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 – Alignment with Fast-track Approvals Bill

Date:	15 March 2024	**Priority:**	Medium
Security classification:	In Confidence	**Tracking number:**	2324-2513

Action sought		
	Action sought	**Deadline**
Hon Simeon Brown **Minister for Energy**	**Agree** to the proposed alignment of the offshore renewable energy regime with the Fast Track approvals Bill for inclusion in upcoming Cabinet decisions **Discuss** the areas in this brief where we seek further guidance from you.	18 March

Contact for telephone discussion (if required)			
Name	**Position**	**Telephone**	**1st contact**
Susan Hall	Policy Director	Privacy of natural persons	
Peter Bartlett	Director, Sector Engagement	Privacy of natural persons	✓

The following departments/agencies have been consulted
N/A

Minister's office to complete:

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☐ See Minister's Notes ☐ Withdrawn

Comments

MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

BRIEFING

Offshore Renewable Energy – Alignment with Fast-track Approvals Bill

Date:	15 March 2024	**Priority:**	Medium
Security classification:	In Confidence	**Tracking number:**	2324-2513

Purpose

To provide the further advice you requested on aligning the offshore renewable energy regime with the Fast-track Approvals Bill, and seek your approval to include these in upcoming Cabinet decisions on the regime.

Recommendations

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

a **Note** you directed officials to provide further advice on aligning the approach to Māori participation in the offshore regime with the Fast-track Approvals Bill

Noted

b **Note** that officials have assessed these provisions, and to align them would require some modifications to account for the different (competitive, regulator run) permitting process that is proposed for the offshore regime

Noted

c **Agree to, or where indicated discuss**, the proposals set out in the table attached to this briefing

Noted

Privacy of natural persons

Susan Hall
Policy Director
Building, Resources and Markets, MBIE

15 / 03 / 2024

Hon Simeon Brown
Minister for Energy

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Background

1. At our meeting of 6 March 2024, you instructed officials to provide further advice to align the approach to Māori participation in the offshore renewable energy regime (the offshore regime) with the Fast-track Approvals Bill (FTA Bill). Briefing 2324-2096 set our final proposals for the offshore regime.

2. The attached table outlines the relevant provisions of the Bill and how they could align with the offshore regime. Several key differences that would need to be accounted for in aligning the two are:

    - Under the offshore regime we are proposing that a regulator will make decisions under delegated authority from you as Energy Minister, rather than Ministers on reference from a panel. This is the approach taken under the Crown Minerals Regime. We would need to adjust the approach set out in the FTA Bill to attach obligations to the appropriate party under the offshore regime.
    - The offshore regime will invite multiple applications and judge them on a competitive basis where they overlap, whereas the FTA Bill deals with a single application for a given activity in a given area. We have considered alignment with this difference in mind (particularly in terms of the consultation burden on relevant Māori groups).
    - The shovel-ready nature of projects under the FTA Bill is different from offshore projects at feasibility permit stage, where projects will need further development following awarding permits. Some issues relating to Treaty settlements or legal rights, like customary marine title, may need to be resolved during the feasibility permit stage in discussion with relevant Māori groups (rather than prior to as would be the case for consents, where issues are expected to be known by the time of application).

3. There are various provisions where we seek your advice on a preferred approach, as follows. Further detail is covered in the annexed table.

Involvement of the Minister for Māori Crown Relations : Te Arawhiti

4. The FTA Bill includes a mandatory requirement for the expert panel to consult with the Minister for Māori Crown Relations : Te Arawhiti. In most cases we do not consider this is likely to be warranted in relation to permitting decisions in the offshore regime and could add undue complexity and time. Instead, we recommend that the offshore regime include flexibility for the Minister for Energy to consult with other Ministers where appropriate (e.g. a “may” instead of a “must” provision).

Scope of consultation on permits

5. In our original proposals, we suggested a possible option for the regulator/Minister to consult relevant Māori groups on provisional or intended to be granted feasibility permits. This would be in addition to public consultation on feasibility permits (which would inform the regulator’s/Minister’s decision making). You asked for further advice on how this aligns with the FTA Bill.

6. The FTA Bill requires both:

    - Ministers to copy applications for fast-track referral to relevant Māori and seek their input
    - consenting panels to seek relevant Māori views on the consents themselves.

7. For each stage and type of consent application/list of scheduled projects, different groups are consulted.

8. We consider there is value in replicating the approach in the FTA Bill by seeking iwi input on permits as well. However, we have previously heard from iwi that they are unlikely to be interested in many aspects of permit applications. We are also cognisant of the fact that they

may need to respond to multiple permit applications at one time – which is slightly different from the consenting process. Following discussion with you on this brief, we seek your agreement to test what is practical with iwi.

Ongoing consultation requirements for permit holders

9. Confidential advice to Government

10. As noted above, one key difference between consents and offshore renewables projects is that the feasibility permit stage of offshore projects is when a number of matters such as the impact on marine mammals and birds that could be taonga species, and the location of developments that might affect legal rights under Treaty settlements such as customary title, is further assessed. Projects may change during the feasibility process, which an ongoing consultation requirement would support. Free and frank opinions

Treaty clause

11. The FTA Bill includes a Treaty clause that requires all decision makers to act in a manner that is consistent with existing Treaty settlement obligations and certain existing customary rights. We have not yet provided advice on the scope of any similar provision that would be required in the offshore regime, which would be developed through the drafting process. We seek your direction on following the approach in the FTA Bill.

Next steps

12. Following your feedback, we will incorporate any changes into the draft Cabinet paper seeking final policy decisions on the offshore regime. We are intending to provide you a final draft for Ministerial consultation on 28 March 2024.

13. It is possible that the select committee process for the FTA Bill may also result in amendments to the relevant provisions. We recommend that you note in the Cabinet paper that you may need to take account of any changes in the drafting of the offshore legislation to ensure continued alignment. We expect introduction of the offshore legislation to the House after the passage of the FTA Bill, which will enable us to align the offshore regime accordingly.

14. Drafting of the offshore regime would also need to set out which Māori groups the provisions apply to (e.g. those with relevant Treaty interests, relevant post-settlement authorities, customary rights holders, as set out in the FTA Bill). We would also need to set out which substantive issues the offshore regime would invite comment on.

15. You will also be meeting with relevant iwi to discuss offshore renewable energy on 19 March 2024. We have provided briefing 2324-2229 for this meeting. You may wish to seek their feedback on broadly aligning the two approaches.

16. Ngai Tahu and Waikato Tainui (who are both attending) have had initial public reactions to the FTA Bill that are mixed – they consider some elements dealing with Treaty settlements are positive and may wish to see some of their own projects included in the FTA Bill's schedule, while they have also raised concerns about the way the Bill deals with the Treaty

more generally[1]. We have not yet seen public statements from Taranaki iwi, however note that there have been recent public protests in relation to one seabed mining application currently being considered under the RMA.

[1] https://newsroom.co.nz/2024/03/08/new-fast-tracking-regime-is-both-conflicting-and-conflicted/

Annex: Proposals Table

Fast-track approvals provision	Comments and Recommendations
Report on Treaty settlement issues Relevant provision – clause 13. Before referring a project to the fast-track process, the Bill requires Ministers to obtain and consider a report from the responsible agency on various matters to do with Treaty settlements, including: • who are the relevant iwi authorities and relevant Treaty settlement entities: • what Treaty settlements relate to the project area • any court orders that recognise, in relation to the project area, protected customary rights or customary marine title, whether the court orders or agreements are granted under the Marine and Coastal Area (Takutai Moana) Act 2011 or another Act • a summary of comments received by the Ministers from Māori groups, a summary of any further information received by the Ministers from those groups, and the responsible agency's advice on whether the referral application should be accepted. In preparing the report required by this section, the responsible agency must consult the Minister of Māori Development and the Minister for Māori Crown Relations: Te Arawhiti.	**Comment** We have not proposed any similar report under the offshore regime. We have previously proposed that applicants for permits are required to identify their current knowledge of these matters (existing rights and interests) in applications. This will also capture non-Māori interests, such as permits issued under other legislation. Undertaking a similar report would be of substantial benefit for the regulator in ensuring any permits do not override Treaty settlements but would add some further implementation cost to the process, which could be recovered from applicants. In practice, one report could be sufficient to cover several offshore permits in the same area. We would also need to discuss resourcing with the Office For Māori Crown Relations: Te Arawhiti (Te Arawhiti) prior to any Cabinet decisions. **Recommendation** If you wanted to replicate this approach in the offshore regime, we would recommend doing this at the feasibility permit stage only, and implemented by the regulator (MBIE) requesting this from Te Arawhiti. Specific drafting on the required scope of the report would need to be considered (as some provisions included in the Bill are targeted at land-based processes in the RMA and may not be relevant for offshore developments). At the commercial permit stage, we would recommend the regulator and Te Arawhiti checks the issues raised in the report to ensure no fundamental changes have occurred – but that this process is not replicated. Reference could be made by the regulator to any assessments made for the resource consent. *Agree / Discuss*
Applicants must identify affected Māori groups and settlements Relevant provision - clause 14 The Bill requires fast-track applicants to include information on affected Māori groups and settlements, including: • relevant iwi authorities, and relevant Treaty settlement entities, protected customary rights groups, customary marine title groups, applicant groups under the Marine and Coastal (Takutai Moana) Act 2011, ngā hapū o Ngāti Porou • a list of any Treaty settlements that apply to the geographical location of the project, and a summary of the relevant principles and provisions in those settlements • a list of the protected customary rights groups, customary marine title groups, applicant groups under the Marine and Coastal (Takutai Moana) Act 2011 (MACA), and ngā hapū o Ngāti Porou in the list of likely affected parties • whether the project is proposed in any customary marine title area, protected customary rights area, or aquaculture settlement area declared under section 12 of the Māori Commercial Aquaculture Claims Settlement Act 2004 or identified within an individual iwi settlement • an assessment of any effects of the activity on the exercise of a protected customary right.	**Recommendation** We proposed that similar provisions to clause 14 would be included in the application requirements for offshore regime (to be set out in legislation or supporting regulations). Specific drafting will need to be determined to ensure the information is relevant to offshore projects. No change to approach is proposed. *Agree / Discuss*

Consultation requirements for applicants	**Comment**
Relevant provision – clause 16 The Bill requires the applicant to undertake engagement with the following groups: • relevant iwi, hapū, and Treaty settlement entities • any relevant applicant groups with applications for customary marine title under the Marine and Coastal Area (Takutai Moana Act) 2011 • if relevant, ngā hapū o Ngāti Porou • relevant local authorities. The Bill also requires the applicant to include a record of the engagement and a statement about how it has informed the project.	*Engagement prior to application for permit (feasibility and commercial)* Our proposals for the offshore regime would require applicants to engage with relevant Māori groups prior to application, and submit an engagement plan that would show how the applicant would include those groups throughout the feasibility assessment process. The quality of this plan would be assessed by the regulator in selecting applications for feasibility permits (the offshore regime will award permits on a competitive basis at the feasibility stage, where fast-track approvals are first come first served). Our proposals are broadly aligned with the FTA Bill. We recommend maintaining the approach in the offshore regime as originally proposed. *Agree / Discuss* *Engagement through feasibility* The provision in the FTA Bill will be in relation to fully formed/shovel-ready projects, whereas feasibility permits will be in relation to projects that may alter following further feasibility work. For the offshore regime we originally proposed an ongoing engagement requirement, such as a reporting condition on feasibility permit holders that would require them to show how they have met the engagement plan submitted as part of the application. A number of matters such as the impact on marine mammals and birds that may be taonga species, and location of developments that might affect legal rights under Treaty settlements (such as customary marine title), will require engagement as offshore projects are developed. For example, we understand from developers that it may be possible to move offshore connection cables from offshore assets to avoid customary marine title or other Māori interests. This might also apply to avoiding marine mammal or bird habitats. Having an ongoing requirement would also ensure that projects reaching the commercial stage are appropriately consulted on if they are modified substantially during the feasibility process. Developers have also indicated their desire to involve relevant Māori groups through the feasibility process. An ongoing reporting requirement is also similar to the approach in the Crown Minerals Act. Confidential advice to Government Should you not wish to include a reporting requirement on feasibility permit holders, we note feasibility permit holders would still be required to engage with relevant Māori groups prior to making an application. **Recommendation** For discussion on your preferred approach.
Government consultation on referrals / Panel consultation on decisions Relevant provision – clause 19 The Bill requires Ministers to copy an application for referral to, and invite comments, from relevant groups including iwi authorities, Treaty settlement entities, Takutai Moana rights holders and applicants and other affected iwi groups with settlement interests. Ministers must also consult the entities identified in the report that has to be produced under clause 13 (noted above). The Bill also requires panels to consult relevant Māori groups on the report done under clause 13 (noted above).	**Comment** Under the offshore regime the regulator will be making permit decisions under delegated authority from you as Minister. In the feasibility stage the regime, the regulator will also invite multiple applications from a diverse range of developers, whereas the FTA Bill will refer specific projects in any given area. We have proposed public consultation on feasibility applications, to inform the regulator's decision. For the Māori consultation aspects of the offshore regime, we sought your feedback on an approach broadly aligned with the FTA Bill, but where the regulator would inform relevant Māori parties of provisionally accepted permit applications (both feasibility and commercial) and invite comment. This is different to the FTA bill which requires consultation on both referrals and panel decisions. Issues that we understand relevant Māori groups are likely to face are: • If there are a substantial number of applications through a permitting round, the implementation burden on Māori authorities to comment on all applications will be substantial. • In our discussions with Māori authorities they indicated much of the application material would be difficult or irrelevant for them to comment on (such as technical capability of the applicant to deliver a project). They indicated understanding which applications are likely to be approved would help inform their comments. **Recommendation** We recommend modifying our proposals for the offshore regime so that it includes a similar provision to the FTA Bill, requiring Māori consultation on both feasibility and commercial permits. If you agree with this approach, we seek your agreement to test which issues and permits Māori would like to be consulted on to avoid implementation burden on them. *Agree / Discuss*

Māori representation on panels Relevant provision – Schedule 3 clause 3 and clause 7 The Bill requires panels who assess applications to have 1 person nominated by the relevant iwi authorities. A process is included to manage multiple nominees and numbers on panels – including for "matters unique to any relevant iwi participation legislation". In addition, panel members must have the relevant skills and experience particularly: • an understanding of te Tiriti o Waitangi/the Treaty of Waitangi and its principles; and • an understanding of tikanga Māori and mātauranga Māori;	**Comment** We have not previously proposed any similar provision because there is no panel/board style approach proposed for the offshore regime (a regulator decision making process is substantially different). In submissions on the regime some iwi requested that a board approach was taken to permit assessments and that iwi would have representation on the board. We have not yet assessed how a similar requirement would be implemented where the regulator is making permit decision recommendations. If you wanted to follow this approach in relation to offshore permits, we expect it would be strongly supported by iwi. We would however need to undertake further analysis. **Recommendation** For discussion on your preferred approach.
Panel must consult the Minister for Māori Crown Relations Relevant provision – clause 25 Under the Bill the panel must consult the Minister for Māori Crown Relations: Te Arawhiti and the Minister for Māori Development following preparing its report on the outcome of an application for fast-track approval.	**Comment** We have not proposed any similar requirement for the offshore renewables regime. In most cases we do not consider this is likely to be warranted in the offshore regime and could add undue complexity and time. **Recommendation** We recommend that the offshore regime include flexibility for the Minister for Energy to consult with other Ministers where appropriate (e.g. a "may" instead of a "must" provision). *Agree / Discuss*
Ineligible projects Relevant provision – clause 18 The Bill requires that fast-track projects cannot be an activity that (among others): • would occur in a customary marine title area under the Marine and Coastal Area (Takutai Moana) Act 2011; and has not been agreed to in writing by the holder of the relevant customary marine title order issued under that Act: • an activity that would occur in a protected customary rights area under the Marine and Coastal Area (Takutai Moana) Act 2011 and have a more than minor adverse effect on the exercise of the protected customary right; and has not been agreed to in writing by the holder of a relevant protected customary rights order issued under that Act: • an aquaculture activity or other incompatible activity that would occur within an aquaculture settlement area declared under section 12 of the Māori Commercial Aquaculture Claims Settlement Act 2004 or identified within an individual iwi settlement, unless the applicant holds the relevant authorisation under that Act or the relevant Treaty settlement Act.	**Comment** We have not sought specific decisions from you on these matters. We would expect that, on advice from PCO at the drafting stage of legislation, such clarifications will be necessary to ensure that the grant of a feasibility permit does not affect a prior right, either deriving from settlements or other existing legal regimes. We will need to ensure that this is in relation to the grant of permits, rather than the eligibility of projects to apply for permits. Further, for feasibility permits, the scope of the permit will not exclude other activities in the given area. It is only providing a sole right to apply for a later commercial permit. **Recommendation** We recommend that we follow this approach in principle in relation to the grant of offshore permits, subject to further legal advice at the drafting stage on required scope. In the Cabinet paper on the regime, you could include commentary that existing legally recognised rights and interests will not be overridden. *Agree / Discuss*
Decision maker obligations relating to Treaty settlements and recognised customary rights Relevant provision – clause 6 The Bill requires all persons exercising functions, powers, and duties to act a manner consistent with the obligations arising under existing Treaty settlements; and customary rights recognised under the Marine and Coastal Area (Takutai Moana) Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019	**Comment** We have not yet addressed the scope of any similar clause that would be required for the offshore regime. We expect that you will want to replicate a similar clause when the offshore legislation is drafted. **Recommendation** Indicate your preferred approach.