**, to provide greater investment certainty through providing an exclusive right to apply for a commercial permit, and the ability to obtain environmental consents, in a specified area. Feasibility permits will be selected in rounds following a comparative assessment.

6.2 A **commercial permit**, which enables the building and operating offshore renewable energy infrastructure.

7 Offshore renewable energy developers will also be required to obtain environmental and other relevant consents, the timing of which is being accelerated under *Electrify NZ*.

8 The allocation process strikes a balance between enabling development at pace and mitigating risks to the Government and New Zealanders. The proposed regime will be fully cost recovered (i.e. funded by fees paid by developers).

9 I seek Cabinet's approval to issue instructions to Parliamentary Counsel Office to draft primary legislation and delegated authority to take further decisions, in line with the policy decisions agreed by Cabinet. I intend to return to Cabinet by the end of 2024 to seek approval to introduce the Bill.

10 Following Cabinet decisions, I propose to issue a media release announcing the design of the regulatory regime. As agreed by ECO, MBIE has now communicated the indicative timeline for the regime to the sector. I plan to signal at the same time as announcing the regime that the Government is not considering any price support mechanisms. Offshore renewable energy is expected to compete on the same commercial basis as other electricity generation.

Background

Offshore renewable energy could help electrify New Zealand

11 Offshore renewable energy is one of this country's untapped energy sources and has the potential to help us grow an economy where transport and industry are powered by clean energy and to reach net-zero greenhouse gas emissions by 2050.

12 Several international developers are exploring offshore wind projects off the coasts of Taranaki, South Auckland/Waikato and potentially the South Island, which offer a limited number of sites with world-leading wind quality and shallow water depths.[1] There is also significant potential for floating wind sites, but this is newer technology and more expensive.

[1] Based on developer interest, there is an estimated 7GW of fixed-bottom offshore wind potential in New Zealand. This compares around 10GW of renewable electricity generation in New Zealand today.

The regulatory regime has been developed at pace

13 The first Emissions Reduction Plan committed to delivering a regulatory regime for offshore renewable energy. Officials have worked with industry and stakeholders to develop the regime. Two rounds of public consultation in late 2022 and 2023 showed broad support for it. In June 2023 the Cabinet Economic Development committee agreed in principle to some key features of the proposed regime [DEV-23-MIN-0126].

14 In developing proposals, officials have sought to "borrow the best" from more mature regimes in the United Kingdom, Netherlands, Denmark and Australia and adapt it to New Zealand's settings. A key driver of timelines is to enable developers to align activities and supply chains with Australia as much as possible. Australia's Offshore Electricity Infrastructure Act 2021 came into force in June 2022. Australia has recently made preliminary decisions on the first feasibility permit round in Gippsland, Victoria, which ran from January–April 2023. A feasibility round for Hunter, New South Wales, has recently closed and applications are being assessed.

The role of offshore wind in our future energy mix is unclear

15 A regulatory regime is a first step to enabling offshore renewable energy developments. It is unclear, however, if or when offshore wind will become an economic option for New Zealand and therefore when developments will happen. The lifetime cost of offshore wind generation is currently significantly higher than onshore wind or solar. The economics of offshore wind will depend on:

15.1 New Zealand's future electricity demand, including the role of hydrogen (given the significant volume of new renewable electricity that would be required to produce 'green' hydrogen); and

15.2 the potential for onshore renewable energy options to meet that demand.

Purpose and scope of the regime

I recommend developing new regulatory settings for offshore renewable energy to provide greater certainty and enable the selection of developments

16 Offshore renewable energy developments are currently subject to environmental consents under the Resource Management Act 1991 (RMA) and the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act). However, there is a gap in that there is no mechanism to provide developers with the certainty they need to invest in feasibility studies, before they reach the consenting stage. There is also no ability to select the sites that will deliver the highest benefit to New Zealand.

17 I recommend establishing a dedicated regulatory regime for offshore renewable energy to address gaps and enable investment. The purpose of the regime will therefore be to:

17.1 **give developers greater certainty to invest in developing projects**. Offshore wind feasibility studies[2] alone can cost hundreds of millions of dollars before reaching the consenting stage. Developers have identified that the minimum level of certainty required to enable investment in feasibility studies is ‘site exclusivity’, i.e. the sole right to develop offshore renewable energy in a specific area.

17.2 **enable the selection of developments that best meet New Zealand’s national interests.** There is expected to be competition for limited sites with optimum conditions in New Zealand (for fixed-bottom wind). Under the RMA and EEZ Act, consents are allocated on a ‘first-come, first-served' basis and focus primarily on environmental outcomes. The proposed regime aims to maximise potential outcomes and minimise risks for New Zealand, as well as avoid land-banking behaviour by offshore renewable energy developers.

18 The regime will also help to manage a range of risks to the government and public, by including provisions on:

18.1 decommissioning offshore renewable energy infrastructure at the end of its life, to avoid risks that the government will be left to pay decommissioning costs,

18.2 responsibility for building, operating and maintaining transmission infrastructure, and

18.3 safety zones, to manage risks from multiple activities in an area.

The regime will cover all types of offshore renewable energy infrastructure

19 The proposed regime will cover all types of commercial offshore renewable energy infrastructure (e.g. wind, solar, wave or tidal), including offshore transmission infrastructure, up to the 200 nautical mile limit from the coastline (i.e. up to and including the exclusive economic zone).[3]

20 **Appendix Two** provides an overview of the proposed regime.

[2] Feasibility studies for offshore renewable energy developments generally comprise of engineering studies, metocean assessments, seabed surveys, and environmental studies.
[3] Small-scale demonstration or research and development projects will be exempt from the regime as they pose a lower risk to government and do not have the same needs for investment certainty as larger projects. This includes small scale offshore energy generation for other uses (e.g. electricity for fish processing).

Design of the permitting regime

The regime will require developers to obtain two permits

21 The regime will require prospective developers of offshore renewable energy infrastructure to obtain two permits:

21.1 **a feasibility permit**, which will provide an exclusive right to apply for a commercial permit in the specified area (and to apply for relevant environmental consents). In this way, the feasibility permit gives the holder certainty that no other offshore renewable energy developers will be approved to develop the preferred site while they undertake feasibility activities.

21.2 **a commercial permit**, which must be obtained before construction begins, will provide a final check (complementing marine or resource consent assessments) to ensure projects meet the required standard and risks are managed. This step is important as there will be significant unknowns at feasibility permit stage, which is up to seven years earlier. However, the aim is to give as much certainty as possible at feasibility stage, and to only cover checks that are not covered by other regimes. The commercial permit will also provide a mechanism for imposing, monitoring and enforcing, key obligations over the operational life of the development.

22 Details of the operation of each process are set out in the sections below.

Developers will also be required to obtain relevant environmental consents

23 Before constructing and operating offshore renewable energy infrastructure, developers will also require:

23.1 resource consents under the RMA or its successor (e.g. for transmission cables running through the territorial sea and onshore infrastructure);

23.2 marine consents under the EEZ Act for infrastructure in the exclusive economic zone (e.g. turbines); and

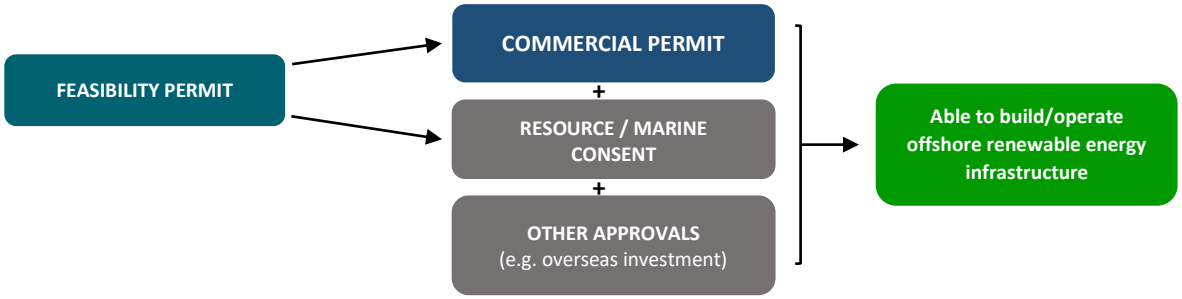
23.3 other relevant permits, e.g. under the Overseas Investment Act 2005 and Maritime Transport Act 1994.

24 Under *Electrify NZ* the Government committed to requiring decisions on resource consents for offshore wind generation within two years of an application. *Electrify NZ* also pledged to require consents for new transmission lines to be issued within one year and to eliminate consents for upgrades to existing transmission lines, within limits. These consenting matters are being implemented through the *Electrify NZ* work programme, including through fast-track consenting.

25 Work on developing a national direction for offshore wind and infrastructure will progress in parallel with the development and delivery of the proposed permitting regime.

26 The relationship between permits and consents is set out in Figure 1 below.

Figure 1: Relationship between permits and consents



Only feasibility permit-holders will be able to obtain or retain environmental consents for offshore renewable energy infrastructure, to manage the risk of land banking

27 Most developers have signalled support for the regime and their intention to participate in it before submitting any environmental consents. There is the potential, however, for consenting processes to be used to 'land bank' prime sites or impede other developments. To manage this risk, I recommend that developers be required to hold a feasibility permit before applying for resource and/or marine consents related to the construction and operation of offshore renewable energy infrastructure, including through the fast-track approvals process.

28 To further manage the risk of land banking, I recommend applications for resource or marine consents 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). Any open consent applications could continue to be considered[4], but could only be granted if the applicant obtains a feasibility permit. This would require consequential amendments to the RMA, EEZ Act, and Fast-track Approvals Bill.

29 This provision is not legally retrospective, but it may be perceived as changing the rules for anyone who has lodged a consent application before the legislation is in force. (There is currently one application for a wind farm in the Territorial Sea off Taranaki, Confidentiality

30 I consider the proposed limitations to be justified to manage the risk of land banking. Perception risks can be mitigated through signalling the Government's intentions early and communicating the value of creating a

[4] Except through the fast-track approvals process, as this is excluded under Section 18(l) of the Fast-track Approvals Bill.

level playing field for developers to ensure projects deliver the best outcomes for New Zealanders.

I am recommending a developer-led approach, at least initially

31 I am recommending a **developer-led approach**, where developers will identify and apply for sites. This approach is to enable the feasibility permit process to begin as soon as possible. During consultation, developers preferred this approach.

32 An alternative approach would be for the government to identify sites for offshore renewable energy development (which could be full marine spatial planning, or a 'designated area' approach like Australia). The trade-off is that it would take substantial investment by government to identify the best use of different areas of the marine environment, which would delay the opening of permitting rounds. The proposed regulatory regime will provide flexibility for the government to select sites if appropriate in future.

The regime will not resolve overlaps with other users in the marine environment

33 Under the developer-led approach, the proposed permits would not prevent other users (e.g. mining, aquaculture and fisheries) from seeking an environmental consent in the same area. This means other users could gain a consent, including through the fast-track approvals process, which prevents an offshore renewable energy project from going ahead (i.e. where competing uses cannot co-exist).

34 The areas of interest for offshore wind developers are highly contested, particularly in the South Taranaki Bight. For example, Trans-Tasman Resources' application for a resource consent for seabed mining in Taranaki overlaps with the area developers have identified as the zone with the highest-potential for bottom-fixed wind in New Zealand.

35 Given some of these competing uses are or will be regulated by the Crown, there may be an opportunity to resolve overlaps through a level of strategic planning in the marine environment. My officials intend to explore these opportunities further with other agencies.

Decision-making

The Minister for Energy will be responsible for determining permit decisions

36 I recommend that decisions to grant, vary or revoke permits are made by the Minister for Energy, but can be delegated to the regulator. This includes assessing applications, prescribing conditions, duration of a permit and the area to which it applies. In practice, most decisions are expected to be made by the regulator given their technical nature, but Ministerial oversight is warranted where decisions involve potentially significant policy or strategic considerations, or significant trade-offs among competing applications at the feasibility stage. This approach aligns with the regime under the Crown Minerals Act 1991 (CMA).

Feasibility permits

37 I recommend that feasibility permits will be **allocated in rounds** initiated by the Minister for Energy. Rounds will be open for a defined period. I recommend that the regime allows the Minister to limit rounds by generation capacity, spatial area or technology type if appropriate. Allocating permits in rounds will support competition and a merit-based selection of developments.

Feasibility permits will be assessed on a comparative basis to select the projects that will deliver the most benefits for New Zealand

38 There is expected to be competition for optimal sites for offshore wind, e.g. several developers have announced they are exploring projects in an overlapping area in South Taranaki. Legislation will set out the high-level factors the decision-maker will need to consider when comparing applications.

39 Given the regime's focus on supporting *Electrify NZ*, the assessment will give priority to projects that are most likely to be delivered successfully, and at a pace and scale to deliver the greatest benefits to New Zealand. The primary assessment will therefore focus on the energy system benefits of the project and the applicant's technical and financial capability.

40 The regime will also enable the decision-maker to consider wider benefits and risks, i.e.:

40.1 wider economic benefits (e.g. jobs opportunities, use of local supply chains, community and regional investment);

40.2 ability to successfully decommission projects;

40.3 compliance record (e.g. no history of major health and safety or environmental breaches by the applicant);

40.4 management of existing rights, interests or limitations (i.e. so a project is not selected where it's clear it could not go ahead, e.g. because of other permitted activities or a marine reserve in the area);

40.5 iwi and hapū engagement (i.e. checking engagement with relevant groups has been sufficient);

40.6 national security or public order risks (i.e. the ability for the Minister for Energy to decline an application where there are significant concerns).

Proposed feasibility permit considerations (comparative assessment)

Primary considerations
- Energy system benefits
- Technical and financial capability

Additional considerations
- Wider economic benefits
- Decommissioning arrangements
- Compliance record
- Existing rights, interests and limitations
- Iwi and hapū engagement
- National security or public order risks

41 If there is only one application in a round, the assessment factors will be used to satisfy the decision-maker the project is viable and risks are appropriately

managed. Where proposed permit areas overlap, the regulator may invite applicants to nominate another area.[5]

42 The details of the factors to be assessed, and relative weighting of factors, will be set out in secondary legislation and guidance. I am seeking delegated authority to make these detailed decisions. Other key features of the feasibility permit process are:

42.1 Feasibility permits will each cover a **single contiguous area**. The maximum area will not be prescribed in legislation, but the regulator could issue guidance on this, e.g. to reflect the capacity and needs of the electricity system. I expect that initially the appropriate maximum area would be around 250km^2, which equates to around a 1GW wind farm. Applicants could not apply for multiple permits in the same geographical area in the same round, to encourage competition and market participation.

42.2 Feasibility permits will have a **duration of seven years** (with the ability for the Minister to approve an extension in limited circumstances).

42.3 In exchange for exclusivity in a developer-led regime, feasibility permit holders will be required to **disclose the feasibility data acquired** when the permit expires, or a commercial permit is awarded. This would only apply to non-commercially sensitive information (such as environmental surveys and baseline studies). The information will be shared with the regulator for the purpose of informing the government's decisions for future developments.

42.4 **'Use it or lose it' provisions** will enable the Minister to revoke the permit if the holder does not begin feasibility activities within 12 months or meet milestones without reasonable justification (e.g. supply chain constraints).[6] Requirements for regular progress reporting will ensure the regulator has visibility of progress. The seven-year expiration and 'use it or lose it' provisions are supported by industry.

42.5 **Public consultation** will be carried out by the regulator on the proposed developments ahead of granting feasibility permits to ensure impacts on other users and rights holders are understood and any conflicts are surfaced.

[5] Cabinet previously agreed in principle that where feasibility permit applications overlap, applicants would be given the opportunity to resolve the overlap themselves. Following further analysis and consultation, this is not considered appropriate due to the risks of anti-competitive behaviour.
[6] If a feasibility permit is revoked, surrendered or expires before a commercial permit is granted, the permitted area will be released and could be made available to other developers.

Commercial permits

Commercial permits will give assurance that a project is ready to progress to construction

43 A commercial permit can be sought up to seven years following the award of a feasibility permit.

44 Commercial permit applications will be **assessed once the developer is ready** (i.e. not as part of a comparative round like at feasibility).

45 The assessment will consider a subset of the feasibility permit considerations and is focused on checking the development is ready to proceed to construction and risks are managed. If a developer does not initially meet the requirements at the commercial permit stage, the regulator will provide them opportunity to remedy this.

Proposed commercial permit assessment considerations

- Technical and financial readiness
- Decommissioning arrangements
- Iwi engagement
- National security and public order risks

46 I recommend that:

46.1 feasibility permit holders can **apply for commercial permits whenever** they are ready to do so (in contrast to the government-initiated rounds proposed for feasibility permits);

46.2 there will be **no public consultation** on the commercial permit applications, given most issues warranting public input will be resolved at the feasibility stage or through the environmental consent processes;

46.3 commercial permits will be allocated for an **initial period of 40 years,** but the duration may be extended by up to a further 40 years with the approval of the regulator, if appropriate to accommodate the full operational life of an asset.[7]

Permit variations

47 I recommend variations to permits over the life of the project may be approved where appropriate (both feasibility and commercial permits). Such variations include minor extensions to permit area, extensions to permit duration, transfers of permits to new permit holders, change of control of a permit participant (more than 25%), and changes to permit conditions or project plans. Variations will require new permits where they might adversely affect other developments, e.g. significant expansions to the permit area.

[7] While the average life of wind turbines is currently 30–35 years, this is increasing and is likely to vary for different technologies.

Revenue-gathering and price support

48 I do not recommend including a revenue-gathering mechanism, such as a royalty scheme. This is because:

48.1 royalties would likely significantly deter investment, as the economics are already expected to be challenging;[8]

48.2 neither the energy source nor the marine area is owned by the Crown, which is the common justification for charging royalties in comparable regimes (e.g. crown minerals);

48.3 additional costs would flow through to consumers in electricity prices;

48.4 it aligns with the Australian regime, which does not include royalties.

49 However, I intend 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. Any such mechanism would sit outside the offshore renewable energy regulatory regime and would need to align with our trade obligations.

I intend to signal clearly that the Government is not intending to offer price support

50 Internationally, most offshore wind projects have been supported by some form of government-backed price support mechanism, e.g. contracts for difference to provide certainty over the future electricity price, which enables access to the significant project finance required at a cheaper rate.

51 Developers are seeking signals from the Government if such support will be available in New Zealand. Such a mechanism would be a material departure from the market-based electricity model in New Zealand. I intend to signal clearly that the Government expects offshore renewable energy projects to compete on the same commercial basis as other electricity generation. The Government's focus is on enabling the market to deliver by creating an enabling regulatory environment.

Treaty settlements

52 In June 2023, Cabinet invited the Minister of Energy and Resources to report back on specific proposals for iwi and hapū participation [DEV-23-MIN-0126].

53 The Government has indicated it will work constructively with Māori in respect of the offshore renewable energy regime. Māori have close interests in offshore renewable energy developments and the marine environment. Some iwi have indicated they see opportunities for investment in offshore developments, as well as jobs and regional economic benefits.

[8] Costs of developing offshore renewable energy infrastructure are currently double that of onshore renewables and it is unclear when or if cost parity will occur.

54 To ensure that rights stemming from Treaty settlements are appropriately managed, I recommend the regime includes the following provisions:

54.1 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[9] on the proposed development/permit application before applying.

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

54.3 The Minister will be required to engage with relevant iwi on the impacts of applications on relevant rights stemming from Treaty settlements.

55 I also recommend 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 and the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.

56 Officials have had close engagement with relevant iwi on the offshore renewable regime. I expect officials will continue to work with iwi on the specific implementation details as legislation is developed.

57 The Marine and Coastal Area (Takutai Moana) Act provides recognition of customary rights within 12 nautical miles in the context of the RMA, including processes for claiming and recognising these rights, and requirements on resource consent applicants to consult with rights holders. The offshore renewable energy regime will still require permit holders to seek the appropriate environmental consents under existing legislative requirements.

58 Officials will undertake further work before legislation is introduced to the House to ensure the two regimes work together appropriately. I also note that the National – New Zealand First Coalition Agreement commits to amending section 58 of the Marine and Coastal Area (Takutai Moana) Act to make clear Parliament's original intent in light of the judgment of the Court of Appeal in *Whakatohea Kotahitanga Waka (Edwards) & Ors v Te Kahui and Whakatohea Maori Trust Board & Ors* [2023] NZCA 504.

Appeal rights

59 I recommend that all key permit decisions could be appealed, except for the decision of whether to grant a feasibility permit, in line with the Crown Minerals tender process. Any right of appeal under the regime should be limited to points of law and only available to the person who has applied for or holds the permit to which the contested decision relates.

[9] Relevant iwi will include the relevant post-treaty settlement governance entity for the geographic region in which the offshore renewable energy development is proposed.

60 Feasibility permit decisions will be excluded because of the comparative nature of the process. If a person whose application overlapped with a successful applicant appealed the decline of their application, this would create uncertainty for the permit holder and could significantly delay their feasibility activities. Resource and marine consenting processes will provide an opportunity for any affected party to submit on and subsequently appeal consent decisions, and any decision will be able to be judicially reviewed.

Transmission infrastructure

I recommend a hybrid model for the building, ownership and operation of offshore transmissions infrastructure

61 New transmission infrastructure will be needed both offshore and onshore if offshore wind projects connect to the national grid.[10] Officials engaged with Transpower and developers on options for building, ownership and operation of offshore transmission infrastructure. Based on this, I recommend a hybrid model that leverages their respective strengths:

61.1 **Commercial permit-holders will generally be responsible for planning, building and funding new offshore transmission infrastructure.** Developers have the technical expertise for design and construction of offshore infrastructure. This model gives developers greater control over delivery timeframes, quality and costs, improving investment certainty. Developers may choose to contract with Transpower to plan and build offshore transmission, noting it must connect with the onshore transmission system operated by Transpower.

61.2 **Transpower will become responsible for owning, operating and decommissioning offshore transmission infrastructure.** As the transmission system operator for New Zealand, Transpower is well-placed to carry out this function, particularly where the same transmission infrastructure is shared by two or more offshore generation projects.

62 The details of how offshore transmission infrastructure will be regulated, including any mechanisms necessary to ensure investments are appropriately sized and to facilitate transfers of ownership, requires further policy development. This will be carried out by the Ministry of Business, Innovation and Employment (MBIE) in consultation with the Commerce Commission, Electricity Authority and Transpower.

63 Development of onshore transmission infrastructure (e.g. network investment planning, capacity allocation and cost recovery) is already highly regulated under the Commerce Act 1986 and the Electricity Industry Act 2010. I do not

[10] In addition to feeding into the grid, developers are exploring options for direct connections to industrial users, and power-to-X (e.g. where electricity is used to produce hydrogen, synthetic natural gas, liquid fuels, or chemicals).

propose to make any changes to the broader transmission regulatory system through this regime.

Decommissioning

The regime will include safeguards to ensure decommissioning occurs at developers' expense

64 Decommissioning of offshore renewable energy infrastructure presents a significant financial risk to the Crown if assets are abandoned after their operational life. It is standard practice internationally for offshore renewable energy regimes to require permit holders to decommission and to provide financial security to cover that obligation. In 2021, New Zealand adopted similar mechanisms in the CMA.

65 I recommend that permit holders will have a legal obligation to decommission infrastructure and to obtain and maintain one or more financial securities to cover this obligation. Commercial permit applicants will need to provide a decommissioning plan; a cost estimate for decommissioning, based on the cost of fully removing infrastructure; and a proposal on the financial securities.

66 Financial securities will be required to be in place during construction, before being released (or partially released) to the permit holder at the point of commercial operation and then building up again over the asset's life. The regulator will regularly monitor and assess the decommissioning plan and the financial securities. The Minister for Energy will determine the kind and amount of financial securities required, which will reflect the risk profile of the developer, and may adjust these requirements over time if required.

67 If a commercial permit is transferred to a new party, the transferee will be required to put in place adequate financial securities for decommissioning and the transfer will need the approval of the Minister.

68 In addition, I recommend that permit holders will be required to provide the Environmental Protection Authority (EPA) with a decommissioning plan prior to submitting a marine consent for decommissioning. This will require amendments to the EEZ Act.

69 Further detail on decommissioning requirements will be set out in secondary legislation.

The regime will include a form of trailing liability that the Minister could remove when approving the transfer of a permit

70 I recommend permit holders are by default subject to trailing liability or to ongoing requirements to maintain financial security if they transfer permits to new permit holders. The Minister will have discretion to decide whether to maintain or remove these requirements on a case-by-case basis, when approving a transfer. This approach is in line with both the Australian and the

UK regimes.[11] While the proposed New Zealand regime already includes robust financial security and transfer requirements (described at paragraphs 66–7), I consider the inclusion of a default trailing liability or financial security requirement provides an option to further mitigate any risk to the Crown if a financial security falls short. I seek authorisation to decide the details of how this will be implemented.

71 While the CMA applies trailing liability to any petroleum permit transfer, it also provides more flexibility on the kind and amount of financial security a permit holder must provide. The proposed provisions for offshore renewable energy allow less flexibility on the kind and amount of financial security a permit holder must provide, warranting a more flexible approach to trailing liability.

Safety zones

Safety zones around infrastructure will protect people and assets

72 Some restrictions are required to protect offshore renewable energy infrastructure from intentional or accidental harm (e.g. a collision between vessels and infrastructure) and ensure public and navigational safety. Safety zones preventing unauthorised vessels from entering a particular area are commonly used around offshore renewable energy infrastructure to manage these risks. Monitoring safety zones in the territorial sea and exclusive economic zone will involve a combination of regulators.

73 I recommend that the regime:

73.1 provides for safety zones of up to 500 metres around offshore infrastructure during key risk periods (e.g. construction), in accordance with New Zealand's right as a coastal state under the United Nations Convention on the Law of the Sea; and

73.2 empowers the regulator to vary these zones to reflect the varying risk-profile over the life of the developments (e.g. 50 meters during normal operations).

Compliance and enforcement

Permit conditions will be a key regulatory tool

74 The regulator will be able to enforce conditions on feasibility and commercial permits. The conditions will be in addition to legal requirements applying to all permits and largely aligned with the CMA. Conditions will include, but not be limited to:

74.1 adhering to the project design or work programme;

[11] Australia requires a permit holder that transfers out of a licence to maintain financial security unless/until the Minister releases it from this obligation; in the UK the previous permit holder remains liable for decommissioning unless/until the Minister agrees to remove liability.

74.2 paying necessary fees on time;

74.3 providing reports or any information requested by the regulator, and

74.4 disclosing feasibility data acquired during project development.

The regulator will have a standard set of powers

75 The regulator, or its delegated representative, will have a standard set of powers and functions, largely aligned with those in the CMA, including the ability to:

75.1 monitor and request information from permit holders;

75.2 check compliance by authorising officers to conduct inspections of project sites;

75.3 obtain a search warrant and conduct investigations into confirmed or alleged non-compliance;

75.4 conduct inspections of offshore renewable energy project sites and investigations into confirmed or alleged non-compliance;

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

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

76 While all permit applications and decisions will be publicly notified, consolidating some of this information in a bespoke register will help build a more transparent and accessible regime, and will provide useful information to future applicants. The specific processes underpinning the disclosure requirements, and implementation of this register, will be prescribed in regulations.

Enforcement tools will be aligned with the CMA and Australian offshore renewable energy regime

77 The enforcement approach I am recommending is closely aligned with the CMA and the Australian regime, with the exception that the offshore renewable energy regime will not include an infringement offence scheme and may provide higher penalties for certain offences. Given the financial capability of the regime's likely permit holders, more significant fines and/or pecuniary penalties will be necessary in certain instances to ensure penalties effectively deter future non-compliance.

78 I recommend the regime includes a combination of criminal offences and penalties including civil pecuniary penalties, aligned with the CMA. It will

include penalties that are proportionate to the consequences of non-compliance (acknowledging that these developments are expected to be multi-billion dollar projects). The regime will not duplicate the existing provisions of environmental and health and safety legislation that will apply to offshore renewable energy projects.

79 I am seeking delegated authority for the Minister for Energy to make further decisions on the details of the penalties and offences.

80 I also seek Cabinet's authorisation for the Minister for Energy to make further decisions on whether permit revocation is warranted as an enforcement action beyond 'use it or lose it' – i.e. once the commercial permit stage has been reached.

The most significant offences relate to failures to decommission

81 The regime will closely follow the CMA in terms of offences for decommissioning infrastructure. The maximum penalty for the most egregious offence in the offshore renewable energy regime, 'knowingly' failing to decommission, aligns with the equivalent offence and penalty in the CMA, being a fine of up to $1 million and/or a term of imprisonment up to two years for an individual. For a body corporate, the criminal sanction will be a fine the greater of either $10 million or up to 3 times the costs of decommissioning. I also propose (again, in line with the CMA) that directors can be held personally liable for knowingly failing to decommission, if they were a director at the time the offence took place. Defences will be available for directors in this instance, where a director took all reasonable steps to ensure the permit holder fulfilled its decommissioning obligations.

Implementation

82 If Cabinet agrees with the recommendations in this paper, MBIE officials will work closely with the Parliamentary Counsel Office to prepare the legislation necessary to give effect to the proposals. MBIE will be responsible for the implementation and the administration of the legislation.

MBIE will be the regulator

83 I recommend the Chief Executive of MBIE is the regulator. This will enable the regime to be implemented quickly with minimal financial implications, given alignment with MBIE's existing functions in administering the CMA.

84 I recommend empowering the regulator with sufficient powers and a range of proactive and reactive enforcement tools to monitor and enforce compliance with the requirements of the offshore renewable energy regulatory framework.

85 The regime will allow for information sharing between MBIE and key agencies with a role in administering, monitoring, or enforcing the regime and related regulatory systems, where that information:

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

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

I seek authority to approve further detail of the regime

86 Further policy details will need to be decided during the development of the legislation. I seek Cabinet agreement to delegate authority to the Minister for Energy to make detailed decisions in line with the proposals set out here, so long as they are not contrary to the objectives and scope of the regime.

The regime could be in place by the end of 2025

87 I am proposing to deliver this regime by the end of 2025 to enable developers to align activities and supply chains with Trans-Tasman developments as much as possible. This requires the prioritisation of the drafting of this Bill and in the House.

88 Alongside primary legislation, secondary legislation that sets out the detail of administrative processes will need to be developed. MBIE will lead the development of the necessary secondary legislation. Some of this is intended to be in place shortly after the Bill is passed, to enable the first feasibility round to open.

89 I intend to introduce the Bill in late 2024. This would enable the first feasibility permit round to be launched in late 2025, per the milestones in the table below. To enable these timelines, MBIE has prepared drafting instructions based on the proposals in this paper to enable PCO to begin drafting the Bill immediately following Cabinet decisions. If there are significant changes to the policy proposals, timelines will need to be revised.

Milestone/Activity	**Timeframe**
Cabinet decisions on regime	Early June 2024
MBIE prepares drafting instructions	By early June 2024
Drafting of Bill (4.5 months)	Mid-June–October 2024
Legislation Cabinet paper – drafting, consultation, lodgement	November 2024
Bill introduced and first reading	December 2024
Select Committee (six months)	January–June 2025
2nd reading, Committee of the whole House, 3rd reading, Royal assent, Act	Mid-2025

commences, and regulator established (regulations made shortly after Bill passes)	
Secondary legislation in force and permit application guidance issued	After Bill passes*
First feasibility round initiated, and permit application guidance published	Late 2025
First feasibility permits granted	2026

**Secondary legislation will be prepared alongside the Bill to enable implementation as soon as possible*

Cost-of-living Implications

90 There are no immediate or direct cost-of-living implications arising from the proposals in this paper. Enabling offshore renewable energy provides another option for our future energy mix. Greater choices in the market may enable lower-cost electricity for consumers.

Financial Implications

91 There will be a cost associated with implementation of and ongoing management of the proposed regulatory regime. I recommend that:

91.1 these costs will be fully cost recovered through application fees and annual fees paid by permit holders and applicants;

91.2 Confidential advice to Government

91.3 Confidential advice to Government

92 Advice on the cost recovery approach and proposed fees will be completed following further policy development and design. I consider that the level of fees should be specified in regulations, with the ability to cost recover being set out in legislation.

93 Confidential advice to Government

94 Confidential advice to Government

95 Confidential advice to Government

Legislative Implications

96 New primary and secondary legislation is needed to implement the proposals. The proposed regime will be given effect through the Offshore Renewable Energy Bill, consequential amendments to the RMA and EEZ Act and supporting secondary legislation. The Bill is proposed to be a Confidential advice to Government

Impact Analysis

Regulatory Impact Statement

97 Cabinet's impact analysis requirements will apply to the proposals in this Cabinet paper. MBIE's Regulatory Impact Analysis Review Panel has reviewed the attached Regulatory Impact Statement "Offshore Renewable Energy Regime" produced by MBIE.

98 The Panel considers that it partially meets the quality assurance criteria. It stated: The Panel was satisfied with the problem definition and the consultation process. To fully meet quality assurance criteria, it would be important to:

98.1 have a stronger evidence base on the costs and benefits of implementing the options, which we understand may not be possible on the current evidence base; and

98.2 better articulation of the objectives and criteria, and the trade-offs between options.

Climate Implications of Policy Assessment

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

impact is indirect. As this work is progressed, any emissions impacts will be assessed in more detail and disclosed to Cabinet as appropriate.

Population Implications

100 The proposed regime would not disproportionately impact distinct population groups beyond those impacts on Māori outlined at paragraphs 52–58.

101 However, any development enabled by the implementation of the proposals may disproportionately impact regions where development occurs. This could have positive impacts arising from job opportunities and economic development opportunities for the region. However, it could also affect access to marine areas and adversely impact ecosystems.

Human Rights

102 There are no human rights implications arising from the proposals in this paper. Consistency with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993 will be discussed with the Ministry of Justice during the drafting process.

Use of External Resources

103 These proposals have been developed without the use of external resources.

Consultation

104 MBIE carried out two rounds of public consultation on the proposals from December 2022 and August 2023. Feedback was received from a broad range of perspectives, including prospective offshore renewable energy developers, energy industry stakeholders, iwi and Māori organisations, environmental advocacy groups, local governments, regional development organisations, energy consultants and researchers. Feedback from public consultation generally supported the proposed regulatory regime. In addition to ongoing engagement, MBIE undertook dedicated consultation with a cross-iwi grouping in late 2023.

105 MBIE consulted with the following agencies in the development of the proposals outlined in this paper: Department of Conservation, Department of Prime Minister and Cabinet, (Policy Advisory Group and National Security Group), Government Communications Security Bureau, Maritime New Zealand, Ministry for the Environment, Ministry of Foreign Affairs and Trade, Ministry of Justice, Ministry of Primary Industries, Ministry of Transport, New Zealand Security Intelligence Service, the Treasury, Office of the Privacy Commissioner and the Parliamentary Counsel Office. Te Arawhiti was also provided with opportunity to comment on the content of this paper.

Communications

106 I propose to issue a media release announcing the design of the regulatory regime and expected timeframes for introducing legislation and implementing

the regime. I plan to signal, at the same time, that the Government is not considering any price stabilisation or support mechanisms.

Proactive Release

107 I plan to proactively release this paper, with any redactions consistent with the Official Information Act 1982, on MBIE's website within 30 business days of Cabinet's decision.

Recommendations

The Minister for Energy recommends that the Committee:

1 **note** that on 1 May 2024 the Cabinet Economic Policy Committee (ECO) [ECO-24-MIN-0062]:

1.1 discussed and noted a paper setting out the Minister for Energy's intentions for regulating offshore renewable energy developments,

1.2 noted that the Minister for Energy, in consultation with the Minister Responsible for RMA Reform, the Minister for Oceans and Fisheries, the Minister for Resources, and the Minister for Regional Development, intended to seek decisions from Cabinet in June 2024 on the proposals outlined in the submission;

2 **agree** the purpose of the regime will be to:

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

2.2 enable the selection of developments that best meet New Zealand's national interests;

3 **note** the design of the regime has not changed substantively since it was discussed and noted by ECO on 1 May 2024, apart from the introduction of a form of trailing liability or an ongoing requirement to maintain financial security that the Minister could remove when approving the transfer of a permit;

4 **agree** to the design of the regime, described in **Appendix One**;

5 **note** the Minister for Energy intends to return to Cabinet with further proposals on transmission infrastructure;

Financial implications

6 **agree** that the costs of administering the regime will be fully recovered from permit-applicants and permit-holders, through application and annual fees, to be prescribed in secondary legislation;

7 **note** that MBIE will provide further advice on the cost recovery regime in the second quarter of 2025;

8 **note** that there is expected to be an initial deficit before the cost recovery regime commences, which MBIE considers it can manage from its balance sheet;

Legislative implications

9 **agree** that the proposals will be given effect to through the Offshore Renewable Energy Bill (the Bill), which is proposed to hold a [redacted] Confidential advice to Government [redacted]

10 **agree** that the Bill will include a provision stating that the Act will bind the Crown;

11 **agree** that the proposed regime will require consequential amendments to other legislation, including the Resource Management Act 1991 and the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012;

12 **agree** that the Bill will include regulation-making powers including the ability to make regulations to prescribe:

12.1 the permit application assessment and variation process, including the factors for assessing applications against the considerations set out in paragraphs 14.2 and 20 of **Appendix One**,

12.2 the fees charged to enable full cost recovery,

12.3 the appropriate level and form of financial security to support decommissioning obligations,

12.4 application and information requirements, including the implementation of a public register,

12.5 details of the conditions that may be attached to permits, and

12.6 requirements relating to change of control of permit-holders and transfer of permits;

13 **authorise** the Minister for Energy to take further decisions in line with the policy decisions agreed by Cabinet on:

13.1 further details of the permit application assessment and allocation process (including procedural requirements relating to Treaty settlements),

13.2 further details of the decommissioning obligations, including:

13.2.1 how a default trailing liability or requirement to maintain financial security following a permit transfer is implemented, and

13.2.2 alignment, where necessary, with any proposed changes to the decommissioning arrangements in the Crown Minerals regime,

13.3 whether fees collected should be used to support iwi and hapū engagement with developers,

13.4 the process for considering applications for permit variations and extensions,

13.5 which decisions can be appealed and whether there are other limitations on appeal rights beyond the ability to appeal on points of law only,

13.6 the details of the offences, defences and penalties introduced by the regime, in consultation with the Minister of Justice, including whether permits can be revoked as a penalty beyond the proposed 'use it or lose it' provisions,

13.7 any other functions, powers or duties needed for the regulator to ensure compliance with permit conditions, the Act, and/or regulations,

13.8 the details and process for activating the 'use it or lose it' provision (described in paragraph 14.6 of **Appendix One**, which applies to feasibility permits),

13.9 entities the regulator requires information from or needs to provide information to including what that information may be and how it is handled,

13.10 the regulation-making powers in addition to those detailed above, which would be confirmed when seeking approval to introduce the Bill, and

13.11 any other minor or technical issues that arise during the drafting of legislation and its passage through the House; and

14 **invite** the Minister for Energy to issue drafting instructions to the Parliamentary Counsel Office for the Offshore Renewable Energy Bill and associated secondary legislation.

Authorised for lodgement

Hon Simeon Brown

Minister for Energy

Appendix One: 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.

Additional material

Appendix Two: Overview of the Offshore Renewable Energy Regulatory Regime

Appendix Three: Offshore Renewable Energy Timelines

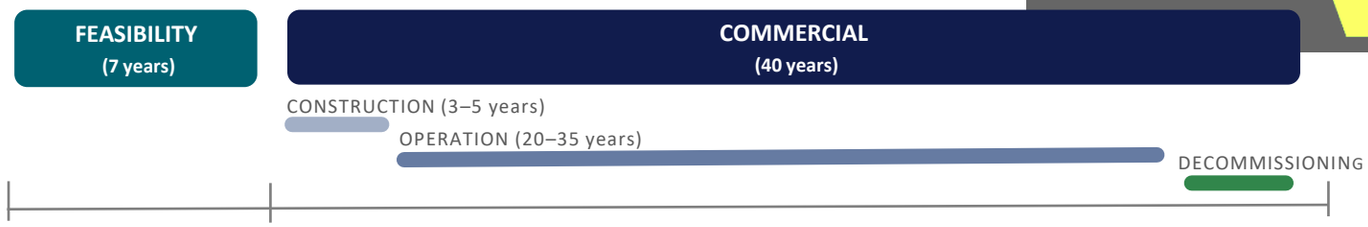
Offshore Renewable Energy – Proposed Regulatory Regime

The proposed regime will:

- give developers greater **certainty to invest** in developing projects, through offering the exclusive right to develop renewable energy projects in a specific area.
- enable the selection of developments that **best meet New Zealand's national interests**

The regime covers all forms of offshore renewable energy. Offshore wind is the most developed technology.

INDICATIVE OFFSHORE WIND PROJECT TIMELINE



PROJECTS WILL REQUIRE TWO PERMITS

1. FEASIBILITY PERMITS WILL GIVE THE CERTAINTY TO UNDERTAKE FEASIBILITY STUDIES

FEASIBILITY PERMIT

Maximum duration 7 years

Comparative assessment

Gives the exclusive right to apply for a commercial permit in the relevant area
= greater certainty to commit to feasibility studies

Government opens application round

- **Developer identifies site.** Legislation will allow for government to identify sites in future
- **Guidance of <250km²** No legislated minimum or maximum area
- **Developers engage with iwi/hapū before applying**

Regulator (MBIE) assesses application

Regulator:

- **assesses application**
- **selects best application** (where there are overlaps or overall limits)
- **notifies and consults publicly**
- **engages with relevant Māori groups** on Treaty Settlement impacts

Permit granted

- Feasibility permits will be subject to **"use it or lose it"** provisions

2. COMMERCIAL PERMITS WILL ENABLE CONSTRUCTION AND OPERATION

COMMERCIAL PERMIT

Maximum 40 years
Potential to extend

Pass/fail assessment
(non-comparative as feasibility permit-holders already have site exclusivity)

Enables construction and operation of offshore renewable energy infrastructure
(subject to other relevant consents)

Developer applies

- **Developer applies when ready** (within 7 years of being granted feasibility permit)
- **Developer can reduce the size of the area** (minor extensions may be considered)

Regulator (MBIE) assesses application

Regulator:

- **assesses application** (non-comparative and only where not covered by other legislation)
- **notifies application**
- **engages with relevant Māori groups** on Treaty settlement impacts

Permit granted

- **Applicants can appeal** to the High Court within 20 days (on points of law only)

PROJECTS WILL ALSO REQUIRE ENVIRONMENTAL (AND OTHER) CONSENTS

Developers will need:

- **Resource consents under the RMA or its successor** (e.g. for transmission cables running through the territorial sea and onshore infrastructure)
- **Marine consents under the EEZ Act for activities in the EEZ** (e.g. for turbines)
- other relevant permits, e.g. under the Overseas Investment Act and Maritime Act.

Offshore renewable energy projects will only be eligible for environmental consents, including through fast-track approvals, if they hold a feasibility permit (to avoid land banking outside the regime).

Opportunities to align permit and consent processes at the commercial stage under a one-stop shop will be considered.

PERMIT APPLICATION APPLICATIONS WILL CONSIDER A RANGE OF FACTORS

- Feasibility permit assessments will give priority to projects that are most likely to be delivered successfully, and at a pace and scale to deliver the greatest benefits to New Zealand.
- Commercial permit assessments will focus on final checks before construction begins.

DECOMMISSIONING REQUIREMENTS WILL BE BUILT IN

DECOMMISSIONING

Financial security will be required for decommissioning

Financial security would build up to reflect key risk periods, i.e. construction and towards the end of asset life

The Minister for Energy could deviate from default approach based on risk

COSTS WILL BE RECOVERED

- The government will recover the **costs of administering the regime** from developers through fees.
- The government will not collect **royalties,** as this would deter investment and the costs would flow through to consumers.

Confidential advice to Government