



## COVERSHEET

<b>Minister</b>	Hon Simeon Brown	<b>Portfolio</b>	Energy
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### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
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



## BRIEFING

### Offshore renewable energy: Regime design and next steps for Cabinet decisions

<b>Date:</b>	1 March 2024	<b>Priority:</b>	High
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2324-2096

Action sought		
	Action sought	Deadline
Hon Simeon Brown <b>Minister for Energy</b>	<b>Agree</b> to the proposed design of the regime, and instruct MBIE to draft a Cabinet paper seeking agreement to the regime and approval for the Parliamentary Counsel Office to draft legislation.	7 March 2024

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Melanee Beatson	Manager, Offshore Renewable Energy and Hydrogen	Privacy of natural persons	✓
Poppy Haynes	Principal Policy Advisor, Offshore Renewable Energy	Privacy of natural persons	
Georgia Banks	Senior Policy Advisor, Offshore Renewable Energy	Privacy of natural persons	

The following departments/agencies have been consulted

Minister's office to complete:

Approved

Declined

Noted

Needs change

Seen

Overtaken by Events

See Minister's Notes

Withdrawn

Comments



# BRIEFING

## Offshore renewable energy: regime design and next steps for Cabinet decisions

<b>Date:</b>	1 March 2024	<b>Priority:</b>	Medium
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2324-2096

### Purpose

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The purpose of this briefing is to:

- confirm the proposed policy design of the offshore renewable energy regime, subject to Cabinet approval
- seek your agreement to prepare a Cabinet paper for consideration by the Cabinet Economic Policy Committee (ECO) on 1 May 2024 and Cabinet on 6 May 2024.

### Executive summary

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We briefed you on 1 February 2024 on the proposed regulatory regime for offshore renewable energy to give developers certainty to invest in New Zealand [2324-1541 refers].

We are working to enable you to see Cabinet agreement to the policy proposals for the regime in early May 2024. This timeline is to enable legislation to be drafted and introduced by the end of the year and passed in mid 2025, to enable the first feasibility permit round to open late next year.

In this briefing we seek your agreement to the proposed design of the regime, which will form the basis of a draft Cabinet paper. The key proposals are:

- the selection of **MBIE as the regulator**
- a **developer-led permitting regime**, which requires developers to obtain feasibility permit and commercial permits
- requirements for permit applicants to **engage meaningfully with iwi and hapū**, and a proposal for the decision-maker to provide a provisional notification of planned decisions to iwi and hapū
- a financial design that involves the Crown **recovering costs but not seeking royalties**
- **decommissioning requirements** that balance the cost to developers against the need to reduce the risk of costs falling to the Crown
- measures to ensure the regime complements and does **not duplicate environmental consenting regimes** and to manage the risk of land banking
- a hybrid model for the building, ownership and operation of **offshore transmission infrastructure**
- provisions for **safety zones** to protect offshore renewable energy infrastructure from intentional or accidental harm
- **regulatory settings** to incentivise participants to comply with the regime and to provide effective ways of dealing with non-compliance.

We also seek your agreement to release the summary of submissions from our recent public consultation on the regime.

## Recommended action

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

a **Either:**

- i. **agree** the proposed design of the regulatory regime, as reflected in this paper

*Agree / Disagree*

**Or:**

- ii. **indicate** any issues you would like to discuss

b **Instruct** MBIE to draft a Cabinet paper:

- i. seeking agreement to the design of the regulatory regime  
ii. inviting you to issue drafting instructions to the Parliamentary Counsel Office for the proposed Offshore Renewable Energy Bill and associated secondary legislation, and  
iii. delegating authority to you to take further decisions on relevant details of the regime

*Agree / Disagree*

c **Note** that our proposed regime aligns where appropriate with Australia's regime, with key differences including the approach to selecting areas for development

*Noted*

d **Note** that you are scheduled to meet with relevant iwi on 7 March to hear their perspectives on Māori participation in the regime, and you may wish to review the proposals set out in this paper in the light of that discussion

*Noted*

e **Agree** for MBIE to publish the summary of submissions from the public consultation held in late 2023 on *Developing a regulatory framework for offshore renewable energy*

*Agree / Disagree*

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

*Yes / No*

Privacy of natural persons



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

Hon Simeon Brown  
**Minister for Energy**

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## Background

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1. The Government’s priorities include fast-tracking permits to unleash investment in offshore wind generation, as part of its plan to Electrify New Zealand and help rebuild the economy.
2. We provided you with advice on 14 December 2023 and 1 February 2024 on the development of a new regulatory regime for offshore renewable energy [2324-1066 and 2324-1541 refer]. The aim of the regime is to:
  - enable the selection of developments that **best meet New Zealand’s national interests**, and
  - give developers the **certainty to invest**.
3. As signalled in our previous advice, this paper seeks your agreement to the proposed design of the regime and approval to prepare a Cabinet paper. We are working to deliver the regime within the accelerated timeline set out below.

**Table 1: Timeline for offshore renewable energy regulatory regime**

Date	Milestone
1 May 2024	ECO considers policy decisions
6 May 2024	Cabinet approves policy decisions and authorises drafting of the Bill
June–November 2024	Parliamentary Counsel Office drafts the Bill
December 2024	Introduction of the Bill
Mid-2025	Parliament passes the Bill
Shortly after Bill comes into force	Cabinet approves the regulations
Late 2025	First feasibility permit round opens

### We are seeking to align with Australia where possible

4. You have stated a preference for our regime to align with Australia’s as much as possible. In developing the regime, we have sought to “borrow the best” from more mature regimes in the United Kingdom, Netherlands, Denmark and Australia and adapt it to New Zealand. **Annex One** sets out how the proposed regime compares with other regimes.
5. Our proposed regime largely aligns with Australia’s, including having a seven-year feasibility permit and a 40-year commercial permit. A key difference is Australia’s feasibility permit rounds invite applications for ‘designated areas’ deemed suitable for offshore renewable energy (i.e. a ‘government-led’ approach).
6. 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 received assent in December 2021 and came into force in June 2022. The first feasibility round in Gippsland, Victoria ran from January–April 2023, with preliminary decisions released in December 2023, and final decisions still to come. Victoria is expected to commence its first offshore wind auction (contracts for difference) for at least 2GW in 2025. Other states are less advanced. A feasibility round for Hunter, New South Wales, has recently closed and applications are being assessed. The Minister is yet to declare another four proposed areas as suitable for offshore wind, which must occur before feasibility rounds can open.
7. We have outlined below other areas where our proposals differ from Australia. We will continue to engage with our Australian counterparts to learn from their experience.

## **We are proposing a developer-led approach, at least initially**

8. As we have previously advised, we propose a 'developer-led' approach, in which developers can apply to develop any area within New Zealand's Coastal Marine Area (territorial sea) and Exclusive Economic Zone (EEZ). The proposed permits would not prevent other (non-offshore renewable energy) users from seeking an environmental consent in the same area, meaning other users could gain a consent that prevents an offshore renewable energy project from going ahead. Developers are aware of the need to manage this risk.
9. The alternative is a 'government-led' approach, where the Government selects areas suitable for offshore renewable energy development. A government-led approach could be full marine spatial planning, or a designated area approach like Australia. We have recently discussed with you, in the context of fast-track consenting, that a government-led approach would address issues around contested space in the marine environment upfront. However, it would require substantial investment by government to undertake a process to allocate different marine areas to different potential users, including mining, aquaculture and fisheries. This would delay the ability to open permit rounds.
10. We propose to design the regime in a way that will enable the government the option to shift to a more government-led model in future. Iwi have expressed a preference for a spatially-planned approach to allocating activities in the marine environment. Developers advocated for a developer-led approach, to avoid long delays to projects.
11. We propose to explore further with agencies options for strategic planning in the marine environment.

## **A draft summary of submissions is attached**

12. As we have previously advised, the regime proposals have been informed by two rounds of consultation from December 2022 and August 2023. Attached at **Annex Two** is a draft summary of submissions on the latest round held from August to November 2023<sup>1</sup>. We are seeking your approval for MBIE to release the summary of submissions.

## **We recommend a meeting with relevant iwi/hapū before finalising recommendations**

13. You were intending to meet with relevant iwi in Taranaki on 7 March [2324-2239 refers]. We recommend meeting with iwi before finalising recommendations to Cabinet. This would be an opportunity to hear iwi representative's expectations for the offshore renewable energy regime and to seek their feedback. We will work with your office and iwi on finding another opportunity.

## **Design of the regulatory regime**

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14. In our advice to you on 1 February 2024, we set out in detail the key design choices for the regime. We are now seeking your agreement to the proposed design of the regime to be reflected in legislation, and to draft a Cabinet paper on this basis. The Cabinet paper will be accompanied by a full Regulatory Impact Analysis and a statement as to its quality from an independent panel. This is a requirement for all Cabinet papers involving regulatory change, as set out in the Cabinet Manual. You will have the opportunity to review the recommendations in the Cabinet paper before circulating it for Ministerial/Coalition party consultation.

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<sup>1</sup> [Developing a Regulatory Framework for Offshore Renewable Energy: Second Discussion Document August 2023](https://www.mbie.govt.nz/dmsdocument/26913-developing-a-regulatory-framework-for-offshore-renewable-energy-pdf) (<https://www.mbie.govt.nz/dmsdocument/26913-developing-a-regulatory-framework-for-offshore-renewable-energy-pdf>)

15. **Annex Three** provides an overview of the regime on a page. Below we set out each of the key proposals for your decision. We have highlighted where the proposal has changed following consultation or previous advice, or where it is substantially different from Australia.
16. We propose that Cabinet delegates to you some detailed design choices, e.g. specific offences, defences and penalties, for your decision in the coming months as the legislation is developed. Other provisions will be set out in regulations, for a subsequent Cabinet decision.

## Decision-making

17. We propose that MBIE is the regulator for the regime. In our 1 February 2024 briefing, we set out a model where the regulator makes most permit decisions, but elevates the decision to the Minister where there are implications for national security or public order. Following a recent meeting with the Legislation Design Advisory Committee, we are developing an alternative proposal that would give the Minister for Energy a greater role in permitting decisions, particularly where they involve balancing wider system impacts (such as economic and electricity system impacts). We will provide further advice on this.

**Table 2: Regulator proposal**

	Proposal	Why?	Decision
1.	MBIE would be the regulator	<ul style="list-style-type: none"> <li>• Functions align with MBIE’s existing regulatory functions under the Crown Minerals Act 1991 (CMA)</li> <li>• MBIE already has many (but not all) of the required capabilities and systems</li> <li>• Quickest and lowest cost option</li> </ul>	Agree / Discuss

## Feasibility permit

18. We are proposing a developer-led permitting regime, which will require developers to obtain both a feasibility permit and a commercial permit.
19. Feasibility activities, such as geotechnical assessments and environmental data collection, can currently be undertaken in New Zealand without a permit, but they require significant funding (e.g. one developer recently estimated \$250 million per 1GW project). The purpose of the feasibility permit is to give developers greater certainty to invest in feasibility studies. It does this by providing the permit-holder ‘site exclusivity’, in the form of the sole right to apply for a subsequent commercial permit within the specified location.

**Table 3: Feasibility permit proposals**

	Proposal	Why?	Decision
2.	The feasibility permit will give the holder the sole right to apply for a commercial permit for the area (or a portion of the area) covered by the feasibility permit	<ul style="list-style-type: none"> <li>• Provides greater investment certainty</li> </ul>	Agree / Discuss
3.	The Minister for Energy will initiate application rounds	<ul style="list-style-type: none"> <li>• Provides a structured process for comparative assessments</li> <li>• Provides greater certainty for participants than an “open-door” approach</li> <li>• Allows Minister to consider broader system objectives</li> </ul> <p><i>This proposal has changed following consultation feedback to enable greater certainty</i></p>	Agree / Discuss

4.	Applicants will identify and apply for preferred area (i.e. site selection will be developer-led)  <i>Legislation will allow the government to shift to a government-led approach in future</i>	<ul style="list-style-type: none"> <li>Allows regime to be implemented significantly earlier than if there was a government-led approach (e.g. designated areas such as in Australia)</li> </ul>	Agree / Discuss
5.	The Minister for Energy may impose limits on the types of permits that may be awarded in each round (e.g. generation capacity, area, technologies)	<ul style="list-style-type: none"> <li>Enables the Government to structure developments to meet energy system needs</li> <li>Provides an option to move to government-led site selection in the future (e.g. a designated area approach like Australia or full spatial planning)</li> </ul>	Agree / Discuss
6.	Feasibility permit applications are assessed against a legislated set of criteria (detailed below)	<ul style="list-style-type: none"> <li>Enables permits to be awarded to the projects that best meet New Zealand's national interests</li> </ul>	Agree / Discuss
7.	Feasibility permits will be issued for up to seven years	<ul style="list-style-type: none"> <li>Gives developers time to undertake the necessary feasibility activities</li> <li>Incentivises developers to progress projects in a timely manner</li> <li>Aligns with Australian regime<sup>2</sup></li> </ul>	Agree / Discuss
8.	Permits will have 'use it or lose it' provisions	<ul style="list-style-type: none"> <li>If a project fails to progress, the area can be made available to other developers</li> </ul>	Agree / Discuss
9.	Feasibility permits should be within a contiguous area of up to 250 km <sup>2</sup>  <i>Note this will be set out in guidance rather than legislation</i>	<ul style="list-style-type: none"> <li>Reflects size of New Zealand's electricity system and expected energy needs</li> <li>Enables competition</li> <li>Supported by most submitters in consultation</li> </ul> <p><i>Australia's regime awards permits up to 700km<sup>2</sup> to incentivise larger developments, reflecting its larger electricity system</i></p>	Agree / Discuss
10.	Applicants may not be awarded multiple permits side-by-side or in the same area	<ul style="list-style-type: none"> <li>Promotes competition and efficiency</li> </ul>	Agree / Discuss
11.	Where permit applications overlap or are oversubscribed, priority will be given to the stronger application	<ul style="list-style-type: none"> <li>Prioritises outcomes for New Zealand</li> <li>Less risk of anti-competitive behaviour than if developers resolve overlaps between themselves</li> </ul>	Agree / Discuss
12.	Permit decisions may be appealed to the High Court	<ul style="list-style-type: none"> <li>Significance of decision (i.e. awarding exclusivity) warrants appeal process</li> </ul>	Agree / Discuss
13.	Permit applications will be notified and public consultation undertaken, with the process and minimum period for consultation set in regulations (e.g. two months)	<ul style="list-style-type: none"> <li>Significance of decision (i.e. awarding exclusivity) warrants process to enable public input</li> <li>Builds social licence by surfacing any contentious issues early</li> </ul>	Agree / Discuss

## Commercial permit

20. Under the proposed model, a developer must obtain a commercial permit before they can construct and operate offshore renewable energy infrastructure in the permit area. Only the holder of a feasibility permit in a specified area can apply for the commercial permit relating to that area.

<sup>2</sup> Unlike in New Zealand, the feasibility licence in Australia is required to undertake feasibility activities.



21. The assessment for commercial permits is non-comparative, unlike for feasibility permits. This reflects the importance of giving as much certainty as possible at the feasibility stage to enable permit-holders to invest.

**Table 4: Commercial permit proposals**

	<b>Proposal</b>	<b>Why?</b>	<b>Decision</b>
14.	Commercial permits are required before construction and operation of any offshore renewable energy infrastructure	<ul style="list-style-type: none"> <li>• Gateway to ensure projects meet the required standards and risks are managed</li> <li>• Ensures all offshore renewable energy infrastructure is subject to the regime</li> </ul>	Agree / Discuss
15.	Commercial permits can be sought at any time within the term of the feasibility permit, once feasibility work is complete	<ul style="list-style-type: none"> <li>• Allows developments to go ahead as soon as possible once permit-holders are ready</li> </ul>	Agree / Discuss
16.	Applications will be assessed against criteria on a pass/fail basis (non-comparative)	<ul style="list-style-type: none"> <li>• Overlaps will already have been resolved at feasibility</li> <li>• A comparative assessment at this stage would reduce certainty and deter investment</li> </ul>	Agree / Discuss
17.	Permits will be issued for up to 40 years	<ul style="list-style-type: none"> <li>• Length accounts for construction, expected life of the assets, and decommissioning</li> <li>• Aligns with the Australian regime</li> </ul>	Agree / Discuss
18.	Permit decisions may be appealed to the High Court	<ul style="list-style-type: none"> <li>• Significant impacts of decision warrants appeal process</li> </ul>	Agree / Discuss
19.	Permit applications are publicly notified, but there is no requirement to consult publicly	<ul style="list-style-type: none"> <li>• Avoids duplicating public consultation on environmental consents, but allows for public consultation if warranted by the circumstances</li> </ul>	Agree / Discuss
20.	Extensions to the permit duration may be sought and approved by the regulator to accommodate the life of the assets	<ul style="list-style-type: none"> <li>• Enables infrastructure to remain in place longer where appropriate</li> </ul>	Agree / Discuss

### Criteria for permit assessments

22. As set out above, the permits will be assessed against set criteria. The legislation will set out the high-level criteria, with the detail of how they will be assessed and weighted to be set out in secondary legislation.
23. The proposed assessment criteria, and what they are intended to cover, are set out in the table below. Most criteria will apply to both permits, but the nature of the assessment will be different, reflecting the different functions of each permit:
- the feasibility permit assessment is to identify the best projects to proceed, particularly where there are multiple applications
  - the commercial permit assessment is to check that the claims and assumptions made at feasibility stage hold true, the necessary feasibility activities have been completed, and the project plans have matured acceptably.
24. Since we last briefed you on the proposed criteria, we have incorporated a new criterion on existing rights and interests (e.g. mining permits, Treaty settlements) in the area subject to the feasibility permit. The ability of a developer to manage conflicts with other marine users may affect its ability to get an environmental consent under the RMA and/or EEZ Act. The new criterion would require applicants to identify overlaps or potential conflicts and provide

information about how those will be managed as part of their application. This information would be complemented by information provided through the public consultation process.

**Table 5: Proposed criteria for assessment**

<b>Proposed criteria</b>	<b>What it covers</b>
<b>Technical and financial capability</b>	Applicant's technical and financial capability to install, operate, maintain and decommission offshore renewable infrastructure Considerations would include evidence of financial position, financing arrangements for the project, a risk mitigation strategy with appropriate mitigations, and a clear management plan for the operational life of the project
<b>Decommissioning arrangements</b>	Applicant's plan for decommissioning the assets at the end of their economic life, including a cost estimate and appropriate form and level of financial security
<b>Health and safety capability</b>	Applicant's understanding of New Zealand health and safety legislation, their plan to deliver the project safely, and their health and safety record
<b>Iwi engagement</b>	Applicant's plan to engage meaningfully with iwi and hapū
<b>Economic benefits (including national, regional and local)</b>	What economic benefits the project will bring to New Zealand. Considerations would include the number and quality of the jobs the project will create, community engagement, regeneration and investment, training and skills development opportunities, and investment in localised supply chains
<b>Electricity system impacts</b>	What impact the proposed energy generation will have on the overall network Considerations would include the volume and location of generation, transmission plans, costs and where these costs are expected to fall, any impacts on system resilience, and whether generation is intermittent or comes with a firming solution
<b>National security and public order considerations</b>	Whether an applicant or proposed development poses any risk to national security or public order Determines whether decision to approve/decline application is made by the Minister for Energy
<b>Environmental capability</b> (for feasibility permit only)	Applicant's environmental record, including any previous incidents or prosecutions and understanding of New Zealand's environmental consenting legislation
<b>Readiness of the project, including status of environmental consent application(s)</b> (for commercial permit only)	Likelihood of project proceeding if granted a commercial permit Considerations would include whether financing was in place and/or secured conditional on the permit, there was well-progressed grid connection plans, a route to market, status of environmental consent, and the maturity of the project plan
<b>[NEW CRITERION]: Existing rights and interests</b> (for feasibility permit only)	Applicant's approach to identifying, engaging with, and managing other rights and interests in the area

## **Iwi and hapū participation**

25. We recently briefed you on the concerns iwi have raised with how the regime will be structured and whether it will reflect their view of the Crown's obligations under the Treaty of Waitangi (the Treaty) (briefing 2324-1361).
26. Following your indication that the Government's priority is to ensure appropriate consultation on permits (rather than a process for joint decision making), we envisage including the following proposals in the draft Cabinet paper. As set out above, we recommend there is an

opportunity for you to meet with relevant iwi to hear their perspectives on Māori participation in the regime. Any additions or changes following such a meeting could be incorporated into the Cabinet paper.

**Table 6: Iwi and hapu participation proposals**

	<b>Proposal</b>	<b>Why?</b>	<b>Decision</b>
<b>21.</b>	The regime will require permit applicants to engage meaningfully with iwi and hapū and to adhere to an iwi engagement plan throughout the duration of any permit	<ul style="list-style-type: none"> <li>• Incentivises developers to conduct meaningful and ongoing engagement with iwi and hapū, both prior to applying for a permit and during its life</li> </ul>	Agree / Discuss
<b>22.</b>	The regulator will assess the quality of existing and planned engagement with iwi and hapū as part of permitting decisions	<ul style="list-style-type: none"> <li>• Ensures permitting decisions take into account iwi and hapū engagement</li> </ul>	Agree / Discuss
<b>23.</b>	The regulator will consider the economic benefits proposed to flow to iwi and hapū as part of its assessment of the economic benefit of projects seeking permits	<ul style="list-style-type: none"> <li>• Ensures permitting decisions take into account economic benefits to iwi and hapū</li> </ul>	Agree / Discuss
<b>24.</b>	<i>[New proposal]</i> The regulator will be required to notify relevant iwi and hapū of provisional permit decisions within in their rohe, and to provide opportunity for them to comment within a defined period (to be set in regulations)	<ul style="list-style-type: none"> <li>• Increases iwi and hapū participation in the regime without materially affecting timeframes</li> <li>• Aligns with Australia's regime</li> </ul>	Agree / Discuss

27. Proposals 21–23 above were set out in our January advice. Proposal 24, for the regulator to notify iwi and hapū of planned permit decisions and provide an opportunity for the entities to comment, is new.

28. In the Australian regime, the Minister writes to leaders of impacted first nations peoples and invites comment on provisional permit decisions, in accordance with the obligations set out in the Native Title Act 1993. Developers are notified of the provisional decisions in confidence so that they have visibility of likely outcomes. We understand this consultation is currently underway for the first round of provisional feasibility licences in Victoria. During public consultation last year, many submitters (including developers) advocated for strong participation by iwi, including direct involvement in decision-making on permit applications.

29. Including a requirement for the regulator to notify iwi and hapū of planned permit decisions would enable iwi input into permit decisions without materially affecting timeframes. This would also help to identify any issues with existing rights and interests held by iwi that have not been surfaced through the required developer engagement.

### **Financial design of the regime**

30. As noted in the 1 February briefing, we propose to recover the costs of the regime from developers. Consultation feedback almost unanimously supported full cost recovery for government administration of the regime, so long as it is proportionate and moderate. Conversely, most submitters argued against any revenue flow back to government.

31. The detailed costs of administering the regime and the structure of fees will be set in regulations. As indicated in our separate briefing to you for the 7 March Taranaki meeting [2324-2239 refers], iwi have requested that the regime provides a cultural interests fund for costs associated with their participation. Developers have indicated support for part of the fees being used for this purpose. We will provide you further advice on this in the context of the policy decisions that will be required for regulations.

**Table 7: Financial proposals**

	<b>Proposal</b>	<b>Why?</b>	<b>Decision</b>
<b>25.</b>	The costs of administering the regime will be recovered from permit-applicants and permit-holders	<ul style="list-style-type: none"> <li>Aligns with Treasury guidance that public organisations generally charge fees when the goods or services they provide deliver direct benefit to a specific group</li> <li>Almost unanimously supported in consultation</li> </ul>	Agree / Discuss
<b>26.</b>	The legislation will not provide for royalties	<ul style="list-style-type: none"> <li>Likely to significantly deter investment</li> <li>Increased cost of projects would flow through to consumers</li> <li>Legal professional privilege</li> <li>Aligns with the Australian regime</li> </ul>	Agree / Discuss

### **Decommissioning**

32. The purpose of the decommissioning provisions is to ensure that offshore renewable energy assets are removed at the end of their operational lives and to reduce the risk of significant decommissioning costs falling to the Crown.
33. It is standard practice internationally for offshore renewable energy regimes to require financial security for decommissioning. The legislation will set out how financial security should build up over time and how to manage risks if the permit is transferred to another entity. More detailed issues relating to decommissioning, including calculating the level of financial security, will be set out in secondary legislation.
34. Following the 1 February briefing, you asked for more information on Australia’s approach. Australia’s decommissioning regulations are expected to be published in the next few months. Australia’s approach is more financially onerous than ours:
- Confidential advice to Government  
Financial security will build up during construction, be partially released soon after operation commences, then build up to its full value over an agreed number of years before decommissioning.
  - Australia will base financial securities on the cost to the government. It will require full financial security at the commercial permit stage (i.e. not building up over time).
35. Developers prefer a risk based, incremental approach and have stated that requiring the full cost of decommissioning to be secured at the point of commercial permit would materially affect the overall investibility of projects. This does not appear to have affected the level of interest in feasibility activities, with 37 applications for feasibility licences received in Australia’s first round. However, the revenue stabilization measures being offered at the State level in Australia provide a different context for (and may offset) decommissioning security costs.
36. Our approach to managing permit transfers aligns with Australia and the UK, i.e. no trailing liabilities.

**Table 8: Decommissioning proposals**

	<b>Proposal</b>	<b>Why?</b>	<b>Decision</b>
<b>27.</b>	Commercial permit-holders have obligations to decommission, with criminal offences for failing to do so	<ul style="list-style-type: none"> <li>Gives permit-holders a strong incentive to ensure assets are decommissioned appropriately</li> </ul>	Agree / Discuss

28.	Commercial permit-holders would be required to put in place a financial security towards the costs of decommissioning	<ul style="list-style-type: none"> <li>Reduces the risk of costs falling to the Crown if a permit-holder fails to decommission adequately</li> </ul>	Agree / Discuss
29.	Financial security would accrue to reflect key risk periods (i.e. during construction and towards the end of the asset's life).	<ul style="list-style-type: none"> <li>Makes the costs to developers proportionate to the risk of the project failing to decommission adequately</li> <li>Balances the government's exposure to risk with the investibility of projects</li> </ul>	Agree / Discuss
30.	The Minister will be able to deviate from this default approach depending on the specific risk profile of a permit holder	<ul style="list-style-type: none"> <li>Gives flexibility to respond to the specific risk profile of a particular permit holder</li> </ul> <p>Confidential advice to Government</p>	Agree / Discuss
31.	<p>No trailing liabilities. Instead, if a commercial permit is transferred from one party to another:</p> <ul style="list-style-type: none"> <li>the Minister must approve the transfer</li> <li>the new permit holder must put in place a financial security of equal or greater value than the existing security</li> <li>there is no continuing obligation on the original permit holder to decommission (i.e. no trailing liability)</li> </ul>	<ul style="list-style-type: none"> <li>Manages risk of decommissioning costs falling to the Government</li> <li>Trailing liabilities are strongly opposed by industry because of the significant impact on the investibility of projects</li> <li>Aligns with Australia's approach</li> </ul>	Agree / Discuss

### Interaction with environmental consenting and other regimes

37. The regime is intended to work alongside, rather than duplicate, the environmental consenting regime. However, the 'first-in, first served' basis of the existing consenting regimes has the potential to undermine the site exclusivity for offshore renewable energy provided by the permit regime. The proposals aim to avoid this risk.

**Table 9: Interaction with consenting proposals**

	Proposal	Why?	Decision
32.	Consenting legislation (Resource Management Act 1991 (RMA) and the Exclusive Economic Zone and Continental Shelf (Environmental Protections) Act 2012 (EEZ Act)) will be amended to require consent decision makers to decline an application for offshore renewable energy if a feasibility permit has not been granted. We are recommending this approach is also applied to fast-track consenting	<ul style="list-style-type: none"> <li>Prevents use of consenting processes to undermine the permitting regime (which enables the selection of developments that best meet New Zealand's national interests)</li> </ul>	Agree / Discuss
33.	Existing applications for environmental consents, or consents already granted, for offshore renewable energy projects will lapse if a feasibility or commercial permit is not granted	<ul style="list-style-type: none"> <li>Prevents the risk of land banking before the permitting regime comes into force</li> <li>Addresses the existing application to the Taranaki Regional Council for a resource consent (Wind Quarry Zealandia)</li> </ul> <p>Legal professional privilege</p>	Agree / Discuss

## Transmission infrastructure

38. Offshore renewable energy will require new transmission infrastructure to connect it to the national grid. As detailed in the 1 February briefing, we propose a hybrid model for the building, ownership and operation of this infrastructure. Consultation feedback generally supported this approach.
39. A process for transferring ownership of the infrastructure will be required. We are developing proposals for this and will seek decisions from you when we provide the draft Cabinet paper.

**Table 10: Transmission infrastructure proposals**

	Proposal	Why?	Decision
34.	Commercial permit-holders will be responsible for planning, building and funding new transmission infrastructure	<ul style="list-style-type: none"> <li>Design and construction of infrastructure is done by the party most likely to have technical expertise and experience (the developer)</li> <li>Gives developers more certainty of the delivery timeline and costs</li> </ul>	Agree / Discuss
35.	Transpower will be responsible for owning, operating and decommissioning the transmission infrastructure	<ul style="list-style-type: none"> <li>Consistent with how onshore transmission infrastructure is owned and operated, which reduces the risk of distorting the onshore renewable pipeline</li> </ul>	Agree / Discuss
36.	Feasibility permits and commercial permits will cover a development's offshore transmission infrastructure (rather than having a separate permit for transmission infrastructure, as Australia does)	<ul style="list-style-type: none"> <li>Enables early consideration of transmission routes</li> <li>Streamlines the management of permits</li> </ul>	Agree / Discuss

## Safety zones

40. 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 entry to unauthorised vessels are commonly used around offshore renewable energy infrastructure to manage these risks.

**Table 11: Safety zone proposals**

	Proposal	Why?	Decision
37.	The regime will provide for safety zones of up to 500 metres to be put in place around offshore renewable energy infrastructure	<ul style="list-style-type: none"> <li>Reduces risk of damage to infrastructure and collisions in areas where offshore renewable energy infrastructure is being developed, operated or decommissioned</li> </ul>	Agree / Discuss
38.	The size of safety zones will be set in guidance and may vary from 500 metres during high-risk periods to 50 metres during periods of normal operation	<ul style="list-style-type: none"> <li>Balances the need to protect infrastructure and public safety with existing rights and interests of other marine users</li> <li>Developers, iwi and hapū and other marine users were in favour of this approach</li> </ul>	Agree / Discuss

## Regulatory settings

41. The proposed regulatory settings are intended to incentivise participants to comply with the regime and to provide effective ways of dealing with non-compliance. The proposals align with the existing compliance and enforcement regime in the Crown Minerals Act 1991 (CMA) and, where appropriate, with the Australian Offshore Electricity Infrastructure Act.

**Table 12: Regulatory setting proposals**

	<b>Proposal</b>	<b>Why?</b>	<b>Decision</b>
39.	The regulator would have access to a range of compliance and enforcement tools	<ul style="list-style-type: none"> <li>Enables the regulator to use proportionate interventions to encourage compliance and deter wrongdoing</li> </ul>	Agree / Discuss
40.	The regime would establish a set of obligations, offences, and defences, and would provide for civil proceedings as well as criminal prosecutions	<ul style="list-style-type: none"> <li>Makes permit-holders accountable under the regime and enables enforcement action, including prosecutions</li> </ul>	Agree / Discuss
41.	The maximum penalty would be <ul style="list-style-type: none"> <li>In the case of an individual, a term of imprisonment not exceeding two years, or a fine not exceeding \$1,000,000, or both;</li> <li>In any other case, the greater of the following:               <ol style="list-style-type: none"> <li>A fine not exceeding \$10,000,000;</li> <li>A fine not exceeding 3 times the cost of decommissioning.</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>Aligns with section 89ZZX of the CMA.</li> <li>Provides a meaningful deterrent against the most serious breaches of the regime, e.g. failure to decommission.</li> </ul>	Agree / Discuss

## Next steps

42. As set out above, we are aiming to develop a Cabinet paper for consideration by the Cabinet Economic Policy Committee (ECO) on 1 May. The table below sets out the key milestones. There will be a tight turnaround for you to provide any feedback on the draft Cabinet paper (as it coincides with public holidays), for MBIE to update the paper based on this feedback, and for revisions following feedback from Ministerial and coalition party consultation.

### Offshore Renewable Energy Timeline for Cabinet decisions

<b>Date</b>	<b>Milestone</b>
Thursday 7 March	<b>Initial feedback received from Minister on briefing</b> Officials draft Cabinet paper
Monday 18 March	Interagency consultation begins (1 week only)
Thursday 28 March	<b>Draft Cabinet paper provided to Minister</b> <i>(Note Good Friday 29 March and Easter Monday 1 April)</i>
Wednesday 3 April	<b>Feedback from Minister on draft Cabinet paper</b> Officials update Cabinet paper
Thursday 4 April	<b>Ministerial consultation begins (2 weeks)</b>
Thursday 18 April	Feedback from Ministerial consultation
Tuesday 23 April	<b>Revised Cabinet paper provided to Minister</b>
Wednesday 24 April	<b>Cabinet paper lodged</b>
Wednesday 1 May	<b>Cabinet Economic Policy Committee</b>
Monday 6 May	<b>Cabinet</b>

## Annexes

Annex One: Offshore renewable energy regimes – international comparisons

Annex Two: Summary of submissions

Annex Three: Overview of proposed regime

## Annex One: Offshore renewable energy regimes – international comparisons

The table below shows how the proposed New Zealand regime compares internationally.

	<b>New Zealand (proposed)</b>	<b>Australia</b>	<b>United Kingdom</b>	<b>Scotland</b>	<b>Netherlands</b>	<b>Denmark – Tendered process</b>	<b>Denmark – Open door process</b>
Does the country have <b>bespoke legislation</b> for ORE?	<b>Yes</b> Offshore Renewable Energy Bill, currently under development.	<b>Yes</b> Offshore Electricity Infrastructure Act 2021.	<b>No</b> ORE is covered under the Energy Act 2004 and managed via the Crown Estate (UK) and ScotWind (Scotland).		<b>Yes</b> Offshore Wind Energy Act 2015.	<b>No</b> The Act on the Promotion of Renewable Energy 2015 promotes the production of renewable energy sources on land and offshore areas.  The Danish system provides for two processes – an open-door process and a tendered process – both of which are covered in this table.	
How <b>mature</b> is the regime?	Under development	Very recent	Established	Recent	Established	Established	
<b>Who</b> determines where developments should go?	<b>Developer</b> Developers will submit proposals for sites to the regulator.	<b>Hybrid</b> The Government assesses and designates suitable areas; developers propose specific sites within those areas.	<b>Government</b> The Government proposes broad areas for development and conducts preliminary analysis of specific sites. Leases are granted to developers for further investigations of these sites.		<b>Government</b> The Government uses spatial planning to designate areas and specifies conditions for construction and operation in these areas.	<b>Government</b> The Government uses spatial planning to identify and assess eligible sites.	<b>Developer</b> The developer applies for a license to carry out preliminary investigations in an area. No specific sites are designated for these applications.
<b>How</b> is the process run and <b>who</b> initiates it?	<b>Government rounds</b> Rounds for feasibility permit applications will be	<b>Government rounds</b> The Minister issues an invitation to submit a feasibility licence application	<b>Government rounds</b> The Government initiates rounds to award leases to developers.		<b>Government rounds</b> A competitive tender process is initiated by the Government after	<b>Government rounds</b> Tender invitations (including specifications for developers to	<b>Developer applications</b> Developers may, at any time, apply to carry out initial investigations. No



	<b>New Zealand (proposed)</b>	<b>Australia</b>	<b>United Kingdom</b>	<b>Scotland</b>	<b>Netherlands</b>	<b>Denmark – Tendered process</b>	<b>Denmark – Open door process</b>
	initiated by the regulator.	(within a specified time period).			its spatial planning decisions have been made.	follow) are issued by the Government.	prompt from the government is required.
What are the broad types of <b>criteria</b> used to select a project?	Delivery and capability – YES  Broader outcomes – YES  Price - NO	Delivery and capability – YES  Broader outcomes – YES  Price - NO	Delivery and capability – YES  Broader outcomes – YES  Price - NO		Delivery and capability – YES  Broader outcomes – YES  Price - YES	Delivery and capability – YES  Broader outcomes – YES  Price - YES	
When are projects <b>assessed</b> against the criteria?	Pre-feasibility permit grant, pre-commercial permit grant.	Pre-feasibility licence grant, pre-commercial licence grant.	Pre-tender process, during tender process, assessment of successful tender bids prior to construction.		Pre-construction.	Pre-feasibility licence grant, pre-construction, pre-electricity production licence grant.	
How <b>long</b> do commercial permits (or equivalents) last?	40 years	40 years	60 years		40 years	25 years, with the possibility of extension upon agreement.	
What is the <b>maximum size</b> of a project, and how is it defined?	250km2 (in guidance)	700km2 (in regulations)	850km2 (in guidance)	Government spatial planning sets out a ratio for output to geographic area that tender offers are based on.	Variable approach, depending on the government's spatial planning. Tender offers are based on project outputs (MW).	Government spatial planning identifies sites of specific sizes, and the project application process is based on output (MW).	Applications are made based on sites identified via government spatial planning processes.
Is <b>transmission</b> developer led or Transmission System Operator (TSO) led?	<b>Hybrid</b> Developers design and build transmission infrastructure, then	<b>Hybrid</b> Government is involved in the design phase, but developers hold the	<b>Hybrid</b> Developers of new projects can choose to either design and build transmission infrastructure		<b>Hybrid</b> Developer is responsible for costs up to connection point,	<b>TSO</b> TSO is responsible for development, construction, and operation of	<b>Developer</b> Developer is responsible for the development, construction, and

	<b>New Zealand (proposed)</b>	<b>Australia</b>	<b>United Kingdom</b>	<b>Scotland</b>	<b>Netherlands</b>	<b>Denmark – Tendered process</b>	<b>Denmark – Open door process</b>
	transfer ownership to Transpower (as TSO).	transmission licence. Guidelines yet to be written.	themselves or opt for the TSO to do so.		after which ownership is transferred to the TSO.	transmission assets.	operation of the offshore transmission assets.
Does the country have a <b>decommissioning regime</b> – with financial security and trailing liability?	<b>Yes</b> Financial security – YES  Trailing liability - NO	<b>Yes</b> Financial security – YES  Trailing liability – NO	<b>Yes</b> Financial security – YES  Trailing liability – YES, subject to Ministerial decision-making		<b>Yes</b> Financial security – YES  Trailing liability – No detailed framework	<b>Yes</b> Financial security – YES  Trailing liability – No detailed framework	
Are <b>cost recovery or revenue gathering</b> mechanisms in place?	<b>Cost recovery</b> only, with a combination of relatively moderate pre-set application and annual fees.	<b>Cost recovery</b> only, with a combination of relatively moderate pre-set application and annual fees.	<b>Revenue gathering</b> , including significant royalties based on annual production volumes (competitively allocated).	<b>Revenue gathering</b> , including significant pre-set ongoing fees based on production volumes.	<b>Revenue gathering</b> , including moderate ongoing fees at a fixed rate based on production volumes.	<b>Cost recovery</b> only, with successful applicants covering previous costs incurred by the Government.	
Does the country offer <b>revenue support/stabilisation</b> ?	<b>TBD</b> We are currently determining our position on this issue.	<b>Yes</b> Determined at the State rather than the Federal Government level. States are offering a range of measures, including feed in tariffs; floating premiums; and Contract for Differences.	<b>Yes</b> Two-sided Contract for Difference.		<b>Yes</b> Tenders are awarded to offers with the lowest subsidy bid. However, the Dutch are moving away from a subsidy model.	<b>Yes</b> Contract for Difference.	<b>Yes</b> Premium of DKK 0.25 kWh, with limits on how much the subsidy plus market price for electricity can amount to.

ANNEX 2: Summary of Submissions  
was proactively released alongside  
the Cabinet paper on MBIE's  
website

ANNEX 3: Overview of proposed regime was proactively released alongside the Cabinet paper on MBIE's website