MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

COVERSHEET

Minister	Hon Simeon Brown	**Portfolio**	Energy
Title of Cabinet paper	Offshore Renewable Energy Regulatory Regime Offshore Renewable Energy Bill: Approval for Introduction	**Date to be published**	20 December 2024

List of documents that have been proactively released		
Date	**Title**	**Author**
November 2024	Offshore Renewable Energy Bill: Approval for Introduction	Office of the Minister for Energy
November 2024	Offshore Renewable Energy Bill: Approval for Introduction LEG-24-MIN-0235	Cabinet Office
13 June 2024	2324-3049 Offshore renewable energy regime – offences, penalties, powers and appeals	MBIE
20 June 2024	2324-3446 Offshore Renewable Energy regulatory regime – permit variations	MBIE
25 July 2024	2324-4013 Offshore renewable energy - update on progress and establishment of a developer working group	MBIE
8 August 2024	2425-0577 Accelerated timing for Offshore Renewable Energy Bill and Hydrogen Action Plan	MBIE
19 August 2024	2425-0725 Engagement with iwi on the offshore renewable energy regulatory regime	MBIE
23 August 2024	2425-0230 Offshore renewable energy regulatory regime – decommissioning obligations	MBIE
23 August 2024	2324-3448 Offshore renewable energy regulatory regime – transmission infrastructure	MBIE
18 October 2024	BRIEFING-REQ-0004369 Offshore Renewable Energy Bill – draft Cabinet paper seeking approval for introduction and agreement to related policies	MBIE
7 November 2024	BRIEFING-REQ-0005576 Offshore Renewable Energy Bill – updated Cabinet paper seeking approval for introduction	MBIE
June 2024	Offshore Renewable Energy Regulatory Regime: Policy Decisions	Office of the Minister for Energy
June 2024	Offshore Renewable Energy Regulatory Regime: Policy Decisions Minute of Decision CBC-24-MIN-0041	Cabinet Office

May 2024	Offshore Renewable Energy Regulatory Regime	Office of the Minister for Energy
May 2024	Offshore Renewable Energy Regulatory Regime Minute of Decision ECO-24-MIN-0062	Cabinet Office

Information redacted **YES**

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a. Privacy of natural persons
b. Confidential advice to Government

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In Confidence

Office of the Minister for Energy

Economic Policy Committee

Offshore renewable energy regulatory regime

Proposal

1 This paper sets out my intentions for regulating offshore renewable energy developments. Following the Budget moratorium, in June 2024 I intend to seek Cabinet agreement to the proposals and authority to issue drafting instructions to the Parliamentary Counsel Office to draft primary and secondary legislation for the offshore renewable energy regime.

Relation to government priorities

2 Electrify NZ outlines the Government's plan to drive a surge of investment in renewable electricity generation to double the supply of affordable, clean energy and enable New Zealand to become a low emissions economy. One of the key components is to 'fast-track' rules to unleash investment in offshore renewable energy, particularly offshore wind to deliver clean energy at scale. Cabinet is expected to consider a work programme to deliver ***Electrify NZ*** around the same time as this paper.

Executive Summary

3 Offshore renewable energy generation could contribute significantly to ***Electrify NZ***. I am intending to establish dedicated legislation to regulate offshore renewable energy. The legislation will establish a permitting regime that builds on existing regulatory systems, including the environmental consenting regimes.

4 The legislation will be designed to (a) give developers greater certainty to invest in offshore renewable energy projects, and (b) enable the selection of developments that best meet New Zealand's national interests. It will introduce two dedicated offshore renewable energy permits:

4.1 A **feasibility permit**, to provide greater investment certainty through providing an exclusive right to apply for a commercial permit, and the ability to obtain environmental consents, in a specified area. Feasibility permits will be selected in rounds following a comparative assessment.

4.2 A **commercial permit**, which enables the building and operating of offshore renewable energy infrastructure.

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5 Offshore renewable energy developers will also be required to obtain environmental and other relevant consents, the timing of which is being accelerated under ***Electrify NZ***.

6 The allocation process strikes a balance between enabling development at pace and mitigating risks to the Government and New Zealanders. The proposed regime will be fully cost recovered (i.e. funded by fees paid by developers).

7 I intended to seek Cabinet's agreement to the regime in May 2024, to enable introduction of the Bill into the House by the end of 2024. Due to the Budget moratorium, I now intend to seek Cabinet's approval in June 2024 to issue instructions to Parliamentary Counsel Office to draft primary legislation and delegated authority to take further decisions. I am providing detailed information to Cabinet now for visibility, as any significant policy changes in June 2024 would affect the ability to introduce legislation this year.

8 Following Cabinet decisions in June 2024, I intend to issue a media release announcing the design of the regulatory regime and confirming timeframes for introducing legislation and implementing the regime. To support planning and provide assurances about the Government's intentions, I am seeking agreement for MBIE officials to communicate the indicative timeline for the regime, noting timelines are subject to Cabinet decisions.

9 I plan to signal at the same time as announcing the regime that the Government is not considering any price support mechanisms. Offshore renewable energy is expected to compete on the same commercial basis as other electricity generation.

Background

Offshore renewable energy could help electrify New Zealand

10 Offshore renewable energy is one of this country's untapped energy sources and has the potential to help us grow an economy where transport and industry are powered by clean energy and to reach net-zero greenhouse gas emissions by 2050.

11 Several international developers are exploring offshore wind projects off the coasts of Taranaki, South Auckland/Waikato and potentially the South Island, which offer a limited number of sites with world-leading wind quality and shallow water depths.[1] There is also significant potential for floating wind sites, but this is newer technology and more expensive.

The regulatory regime has been developed at pace

12 The first Emissions Reduction Plan committed to delivering a regulatory regime for offshore renewable energy. Officials have worked with industry and

[1] Based on developer interest, there is an estimated 7GW of fixed-bottom offshore wind potential in New Zealand. This compares around 10GW of renewable electricity generation in New Zealand today.

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stakeholders to develop the regime. Two rounds of public consultation in late 2022 and 2023 showed broad support for it. In June 2023 the Cabinet Economic Development committee agreed in principle to some key features of the proposed regime [DEV-23-MIN-0126].

13 In developing proposals, officials have sought to "borrow the best" from more mature regimes in the United Kingdom, Netherlands, Denmark and Australia and adapt it to New Zealand's settings. A key driver of timelines is to enable developers to align activities and supply chains with Australia as much as possible. Australia's Offshore Electricity Infrastructure Act 2021 came into force in June 2022. Australia has recently made preliminary decisions on the first feasibility permit round in Gippsland, Victoria, which ran from January–April 2023. A feasibility round for Hunter, New South Wales, has recently closed and applications are being assessed.

The role of offshore wind in our future energy mix is unclear

14 A regulatory regime is a first step to enabling offshore renewable energy developments. It is unclear, however, if or when offshore wind will become an economic option for New Zealand and therefore when developments will happen. The lifetime cost of offshore wind generation is currently significantly higher than onshore wind or solar. The economics of offshore wind will depend on:

14.1 New Zealand's future electricity demand, including the role of hydrogen (given the significant volume of new renewable electricity that would be required to produce 'green' hydrogen); and

14.2 the potential for onshore renewable energy options to meet that demand.

Purpose and scope of the regime

I intend to develop new regulatory settings for offshore renewable energy to provide greater certainty and enable the selection of developments

15 Offshore renewable energy developments are currently subject to environmental consents under the Resource Management Act 1991 (RMA) and the Exclusive Economic Zone and Continental Shelf. (Environmental Effects) Act 2012 (EEZ Act). However, there is a gap in that there is no mechanism to provide developers with the certainty they need to invest in feasibility studies, before they reach the consenting stage. There is also no ability to select the sites that will deliver the highest benefit to New Zealand.

16 I intend to establish a dedicated regulatory regime for offshore renewable energy to address gaps and enable investment. The purpose of the regime will therefore be to:

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16.1 **give developers greater certainty to invest in developing projects**. Offshore wind feasibility studies[2] alone can cost hundreds of millions of dollars before reaching consenting stage. Developers have identified that the minimum level of certainty required to enable investment in feasibility studies is ‘site exclusivity’, i.e. the sole right to develop offshore renewable energy in a specific area.

16.2 **enable the selection of developments that best meet New Zealand’s national interests.** There is expected to be competition for limited sites with optimum conditions in New Zealand (for fixed-bottom wind). Under the RMA and EEZ Act, consents are allocated on a ‘first-come, first-served' basis and focus primarily on environmental outcomes. The proposed regime aims to maximise potential outcomes and minimise risks for New Zealand, as well as avoid land-banking behaviour by offshore renewable energy developers.

17 The regime will also help to manage a range of risks to the Government and public, by including provisions on:

17.1 decommissioning offshore renewable energy infrastructure at the end of its life, to avoid risks that the Government will be left to pay decommissioning costs;

17.2 responsibility for building, operating and maintaining transmission infrastructure; and

17.3 safety zones, to manage risks from multiple activities in an area.

The regime will cover all types of offshore renewable energy infrastructure

18 The proposed regime will cover all types of commercial offshore renewable energy infrastructure (e.g. wind, solar, wave or tidal), including offshore transmission infrastructure, up to the 200 nautical mile limit from the coastline (i.e. up to and including the Exclusive Economic Zone).[3]

19 **Appendix One** provides an overview of the proposed regime.

[2] Feasibility studies for offshore renewable energy developments generally comprise of engineering studies, metocean assessments, seabed surveys, and environmental studies.
[3] Small-scale demonstration or research and development projects will be exempt from the regime as they pose a lower risk to government and do not have the same needs for investment certainty as larger projects. This includes small scale offshore energy generation for other uses (e.g. electricity for fish processing).

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Design of the permitting regime

The regime will require developers to obtain two permits

20 The regime will require prospective developers of offshore renewable energy infrastructure to obtain two permits:

20.1 **A feasibility permit**, which will provide an exclusive right to apply for a commercial permit in the specified area (and to apply for relevant environmental consents). In this way, the feasibility permit gives the holder certainty that no other offshore renewable energy developers will be approved to develop the preferred site while they undertake feasibility activities.

20.2 **A commercial permit**, which must be obtained before construction begins, will provide a final check (complementing marine or resource consent assessments) to ensure projects meet the required standard and risks are managed. This step is important as there will be significant unknowns at feasibility permit stage, which is up to seven years earlier. However, the aim is to give as much certainty as possible at feasibility stage, and to only cover checks that are not covered by other regimes. The commercial permit will also provide a mechanism for imposing, monitoring and enforcing, key obligations over the operational life of the development.

21 Details of the operation of each process are set out in the sections below.

Developers will also be required to obtain relevant environmental consents

22 Before constructing and operating offshore renewable energy infrastructure, developers will also require:

22.1 resource consents under the RMA or its successor (e.g. for transmission cables running through the territorial sea and onshore infrastructure);

22.2 marine consents under the EEZ Act for infrastructure in the Exclusive Economic Zone (e.g. turbines); and

22.3 other relevant permits, e.g. under the Overseas Investment Act 2005 and Maritime Transport Act 1994.

23 Under ***Electrify NZ*** the Government committed to requiring decisions on resource consents for offshore wind generation within two years of an application. ***Electrify NZ*** also pledged to require consents for new transmission lines to be issued within one year and to eliminate consents for upgrades to existing transmission lines, within limits. These consenting matters are being implemented through the ***Electrify NZ*** work programme, including through fast-track consenting.

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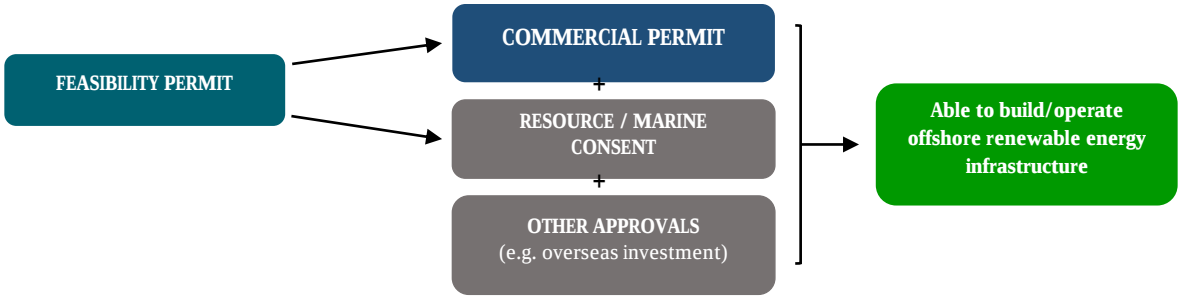
24 Work on developing a national direction for offshore wind and infrastructure will progress in parallel with the development and delivery of the proposed permitting regime.

25 The relationship between permits and consents is set out in Figure 1 below.

Figure 1: Relationship between permits and consents



Only feasibility permit-holders will be able to obtain or retain environmental consents for offshore renewable energy infrastructure, to manage the risk of land banking

26 Most developers have signalled support for the regime and their intention to participate in it before submitting any environmental consents. There is the potential, however, for consenting processes to be used to 'land bank' prime sites or impede other developments. To manage this risk, I intend to recommend that developers be required to hold a feasibility permit before applying for resource and/or marine consents, including through the fast-track approvals process.

27 To further manage the risk of land banking, I intend to recommend 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). Any open consent applications could continue to be considered[4], but could only be granted if the applicant obtains a feasibility permit. This would require consequential amendments to the RMA, EEZ Act, and Fast-track Approvals Bill.

28 This provision is not legally retrospective, but it may be perceived as changing the rules for anyone who has lodged a consent application before the legislation is in force. (There is currently one application for a wind farm in the Territorial Sea off Taranaki, Confidentiality)

29 I consider the proposed limitations to be justified to manage the risk of land banking. Perception risks can be mitigated through signalling the Government's intentions early and communicating the value of creating a level playing field for developers to ensure projects deliver the best outcomes for New Zealanders.

[4] Except through the Fast-track approvals process, as this is excluded under Section 18(l) of the Fast-track approvals Bill.

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I intend to recommend a developer-led approach, at least initially

30 I intend to recommend a **developer-led approach**, where developers will identify and apply for sites. This approach is to enable the feasibility permit regime to begin as soon as possible. During consultation, developers preferred this approach.

31 An alternative approach would be for the government to identify sites for offshore renewable energy development (which could be full marine spatial planning, or a 'designated area' approach like Australia). The trade-off is that it would take substantial investment by government to identify the best use of different areas of the marine environment, which would delay the introduction of the regime. The proposed regulatory regime will provide flexibility for the government to select sites if appropriate in future.

The regime will not resolve overlaps with other users in the marine environment

32 Under the developer-led approach, the proposed permits would not prevent other users (e.g. mining, aquaculture and fisheries) from seeking an environmental consent in the same area. This means other users could gain a consent, including through the fast-track approvals process, which prevents an offshore renewable energy project from going ahead (i.e. where competing uses cannot co-exist).

33 The areas of interest for offshore wind developers are highly contested, particularly in the South Taranaki Bight. For example, Trans-Tasman Resources' application for a resource consent for seabed mining in Taranaki overlaps with the area developers have identified as the zone with the highest-potential for bottom-fixed wind in New Zealand.

34 Given some of these competing uses are or will be regulated by the Crown, there may be an opportunity to resolve overlaps through a level of strategic planning in the marine environment. My officials intend to explore these opportunities further with other agencies.

Decision-making

The Minister for Energy will be responsible for determining permit decisions

35 I intend to recommend that decisions to grant, vary or revoke permits are made by the Minister for Energy, but can be delegated to the regulator. This includes assessing applications, prescribing conditions, duration of a permit and the area to which it applies. In practice, most decisions are expected to be made by the regulator given their technical nature, but Ministerial oversight is warranted where decisions involve potentially significant policy or strategic considerations, or significant trade-offs among competing applications at the feasibility stage. This approach aligns with the regime under the Crown Minerals Act 1991 (CMA).

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Feasibility permits

36 I intend to recommend that feasibility permits will be **allocated in rounds** initiated by the Minister for Energy. Rounds will be open for a defined period. I recommend that the regime allows the Minister to limit rounds by generation capacity, spatial area or technology type if appropriate. Allocating permits in rounds will support competition and a merit-based selection of developments.

Feasibility permits will be assessed on a comparative basis to select the projects that will deliver the most benefits for New Zealand

37 There is expected to be competition for optimal sites for offshore wind, e.g. several developers have announced they are exploring projects in an overlapping area in South Taranaki. Legislation will set out the high-level factors the decision-maker will need to consider when comparing applications.

38 Given the regime's focus on supporting ***Electrify NZ***, the assessment will give priority to projects that are most likely to be delivered successfully, and at a pace and scale to deliver the greatest benefits to New Zealand. The primary assessment will therefore focus on the energy system benefits of the project and the applicant's technical and financial capability.

39 The regime will also enable the decision-maker to consider wider benefits and risks, i.e.:

39.1 wider economic benefits (e.g. jobs opportunities, use of local supply chains, community and regional investment);

39.2 ability to successfully decommission projects;

39.3 compliance record (e.g. no history of major health and safety or environmental breaches by the applicant);

39.4 management of existing rights, interests or limitations (i.e. so a project is not selected where it's clear it could not go ahead, e.g. because of other permitted activities or a marine reserve in the area);

39.5 iwi and hapū engagement (i.e. checking engagement with relevant groups has been sufficient);

39.6 national security or public order risks (i.e. the ability for Ministers to veto a project where there are significant concerns).

Proposed feasibility permit considerations (comparative assessment)

Primary considerations
- ➢ Energy system benefits
- ➢ Technical and financial capability

Additional considerations
- ➢ Wider economic benefits
- ➢ Decommissioning arrangements
- ➢ Compliance record
- ➢ Existing rights, interests and limitations
- ➢ Iwi and hapū engagement
- ➢ National security or public order risks

40 If there is only one application in a round, the assessment factors will be used to satisfy the decision-maker the project is viable and risks are appropriately

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managed. Where proposed permit areas overlap, the regulator may invite applicants to nominate another area.[5]

41 The details of the factors to be assessed, and relative weighting of factors, will be set out in secondary legislation and guidance. I intend to seek delegated authority to make these detailed decisions. Other key features of the feasibility permit process are:

41.1 Feasibility permits will each cover a **single contiguous area**. The maximum area will not be prescribed in legislation, but the regulator could issue guidance on this, e.g. to reflect the capacity and needs of the electricity system. I expect that initially the appropriate maximum area would be around 250km^2, which equates to around a 1GW wind farm. Applicants could not apply for multiple permits in the same geographical area in the same round, to encourage competition and market participation.

41.2 Feasibility permits will have a **maximum duration of seven years**.

41.3 In exchange for exclusivity in a developer-led regime, feasibility permit holders will be required to **disclose the feasibility data acquired** when the permit expires, or a commercial permit is awarded. This would only apply to non-commercially sensitive information (such as environmental surveys and baseline studies). The information will be shared with the regulator for the purpose of informing the government's decisions for future developments.

41.4 **'Use it or lose it' provisions** will enable the Minister to revoke the permit if the holder does not begin feasibility activities within 12 months or meet milestones without reasonable justification (e.g. supply chain constraints).[6] Requirements for regular progress reporting will ensure the regulator has visibility of progress. The seven-year expiration and 'use it or lose it' provisions are supported by industry.

41.5 **Public consultation** will be carried out by the regulator on the proposed developments ahead of granting feasibility permits to ensure impacts on other users and rights holders are understood and any conflicts are surfaced.

[5] Cabinet previously agreed in principle that where feasibility permit applications overlap, applicants would be given the opportunity to resolve the overlap themselves. Following further analysis and consultation, this is not considered appropriate due to the risks of anti-competitive behaviour.
[6] If a feasibility permit is revoked, surrendered, or expires before a commercial permit is granted, the permitted area will be released and could be made available to other developers.

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Commercial permits

Commercial permits will give assurance that a project is ready to progress to construction

42 I intend to propose a commercial permit can be sought up to seven years following the award of a feasibility permit.

43 Commercial permit applications will be **assessed once the developer is ready** (i.e. not as part of a comparative round like at feasibility).

44 The assessment will consider a subset of the feasibility permit considerations and is focused on checking the development is ready to proceed to construction and risks are managed. If a developer does not initially meet the requirements at the commercial permit stage, the regulator will provide them opportunity to remedy this.

Commercial permit assessment

- Technical and financial readiness
- Decommissioning arrangements
- Iwi engagement
- National security and public order risks

45 I intend to recommend that:

45.1 feasibility permit holders can **apply for commercial permits whenever** they are ready to do so (in contrast to the government-initiated rounds proposed for feasibility permits);

45.2 there will be **no public consultation** on the commercial permit applications, given most issues warranting public input will be resolved at the feasibility stage or through the environmental consent processes;

45.3 commercial permits will be allocated for an **initial period of 40 years,** but the duration may be extended by up to a further 40 years with the approval of the regulator, if appropriate to accommodate the full operational life of an asset.[7]

Permit variations

46 I intend to recommend variations to permits over the life of the project may be approved where appropriate (both feasibility and commercial permits). Such variations include minor extensions to permit area, extensions to commercial permit duration, transfers of permits to new permit holders, change of control of a permit participant (more than 25%), changes to permit conditions or project plans. Variations will require new permits where they might adversely affect other developments, e.g. significant expansions to the permit area and extensions to the feasibility permit duration.

[7] While the average life of wind turbines is currently 30–35 years, this is increasing and is likely to vary for different technologies.

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Revenue-gathering and price support

47 I do not intend to propose including a revenue-gathering mechanism, such as a royalty scheme. This is because:

47.1 royalties would likely significantly deter investment, as the economics are already expected to be challenging;[8]

47.2 neither the energy source nor the marine area is owned by the Crown, which is the common justification for charging royalties in comparable regimes (e.g. crown minerals);

47.3 additional costs would flow through to consumers in electricity prices;

47.4 it aligns with Australian regime, which does not include royalties.

48 However, I intend to separately consider whether there should be a mechanism to ensure New Zealand receives appropriate value from new export products produced from renewable electricity, such as green hydrogen, methanol or ammonia. Any such mechanism would sit outside the offshore renewable energy regulatory regime and would need to align with our trade obligations.

I intend to signal clearly that the Government is not intending to offer price support

49 Internationally, most offshore wind projects have been supported by some form of government-backed price support mechanism, e.g. contracts for difference to provide certainty over the future electricity price, which enables access to the significant project finance required at a cheaper rate.

50 Developers are seeking signals from the Government if such support will be available in New Zealand. Such a mechanism would be a material departure from the market-based electricity model in New Zealand. Following Cabinet decisions in June 2024, I intend to signal clearly that the Government expects offshore renewable energy projects to compete on the same commercial basis as other electricity generation. The Government's focus is on enabling the market to deliver by creating an enabling regulatory environment.

Treaty settlements

51 In June 2023, Cabinet invited the Minister of Energy and Resources to report back on specific proposals for iwi and hapū participation [DEV-23-MIN-0126].

52 The Government has indicated it will work constructively with Māori in respect of the offshore renewable energy regime. Māori have close interests in offshore renewable energy developments and the marine environment. Some iwi have indicated they see opportunities for investment in offshore developments, as well as jobs and regional economic benefits.

[8] Costs of developing offshore renewable energy infrastructure is currently double that of onshore renewables and it is unclear when or if cost parity will occur.

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53 To ensure that rights stemming from Treaty settlements are appropriately managed, I intend to recommend the regime includes the following provisions:

53.1 Applicants will be required to identify relevant rights stemming from Treaty Settlements as part of applications and must consult relevant iwi, hapū or Māori groups[9] on the proposed development/permit application before applying.

53.2 Applicants' engagement and identification of relevant rights stemming from Treaty settlements will be considered by the Minister when granting permits.

53.3 The Minister will be required to engage with relevant iwi on the impacts of applications on relevant rights stemming from Treaty settlements.

54 I also intend to recommend the regime includes a clause reflecting the approach taken in Clause 6 of the Fast-track Approvals Bill 2024, which requires decision makers to act in a manner consistent with obligations under Treaty settlements and customary rights recognised under the Marine and Coastal Area (Takutai Moana) Act 2011 the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.

55 Officials have had close engagement with relevant iwi on the offshore renewable regime. I expect officials will continue to work with iwi on the specific implementation details as legislation is developed.

56 The Marine and Coastal Area (Takutai Moana) Act 2011 provides recognition of customary rights within 12 nautical miles in the context of the RMA, including processes for claiming and recognising these rights, and requirements on resource consent applicants to consult with rights holders. The offshore renewable energy regime will still require permit holders to seek the appropriate environmental consents under existing legislative requirements.

57 Officials will undertake further work before legislation is introduced to the House to ensure the two regimes work together appropriately. I also note that the National – New Zealand First Coalition Agreement commits to amending section 58 of the Marine and Coastal Area Act to make clear Parliament's original intent in light of the judgment of the Court of Appeal in Whakatohea Kotahitanga Waka (Edwards) & Ors v Te Kahui and Whakatohea Maori Trust Board & Ors [2023] NZCA 504.

Appeal rights

58 I intend to recommend that all key permit decisions could be appealed, except for the decision of whether to grant a feasibility permit, in line with the Crown Minerals tender process. Any right of appeal under the regime should be

[9] Relevant iwi will include the relevant post-treaty settlement governance entity for the geographic region in which the offshore renewable energy development is proposed.

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limited to points of law and only available to the person who has applied for or holds the permit to which the contested decision relates.

59 Feasibility permit decisions will be excluded because of the comparative nature of the process. If a person whose application overlapped with a successful applicant appealed the decline of their application, this would create uncertainty for the permit holder and could significantly delay their feasibility activities. Resource and marine consenting processes will provide an opportunity for any affected party to submit on and subsequently appeal consent decisions, and any decision will be able to be judicially reviewed.

Transmission infrastructure

I intend to recommend a hybrid model for the building, ownership and operation of offshore transmissions infrastructure

60 New transmission infrastructure will be needed both offshore and onshore if offshore wind projects connect to the national grid.[10] Officials engaged with Transpower and developers on options for building, ownership and operation of offshore transmission infrastructure. Based on this, I intend to recommend a hybrid model that leverages their respective strengths:

60.1 **Commercial permit-holders will generally be responsible for planning, building and funding new offshore transmission infrastructure.** Developers have the technical expertise for design and construction of offshore infrastructure. This model gives developers greater control over delivery timeframes, quality and costs, improving investment certainty. Developers may choose to contract with Transpower to plan and build offshore transmission, noting it must connect with the onshore transmission system operated by Transpower.

60.2 **Transpower will become responsible for owning, operating and decommissioning offshore transmission infrastructure.** As the transmission system operator for New Zealand, Transpower is well-placed to carry out this function, particularly where the same transmission infrastructure is shared by two or more offshore generation projects.

61 The details of how offshore transmission infrastructure will be regulated, including any mechanisms necessary to ensure investments are appropriately sized and to facilitate transfers of ownership, requires further policy development. This will be carried out by the Ministry of Business, Innovation and Employment (MBIE) in consultation with the Commerce Commission, Electricity Authority and Transpower.

[10] In addition to feeding into the grid, developers are exploring options for direct connections to industrial users, and power-to-X (e.g. where electricity is used to produce hydrogen, synthetic natural gas, liquid fuels, or chemicals).

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62 Development of onshore transmission infrastructure (e.g. network investment planning, capacity allocation and cost recovery) is already highly regulated under the Commerce Act 1986 and the Electricity Industry Act 2010. I do not propose to make any changes to the broader transmission regulatory system through this regime.

Decommissioning

The regime will include safeguards to ensure decommissioning occurs at developers' expense

63 Decommissioning of offshore renewable energy infrastructure presents a significant financial risk to the Crown if assets are abandoned after their operational life. It is standard practice internationally for offshore renewable energy regimes to require permit holders to decommission and to provide financial security to cover that obligation. In 2021, New Zealand adopted similar mechanisms in the CMA.

64 I intend to recommend that permit holders will have a legal obligation to decommission infrastructure and to obtain and maintain one or more financial securities to cover this obligation. Commercial permit applicants will need to provide a decommissioning plan; a cost estimate for decommissioning, based on the cost of the developer fully removing infrastructure; and a proposal on the financial securities.

65 Financial securities will be required to be in place during construction, before being released (or partially released) to the permit holder at the point of commercial operation and then building up again over the asset's life. The regulator will regularly monitor and assess the decommissioning plan and the financial securities. The Minister for Energy will determine the kind and amount of financial securities required, which will reflect the risk profile of the developer, and may adjust these requirements over time if required.

66 If a commercial permit is transferred to a new party, the transferee will be required to put in place adequate financial securities for decommissioning and the transfer will need the approval of the Minister.

67 In addition, I intend to propose that permit holders will be required to provide the Environmental Protection Authority (EPA) with a decommissioning plan prior to submitting a marine consent for decommissioning. This will require amendments to the EEZ Act.

68 Further detail on decommissioning requirements will be set out in secondary legislation.

The regime will not include trailing liability

69 I intend to propose permit holders are not subject to trailing liability. The financial and other risks to the Crown are considered low for offshore renewable energy developments, if appropriate mitigations are in place. With robust financial security requirements and the transfer requirements described

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at paragraph 66, I consider the risks to the government of assets being abandoned to be sufficiently mitigated.

70 The proposed provisions for offshore wind are different to the provisions in the CMA relating to oil and gas. This reflects the different nature of the infrastructure and because for offshore renewable energy developments:

70.1 the requirements will be in place from the beginning of developments, rather than late in the life of existing developments, as was the case for oil and gas;

70.2 the risk of an operator transferring out of its liability is also lower;

70.3 the underlying resource (e.g. wind) is more certain during the tail end of a development's life. This contrasts with oil and gas fields, where resources peak and decline, sometimes unpredictably, towards the end.

Safety zones

Safety zones around infrastructure will protect people and assets

71 Some restrictions are required to protect offshore renewable energy infrastructure from intentional or accidental harm (e.g. a collision between vessels and infrastructure) and ensure public and navigational safety. Safety zones preventing unauthorised vessels from entering a particular area are commonly used around offshore renewable energy infrastructure to manage these risks. Monitoring safety zones in the territorial sea and Exclusive Economic Zone will involve a combination of regulators.

72 I intend to recommend that the regime:

72.1 provides for safety zones of up to 500 metres around offshore infrastructure during key risk periods (e.g. construction), in accordance with New Zealand's right as a coastal state under the United Nations Convention on the Law of the Sea; and

72.2 empowers the regulator to vary these zones to reflect the varying risk-profile over the life of the developments (e.g. 50 meters during normal operations).

Compliance and enforcement

Permit conditions will be a key regulatory tool

73 The regulator will be able to enforce conditions on feasibility and commercial permits. The conditions will be in addition to legal requirements applying to all permits and largely aligned with the CMA. Conditions will include, but not be limited to:

73.1 adhering to the project design or management plan;

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73.2 paying necessary fees on time;

73.3 providing reports or any information requested by the regulator, and

73.4 disclosing feasibility data acquired during project development.

The regulator will have a standard set of powers

74 The regulator, or its delegated representative, will have a standard set of powers and functions, largely aligned with those in the CMA, including the ability to:

74.1 monitor and request information from permit holders;

74.2 check compliance by authorising officers to conduct inspections of project sites;

74.3 obtain a search warrant and conduct investigations into confirmed or alleged non-compliance;

74.4 conduct inspections of offshore renewable energy project sites and investigations into confirmed or alleged non-compliance;

74.5 enforce compliance by issuing warnings, compliance notices, entering into enforceable undertakings, pursuing civil penalties or prosecuting criminal offences; and

74.6 keep and maintain a public register of permits issued to disclose key details of permit applications and permit decisions, which are not commercially sensitive.

75 While all permit applications and decisions will be publicly notified, consolidating some of this information in a bespoke register will help build a more transparent and accessible regime, and will provide useful information to future applicants. The specific processes underpinning the disclosure requirements, and implementation of this register, will be prescribed in regulations.

Enforcement tools will be aligned with the CMA and Australian offshore renewable energy regime

76 The enforcement approach I intend to propose is closely aligned with the CMA and the Australian regime, with the exception that the offshore renewable energy regime will not include an infringement offence scheme and may provide higher penalties for certain offences. Given the financial capability of the regime's likely permit holders, more significant fines and/or pecuniary penalties will be necessary in certain instances to ensure penalties effectively deter future non-compliance.

77 I intend to recommend the regime includes a combination of criminal offences and penalties including civil pecuniary penalties, aligned with the CMA. It will

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include penalties that are proportionate to the consequences of non-compliance (acknowledging that these developments are expected to be multi-billion dollar projects). The regime will not duplicate the existing provisions of environmental and health and safety legislation that will apply to offshore renewable energy projects.

78 I intend to seek delegated authority in June 2024 for the Minister for Energy to make further decisions on the details of the penalties and offences.

79 I also intend to seek delegated authority for the Minister to make further decisions on whether permit revocation is warranted as an enforcement action beyond 'use it or lose it' – i.e., once the commercial permit stage has been reached.

The most significant offences relate to failures to decommission

80 The regime will closely follow the CMA in terms of offences for decommissioning infrastructure. The maximum penalty for the most egregious offence in the offshore renewable energy regime, 'knowingly' failing to decommission, aligns with the equivalent offence and penalty in the CMA, being a fine of up to $1 million and/or a term of imprisonment up to two years for an individual. For a body corporate, the criminal sanction will be a fine the greater of either $10 million or up to 3 times the costs of decommissioning. I also intend to propose (again, in line with the CMA) that directors can be held personally liable for knowingly failing to decommission, if they were a director at the time the offence took place. Defences will be available for directors in this instance, where a director took all reasonable steps to ensure the permit holder fulfilled its decommissioning obligations.

Implementation

81 Subject to Cabinet decisions in June, MBIE officials will work closely with the Parliamentary Counsel Office to prepare the legislation necessary to give effect to the proposals. MBIE will be responsible for the implementation and the administration of the legislation.

MBIE will be the regulator

82 I intend to recommend the Chief Executive of MBIE is the regulator. This will enable the regime to be implemented quickly with minimal financial implications, given alignment with MBIE's existing functions in administering of the CMA.

83 I propose to empower the regulator with sufficient powers and a range of proactive and reactive enforcement tools to monitor and enforce compliance with the requirements of the offshore renewable energy regulatory framework.

84 The proposed regime will allow for information sharing between MBIE and key agencies with a role in administering, monitoring, or enforcing the regime and related regulatory systems, where that information:

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84.1 is held for the performance or exercise of either the regulator or the specified entity's functions, duties or powers; and

84.2 would assist the regulator or the specific agencies in the performance or exercise of their functions, duties or powers – including the assessment of permit applications.

I intend to seek authority to approve further detail of the regime

85 Further policy details will need to be decided during the development of the legislation. I intend to seek Cabinet agreement to delegate authority to the Minister for Energy to make detailed decisions in line with the proposals set out here, so long as they are not contrary to the objectives and scope of the regime.

The regime could be in place by the end of 2025

86 I am proposing to deliver this regime by the end of 2025 to enable developers to align activities and supply chains with Trans-Tasman developments as much as possible. This requires the prioritisation of the drafting of this Bill and in the House.

87 Alongside primary legislation, secondary legislation that sets out the detail of administrative processes will need to be developed. MBIE will lead the development of the necessary secondary legislation. Some of this is intended to be in place shortly after the Bill is passed, to enable the first feasibility round to open.

88 I intend to introduce the Bill in late 2024. This would enable the first feasibility permit round to be launched in late 2025, per the milestones in the table below. To enable these timelines, MBIE is preparing drafting instructions on the basis of the proposals in this paper to enable PCO to begin drafting the Bill immediately following Cabinet decisions. If there are significant changes to the policy proposals, timelines will need to be revised.

Milestone/Activity	**Timeframe**
Cabinet decisions on regime	Early June 2024
MBIE prepares drafting instructions	By early June 2024
Drafting of Bill (4.5 months)	Mid-June–October 2024
Legislation Cabinet paper – drafting, consultation, lodgement	November 2024
Bill introduced and first reading	December 2024
Select Committee (six months)	January–June 2025

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2nd reading, Committee of the whole House, 3rd reading, Royal assent, Act commences, and regulator established (regulations made shortly after Bill passes)	Mid-2025
Secondary legislation and permit application guidance prepared	After Bill passes
First feasibility round initiated, and permit application guidance published	Late 2025
First feasibility permits granted	Mid-2026

89 Developers have been seeking clarity on the Government's intentions for the regime to inform planning, in particular the timeline for the legislation and the opening of the first permitting round. As Cabinet is not expected to make decisions on the regime until June 2024, I am seeking agreement for MBIE officials to communicate the indicative timeline, noting the regime and timelines are subject to Cabinet decisions.

Cost-of-living Implications

90 There are no immediate or direct cost-of-living implications arising from the proposals in this paper. Enabling offshore renewable energy provides another option for our future energy mix. Greater choices in the market may enable lower-cost electricity for consumers.

Financial Implications

91 There will be a cost associated with implementation of and ongoing management of the proposed regulatory regime. In June 2024 I intend to seek agreement that:

91.1 these costs will be fully cost recovered through application fees and annual fees paid by permit holders and applicants;

91.2 Confidential advice to Government

91.3 Confidential advice to Government

92 Advice on the cost recovery approach and proposed fees will be completed following further policy development and design. I consider that the level of fees should be specified in regulations, with the ability to cost recover being set out in legislation.

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93 In the interim, MBIE has undertaken a very preliminary costing exercise that will need to be refined as the legislative process proceeds and a greater understanding is developed about the level of interest that will be generated in the sector. That interim costing exercise has been undertaken at the request of the Treasury, so that the potential exposure of the Crown to meeting any costs associated with the regime can be managed, and to understand what the potential impact on MBIE's balance sheet might be when the memorandum account is in deficit for a period.

94 Preliminary costings suggest that the first-year cost of the regime could be Confidentiality This will include costs associated with establishing the regime as well as management of it. Outyear costs will be lower, estimated at Confidentiality Costings have assumed that expenditure will be required from 1 July 2025, but that application fees will not be received before early 2026. The initial costs of the regime will therefore need to be managed through a memorandum account and MBIE's balance sheet for a short period within the 2025/2026 financial year (with an associated impact on OBEGAL of up to Confidentiality.

95 Confidential advice to Government

Legislative Implications

96 New primary and secondary legislation is needed to implement the proposals. The proposed regime will be given effect through the Offshore Renewable Energy Bill, consequential amendments to the RMA and EEZ Act and supporting secondary legislation. The Bill is proposed to be a category 5 priority on the 2024 Legislation Programme (to be referred to a select committee by the end of 2024).

Impact Analysis

Regulatory Impact Statement

97 Cabinet's impact analysis requirements will apply to the proposals I intend to seek agreement on in June 2024. MBIE's Regulatory Impact Analysis Review Panel has reviewed the attached Regulatory Impact Statement "Offshore Renewable Energy Regime" produced by MBIE.

98 The Panel considers that it partially meets the quality assurance criteria. It stated: The Panel was satisfied with the problem definition and the consultation process. To fully meet quality assurance criteria, it would be important to:

98.1 have a stronger evidence base on the costs and benefits of implementing the options, which we understand may not be possible on the current evidence base; and

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98.2 better articulation of the objectives and criteria, and the trade-offs between options.

Climate Implications of Policy Assessment

99 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. As this work is progressed, any emissions impacts will be assessed in more detail and disclosed to Cabinet as appropriate.

Population Implications

100 The proposed regime would not disproportionately impact distinct population groups beyond those impacts on Māori outlined at paragraphs 51-54.

101 However, any development enabled by the implementation of the proposals may disproportionately impact regions where development occurs. This could have positive impacts arising from job opportunities and economic development opportunities for the region. However, it could also affect access to marine areas and adversely impact ecosystems.

Human Rights

102 There are no human rights implications arising from the proposals in this paper. Consistency with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993 will be discussed with the Ministry of Justice during the drafting process.

Use of External Resources

103 These proposals have been developed without the use of external resources.

Consultation

104 MBIE carried out two rounds of public consultation on the proposals from December 2022 and August 2023. Feedback was received from a broad range of perspectives, including prospective offshore renewable energy developers, energy industry stakeholders, iwi and Māori organisations, environmental advocacy groups, local governments, regional development organisations, energy consultants and researchers. Feedback from public consultation generally supported the proposed regulatory regime. In addition to ongoing engagement, MBIE undertook dedicated consultation with a cross-iwi grouping in late 2023.

105 MBIE consulted with the following agencies in the development of the proposals outlined in this paper: Department of Conservation, Department of Prime Minister and Cabinet, (Policy Advisory Group and National Security Group), Government Communications Security Bureau, Maritime New Zealand, Ministry for the Environment, Ministry of Foreign Affairs and Trade, Ministry of Justice, Ministry of Primary Industries, Ministry of Transport, New

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Zealand Security Intelligence Service, the Treasury and the Parliamentary Counsel Office. Te Arawhiti was also provided with opportunity to comment on the content of this paper.

Communications

106 Subject to Cabinet decisions in June 2024, I propose to issue a media release announcing the design of the regulatory regime and expected timeframes for introducing legislation and implementing the regime. I plan to signal, at the same time, that the Government is not considering any price stabilisation or support mechanisms.

Proactive Release

107 I plan to delay the proactive release of this paper until after Cabinet makes decisions in June 2024.

Recommendations

The Minister for Energy recommends that the Committee:

1 **note** the Government's priorities include fast-tracking permits to unleash investment in offshore wind generation, as part of the Electrify New Zealand work programme;

2 **note** that in June 2023 Cabinet agreed in principle to key features of a proposed regulatory regime for offshore renewable energy [DEV-23-MIN-0126];

3 **note** that Ministry of Business, Innovation and Employment (MBIE) officials have developed a proposed regime for offshore renewable energy and that submissions on public consultations showed broad support for it;

4 **note** that I intend to seek decisions from Cabinet in June 2024 on the proposals outlined in this paper;

5 **note** that the sector is seeking clarity on the timeline for the legislation and the opening of the first permitting round, to inform planning;

6 **agree** that MBIE officials can communicate the indicative timeline for the regime, noting the regime and timelines are subject to Cabinet decisions;

Purpose and scope of the regime

7 **note** that I intend to seek agreement that:

7.1 the purpose of the regime will be to:

7.1.1 give developers greater certainty to invest in offshore renewable energy projects, and

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7.1.2 enable the selection of developments that best meet New Zealand's national interests;

7.2 the regime will facilitate the development (including construction, operation and decommissioning) of all commercial offshore renewable energy infrastructure (including offshore transmission infrastructure) in New Zealand up to the 200 nautical mile limit from the coastline (i.e. up to and including the Exclusive Economic Zone), and

7.3 regime will align with, and not duplicate, environmental consenting regimes, including the Resource Management Act 1991 and the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012;

Design of the permitting regime

8 **note** that I intend to seek agreement that:

8.1 the regulatory regime will include a permitting regime covering two classes of permits: feasibility permits and commercial permits,

8.2 a feasibility permit will give the holder the exclusive right to apply for a commercial permit for the area (or a portion of the area) covered by the feasibility permit,

8.3 applications for resource or marine consents relating to the construction and operation of offshore renewable energy infrastructure 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, and

8.4 a commercial permit must be obtained before construction begins;

9 **note** that I intend to seek agreement that:

9.1 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),

9.2 the Fast-track Approvals legislation will be amended so that applications for marine consents and resource consents relating to offshore renewable energy projects are eligible once the offshore renewable energy regulatory regime is in force,

9.3 the selection of areas for development will be developer-led (meaning developers will identify and apply for sites), with the ability for the government to select sites if appropriate in future, and

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9.4 feasibility permits will not prevent other authorised non-offshore renewable energy activities (e.g. mining or aquaculture) from gaining environmental consents within the permit area, potentially excluding offshore renewable energy developments from being consented;

Decision-making

10 **note** that I intend to seek agreement that:

10.1 the Minister for Energy will make decisions on the allocation, variation and revocation of permits, and

10.2 the allocated permits will have a prescribed area, start date, end date and be subject to such conditions as are necessary to ensure that activities are undertaken in accordance with agreed plans, and avoid or manage any adverse or unauthorised activities over the permit duration and such other relevant conditions the Minister considers appropriate;

Feasibility permits

11 **note** that I intend to seek agreement that feasibility permits:

11.1 will be allocated within application rounds initiated by the Minister for Energy, and may be limited by generation capacity, spatial area or technology type,

11.2 will be awarded or declined based on an assessment of the following factors to select the projects that are most likely to deliver the greatest benefits for New Zealand:

Primary considerations

11.2.1 energy system benefits

11.2.2 technical and financial capability

Additional considerations

11.2.3 wider economic benefits

11.2.4 decommissioning arrangements

11.2.5 compliance record

11.2.6 iwi and hapū engagement, as outlined in recommendation 25 below

11.2.7 management of existing rights, interests and limitations

11.2.8 national security or public order risks,

11.3 will not have a legislated maximum area (although the regulator may issue guidance on this),

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11.4 will cover a single contiguous area that is reasonable for the proposed development (in New Zealand, this is likely to be around 250km^2 for 1GW developments), and

11.5 will have a maximum duration of seven years,

11.6 require permit holders to disclose data obtained during their feasibility studies to the regulator either when they obtain a commercial permit or when a feasibility permit expires, revoked or surrendered,

11.7 will have 'use it or lose it' provisions to enable the Minister to revoke the permit if the holder does not begin feasibility activities within 12 months or make effective use of it, without reasonable justification, and

11.8 will include a requirement for the regulator to consult publicly on key details of applications before permitting decisions are made;

12 **note** that I intend to seek agreement that an applicant may not seek multiple permits within the same geographic area within a feasibility round, to encourage competition and market participation;

Commercial permits

13 **note** that I intend to seek agreement that commercial permits:

13.1 may be sought by a feasibility permit holder for any area within the spatial boundaries of the applicant's feasibility permit, at any time within seven years of the award of the feasibility permit,

13.2 may be awarded following an application from the feasibility permit holder and an assessment that is independent of other commercial permit applications (i.e. non-comparative),

13.3 will not be subject to public consultation, and

13.4 will have an initial duration of up to 40 years, with the ability to seek extensions up to a further 40 years;

14 **note** that I intend to seek agreement that assessment of commercial permits will be based on the following considerations:

14.1 technical and financial readiness,

14.2 decommissioning arrangements,

14.3 iwi and hapū engagement, and

14.4 national security or public order risks;

Permit variation

15 **note** that I intend to seek agreement that:

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15.1 the Minister may approve, on the request of the permit holder, the following variations: minor extensions to permit area, extensions to commercial permit duration, transfers or change of control of the permit holder and permit conditions; and

15.2 extensions to the feasibility permit duration or significant extensions to the permit area that alter generation capacity or impact neighbouring developments will require a new permit;

Revenue-gathering

16 **note** I intend to seek agreement that the legislation will not provide for a revenue-gathering mechanism, such as a royalty scheme, as this is likely to significantly deter investment and the increased cost of projects would flow through to users;

17 **note** that I intend to separately consider whether there should be a mechanism to ensure New Zealand receives appropriate value from new export products produced from renewable electricity, such as green hydrogen, methanol or ammonia;

Treaty settlements

18 **note** that I intend to seek agreement that:

18.1 applicants will be required to identify relevant rights stemming from Treaty Settlements as part of applications and must consult relevant iwi, hapū or Māori groups on the proposed development/permit application before applying,

18.2 applicants' engagement and identification of relevant rights stemming from Treaty Settlements will be considered by the Minister when granting permits,

18.3 the regime will require the Minister to consult with relevant iwi on the impacts of applications on relevant rights stemming from Treaty Settlements, and

18.4 the regime includes a clause reflecting the approach taken in Clause 6 of the Fast-track Approvals Bill 2024, which requires decision-makers to act in a manner consistent with obligations under Treaty settlements and customary rights recognised under the Marine and Coastal Area (Takutai Moana) Act 2011 the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019;

Appeal rights

19 **note** that I intend to seek agreement that, in addition to judicial review, there will be some limited rights of appeal to the High Court for key permitting decisions (such as a decline of a commercial permit application or the revocation of a permit) with the following limitations:

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19.1 appeals would be limited to points of law,

19.2 appeals would be available only to the person who has applied for or holds the permit to which the contested decision relates, and

19.3 the decision to decline a feasibility permit application would not be able to be appealed;

20 **note** that resource and marine consenting processes will provide an opportunity for any affected party to submit on and subsequently appeal consent decisions;

Transmission infrastructure

21 **note** that I intend to seek agreement in principle that:

21.1 commercial permit-holders will be responsible for planning, building and funding new offshore transmission infrastructure, and

21.2 Transpower will become responsible for owning, operating and decommissioning offshore transmission infrastructure and may be involved in prescribing technical design standards;

Decommissioning

22 **note** that I intend to seek agreement that the regime will ensure offshore renewable energy assets are decommissioned at the end of their operational lives, by requiring permit holders to decommission and:

22.1 to provide a decommissioning plan to the regulator and to the Environmental Protection Authority (via consequential amendments to the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012), and

22.2 to provide a cost estimate to the regulator based on the cost of the developer fully removing infrastructure;

23 **note** that I intend to seek agreement that:

23.1 permit holders will be required to obtain and maintain one or more financial securities to enable the Crown to recover decommissioning cost in the event of default by the permit holder,

23.2 the form of financial security to be obtained, and the amount to be secured, will be determined by the Minister based on the cost estimate and will be required to reach certain proportions of overall decommissioning cost at particular milestones, reflecting points of particular risk in the lifetime of the project, and

23.3 there will be flexibility for the Minister to impose different financial security requirements and conditions depending on the risk profile of the developer and the nature of the project;

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24 **note** that I intend to seek agreement that if a commercial permit is transferred from one party to another:

24.1 the Minister's approval must have been gained before the transfer occurs,

24.2 the new permit holder must put in place one or more financial securities of combined equal or greater value than the existing security/securities, and

24.3 there is no continuing obligation on the original permit holder to decommission (i.e. no trailing liability);

Safety zones

25 **note** that I intend to seek agreement that the regime will enable safety zones of up to 500 metres to be established around offshore renewable energy infrastructure, which will prohibit unauthorised persons or vessels from entering the area;

26 **note** that the Health and Safety at Work Act 2015 will apply to offshore renewable energy workplaces;

Compliance and enforcement

27 **note** that I intend to seek agreement that conditions, similar to those imposed through the Crown Minerals Act 1991, may be applied to permits to give effect to the objectives of the regime, manage decommissioning risks, enable the effective administration of the regime and set reporting or disclosure obligations;

28 **note** that I intend to seek agreement that the regulator be empowered with a standard set of powers and functions, largely aligned with those in the Crown Minerals Act 1991, to enforce compliance with the regime, including the ability to:

28.1 monitor and request information from permit holders,

28.2 check compliance by authorising officers to conduct inspections of project sites,

28.3 obtain a search warrant and conduct investigations into confirmed or alleged non-compliance,

28.4 enforce compliance by issuing warnings, compliance notices, entering into enforceable undertakings, pursuing civil penalties or prosecuting criminal offences, and

28.5 keep and maintain a public register of permits issued to publicly disclose key details of permit applications and permit decisions, which are not commercially sensitive;

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29 **note** that I intend to seek agreement to establish, in line with the Crown Minerals Act 1991 and the Australian Offshore Energy Infrastructure Act 2021, a set of criminal offences (with corresponding penalties and defences where appropriate) or contraventions liable for civil penalty to address problematic behaviour including but not limited to:

29.1 parties constructing or operating offshore renewable energy infrastructure without holding a commercial permit,

29.2 failures to comply with permitting conditions,

29.3 failures to decommission or to adhere to the decommissioning plan (which includes specific liabilities on directors that knowingly breach their obligations),

29.4 any attempt to deceive, mislead or obstruct the regulator,

29.5 failures to comply with compliance notices or enforceable undertakings, and

29.6 intentionally interfering with offshore renewable energy infrastructure;

30 **note** that I intend to seek agreement that the most significant offences relate to failures to decommission which should be subject to maximum penalties of $1 million for an individual or $10 million for any other entity, or 3 times the cost of decommissioning or imprisonment of up to two years;

Implementation

31 **note** that I intend to seek agreement that the regulator will be the Ministry of Business, Innovation and Employment;

32 **note** that I intend to seek agreement that the regulator may provide information to, and require information from, other government agencies where that information:

32.1 is held for the performance or exercise of either the regulator or the specified entity's functions, duties or powers, and

32.2 would assist the regulator or the specified agencies in the performance or exercise of their functions, duties or powers – including the assessment of permit applications;

Financial implications

33 **note** that I intend to seek agreement that the costs of administering the regime will be fully recovered from permit-applicants and permit-holders, through application and annual fees, to be prescribed in secondary legislation;

34 **note** that, subject to Cabinet decisions in June 2024, MBIE will provide further advice on the proposed cost recovery regime in the second quarter of 2025;

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35 **note** that, if the regime proceeds, there is expected to be an initial deficit before the proposed cost recovery regime commences, which MBIE considers it can manage from its balance sheet;

Legislative implications

36 **note** I intend to seek agreement that:

36.1 the proposals will be given effect to through the Offshore Renewable Energy Bill (the Bill), which is proposed to hold a category 5 priority on the 2024 Legislation Programme (to be referred to a select committee by the end of 2024),

36.2 the Bill should include a provision stating that the Act will bind the Crown, and

36.3 the proposed regime will require consequential amendments to other legislation, including the Resource Management Act 1991 and the Exclusive Economic Zone Act 2012;

37 **note** that I intend to seek agreement that the Bill will include regulation-making powers including the ability to make regulations to prescribe:

37.1 the permit application, assessment and variation process, including the detail of the considerations set out in recommendations 11.2 and 14,

37.2 the fees charged to enable full cost recovery,

37.3 the appropriate level and form of financial security to support decommissioning obligations,

37.4 application and information requirements, including the implementation of a public register,

37.5 details of the conditions that may be attached to permits,

37.6 requirements relating to change of control of permit-holders and transfer of permits;

38 **note** that:

38.1 MBIE will begin drafting instructions to the Parliamentary Counsel Office on the basis of the regime outlined in this paper,

38.2 the Minister for Energy will need to issue drafting instructions to the Parliamentary Counsel Office for the Offshore Renewable Energy Bill in early June 2024, to enable introduction of the Bill by the end of 2024, and

38.3 the Minister for Energy will also seek agreement to issue drafting instructions for the associated secondary legislation;

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39 **note** that I will seek delegated authority for the Minister for Energy to take further decisions, in line with the policy decisions agreed by Cabinet, on:

39.1 further details of the permit application assessment and allocation process (including procedural requirements relating to Treaty Settlements),

39.2 further details of the decommissioning obligations and alignment, where necessary, with any proposed changes to the decommissioning arrangements in the Crown Minerals regime,

39.3 whether fees collected should be used to support iwi and hapū engagement with developers,

39.4 the process for considering applications for permit variations,

39.5 which decisions can be appealed and whether there are other limitations on appeal rights beyond the ability to appeal on points of law only,

39.6 the details of the offences, defences and penalties introduced by the regime, including whether permits can be revoked as a penalty beyond the proposed ‘use it or lose it’ provisions,

39.7 any other functions, powers or duties needed for the regulator to ensure compliance with permit conditions, the Act, and/or regulations,

39.8 the details and process for activating the ‘use it or lose it’ provision described in recommendation 11.7 that applies to feasibility permits,

39.9 entities the regulator requires information from or needs to provide information to including what that information may be and how it is handled,

39.10 the regulation-making powers in addition to those detailed above, which would be confirmed when seeking approval to introduce the Bill,

39.11 any other minor or technical issues that arise during the drafting of legislation and its passage through the House.

Authorised for lodgement

Hon Simeon Brown

Minister for Energy

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