MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

COVERSHEET

Minister	Hon Simeon Brown	**Portfolio**	Energy

List of documents that have been proactively released		
Date	**Title**	**Author**
14 December 2023	Offshore renewable energy	MBIE
18 December 2023	Iwi Engagement in Offshore Renewable Energy	MBIE
1 February 2024	Offshore renewable energy: Timing and design of permitting regime	MBIE
1 March 2024	Offshore renewable energy: Regime design and next steps for Cabinet decisions	MBIE
15 March 2024	Offshore Renewable Energy – Alignment with Fast-track Approvals Bill	MBIE
28 March 2024	Offshore renewable energy regulatory regime: Draft Cabinet Paper	MBIE
18 April 2024	Offshore renewable energy – Interaction with environmental consents	MBIE
17 May 2024	Offshore renewable energy regulatory regime – Next steps	MBIE
21 May 2024	Offshore renewable energy – decommissioning requirements	MBIE
22 May 2024	Offshore renewable energy regulatory regime - Timeline	MBIE

Information redacted **YES**

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

- Privacy of natural persons
- Commercial information
- Confidentiality
- Confidential advice to Government
- Free and frank opinions
- Legal professional privilege
- International relations
- Constitutional conventions

MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

BRIEFING

Offshore renewable energy: Timing and design of permitting regime

Date:	1 February 2024	**Priority:**	Medium
Security classification:	In Confidence	**Tracking number:**	2324–1541

Action sought		
	Action sought	**Deadline**
Hon Simeon Brown **Minister for Energy**	Provide feedback on the timing and design of the regime Forward this briefing to the Associate Minister for Energy for information	8 February 2024

Contact for telephone discussion (if required)			
Name	**Position**	**Telephone**	**1st contact**
Melanee Beatson	Manager, Offshore Renewable Energy and Hydrogen	Privacy of natural persons	✓
Gemma Couzens	Principal Advisor, Offshore Renewable Energy	Privacy of natural persons	

The following departments/agencies have been consulted

Minister's office to complete:

- ☐ Approved
- ☐ Noted
- ☐ Seen
- ☐ See Minister's Notes
- ☐ Declined
- ☐ Needs change
- ☐ Overtaken by Events
- ☐ Withdrawn

Comments

MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

BRIEFING

Offshore renewable energy: Timing and design of permitting regime

Date:	1 February 2024	**Priority:**	Medium
Security classification:	In Confidence	**Tracking number:**	2324-1541

Purpose

The purpose of this briefing is to:

- confirm the intended timeframe for introducing offshore renewable energy legislation and discuss how to communicate this publicly, and
- provide an overview of the proposed regulatory regime for your feedback, before we seek your agreement to the design of the regime and to draft a Cabinet paper in late February.

Executive summary

We are developing a new regulatory regime for offshore renewable energy at pace to give developers certainty to invest in New Zealand.

Developers want visibility of the likely timeframes for the regime to be developed and in force. We are therefore seeking your agreement to a proposed accelerated timeframe for the regime, and we would like to discuss how to communicate this publicly.

We are planning to seek your agreement to a comprehensive set of proposals for the regime's design in late February, and then to incorporate the proposals into a Cabinet paper for you to consult with colleagues, then lodge in April for Cabinet decisions. In this briefing we provide an overview of the proposed regime, so you can see the direction of travel and provide any feedback in advance of our February advice on the regime design. In particular, we outline a proposed:

- process for inviting and assessing feasibility and commercial **permit applications**, including application rounds, assessment criteria, an approach to manage overlapping applications, and public consultation requirements,
- **financial design** for the regime, which includes cost recovery, but not revenue gathering,
- **regulator** (New Zealand Petroleum & Minerals),
- set of measures to ensure developers appropriately **engage with iwi and hapū,**
- approach to **decommissioning** requirements,
- division of responsibility for **offshore transmission** infrastructure, in which developers build the infrastructure, and Transpower owns and operates it, and
- combination of measures to **manage the risk of developers land-banking** valuable sites by acquiring environmental consents before the offshore renewable permitting regime is in force.

Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

a **Agree** to the accelerated timeframe for the offshore renewable energy legislation, which would mean:

i. introduction of the Bill in the House by the end of 2024

ii. the legislation in place by mid-2025, and

iii. the first permitting round could open before the end of 2025.

Agree / Disagree

b **Agree** to discuss with us how to publicly communicate the intended timelines for the regime.

Agree / Disagree

c **Note** that subject to your views on the timeline, we intend to provide you with comprehensive advice seeking decisions on policy settings in late February and a draft Cabinet paper in March.

Noted

d **Provide feedback** on the design of the regime to inform developments of proposals.

Yes / No

e **Agree** to emphasise in relevant discussions on fast-track consenting that offshore renewable energy projects should become eligible only once the proposed offshore renewable energy regulatory regime is in force, to avoid the risk of land-banking by developers.

Agree / Disagree

f **Forward** this briefing to the Associate Minister for Energy for information.

Yes / No

Privacy of natural persons

Melanee Beatson
Manager, Offshore Renewable Energy & Hydrogen
Building, Resources and Markets, MBIE

01 / 02 / 24

Hon Simeon Brown
Minister for Energy

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Background

1. We provided you with advice on 14 December 2023 on the development of a new regulatory regime for offshore renewable energy and discussed this with you on Monday 18 December 2023 [briefing 2324-1066 refers].

2. The proposed aims of the regime are to enable the selection of offshore renewable energy developments that **best meet New Zealand's national interests** and to give developers **certainty to invest** in them.

We have consulted widely on the design of the regime

3. We ran two rounds of public consultation in December 2022 and August 2023, and engaged with iwi in the design of a permitting regime for offshore renewable energy.

4. We received 59 submissions on our 2022 consultation and 51 submissions on our 2023 consultation. There was general broad support for the development of the regime from industry and most submitters, but several noted the need for other supporting levers. We will provide a summary of the submissions received, alongside summaries of the submissions received on two other consultations, in late February.

We have followed in-principle Cabinet decisions, with a few exceptions

5. Cabinet took in-principle decisions in July 2023 on the high-level design of the feasibility permitting regime. The proposals outlined here are aligned with those in-principle decisions, except in a few instances where feedback from consultation or further analysis of the issue has led us to adjust our approach. We signal in our advice where we have departed from previous decisions.

This paper builds off our previous advice and provides a foundation for upcoming policy decisions

6. In December, we indicated we would seek decisions from you in early 2024 on the design of the regime, including:

    - permit assessment criteria, and the process and structure for applications,
    - whether the government should collect revenue from the regime,
    - the appropriate regulator,
    - who will be responsible for funding, building, owning and operating offshore transmission infrastructure, and
    - provisions to ensure successful decommissioning.

7. We also signalled that in February we would seek final decisions on the design of the regulatory regime and agreement to incorporate those decisions into a draft Cabinet paper.

8. This paper provides you with greater detail on our proposals for the design of the regime. We invite your feedback on these matters.

We will provide separate advice on other measures to enable offshore wind developments

9. As set out in previous advice [briefing 2324-1066 refers], other measures will likely be needed, alongside the permitting regime, to enable offshore renewable energy to go ahead. These other measures are largely outside the scope of this briefing. Developers will be seeking indications of the Government's position, particularly on revenue stabilisation, but this does not need to be resolved at the same time as decisions on the design of the regulatory regime. We will provide you with further advice on issues outside the regime in the coming months.

Timing of Legislation

10. The pace of the regime's development is driven by the need to harness interest from developers, who may otherwise opt to develop offshore windfarms in other countries with more established regulatory regimes. Offshore wind developers are seeking to align activities and supply chains with Australia, which has recently announced the preliminary results of its first feasibility permit round in Gippsland, Victoria.

11. In December, we provided you with an overview of proposed accelerated timelines for progressing a Bill for the offshore renewable energy permitting regime [briefing 2324-1066 refers]. We assess at the earliest you could introduce legislation in late-2024, have the legislation in force in mid-2025 and the first feasibility permit round could be launched by late-2025.

12. **Table one** below sets out the proposed key milestones. **Annex 1** illustrates the proposed accelerated timeline compared against standard timelines for a bill.

13. The proposed timeline is ambitious and requires almost all parts of the process to run faster than normal and/or in parallel. It relies on prioritising the regime on policy and legislative work programmes, as well as Cabinet committee agendas, and resolving any issues smoothly. This timeline is subject to obtaining all necessary approvals and there is a risk it could be delayed, e.g. due to the limited availability of House time.

14. The timeline is predominantly based on:

    a. Parliamentary Counsel Office (PCO) drafting (five months). [redacted] Legal professional privilege and confidential advice to Government [redacted]

    b. Select Committee (six months). Sufficient time will be important for Select Committee consideration, given this is a novel regime for New Zealand. We understand developers want the opportunity to submit on the Bill through Select Committee. This timing could, however, be compressed following discussion with the Leader of the House (note that anything less than four months triggers a time-unlimited debate in the House).

15. We also considered whether the regime could be delivered more quickly by progressing the legislation needed for feasibility permits ahead of the rest of the regime. However, this would result in minimal time savings in implementing the feasibility permitting regime and would significantly delay delivery of the full regime. Developers are expecting the full regime to be introduced at once and have emphasised the importance of consistent policy settings and stable, transparent timelines for investment confidence.

16. We had previously discussed with you the possibility of releasing an exposure draft of the legislation for feedback from developers, iwi and other stakeholders. This would add an additional two to three months to the timeline. The accelerated timeline does not allocate time for this. While there could be value in releasing an exposure draft, the Select Committee process would provide an opportunity for interested parties to comment on the draft legislation.

Table 1: Proposed accelerated timeline for offshore renewable energy regulatory regime

Date	Legislation
End February 2024	MBIE provides comprehensive advice for decisions on regime design
Mid-March	Minister confirms policy decisions

Mid-February–end of March 2024	MBIE develops draft Cabinet paper and regulatory impact statement, incorporates feedback from legal advisers and regulator, and consults with other agencies
First week of April 2024	MBIE provides Minister with a draft Cabinet paper
By second week in April 2024	Minister provides feedback and MBIE updates Cabinet paper
From second week in April 2024	Minister circulates draft Cabinet paper for Ministerial consultation (standard 2 weeks minimum) *(Note this will fall over the April recess period)*
22–23 April 2024	MBIE updates draft Cabinet paper following Ministerial consultation
Wed 24 April 2024	Cabinet paper lodged
Wednesday 1 May 2024	ECO considers Cabinet paper
Monday 6 May 2024[1]	Cabinet approves policy decisions
June 2024	MBIE finalises drafting instructions to PCO (work will begin before Cabinet decisions)
By November 2024	Parliamentary Counsel Office (PCO) completes drafting of Bill (within five months)
December 2024	Parliament introduces the Bill in December 2024 *(Note that the inclusion of a scrutiny week in December 2024 may reduce the available House time)*
By June 2025	Select committee refers the Bill back to the House (within six months) *MBIE and PCO to work on draft regulations while the Bill is proceeding through the House*
Mid-2025	Parliament passes the Bill
After Bill comes into force	Cabinet approves the regulations
Late 2025	First round opens

17. You will receive a briefing on 8 February 2024 on the proposed bid for prioritisation of the offshore renewable energy Offshore Renewable Energy Bill on the 2024 legislation programme. Constitutional Conventions

18. The Emissions Reduction Plan set a timeframe of 2024 for the regime to be in place – Free and frank opinions If you agree, we recommend publicly signalling the proposed

[1] Note this is deferred from the previously proposed "end-April" following release of the Cabinet Committee Indicative Timetable, which has no Cabinet Committee meetings scheduled (except CBC on 15 April) for a two-week period from Monday 15 April 2024.

timeline. We would welcome your views on opportunities to announce this, e.g. if you would like to do so in an upcoming speech.

Design of the Regime

We propose a two-stage, developer-led permitting model

19. We intend to seek your agreement to the proposed design of the permitting regime in February, for lodgement in April for Cabinet decisions. This briefing sets out the key components of the proposed regime for your consideration and feedback. We will provide a detailed Regulatory Impact Statement, analysing all options considered, alongside the draft Cabinet paper.

20. As set out in our earlier briefing, the proposed regime is a developer-led permitting model. It covers all forms of offshore renewable energy (e.g. wind, solar, wave or tidal), but the focus is on wind, as this is the most mature technology. We propose a two-stage permitting regime in which developers obtain:

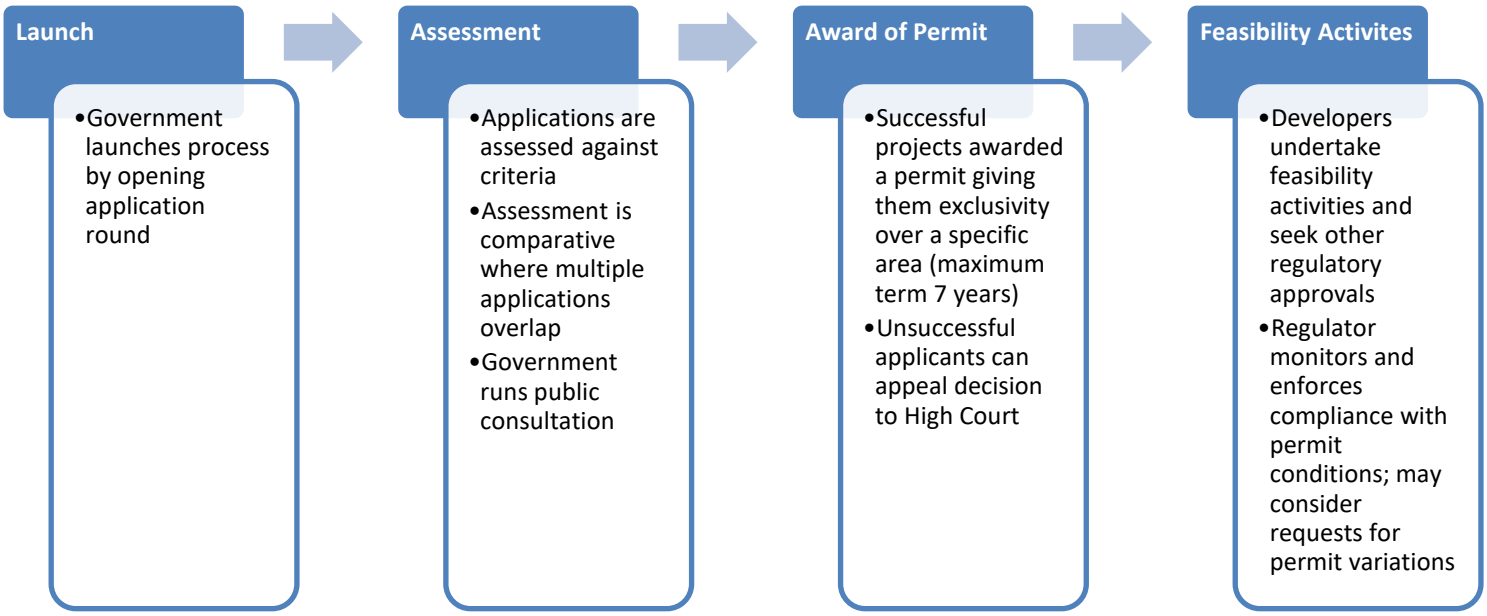
    - a **feasibility permit**, which would provide holders the exclusive right to apply for a subsequent commercial permit to develop renewable energy in the relevant area. This exclusivity is needed to give developers certainty to undertake the expensive, in-depth and lengthy assessments to test the viability of projects. Under our proposed approach, feasibility permits would be allocated in a comparative process. They would have a maximum duration of seven years, with "use it or lose it" provisions.[2]
    - a **commercial permit**, which would grant the right to construct and operate offshore energy infrastructure. Commercial permits would be issued following feasibility studies (approximately five to seven years) and would have a proposed 40-year duration, potentially with the option to extend.

21. Both types of permits would contain conditions that holders must comply with. Permit holders would also have to obtain all necessary resource consents and/or marine consents. An overview of the processes for granting both permits is set out in **Figure 1** below.

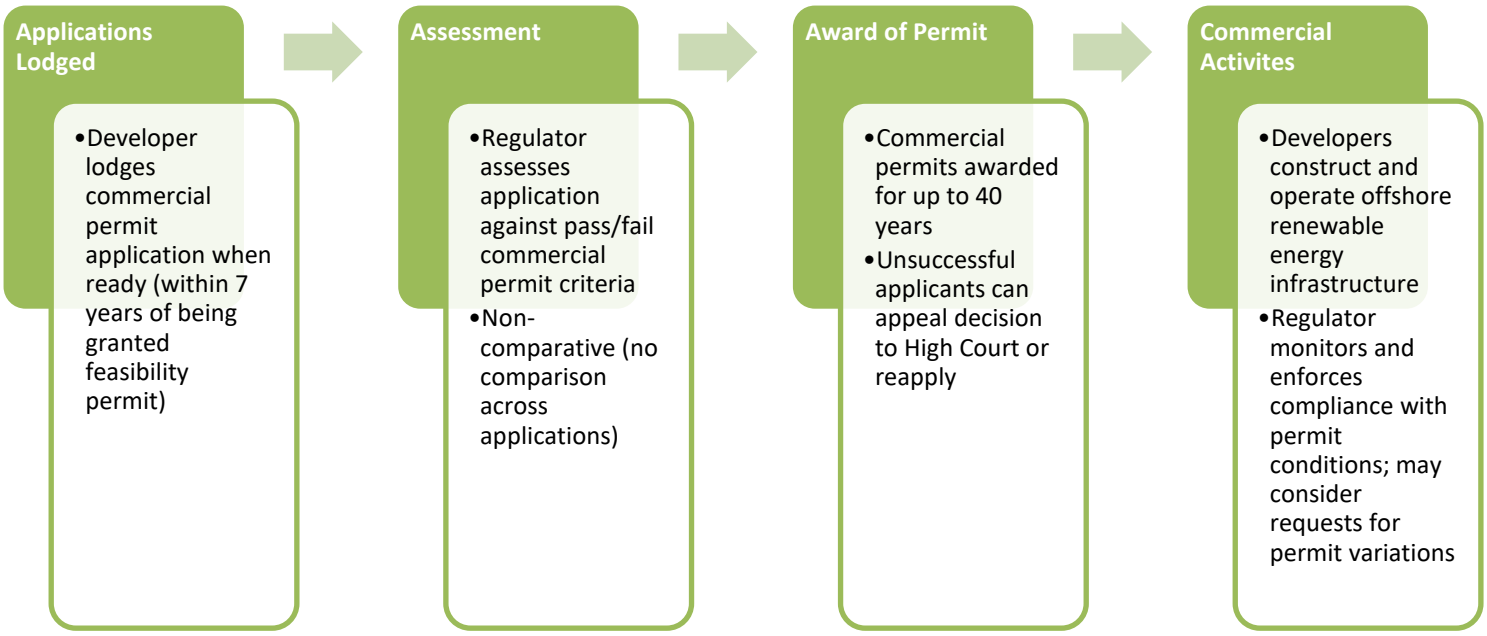
[2] For clarity, developers are not *required* to obtain a feasibility permit to carry out feasibility study activities, as these activities are authorised by the Resource Management Act 1991 and Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.

Figure 1: Summary of the process for granting and operating under feasibility and commercial permits

Process for feasibility permits



Process for commercial permits



Across both permitting processes:

Environmental consents obtained under existing processes in the Resource Management Act 1991 or its successor legislation and the Exclsuive Economic Zone and Continental Shelf (Environmental Effects) Act 2012

22. Table 2 below summarises the key elements of the feasibility and commercial permit processes. We provide further detail on these features below the table.

Table 2. Overview of key elements of the feasibility and commercial permit process

	Feasibility	**Commercial**
Identification of site	Site identified by the developer	Site identified in the feasibility permit application
Award	Site exclusivity in the form of sole right to apply for a subsequent commercial permit within the specified location	Right to construct and operate offshore renewable energy project
Process initiation	By government – the Minister would open an application round	By the developer once their project is suitably developed
Assessment process	Merits-based with a comparative assessment (applications are compared against each other)	A threshold based (non-comparative) assessment
Assessment criteria (* indicates criteria that apply only at one stage)	• Technical and financial capability of applicant • Decommissioning arrangements • Health and safety capability • Iwi engagement • Economic benefits (including national, regional and local) • Electricity system impact • Environmental capability* • National security and public order considerations	• Technical and financial capability of applicant • Readiness of project (including status of environment consent application)* • Decommissioning arrangements • Health and safety capability • Iwi engagement • Economic benefits (including national, regional and local) • Electricity system impact • National security and public order considerations
Geographic reach	No legislative limits. However, guidance to set out a maximum area of 250km². There is no minimum area	Same as feasibility. The developer can reduce the area sought under the permit but cannot increase it
Duration	Maximum 7 years. Subject to 'use it or lose it' provisions	Maximum 40 years
Notification and consultation	Will be notified and public consultation undertaken	Will be notified. May consult but consultation not required
Legislative provision for appeals[3]	To the High Court within 20 working days	To the High Court within 20 working days

We propose the permitting regime is developer-led

23. The previous Cabinet agreed in-principle for the feasibility permitting model to be 'developer-led', i.e. developers would be responsible for identifying appropriate sites and undertaking feasibility studies. This approach would allow developments to begin as soon as possible.

[3] Note that internal review procedures can be implemented without legislative provision, so the regulator could also have an internal review process.

24. The alternative would be a ‘government-led’ (or ‘spatially-planned’) approach in which the government plays a greater role in identifying sites in which offshore renewable energy should be developed (similar to a block offer or the Australian approach of identifying offshore wind areas). The proposed legislation would leave open the option of taking a government-led approach in the future, which may allow a better balance of the various interests in the marine space. Under the proposed developer-led approach, we intend to explore options alongside developers and stakeholders to identify and reduce barriers to development.

The government would run application rounds for feasibility permits

25. Our proposed approach is for the government to initiate application rounds, where proposals for feasibility permits would be invited within a certain period of time and developers would not be able to apply outside of these rounds. We considered different options for awarding feasibility permits including:

    - setting application rounds where the government makes a call for applications
    - an open-door approach where developers would be allowed to make applications at any time, or
    - a combination of the two approaches.

26. Government-initiated rounds will create more certainty for industry and lead to a less reactive environment (than if proposals could be considered at any time and developers had to rush bids to keep up with potential competitors). A rounds-only approach should support competition and result in a more robust and easier-to-manage process. Developers indicated this was their preference in submissions.

27. We intend that these rounds would be open for a defined amount of generation capacity, with an ability for future rounds to be limited in terms of spatial area or technology type. This approach would stagger development of the industry, giving greater certainty to developers looking to invest in the future pipeline. It would also provide greater control for government to manage space in the future.

28. Feasibility permit holders may seek a commercial permit at any time within the term of their feasibility permit (maximum seven years).

Where two applications overlap across the same geographic area, that area will be granted to the stronger application

29. We propose that where applications for feasibility permits overlap, the area of overlap will be granted to the developer with the stronger application, based on an assessment of the criteria. The other applicant/s will then be given the opportunity to amend their permit application with a revised area. This is a change to the approach the previous Cabinet agreed in-principle of encouraging applicants to resolve overlaps between themselves. Giving the regulator a greater role in resolving overlaps will reduce the risk of collusion or anti-competitive behaviour.

We have added to the proposed criteria for assessing feasibility permits

30. Consultation feedback led us to add to the initially proposed criteria for feasibility permits to include environmental capability. This will help ensure developers have the necessary capability to both manage and mitigate environmental impacts, as well as gain consents. Following consultation feedback we also propose narrowing the criterion agreed in-principle as “national interest considerations” (which was thought to be unhelpfully broad and uncertain) to focus exclusively on national security and public order.

We recommend national security and public order considerations are referred to Ministers

31. We propose that relevant decisions with potential national security considerations or public order[4] impacts are escalated to the relevant Minister(s). Feasibility and commercial permit applications will be screened, in consultation with the relevant national security agencies, to determine whether there are matters of national security or public order to be considered. This will ensure matters of national security and public order are considered by those with the most relevant context and mandate to consider national security (i.e. Ministers). This approach is in line with Australia's offshore renewable energy regime, and the approach taken in our Outer Space regime. It is not possible to rely solely on the screening provided by the Overseas Investment Act 2005, as not all activities by developers, particularly under feasibility permits, would meet the thresholds for screening provided by that Act.

Public consultation would be undertaken on feasibility permit applications. . .

32. We propose the regulator publishes high-level information about the types of developments seeking feasibility permits and consults publicly on this to inform decision-making on permit applications, because:

    - it may yield information relevant for the decision-maker when undertaking a merits-based assessment of applications against the criteria
    - without this process, the only opportunity for public comment on developments will be at the consent/commercial stage, when significant investments have already been made, and
    - depending on the nature of the fast-track consenting process and whether offshore developments are included in this, consultation on the separate resource consents may be limited further.

33. Public consultation is not expected to impact Confidential advice to Government

34. We are still considering the role of the regulator in identifying or resolving conflicts with other marine users when granting feasibility permits and will update you as part of our advice in late February.

. . . but not for commercial permit applications

35. We do not propose to include consultation at the commercial stage. Environmental consenting of offshore renewable energy under the Resource Management Act 1991 (RMA) and Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act) currently include processes for public submissions and hearings. In the discussion document, we considered an option for public consultation on the commercial permit decision. Given developers are likely to seek a commercial permit and environmental consent at around the same time, it is important to avoid unnecessary duplication or repetition of these processes. Submitters largely agreed with this view.

36. We propose that the regime requires developers to undertake engagement with relevant iwi and hapū at both the feasibility and commercial permit stages. This is outlined further below. In preparing permit applications and environmental consent applications, developers would also need to engage with other marine users to understand and resolve any conflicting uses.

The commercial permit stage would be non-comparative

37. Following consultation, we propose to assess commercial permit applications against robust pass/fail criteria, but without a comparative assessment against other applications.

38. Developers awarded a feasibility permit would have the right to apply for a subsequent commercial permit anytime within the seven-year term of their feasibility permit. Spatial

[4] 'Public order' would cover the same kinds of impacts as in the Overseas Investment regime.

overlaps would be resolved at the feasibility stage through a comparative assessment of competing applications. However, there may be other non-spatial conflicts that need to be resolved at the commercial permit stage. Although there could be some benefit in undertaking a second comparative assessment, feedback from most developers suggests that this would undermine their investment confidence to carry out feasibility activities.

Financial design of the regime

Costs of the regime would be recovered

39. We propose to recover the costs of the regime from developers. This is in line with Treasury guidance that public organisations generally charge fees or levies when the goods or services they provide deliver a direct benefit to a specific group. The cost-recovery mechanism would include both an annual fee and an application fee. Further detail on cost recovery mechanisms will be set out in subsequent secondary legislation.

We do not recommend a revenue-gathering mechanism

40. We propose that the regulatory regime should not include a revenue-gathering mechanism, such as a royalty scheme. Although this could provide an income stream to government, it risks deterring investment and any additional cost is likely to flow through to consumers. This view was strongly expressed in consultation feedback.

Selection of the regulator

We recommend New Zealand Petroleum & Minerals as the regulator

41. We propose New Zealand Petroleum & Minerals (which is housed within MBIE) as the regulator, as it offers the ability to set up quickly and at lowest cost. The functions of the proposed regulator are aligned with its existing regulatory functions. It already has many of the capabilities and systems required, it can manage variable workloads, and it has the benefit of being close to the policy function.

42. Although the cost of the regime can ultimately be covered by participants through fees, [redacted] Confidential advice to Government [redacted]

Iwi engagement

We propose including elements in the regime to ensure developers engage appropriately with Māori

43. We briefed you in December on iwi and hapū interests in the regime and discussed these with you on 25 January 2024 [briefing 2324-1361 refers]. Based on these discussions, the following elements could be included in the regime, with a focus on ensuring developers appropriately engage with iwi and hapū:

    - MBIE/the regulator would work with iwi and hapū to issue guidelines for developers on what good engagement looks like.
    - Applicants for feasibility permits would be required to engage with iwi and hapū prior to making applications, and submit an iwi engagement plan that sets out their involvement in feasibility studies (particularly to identify any existing legal rights and interests that may be present in proposed permit areas and account for these accordingly). As noted above, the quality of these plans will be judged by the regulator in comparing applications.
    - The regulator can assess the quality of local economic benefits, including those flowing to iwi and hapū, as part of the economic benefit criteria.

- Conditions on permits will ensure engagement plans are met throughout the permit's life.
- The same requirements and process would be followed in respect of commercial permits (including involvement in decommissioning).

44. Developers have indicated that they broadly support these features.

45. Confidential advice to Government [redacted]

46. As noted in our previous briefing, these elements do not go as far as iwi have sought to date, i.e. to have a role in decision-making or for the Government to provide direct economic benefits. You have agreed to engage directly with relevant iwi to hear their perspectives. We will work with your office to set this up.

Decommissioning

We are seeking views on decommissioning settings

47. At the end of an offshore renewable energy asset's operational life, it needs to be decommissioned. Decommissioning involves significant costs to dismantle turbines and remove supporting infrastructure. If appropriate protections are not in place, costs can fall to government (as was seen recently in the case of the Tui oil field, which cost the taxpayer $400m).

48. The Government's approach to risk, i.e. whether to reduce, minimise, or remove the risk of costs falling on government, will influence a range of design choices. We propose that the party who constructs and operates offshore renewable energy infrastructure should be responsible for meeting the costs of decommissioning activity. To support this, we propose to:

    - create a legal obligation to decommission and associated criminal offences for failing to do so
    - require applicants to submit a decommissioning plan and cost estimate with their commercial permit application
    - require permit holders to undergo regular financial capability assessments, and
    - require permit holders to put in place a financial security covering their decommissioning plan.

49. It is standard practice internationally for offshore renewable energy regimes to require financial security for decommissioning. For example, the UK requires financial security to be provided. We anticipate the Australian regime will also require this. Developers looking to invest in New Zealand are expecting to need to provide some form of security for decommissioning, and most submissions on our consultation document supported this proposed requirement.

50. We are seeking your views on:

    - how financial security should build up over time; and
    - whether or not to include provisions for trailing liability.

51. Beyond these key points, other more detailed issues relating to decommissioning will be set out in secondary legislation. This will include monitoring requirements and the method for calculating the level of financial security.

Financial security would build up over time

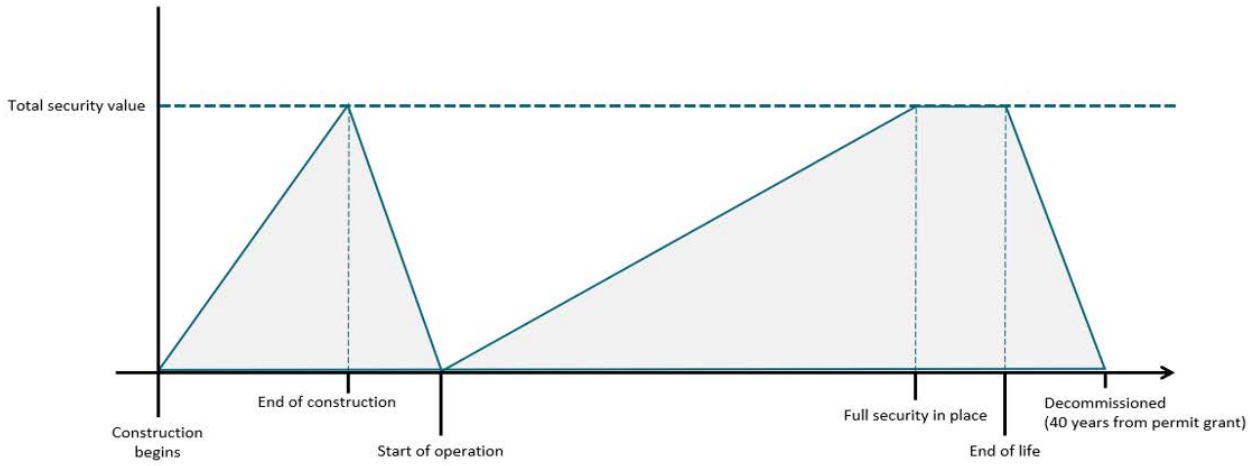
52. Having a financial security in place reduces the costs that fall to the taxpayer if developers default on their decommissioning obligations.

53. Our proposed default approach (for securities such as cash that can build over time) is for the financial security to build up to reflect key risk periods, specifically:

    - construction (before assets start to generate revenue) and
    - towards the end of asset life (when potential future total revenue is at its lowest).

54. To reflect this, the security could build up during construction, be released soon after operation commences and then build up to its full value by an agreed number of years prior to decommissioning taking place (see figure below). The developer would alternatively be able to put in place a security such as a bank security that secures the full cost from the start. Feedback from consultation indicated strong support for the security to be able to build over time.

Figure 2: Overview of how financial securities would build up over key risk periods



55. We also propose that the Minister retains flexibility to deviate from the default approach to respond to the specific risk profile of a particular permit holder. For example, in higher-risk cases, the Minister could require a greater portion of the financial security to be lodged when the commercial permit is granted. This approach is similar to the UK offshore wind decommissioning regime and the approach used for petroleum under the Crown Minerals Act 1991 (CMA).

56. We do not consider it appropriate to require the full cost of decommissioning to be secured at the point of commercial permit award. Although this would protect government from any exposure to costs, it would materially affect the overall investibility of projects. Likewise, we consider that an even, gradual build up over the life of the asset, where the security is only fully in place at the time of decommissioning, would leave government overly exposed, particularly during the key risk periods.

Trailing liability

57. Requiring financial security as proposed above would reduce the risk that the cost of decommissioning falls to the government. However, some regimes also have an additional protection known as trailing liability. This means that when a permit is transferred from one holder to another, and the new permit holder is not able to decommission, the obligation reverts to the previous permit holder. This is a feature of the CMA regime.

58. We propose to follow a similar approach to the UK for trailing liabilities, i.e.:

- any transfer must be approved by the Minister
- once the Minister is satisfied with the new financial security and financial capability of new permit holder, there is no continuing obligation on the original permit holder.

59. We consider this approach is sufficient to manage the level of risk from offshore renewable energy (which is different to petroleum exploration). Industry feedback on the consultation was strongly against having a trailing liability in the offshore renewable energy regime, and that including it would have a significantly negative impact on the investibility of projects.

Transmission infrastructure

We propose developers build and Transpower owns and operates transmission infrastructure

60. New transmission infrastructure will be needed both onshore and offshore to connect offshore wind projects to the national grid. Transpower has been working closely with developers to understand what transmission upgrades will be required to enable offshore renewable energy developments. The offshore renewable energy regime will need to stipulate the party that should fund, build, own and operate the offshore transmission infrastructure. International models typically sit on a spectrum of developer-led, where the developer funds, builds, owns and operates this infrastructure, and Transmission System Operator (TSO)-led, where the TSO takes on these functions. We propose a hybrid model in which:

- the developer is responsible for planning, building and funding this infrastructure. This would allow New Zealand to benefit from the existing experience of international developers, rather than having to wait for Transpower to build up this capability[5]. Developers also prefer to have control over this key component of their overall project and consider ceding responsibility would increase risk and therefore cost.
- Transpower (as the TSO for New Zealand) is responsible for subsequently owning and operating this infrastructure. This has the benefit of having a reliable, proven asset owner and operator, and would support consistency with the onshore system. Developer feedback suggests they have little interest in taking on these functions.

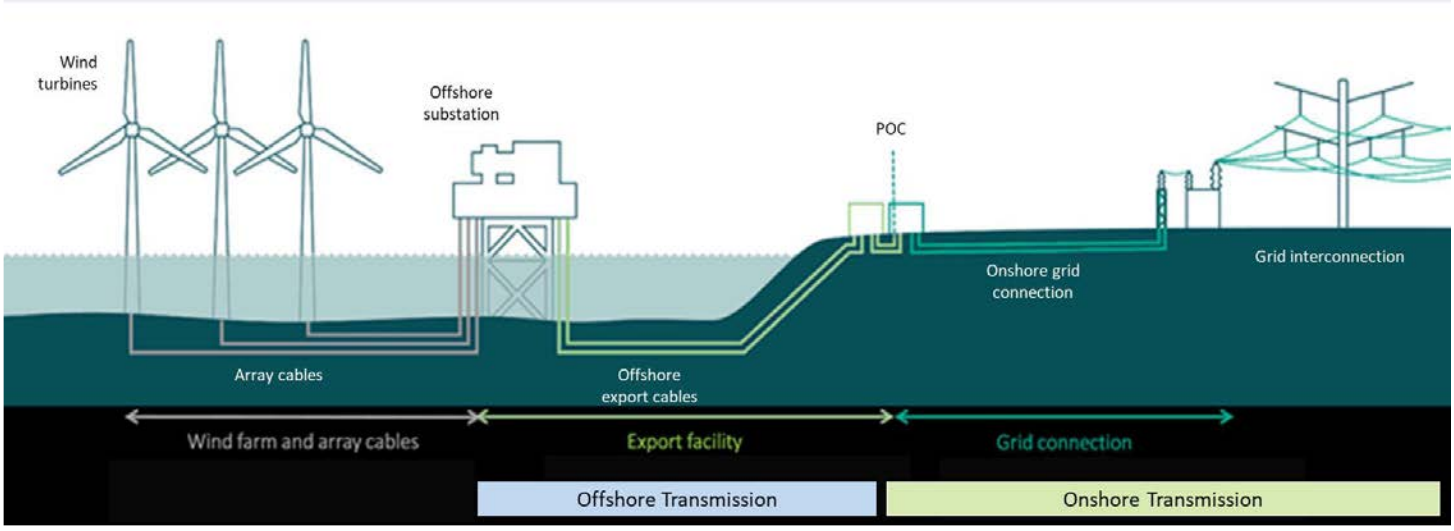
61. Figure 3 below illustrates this division of responsibility. Consultation feedback generally supported this approach. This model will require a process to transfer the offshore transmission infrastructure from the developer to the TSO. We are working through the design of this transfer process and whether the process detail should sit in secondary legislation or in guidance material. We will provide more detail on this topic in our February advice.

62. We propose that processes for upgrading onshore transmission infrastructure should be consistent with onshore renewable projects. As highlighted in our December briefing and recent advice on the transmission regulatory system [briefing 2324-1132 refers], broader decisions around the transmission regulatory system are needed and will significantly impact offshore wind projects.

[5] Transpower does have some offshore capability, given its responsibility for the HVDC link in the Cook Straight. However, both Transpower and developers agree that this is not fully transferable to offshore transmission infrastructure.

Figure 3: Proposed division of responsibility for building, ownership and operation of transmission infrastructure for offshore renewable energy

Developer builds and owns array cables connecting turbines to offshore substation	Developer builds export facility (substation and offshore export cables), then transfers ownership and operation to Transpower	Current Transpower requirements apply for onshore grid connections (Commerce Commission and Electricity Authority approvals via Transmission Pricing Methodology)



Environmental consenting

The permitting regime needs to align with, and not duplicate, environmental consenting regimes

63. We are designing the proposed regime to work alongside, rather than duplicate, the environmental consenting regime. The feasibility permit would, in effectively granting exclusivity to develop offshore renewable energy infrastructure in a particular area, enable developers to commit to the studies required to gain environmental consents (and other feasibility tests). We understand developers' clear preference is therefore that these processes remain separate.

64. MBIE is working with agencies to develop advice on how a one-stop shop could be provided for under the proposed fast-track legislation [briefing 2324-1382 refers]. We will advise on opportunities to align processes between environmental consents and commercial offshore renewable energy permits as part of this advice.

It will be important to manage the risk of land-banking before the permitting regime comes into force

65. We previously advised you that Wind Quarry Zealandia has submitted an application to the Taranaki Regional Council for a resource consent ahead of the offshore renewable energy regime being in place [briefing 2324-1066 refers].

66. Most developers with genuine interests in offshore wind have expressed support for the development of the regime and are engaging constructively in the process. There is a risk, however, that other developers submit environmental consents ahead of the regime coming into force, effectively 'land-banking' areas. This risk would increase if the Fast-Track Consenting Bill were to include offshore renewable energy and come into force ahead of the offshore renewable energy permitting regime.

67. As we discussed with you on 1 February 2024, we recommend the following combination of mitigations to manage this risk:

    - Only feasibility permit holders would be able to apply for an environmental consent for offshore renewable energy developments.
    - The decision-maker on joint (or separate) environmental consent applications (including existing applications) for renewable energy projects would be required to refuse an application if a feasibility permit under the relevant offshore renewable energy permitting legislation has not been granted.
    - Existing environmental consents for offshore renewable energy projects granted prior to the offshore renewable energy legislation will lapse after a certain period, if a feasibility permit or commercial permit is not granted. Note that this would retrospectively affect existing rights granted under the RMA.
    - The Fast-Track Consenting Bill would include provisions that the fast-track consenting legislation does not apply to offshore renewable energy until the offshore renewable energy permitting regime is in place.

68. These proposals would require consequential amendments to legislation administered by Ministry for the Environment (the RMA and EEZ Act) Free and frank opinions We are consulting with Ministry for the Environment on this approach and on the development of the fast-track consenting legislation and will update you as part of our advice in February.

69. In the interim, we recommend that in any relevant discussions with your colleagues on fast-track consenting you emphasise the importance of offshore renewable energy projects becoming eligible only once the offshore renewable energy regulatory regime is in force, to avoid the risk of land-banking by some developers.

Next steps

70. We would welcome dialogue with you on any aspect of the regime. We are seeking your feedback on:

    - the proposed accelerated timeline for the legislation
    - how to communicate timeframes for the regime publicly, and
    - options for addressing decommissioning financial security and trailing liability.

71. We plan to provide you with the following products over the coming months:

Date	Product	Purpose
Late February	Summary of submissions on recent offshore renewable energy consultation	Provide you with an overview of feedback received
Late February	Briefing seeking policy decisions on regime design	Confirm content and seek agreement to draft for Cabinet paper. Provide update on consenting matters, including how to deal with consents granted before the permitting regime is in force
March	Draft Cabinet paper, for Ministerial consultation then lodgement in April	Seek Cabinet agreement to the design of the regime and approval for Parliamentary Counsel Office to begin drafting an Offshore Renewable Energy Bill

Later this year	Further advice on other measures to enable offshore wind developments	Support decisions on the role of government in providing other enabling measures, including revenue stabilisation

Annexes

Annex One: Proposed accelerated timeline for the offshore renewable energy regime

Annex One: Proposed accelerated timeline for the offshore renewable energy regime

The standard timeline shows the standard duration for preparing drafting instructions and drafting of the Bill, and a six-month select committee. It also provides for the release of an exposure draft, allowing stakeholders (including developers and iwi) to review the legislation, providing an opportunity before select committee to resolve any identified issues.

The accelerated timeframe requires MBIE to begin drafting instructions prior to Cabinet approval. It also requires shortened timeframes for preparing drafting instructions and drafting of the bill.
Under both timelines, feasibility regulations would be developed alongside the Bill.