



COVERSHEET

Minister	Hon Simeon Brown	Portfolio	Energy
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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



BRIEFING

Offshore renewable energy – Interaction with environmental consents

Date:	18 April 2024	Priority:	High
Security classification:	In Confidence	Tracking number:	2324-0741

Action sought		
	Action sought	Deadline
Hon Simeon Brown Minister for Energy	<p>Agree the proposed updated recommendation to manage the interaction of the offshore renewable energy regime with resource and marine consent applications.</p> <p>Confidential advice to Government [Redacted] [Redacted] [Redacted] [Redacted]</p>	22 April 2024

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

The following departments/agencies have been consulted

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments

BRIEFING



Offshore renewable energy – Interaction with environmental consents

Date:	18 April 2024	Priority:	High
Security classification:	In Confidence	Tracking number:	2324-0741

Purpose

The purpose of this briefing is to:

- provide further advice on recommendations for managing the interaction of the offshore renewable energy regime with resource and marine consent applications, and
- seek your agreement to proposed updated recommendations before finalising the Cabinet paper.

Recommended action

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

- a **Note** the draft Cabinet paper seeking agreement to the offshore renewable energy regime included recommendations to address consents applied for or granted before the regime is in force. *Noted*
- b **Confidential advice to Government** *Noted*
- c **Agree** the proposed updated recommendations in the Cabinet paper:
1. (Addressing applications submitted after the legislation is in force)
Agree that applications for resource or marine consents under the Resource Management Act 1991 and the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 can only be accepted for consideration under those Acts if a feasibility permit covering the area has been granted to the applicant.
 2. (Addressing applications submitted before legislation is in force)
Agree that, to avoid the risk of land banking by some developers, applications for resource or marine consents lodged but not determined before the legislation is in force must be declined if a feasibility permit covering the area is not granted to the applicant in the first round (intended to be in 2026).
- Agree / Disagree*
- d **Note** that the proposed updated recommendation (2) would mean Wind Quarry Zealandia's consent application could continue to be processed, but it could only be granted if it was awarded a feasibility permit in the first application round. *Noted*

e **Note** the proposed recommendation (2) is not considered legally retrospective and there are other examples in other regimes where changes to application processes in legislation are imposed on applications lodged, but not determined, before the change are in force.

Noted

f Confidential advice to Government

[Redacted]

Agree / Disagree

Privacy of natural persons

[Redacted]

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

Hon Simeon Brown
Minister for Energy

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18/04/2024

Background

1. On 28 March 2024, we provided you with a draft Cabinet paper for Ministerial consultation on the design of the offshore renewable energy regime.
2. As you are aware, there is significant interest in a small number of sites considered ideal for fixed-bottom offshore wind developments. Potential developers could pre-empt the regime by applying for consents under the Resource Management Act 1991 (RMA) and the Exclusive Economic Zone Act 2012 (EEZ Act), effectively 'land banking' areas of the marine environment.
3. One company, Wind Quarry Zealandia (WQZ), has applied to the Taranaki District Council for a consent to construct an offshore wind farm in the territorial sea in the South Taranaki Bight. The area does not directly overlap with other announced offshore wind projects, but it could impede, or make it harder, for other developers to, for example, route transmission cables through the area if it was granted exclusive occupation.¹ [REDACTED]
Confidential advice to Government [REDACTED]
4. The draft Cabinet paper included recommendations to address consents applied for or granted before the regime is in place. You have requested further advice on the risks posed by the current application for resource consent, and the application of retrospective provisions in the legislation to address the problem of land banking.

Cabinet paper recommendations

5. Under the proposed regime, developers would require a feasibility permit, commercial permit, and any necessary resource or marine consents before building and operating offshore renewable energy infrastructure. Once the regime is in place, consent applications can only be accepted if the applicant already holds a feasibility permit.
6. The draft Cabinet paper included the following recommendations to address consent applications lodged or granted before the regime is in place:
 1. **Previous recommendation:** Agree that, to avoid the risk of land banking by some developers and ensure that the offshore renewable energy project that will be in New Zealand's best interests gets to proceed, after the legislation is in force:
 - i. An application for a resource consent or a marine consent related to offshore renewable energy activities, including any applications lodged but not determined before the regime comes into force, will be required to be declined if a feasibility permit has not been granted to the applicant (recommendation 9.1); and
 - ii. Any existing consents granted before the regime is in place would lapse if the consent holder does not secure a feasibility permit (recommendation 9.2).
7. The intended effect of these recommendations was to bring all offshore renewable energy developers into the regime, i.e. to be considered on a level playing field in the comparative process for feasibility permits and subject to the regime's risk mitigations.

¹ The Council has told us WQZ has applied for exclusive occupation of the area. The Council would have the ability to impose conditions on a resource consent to enable access for other developers, if the applicant agrees. The Government could not require this, but it could submit during the hearing process.

Addressing applications for consents before the legislation comes into force continues to be important.

8. Confidential advice to Government
To date, all developers engaging with MBIE on the development of the regime, excluding WQZ, have indicated their intention to participate in the permitting regime before applying for environmental consents. This may change if the upcoming Bill does not address open applications and developers perceive a risk that other developers may get in and land bank areas ahead of them.
9. Open consent applications must be decided, including any appeal of decisions, before any subsequent applications (for offshore wind or other uses) can be considered in the same area. This means any application received before the regime is in place could lock up an area. We therefore continue to recommend the legislation addresses future and open applications after the legislation comes into force.

Addressing consents granted before the legislation comes into force is no longer required.

10. You raised concerns about retrospectively applying the legislation to those with consents granted before the legislation comes into force (Recommendation 9.2), which would require strong policy rationale. We judged that the benefits of ensuring the area is available for the best offshore renewable energy project outweighed the risks. However, we now have further information meaning such a provision is no longer required.

Confidential advice to Government

11. Confidential advice to Government
[Redacted]

We therefore consider this requirement is no longer necessary.

12. Confidential advice to Government
As a result, we consider Recommendation 9.2 is not needed.

We propose an updated recommendation to address open applications after the legislation comes into force.

13. We propose the following recommendation to address future applications once the regime is in force. This builds on and replaces an earlier recommendation in the draft Cabinet paper (recommendation 8.2) addressing consent applications after the legislation is in force:

Proposed updated recommendation:

1. Agree that applications for resource or marine consents under the Resource Management Act 1991 and the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 can only be accepted for consideration under those Acts if a feasibility permit covering the area has been granted to the applicant.
14. We also propose the following updated recommendation to address open consent applications once the regime is in force:

Proposed updated recommendation:

- 2. Agree that, to avoid the risk of land banking by some developers, applications for resource or marine consents lodged but not determined before the legislation is in force must be declined if a feasibility permit covering the area is not granted to the applicant in the first round.

- 15. This recommendation would have a similar effect to the previous Recommendation 9.1 in addressing the potential for other developers to apply for consents to secure sites before the legislation is in force.

WQZ could proceed with its consent, but it could only be granted the consent if it obtains a feasibility permit.

- 16. The proposed updated recommendation mean WQZ could continue with its application, but it would not be granted consent if it is not successful in the first feasibility permit round. We consider this to be appropriate to bring WQZ into the regime alongside other developers. If WQZ were awarded a feasibility permit in the first round, the timeline for its consent would not be materially affected **Confidential advice to Government**

Legal professional privilege

- 17. **Legal professional privilege**

- 18. **Legal professional privilege**

- 19. **Legal professional privilege**

Legal professional privilege

- 20. **Legal professional privilege**

- 21. **Legal professional privilege**

Confidential advice to Government

Confidential advice to Government



