

Cost recovery for the Offshore Renewable Energy Regulatory Regime

Discussion document

November 2024



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HĪKINA WHAKATUTUKI

Te Kāwanatanga o Aotearoa
New Zealand Government

Ministry of Business, Innovation and Employment (MBIE)

Hīkina Whakatutuki – Lifting to make successful

MBIE develops and delivers policy, services, advice and regulation to support economic growth and the prosperity and wellbeing of New Zealanders.

More information

Information, examples and answers to your questions about the topics covered here can be found on our website: www.mbie.govt.nz

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How to have your say

Submissions process

The Ministry of Business, Innovation and Employment (**MBIE**) seeks written submissions on the issues raised in this document by 5.00 pm on 2 December 2024.

Your submission may respond to any or all of these issues. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.

Please provide your submission by filling out the 'response' sections throughout this document. Please also include your name and (if applicable) the name of your organisation in your submission.

Please include your contact details in the cover letter or e-mail accompanying your submission.

You can make your submission by:

- Emailing your submission as a Microsoft Word document to offshorerenewables@mbie.govt.nz
- mailing your submission to:

Energy Resources Markets Branch
Ministry of Business, Innovation and Employment
15 Stout Street
PO Box 1473, Wellington 6140
Attention: Offshore Renewable Energy Submissions

Please direct any questions that you have in relation to the submissions process to offshorerenewables@mbie.govt.nz.

Use of information

The information provided in submissions will be used to inform MBIE's regulatory development process and will inform advice to Ministers on the detail of the new regulations for the Offshore Renewable Energy regime. We may contact submitters directly if we require clarification of any matters in submissions.

Release of information

MBIE intends to upload PDF copies of submissions received to MBIE's website at www.mbie.govt.nz. MBIE will consider you to have consented to uploading by making a submission, unless you clearly specify otherwise in your submission.

Objections to the release of information

If your submission contains any information that is confidential or you otherwise wish us not to publish, please:

- indicate this on the front of the submission, with any confidential information clearly marked within the text; and
- provide a separate version excluding the relevant information for publication on our website.

Submissions remain subject to request under the Official Information Act 1982. Please set out clearly in the cover letter or e-mail accompanying your submission if you have any objection to the release of any information in the submission, and in particular, which parts you consider should be withheld, together with the reasons for withholding the information.

MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.

Private information

The Privacy Act 2020 establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including MBIE. Any personal information you supply to MBIE in the course of making a submission will only be used for the purpose of assisting in the development of policy advice in relation to this review. Please clearly indicate in the cover letter or e-mail accompanying your submission if you do not wish your name, or any other personal information, to be included in any summary of submissions that MBIE may publish.

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Executive Summary

1. As part of Electrify NZ, the Government has committed to delivering a regulatory regime for offshore renewable energy, to enable investment and deliver clean energy at scale.
2. The Ministry of Business, Innovation and Employment (MBIE) is developing the offshore renewable energy regime, which focuses on addressing gaps in our current system to enable development of our offshore renewable energy resources. Getting our regulatory settings right will allow development to begin as early as possible, while protecting the interests of New Zealanders now and in the future.
3. MBIE has undertaken two rounds of public consultation to date as part of the development of the offshore renewable energy regime, and submissions have informed advice on the design of the regime¹.
4. On 26 August 2024, Cabinet announced its decisions on the key design features for the offshore renewable energy regime². This included full cost-recovery for the offshore renewable energy regime³. As the offshore renewable energy regime will enable offshore renewable energy developers to establish and operate their businesses, they are the primary beneficiaries, and it is appropriate they pay for the necessary regulatory functions that enable them to operate. Similar arrangements are in place for other sector regulators.
5. The Offshore Renewable Energy Bill (currently being drafted) will include empowering provisions to enable cost recovery regulations to be made. Regulations are being developed alongside the legislative process for the Bill to enable a feasibility permit round shortly after the legislation is in force.
6. This paper sets out the proposed approach to recovering the costs of the offshore renewable energy regime, focussing on the proposed fees and levies relevant to the feasibility phase. Submissions will inform advice on the first tranche of cost recovery regulations.
7. There are other application fees applicable during the feasibility phase, including variations to a permit, transferring a permit and surrendering a permit that will be determined as part of the second tranche of cost recovery regulations (to be determined by late 2025).
8. The application fees for commercial permits and safety zone determinations will be determined in a third tranche, once we are able to base charges on experience of how the feasibility phase has operated. Commercial permit applications are not expected before 2030, and a declaration for a safety zone will not apply until a commercial permit has been granted.
9. The proposed levy design is intended to apply to the levy on commercial permit holders, but the levy rates will be determined in the future once more information is available.

¹ [Offshore renewable energy | Ministry of Business, Innovation & Employment \(mbie.govt.nz\)](https://www.mbie.govt.nz/offshore-renewable-energy)

² [Offshore renewable energy regulatory regime policy decisions \(mbie.govt.nz\)](https://www.mbie.govt.nz/offshore-renewable-energy-regulatory-regime-policy-decisions)

³ www.mbie.govt.nz/dmsdocument/28535-offshore-renewable-energy-regulatory-regime-policy-decisions-proactiverelease-pdf

What does this consultation paper do?

10. We are seeking your views on the proposed fees and levies to fund the regulator functions for the offshore renewable energy regime, specifically the feasibility stage.
11. The main parties affected by the proposed fees and levies are developers who intend to apply for a permit to undertake activities for, or develop, offshore renewable energy.

Process and timeline

12. We are undertaking targeted consultation with developers that have a declared interest in New Zealand and with relevant iwi and hapū. Consultation is open until 5.00 pm on 2 December 2024. Following analysis of the submissions, advice will be provided to Cabinet on the fees and levies to cost recover the regime and then regulations will be drafted based on Cabinet's decisions. The regulations are intended to come into force in the 2025/26 financial year.

Introduction

13. The Government has agreed to establish legislation to regulate offshore renewable energy. The legislation is intended to enable the selection of developments that best meet New Zealand's national interests and give developers greater certainty to invest in offshore renewable energy projects. The legislation will introduce two permits:
- A **feasibility permit** that enables the permit holder to assess the feasibility of an offshore renewable energy development in a specified area, apply for a commercial permit, and apply for related resource or marine consents. The permit gives the holder certainty that no other offshore renewable energy developers will be approved to develop that site while they undertake feasibility activities. Feasibility permit holders will be selected in rounds based on a comparative assessment.
 - A **commercial permit** that enables the permit holder to build and operate offshore renewable energy infrastructure in a specific location (subject to also obtaining the relevant resource and marine consents, and any other necessary approvals).

Cost recovery principles and approach to cost recovery

14. The Government has agreed that the offshore renewable energy regime regulator will be housed within MBIE. The primary objective in setting fees and levies is to resource MBIE, as the regulator and administrator of the offshore renewable energy regime, to deliver the regime effectively and efficiently.
15. The offshore renewable energy regime will operate on a fully cost recovered basis and it is proposed that this is done through fees and levies paid by those that benefit from the service (i.e. permit applicants and permit holders). It is intended that there is regular reconciliation against actual costs and reviews of the cost recovery settings to ensure that revenue aligns with costs over time.
16. Using the guidance from the New Zealand Treasury⁴ and the Office of the Auditor-General⁵, we have identified a set of principles to assess options for the type and level of fees and levies:
- **Equity** – the recovery of costs for a particular function or service should be attributed to those users of the relevant function or service, at a level that reflects their level of use or benefit. This principle also means ensuring that the system does not seek to recover costs from one group that could benefit a previous or future group. This principle is about ensuring the fair distribution of resources.

⁴ Guidelines for Setting Charges in the Public Sector, 2017, The Treasury,

<https://www.treasury.govt.nz/publications/guide/guidelines-setting-charges-public-sector>

⁵ *Setting and administering fees and levies for cost recovery: Good practice guide*, August 2021, The Controller and Auditor-General Tumuaki o te Mana Arotake <https://oag.parliament.nz/2021/fees-and-levies/docs/fees-and-levies.pdf>

- **Efficiency** – costs should be allocated and recovered to ensure that maximum benefits are delivered at minimum cost. This principle is about value for money.
- **Justifiability** – the costs recovered through fees or levies reasonably relate to the goods or services for which users are being charged the fees or levies for. This principle is about making sure that the costs that are recovered are justifiable. MBIE also has a responsibility to ensure that services are both effective and efficient.
- **Transparency** – establishing transparent processes for setting and managing fees or levies. This principle is about ensuring information is available so that those impacted by fees and levies can understand and comment on the basis on which charges are calculated and imposed. It also about ensuring that recovered costs are able to be clearly linked to the service provision (including the time period in which they are incurred).

Funding the Offshore Renewable Energy regime

Role of the Offshore Renewable Energy Regulator

17. The Offshore Renewable Energy Bill proposes to establish an offshore renewable energy regulator within MBIE that will be responsible for:
 - accepting and assessing feasibility and commercial permit applications (including any variations), and providing recommendations to the Minister for Energy about those applications,
 - monitoring compliance with permit conditions and the offshore renewable energy regime,
 - investigating conduct that may contravene the regime and carry out enforcement action,
 - education, guidance and support on the requirements of and compliance with the regime,
 - development and ongoing management of website, guidance and communication collateral, and
 - maintaining a public register of permits and permit holders.
18. The offshore renewable energy regulator will be co-located with the regulator for the Crown Minerals Act 1991. This will enable existing systems and resources to be flexibly applied to the offshore renewable energy regime, alongside additional specialist expertise. This arrangement will enable some efficiencies. However, cost controls will be in place to ensure there will be no cross-subsidisation between the regimes.
19. It is proposed that the regulator be fully cost recovered through fees and levies, as set out in the table below.

Table 1: Cost recovery mechanism

Cost recovery mechanism	Who pays	When they pay
Application fees	Applicants for permits, variations, transfers, etc.	Once upon application
Levy	Permit holders	On a regular basis once permit is granted

20. This consultation focusses on the feasibility permit fee, and the annual levy. Other application fees will be consulted on at a future point.

Proposed application fees

21. Permit applicants are the direct beneficiary of the regulator’s permit assessment function and should therefore cover the costs of this service to them (the **equity** principle).
22. It is proposed that application fees will be payable to the regulator and will recover the costs of the regulator receiving and assessing an application. There are several different applications within the offshore renewable energy regime, relating to the specific activities required for that service (the **transparency** principle). This consultation focusses on the feasibility application fee. Future consultation will consider the additional application fees required, including variations, transfers, surrender, commercial permit and safety zone applications fees.
23. The proposed application fee reflects the estimated cost to the regulator for assessing feasibility applications (the **justifiability** principle).
24. Set fees are proposed as they provide certainty and are administratively simple (the **efficiency** principle).

Table 2: Feasibility permit application fee

Application type	Description of application	Proposed application fee (GST excl)
Application for a feasibility permit	<p>Applicants can apply for a feasibility permit which would give those granted a permit exclusive right to apply for a commercial permit for that area.</p> <p>The assessment involves a comparison between applications against set considerations. The set considerations will include the applicants technical and financial capability, the energy system benefits of the application, iwi and hapū engagement, wider economic benefits, compliance record and the ability to successfully decommission projects. The assessment will also look at whether there are any national security or public order</p>	<p>The proposed fee is: \$124,000</p> <p><i>The fee to apply for a feasibility licence under the Australian regime is \$300,000 per application.</i></p>

	risks. Public consultation is required as part of the feasibility permit assessment process.	
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25. The total costs of assessing applications are estimated to be \$495,000. The proposed fee of \$124,000 (excl. GST) assumes that the regulator will receive four applications. If there are fewer applications, the regulator will under-recover fixed costs. If there are more applications, this will support scaling up of resources required to process a greater volume of applications in a timely manner. The fee includes staff costs, overheads, technical expertise and the costs of public consultation and engagement with Māori.
26. The table below sets out other types of applications that can occur in the offshore renewable energy regime, these are to be costed in a future review.

Table 3: Other application fees to be determined in later tranches

Tranche 2 – to be determined within 12 months of the first round	
Application to vary the permit	Permit holders may apply to vary their existing permit. There are different types of variations and assessments required by the regulator depending on the type of variation.
Application to transfer the permit to a new permit holder or to get approval to change the person of significant influence	<p><i>Transfer</i></p> <p>A permit holder may wish to transfer the ownership of the permit to a new permit holder. This assessment will involve assessing the new permit holder against criteria to mitigate any risks that could arise from transfer to unsuitable permit holders i.e. technical and financial capability to meet the decommissioning requirements, compliance records, national security etc.</p> <p><i>Change of significant influence</i></p> <p>The shareholding of a permit holder may change, and in some instances that may result in a change of significant influence over the permit holder. The legislation will require the permit holder to apply for approval to that significant change in influence over the permit holder where certain thresholds are met.</p>
Request to surrender a permit	If a permit holder wishes to surrender their permit they can request to do so. It is proposed that there is an application fee associated with this request to enable an assessment of whether or not the permit holder has met their obligations when surrendering a permit.
Tranche 3 – to be determined before 2030	
Application for a commercial permit	Feasibility permit holders can apply for a commercial permit once the developer is ready to do so. The assessment is focused on checking the development is ready to proceed to the construction stage and that the risks are managed. There is no public consultation as part of the commercial permit application process (but there are iwi and hapū engagement requirements).
Application for a safety zone determination	A permit holder may apply for a safety zone determination around offshore renewable energy infrastructure. The safety zone may be declared up to 500 metres around the infrastructure.

Questions for consultation

1. Do you have feedback on the proposed feasibility permit application fee? If yes, please provide your reasoning.

Regular review of application fees

27. In line with the **transparency** principle, it is proposed the application fees are reviewed regularly to ensure that they continue to align with the costs incurred by the regulator.
28. It is proposed that the fees are reviewed at least every five years and that MBIE will undertake a post-implementation review to ensure fees align with actual costs.

Proposed levy

29. A levy on permit holders is proposed to recover the ongoing costs of the offshore renewable energy regulator. This is because permit holders are the beneficiary of this regulator function (the **equity** principle).
30. Is intended that the levy will recover the costs of MBIE administering the regime, including compliance and enforcement, maintaining the register of permits, stakeholder engagement, regulatory stewardship and reporting to the Minister (the **justifiability** principle).
31. It is appropriate that the costs of this ongoing function are recovered through a levy (not a fee) as costs are not necessarily specific to a single developer and a levy will enable total costs to be recovered effectively across permit holders.
32. The estimated costs to be recovered by levy are set out below (the **transparency** principle).

Assumptions made to inform the amount of the levies

33. The key assumptions made to estimate the levies are below. These assumptions do not indicate or constrain how many permits may be granted. Rather, they have been used for budgeting purposes and will be reviewed as the regulator functions bed in. Assumptions are therefore based on potential outcomes from Round One.
 - The number of applications for a feasibility permit and active (approved) permits is based on the level of interest shown by developers in New Zealand offshore renewable energy, the likely timeframes for a permit round opening after the legislation is in force, and the key sites of interest.
 - The Minister for Energy may determine the scope of a particular round based on advice from officials and this will influence the number of permits granted. MBIE is undertaking work to determine the scope of the first round, this work may affect assumptions about how many applications are likely to be granted in the first round.
 - The Government has indicated that the first round will be opened by the end of 2025. The frequency of rounds is to be determined by the Government and will be based on the level of interest of developers.

- Due to the competitive process for applying for a feasibility permit, it is assumed that not all applications will be granted (i.e. only a subset will be subject to the levy).

34. Below are estimates of the costs to be recovered from the proposed levy for feasibility permit holders. A commercial permit holder levy will be consulted on at a later date (before 2030, which is the likely earliest date for commercial permit applications).

Table 4: Feasibility permit holder levy

Levy type	Brief description of levy	Estimated cost to be recovered by levy
Feasibility permit holder levy	<p>The feasibility permit holder levy will be a payment required on an annual basis from those developers granted a feasibility permit. It is intended that the permit holder becomes liable for the levy once the permit is granted.</p> <p>The feasibility permit will cover the costs of MBIE undertaking monitoring, compliance and enforcement, information provision and management, education, and regulatory stewardship.</p> <p>As the regime is to be fully cost recovered, there will be annual reconciliation process that enables a final invoice or refund to be provided to ensure accurate cost recovery.</p>	<p>Total cost is estimated at approximately \$1.3 million.</p> <p>The cost will be split equally among levy payers liable in each financial year</p> <p>For example, if there are 2 permit holders, this will be \$650,000 each. If there are 3 permit holders, this will be \$430,000 each.</p>

35. Under the Australian system the feasibility licence holder pays three levies which equate to a minimum of \$730,000 per licence holder plus a variable component based on the size of the development. The Australian system differs from the offshore renewable energy regime, e.g. their system’s regulator is responsible for enforcing the health and safety provisions of the Act (whereas in New Zealand, we have WorkSafe)

Cost recovery of implementation costs

36. The offshore renewable energy regulator will be accruing levy recoverable costs from 1 July 2025. These ‘year one’ implementation costs will include:

- Operational policy to develop the necessary guidance and supporting material to help developers understand the requirements of the regime.
- Website/webpage development, building the feasibility application form, and other application forms.

37. These implementation costs will be recovered from permit holders, potentially across years if they are significant relative to the estimated ongoing costs.

Questions for consultation

2. **Do you have feedback on the level of the proposed levy? If yes, please provide your reasoning.**

Levy design options

38. We are seeking views on the overall design of the levy. This includes how the levy is set and adjusted and ensuring fairness between levy payers.

Setting the levy

39. The proposed approach is to set a levy rate annually based on estimated costs for the financial year, splitting the costs between levy payers (permit holders). An annual reconciliation process would be undertaken once actual costs are known (i.e., about three months after the end of the financial year).
40. Under this approach, levy regulations would provide that the annual levy is set through a Gazette notice each year using a formula that takes account of how many levy payers there are.
41. The levy rate would include an estimate of the costs for the full financial year, meaning levy payers would pay a levy based on a full financial year every year, including the year in which their permit is granted. The levy would be payable within thirty days of a permit being granted for the first levy payment, and within 30 days of 1 July or the relevant Gazette notice (whichever is later) each year thereafter. Levies will be due for the full year, and not reduced in view of a part year of operation (i.e. there will be no discount where a permit is issued, surrendered, or revoked partway through the year). This is necessary to maintain the financial viability of the regulator, which is likely to be collecting revenue from a small number of parties.

Adjustments

42. The annual reconciliation process would involve invoicing or refunding levy payers for under or over payment each year once annual costs have been confirmed (based on MBIE audited accounts, generally published in November for the previous financial year).
43. The reconciliation process would provide for refunds where additional permits have been issued during the year, and therefore additional revenue has been received.
44. For example, if at the beginning of the year there were three levy payers, each paying \$430,000, and a fourth permit was issued during the year, the new permit holder would be charged \$325,000 and existing levy payers would be refunded \$105,000 each at the end of the financial year (excluding any adjustments for actual expenditure).
45. The proposed cost controls will include reporting of actual costs at the end of each financial year to enable reconciliation and for transparency.

Ensuring fairness between levy payers

46. This option has been assessed as best meeting the cost recovery principles compared to alternative options⁶ where the levy rate is fixed for a few years and / or adjusted over a longer time period.
47. In particular, it better meets the **equity, justifiability** and **transparency** principles because it enables the levies paid to more closely match the actual and justifiable costs of the offshore renewable energy regulator.
48. The annual levy setting and reconciliation process will involve more administration compared to alternative options, so the proposed option rates less highly in terms of the **efficiency** principle. This is considered a worthwhile trade-off as it contributes to meeting the other (more important) principles. We do expect there to be a small number of levy payers in the foreseeable period, which reduces the costs of managing refunds and year-end invoicing.

Questions for consultation

- 3. Do you have any views on the design of the levy, or costs to be recovered? Please explain your answer.**

Variations based on the size of the permit

49. Part of the costs that will be recovered through the levy on feasibility permit holders is the costs of monitoring compliance by the regulator. This monitoring is to check that the permit holder is acting in line with the conditions of their permit, including their feasibility work programme.
50. Feasibility analysis is a multi-year process that assesses all the factors that determine the viability of an offshore energy generation project. Feasibility activities can include geotechnical, geophysical, wind speed, and environmental and ecological impact surveys. They also include engineering and design studies, economic analysis, onshore and human impact studies (such as visual impact), as well as assessing options for connecting offshore energy infrastructure to an electrical grid or directly to users. Depending on their nature, some feasibility activities may need resource or marine consents.
51. We are interested in views on whether there would be substantial cost differences for monitoring depending on the size of the permit area that would warrant to levy to vary depending on the size. For example, a larger scale development may require more resourcing to monitor permit holder compliance and manage plan variations. If this is the case, a component of the levy could vary based on the size of the development to reflect this.
52. Our initial view is that, for the feasibility permit, there are unlikely to be significant differences based on the scale of the development. This is because the nature and type of data that needs to be gathered to ascertain whether a site is feasible for wind development, and to prepare for

⁶ Other options considered were 1. Setting an annual levy which is then reviewed and adjusted after a set number of years, and 2. Setting an annual levy which is reset over time depending on under and overcollection.

applying for a commercial permit, would largely be the same between developments (except applying to a wider area). We intend to revisit this question for the commercial permit levy when the levy rate is set in future.

Questions for consultation

- 4. Do you have views on whether a larger scale development would require substantial differences in regulator resourcing in order to monitor compliance with the conditions of the feasibility permit and legislation?**