MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

COVERSHEET

Minister	Hon Dr Megan Woods	**Portfolio**	Energy and Resources
Title of Cabinet paper	Offshore renewable energy: Next steps for regulatory proposals	**Date to be published**	9 August 2023

List of documents that have been proactively released		
Date	**Title**	**Author**
June 2023	Offshore renewable energy: Next steps for regulatory proposals	Office of the Minister of Energy and Resource
June 2023	Regulatory Impact Statement - Offshore Renewables	Ministry of Business, Innovation and Employment
28 June 2023	Offshore renewable energy: Next steps for regulatory proposals DEV-23-MIN-0126 Minute	Cabinet Office

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.

Some information has been withheld for the reason of Legal professional privilege.

In Confidence

Office of the Minister of Energy and Resources

Cabinet Economic Development Committee

Offshore renewable energy: Next steps for regulatory proposals

Proposal

1 This paper:

1.1 seeks agreement in principle to proposals for regulating offshore renewable energy feasibility activities; and

1.2 seeks agreement to release a discussion document on proposals for regulating the construction, operation, and decommissioning stages of offshore renewable energy development.

Relation to government priorities

2 The Government has committed to reaching net zero carbon emissions for long-lived gases by 2050, set a target that 50 per cent of total energy consumption will come from renewable sources by 2035, and has an aspirational target of 100 per cent renewable electricity by 2030.

3 Aotearoa New Zealand's first emissions reduction plan*, Te hau mārohi ki anamata: Towards a productive, sustainable and inclusive economy*, commits the Government to developing regulatory settings to enable investment in offshore renewable energy generation (such as offshore wind farms) and innovation.

4 This paper is a companion to the Cabinet paper *Progressing the Next Phase of New Zealand's Energy Transition: Release of Discussion Documents*.

Executive Summary

5 Offshore renewable energy generation could contribute significantly to decarbonising our energy sector. To incentivise developers to invest, and to manage development of the industry, I am proposing to establish dedicated legislation to regulate offshore renewable energy. This is an action under the emissions reduction plan.

6 I am developing regulatory proposals in two phases:

6.1 Phase One: managing the feasibility stage of offshore renewable energy development; and

6.2 Phase Two: managing the construction, operation, and decommissioning of offshore renewable energy infrastructure.

7 The Government consulted on a feasibility permitting regime from December 2022 to April 2023. Following this consultation, I propose that Cabinet agree in principle to key elements of the proposed feasibility permitting regime. This in principle agreement is necessary to inform development of the remainder of the regime (construction, operation, decommissioning) and provides context for the next phase of engagement with iwi and hapū and wider consultation.

8 I also seek agreement to release a discussion document on proposals for the construction, operation, and decommissioning stages of offshore renewable energy development. The key proposal is that developers will be required to obtain and retain a commercial permit to construct and operate offshore renewable energy infrastructure, and will be required to comply with decommissioning obligations.

9 I intend to bring final proposals for regulating offshore renewable energy development to Cabinet in late 2023. This will include proposals for ensuring meaningful participation by iwi and hapū.

Background

10 Offshore renewable energy refers to the energy sources and technology used to generate electricity from offshore sources – such as wave, tidal, wind or thermal energy. Not all offshore renewable technologies are at the same level of maturity. Offshore wind generation is the most advanced, and is a well-established part of many countries' energy systems.

11 New Zealand has world-leading offshore wind generation potential within its Territorial Sea and Exclusive Economic Zone (EEZ). Offshore wind has contributed to the decarbonisation of the power sector and other energy intensive industries (like data centres, chemical manufacturing, or hydrogen production) in many countries, especially in the North Sea area.

12 Offshore wind generation has the potential to contribute to New Zealand's target of net-zero carbon emissions by 2050. It allows the exploitation of generally higher and more consistent wind energy than land-based windfarms. Offshore wind generation is also further from populated areas, and so has fewer visual and audible impacts on them than onshore wind.

13 Recognising that an offshore renewable energy industry requires dedicated regulation, *Te hau mārohi ki anamata* commits us to developing regulatory settings by July 2024.

14 I am developing regulatory proposals in two phases:

14.1 Phase One: managing the feasibility stage of offshore renewable energy development; and

14.2 Phase Two: managing the construction, operation, and decommissioning of offshore renewable energy infrastructure.

15 The objectives of the proposed regulatory regime are to:

15.1 enable the selection and management of developments to meet New Zealand's national interests, while recognising existing environmental protections;

15.2 enable Māori participation in a regime that recognises the Crown's responsibility to give effect to the principles of Te Tiriti o Waitangi / Treaty of Waitangi; and

15.3 enable New Zealand to access offshore renewable energy technology in a timely way by providing developers with greater certainty to support investment.

16 In December 2022, Cabinet approved the release of the discussion document *Enabling Investment in Offshore Renewable Energy*, to consult on regulatory proposals for Phase One [DEV-22-MIN-0299]. These regulatory proposals have been developed at pace to fulfil the emissions reduction plan commitment, and also to build investor confidence through showing the Government's support for this emerging industry. Developers are likely to lose interest in New Zealand if a regulatory regime is not established.

17 *Enabling Investment in Offshore Renewable Energy* proposed introducing a feasibility permitting regime and proposed that developers would lead feasibility activities. Such a developer-led approach involves developers proposing project sites, gathering feasibility information, and meeting the associated costs. A developer-led approach to feasibility activities is likely to enable more timely development with fewer costs for government than a government-led approach.

Consultation and engagement on introducing a feasibility permitting regime

18 Consultation on *Enabling Investment in Offshore Renewable Energy* has now closed, although engagement with iwi and hapū and stakeholders is continuing.

19 MBIE received 59 submissions from a wide range of stakeholders, and from Taranaki, Southland and Northland iwi and hapū. Feedback from stakeholders, notably offshore renewable energy developers, indicates broad support for adopting a feasibility permitting regime, with specified permit eligibility criteria.

20 A small minority of submitters felt offshore renewable energy was not necessary in New Zealand with fears it would adversely affect marine life. The majority of submitters, however, felt the benefits of decarbonisation warranted the exploration of these developments through feasibility activities.

21 There was wide interest from submitters in starting work early to understand the environmental impacts of developing offshore renewable energy. This includes getting a better understanding of the existing environment (especially marine life) in areas where development could occur. There are obvious advantages to collaboration between government, iwi and hapū, developers,

and others. Collaboration is more efficient and more likely to produce a single coherent environmental picture through common standards, methods, and information-sharing. Such collaboration can complement a feasibility permitting model. I have therefore asked my officials to report back to me by the end of the year on options for a collaborative approach to environmental data collection within a feasibility permitting model.

22 There was also interest from some in adopting a more spatially-planned approach to managing offshore renewable energy development, similar to the spatial planning being adopted onshore under the resource management reforms. A spatially-planned (or government-led) approach has the advantage of allowing decision makers to weigh the alternative uses of offshore areas, and to allocate areas to their best use. A spatially-planned approach, where government leads feasibility activities and identifies areas for development, also gives the government greater control over the development of an offshore renewables industry.

23 *Enabling Investment in Offshore Renewable Energy* recognised the advantages of a spatially-planned approach, but also noted that such a process could be protracted. Marine spatial planning can be protracted because it requires identifying the alternative uses of a marine space, assessing the suitability of the marine space for those uses, and then allocating that space for different uses. Addressing these issues, and then developing a marine spatial plan, would take many years, and likely lead investors to lose interest in the projects they are pursuing in New Zealand.

24 I therefore still consider that a developer-led approach remains preferable in the near-term, given our interest in the timely establishment of an offshore renewables industry. More government involvement may be suitable and possible in the medium-to-long term.

25 Iwi and hapū in the regions where developers have signalled interest have shown a close interest in the regulatory proposals. Iwi and hapū seek a partnership-based approach to regulating this industry – particularly regarding decision making processes and economic opportunities. Iwi and hapū have also expressed a strong desire to be involved in the continuing policy process to ensure this occurs. I am committed to meaningful involvement for iwi and hapū in the policy design and operation of the regulatory regime, and in the benefits of development. We have an opportunity to design a regime together learning the lessons from the operation of other energy industries.

In principle decisions on introducing a feasibility permitting regime

26 I now propose that Cabinet agree in principle to key elements of a feasibility permitting regime. In principle decisions are required to inform development of the remainder of the regime dealing with the management of construction, operation, and decommissioning of offshore renewable energy infrastructure (Phase Two). In principle decisions will also demonstrate the Government's commitment to establishing this industry, and thereby enhance developer and investor confidence.

27 Since continuing consultation and engagement could influence aspects of the feasibility permitting regime, I am only seeking in principle agreement to the inclusion of these key elements, rather than agreement to their detailed design.

28 I seek agreement in principle to include the following key elements in the proposed regulatory regime:

28.1 a feasibility permit process, with permits providing an exclusive right for the holder to apply for a subsequent commercial permit to construct and operate offshore renewable energy infrastructure;

28.2 feasibility permits to have a maximum duration of seven years (subject to 'use it or lose it' provisions); and

28.3 where applications for feasibility permits overlap, applicants will be encouraged to resolve the overlap between themselves; where necessary, the area of overlap will be granted to the applicant with the stronger application according to the feasibility permit criteria (below).

29 We consulted on a five-year validity period for feasibility permits, with an option to extend durations for up to two years for unavoidable delays. Through the consultation, a number of developers, other stakeholders, iwi, industry bodies, and environmental groups called for a longer maximum duration. A longer maximum duration would allow for developing a thorough understanding of the existing environment, and the effects of establishing this new industry in a completely new market.

30 On the other hand, a longer validity period does mean that the undesirable impacts of any 'land-banking' behaviour would be greater. The purpose of granting a feasibility permit is to encourage feasibility activities, and subsequent development, if feasible. 'Land-banking', by contrast, stalls feasibility activities and development.

31 On balance a maximum seven-year duration appears to be a more suitable period for completing feasibility activities. As consulted, feasibility permits would be subject to detailed and enforceable 'use it or lose it' provisions to mitigate the risk of any 'land-banking' behaviour. Permits would need to be exercised within 12 months, and holders would need to show commitment to meeting the milestones in their feasibility activity plans, or risk losing their permits. To support these provisions, feasibility permit-holders would be required to report regularly on their progress. Further details about the timing of permits across the process are also discussed in the second discussion document.

32 I also seek agreement in principle to the following non-exhaustive list of criteria for feasibility permits:

32.1 financial, technical and commercial capability;

32.2 iwi and hapū involvement prior and during feasibility (based on specific criteria);

32.3 indicative electricity system impacts;

32.4 indicative economic development opportunities;

32.5 indicative decommissioning capability;

32.6 health and safety capability; and

32.7 national interest considerations.

33 Reflecting feedback received through consultation, these criteria place additional emphasis on iwi and hapū involvement, health and safety, decommissioning, economic development opportunities, and electricity system impacts.

34 Further criteria to ensure meaningful involvement of iwi and hapū in the permitting and feasibility activity process will be included in later policy decisions following further discussions with iwi and hapū.

35 I intend to bring final detailed proposals for the feasibility permitting regime to Cabinet in late 2023, along with proposals for the construction, operation, and decommissioning stages of offshore renewable energy development.

Release of Phase Two discussion document on the construction, operation, and decommissioning stages of offshore renewable energy development

36 I also seek agreement to the release of a discussion document on the construction, operation, and decommissioning stages of offshore renewable energy development.

37 The key proposal is that developers will be required to obtain and retain a commercial permit to construct and operate offshore renewable energy infrastructure, and will be required to comply with decommissioning obligations.[1]

38 The commercial permit would apply to a given location. It would not be possible to obtain a commercial permit without first obtaining a feasibility permit for the same area. The commercial permit would ensure that only suitable developers can operate in New Zealand.

39 The Phase Two discussion document also includes proposals for:

39.1 the structure of the commercial permitting process;

39.2 criteria for commercial permits;

39.3 the maximum validity duration of commercial permits;

39.4 size limits for areas covered by commercial permits;

39.5 cost recovery;

39.6 interaction between the new permitting regime and existing consenting regimes;

[1] Developers will remain responsible for obtaining resource and / or marine consents.

39.7 decommissioning obligations; and

39.8 compliance and enforcement.

40 To inform further policy analysis, the discussion document seeks views on:

40.1 the roles of financial support mechanisms for developers (and cross-refers to the related consultation on *Electricity Market Measures*);

40.2 collection of revenue from developers;

40.3 how offshore renewable energy projects in the Territorial Sea and EEZ may be treated within consenting processes and any challenges that could be faced;

40.4 any trade-offs between development in the EEZ and the Territorial Sea; and

40.5 arrangements for connecting and transmitting offshore renewable energy.

41 Building on the Phase One discussion document, the Phase Two discussion document also addresses:

41.1 size limits for areas covered by feasibility permits; and

41.2 processes for inviting applications for feasibility permits following an initial application round.

Iwi and hapū participation in the offshore renewable energy regulatory regime

42 The development of an offshore renewable energy industry is of close interest to Māori, and particularly to iwi and hapū in the regions where developers have signalled interest. My officials and I have engaged closely to understand these interests, and continue to engage. The following are the key themes that officials have heard in these discussions and through the submission process:

42.1 existing rights and interests should not be unduly impacted by the feasibility and the commercial stages of development;

42.2 iwi and hapū should be partners in the design of the offshore renewable energy regime;

42.3 the regime should enable mana moana to participate in decision making, including the government providing appropriate resourcing; and

42.4 mana moana should get genuine economic opportunities from the development of offshore renewable energy, and if government takes a revenue flow (such as royalties) this should be shared with iwi and hapū.

43 It will be important that the Crown works closely with iwi and hapū to develop responses to these concerns. The discussion document I am seeking

agreement to release only discusses these issues at a high level and does not make specific proposals since a dedicated process of engagement with iwi and hapū will be needed.

44 I have asked my officials, with support from Te Arawhiti, to continue to engage with iwi and hapū, and through the National Iwi Chairs Forum, to provide practical options on:

44.1 provisions for iwi and hapū participation in the delivery of the regime, such as a process for input into decision making on the grant of permits. I consider this to be a vital aspect of the regime for us to get right; and

44.2 how to ensure iwi and hapū benefit from the establishment of an offshore renewable energy industry.

45 I intend to report back to Cabinet on the outcome of these discussions so we can consider specific proposals for iwi and hapū participation.

Next steps

46 Consultation on the Phase Two discussion document will run for three months. Following consultation, further analysis, and close engagement with iwi and hapū, I intend to report to Cabinet with final proposals for regulating offshore renewable energy development, and to seek authority to issue drafting instructions to the Parliamentary Counsel Office.

Financial Implications

47 There are no direct financial implications arising from the proposals in this paper. Administering the proposed regulatory regime will incur costs. I expect these to be mostly or entirely met through a cost recovery regime.

Legislative Implications

48 Implementing the proposed regulatory regime will require new legislation. I intend to make a bid for a priority category in the Legislation Programme for 2024.

Impact Analysis

Regulatory Impact Analysis

49 MBIE's Regulatory Impact Analysis Review Panel has reviewed the attached *Regulatory Impact Statement: Offshore renewable energy, in principle decisions for regulating feasibility activities* prepared by MBIE. The panel considers that the information and analysis summarised in the Impact Statement meets the criteria necessary for Ministers to make informed decisions on the proposals in this paper.

50 The Panel has also reviewed the Discussion Document *Developing a Regulatory Framework for Offshore Renewable Energy* and considers that it

functions as an interim Regulatory Impact Assessment and confirms that it is likely to lead to effective consultation and support the delivery of Regulatory Impact Analysis to inform subsequent decisions. While the panel acknowledges the intended direct and comprehensive consultation process with Māori, it must assess the discussion document against the quality requirements in the relevant guidance documents. The panel considers that consultation would be more effective if the document provided greater analysis of the implications of options for Māori.

51 As mentioned earlier in this paper, I have directed officials, with support from Te Arawhiti, to undertake a dedicated engagement process with Māori on these issues, in order that we can hear their views on the implications directly before making detailed policy proposals.

Climate Implications of Policy Assessment

52 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met as the likely emissions impact is indirect. However, developing a regulatory framework to enable investment in offshore renewable energy is an action in the emissions reduction plan (ERP) and progressing this work will likely result in impacts on carbon emissions. As this work is progressed, any emissions impacts will be assessed in more detail and disclosed to Cabinet as appropriate.

Population Implications

53 This paper has no immediate population implications. My officials and I are continuing to engage closely with iwi and hapū on the proposals for regulating offshore renewable energy development.

Human Rights

54 This paper has no human rights implications.

Consultation

55 The Ministry for Primary Industries, Department of Conservation, Ministry for the Environment, Ministry of Justice, Treasury, Maritime New Zealand, Worksafe, Ministry of Transport, Ministry of Foreign Affairs and Trade, and Te Arawhiti were consulted on this paper. The Department of the Prime Minister and Cabinet was advised.

56 Legal professional privilege

57 The Department of Conservation, Ministry for Primary Industries, and the Ministry for the Environment advised they favour a more government-led and spatially-planned approach to the development of offshore renewable energy.

58 As discussed above, the MBIE discussion document *Enabling Investment in Offshore Renewable Energy* recognised the advantages of a spatially-planned approach, but also noted that such a process could be protracted. Marine spatial planning can be protracted because it requires identifying the alternative uses of a marine space, assessing the suitability of the marine space for those uses, and then allocating that space for different uses. Addressing these issues, and then developing a marine spatial plan, would take many years, and could lead investors to lose interest in the projects they have announced in New Zealand.

59 For these reasons, MBIE considers that more government involvement and marine spatial planning may be suitable and possible in the medium-to-long term. Given our interest in the timely establishment of an offshore renewables industry, MBIE considers that a developer-led approach remains the best approach in the near-term.

Communications

60 I intend to issue a media statement announcing the release of the Phase Two discussion document and inviting the public to provide feedback. MBIE will publish the discussion document on its website following the media statement.

61 Communications will be coordinated with the release of the following energy-related discussion documents:

61.1 Interim Hydrogen Roadmap;

61.2 Electricity Market Measures issues paper; and

61.3 Discussion document on Implementing a ban on new fossil fuel baseload electricity generation.

Proactive Release

62 This paper will be proactively released on MBIE's website, subject to information being withheld consistent with the Official Information Act 1982.

Recommendations

63 The Minister of Energy and Resources recommends that Cabinet:

Developing regulatory settings to enable investment in offshore renewable energy

1. **note** that New Zealand's first emissions reduction plan*, Te hau mārohi ki anamata: Towards a productive, sustainable and inclusive economy*, commits the Government to developing regulatory settings to enable investment in offshore renewable energy generation (such as offshore wind farms) and innovation;

2. **note** that the Minister of Energy and Resources is developing the regulatory proposals in two phases:
    2.1. Phase One: managing the feasibility stage of offshore renewable energy development; and
    2.2. Phase Two: managing the construction, operation, and decommissioning of offshore renewable energy infrastructure;

In principle decisions on managing the feasibility stage of offshore renewable energy development

3. **note** that, in December 2022, Cabinet approved the release of the discussion document *Enabling Investment in Offshore Renewable Energy*, to consult on regulatory proposals for managing the feasibility stage of offshore renewable energy development [DEV-22-MIN-0299];

4. **note** that a developer-led approach to establishing an offshore renewable energy industry, as consulted, remains the best approach for the near-term, and that more government involvement (including marine spatial planning) may be suitable and possible in the medium-to-long term as an effective model for balancing the needs of all users and meeting protection aims;

5. **note** that in principle decisions are required on elements of the regulatory regime that deal with feasibility (Phase One) to inform development of the remainder of the regime dealing with managing the construction, operation, and decommissioning of offshore renewable energy infrastructure (Phase Two);

6. **agree in principle** to the following elements being included in the regulatory regime:
    6.1. a feasibility permit process, with permits providing an exclusive right for the holder to apply for a subsequent commercial permit to construct and operate offshore renewable energy infrastructure;
    6.2. feasibility permits to have a maximum duration of seven years (subject to ‘use it or lose it’ provisions);
    6.3. where applications for feasibility permits overlap, applicants will be encouraged to resolve the overlap between themselves; where necessary, the area of overlap will be granted to the applicant with the stronger application according to the feasibility permit criteria;
    6.4. criteria for the grant of feasibility permits to include, but not be limited to:
        6.4.1. financial, technical and commercial capability;
        6.4.2. iwi and hapū involvement prior and during feasibility (based on specific criteria);
        6.4.3. indicative electricity system impacts;
        6.4.4. indicative economic development opportunities;

6.4.5. indicative decommissioning capability;

6.4.6. health and safety capability; and

6.4.7. national interest considerations;

7. **direct** the Ministry of Business, Innovation and Employment (working with partners) to report to the Minister of Energy and Resources, by the end of the year, on options for a collaborative approach to environmental data collection within a feasibility permitting model;

Iwi and hapū participation in the offshore renewable energy regime

8. **note** that the Minister of Energy and Resources will continue to engage with iwi and hapū to develop proposals for iwi and hapū participation in the offshore renewable energy regulatory regime;

9. **invite** the Minister of Energy and Resources to report back to Cabinet, in late 2023, on specific proposals for iwi and hapū participation;

Release of Phase Two discussion document on the construction, operation, and decommissioning stages of offshore renewable energy development

10. **approve** the release of the attached discussion document for public consultation and iwi and hapū engagement on approaches to the construction, operation, and decommissioning stages of offshore renewable energy development;

11. **authorise** the Minister of Energy and Resources to release this paper proactively, subject to withholdings as appropriate under the Official Information Act 1982;

12. **authorise** the Minister of Energy and Resources to make any required minor and/or technical amendments to the attached discussion document prior to release; and

13. **note** that, in late 2023, the Minister of Energy and Resources intends to report to Cabinet with final proposals for regulating offshore renewable energy development and to seek authority to issue drafting instructions to the Parliamentary Counsel Office.

Authorised for lodgement

Hon Dr Megan Woods

Minister of Energy and Resources