Energy Resources Aotearoa
POWERING A BETTER NEW ZEALAND TOGETHER

energyresources.org.nz
energyskills.org.nz
energymix.co.nz
PO Box 25259, Wellington 6140

6 February 2025

Environment Select Committee

via New Zealand Parliament website (portal)

Submission on the Offshore Renewable Energy Bill

Introduction

1. Energy Resources Aotearoa is New Zealand's peak energy sector advocacy organisation. We represent participants from across the energy system, providing a strategic sector perspective on energy issues and their adjacent portfolios. We enable constructive collaboration to bring coherence across the energy sector through and beyond New Zealand's journey to net zero carbon emissions by 2050.

2. This document constitutes our submission to the Environment Select Committee ('the Committee') on Offshore Renewable Energy Bill ('the Bill'). We welcome the opportunity to present our submission to the Committee.

Key messages

3. Offshore Renewable Energy ('ORE') is an emerging, and potentially important, part of our energy system. The proposed legislation draws heavily on amendments to Crown Minerals Act 1991 ('the CMA') to manage the financial risk of the Crown having to fund and undertake decommissioning at the end of an ORE project life. We believe this introduces unnecessary cost and complication to the regime.

4. ORE is a nascent sector, meaning the government has the opportunity to design the legislation it wants. The proposals for financial securities, financial capability monitoring, and transfer of interest for commercial permits can be greatly simplified by requiring permit holders to establish a decommissioning fund from the start of commercial operation. This approach recognised that 'money in the bank' is the most robust and lowest risk form of financial assurance. This fund will remain attached to the permit and will be administered by the Crown.

5. We support steps to provide a consenting regime for the development of New Zealand's ORE resources. However, the proposed legislation appears tailored to developing offshore *wind* resources. With offshore wind projects more likely than other ORE resources, we recommend the scope of this legislation be narrowed

to the development of *New Zealand's* offshore wind resources. Other ORE resources, such as tidal and wave energy, are expected to follow a different development pathway, and can be adequately managed with existing legislation.

6. A full set of our recommendations are outlined in paragraph 57 below.

Submission

7. The proposed legislation to manage the development of New Zealand's offshore renewable energy resources draws heavily on the permitting regime of the CMA. Energy Resources Aotearoa has a deep understanding of the permitting regime and the issues in ensuring the Crown is not required to fund and undertaken the decommissioning of petroleum infrastructure and wells. This experience is directly relevant to the development of ORE legislation.

8. Amongst other issues, our submission draws the Committee's attention to several of the weaknesses introduced by relying on amendments to the CMA, in particular the treatment of decommissioning and financial security requirements that are repeated in the proposed legislation.

The proposed legislation is too narrowly focused on offshore wind resources

9. While the intent of the Bill is to provide legislation to manage the development of **all** ORE resources, the design of the proposed permitting regime favours the development of offshore wind resources.

10. By way of example, feasibility permits do not sufficiently differentiate between data collection operations (such as wind and wave data) and technology proving projects (such as novel tidal power technologies). For permits where field testing technology is the goal, section 12 prohibits undertaking ORE generation infrastructure activities without a commercial permit.

11. We take this to mean the development of novel technologies would likely require a commercial permit. However, a commercial permit cannot be applied for without first holding a feasibility permit (section 25(b)). While possible to conceive of a workaround, we submit identifying workarounds for new legislation is not regulatory best practice.

12. We believe the investigation and development of other offshore renewable energy resources, other than wind, can be adequately managed through existing environmental effects-based legislation, such as the Resource Management Act 1991 ('the RMA') and the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 ('the EEZ Act').

13. Rather than attempting to accommodate all ORE resources, which may have different development pathways. We recommend the scope of the Bill be narrowed to focus on the development of offshore wind resources only.

Allocation of prospective areas for offshore renewable energy projects

14. Section 13 provides that an application for a feasibility permit may only be made during an application round. This approach to allocating acreage seems premised on competitive bidding for available acreage.

15. New Zealand's electricity market is small by international standards, with no connections to other power markets, and is characterised by incremental growth in demand. The high cost of offshore developments means the generation capacity of an ORE project to be economically viable is likely to have significant impact on the power market. With this in mind, assuming a ongoing competitive bidding seems unlikely outside of an initial application round.

16. We also note that the proposed allocation method also appears inconsistent with the 'developer led' approach preferred in the consultation document.

17. We recommend (outside of an initial offering) the Crown adopt a priority in time approach for applications for a feasibility permit. This is more consistent with a developer led approach and better suited to the pre-application consultation requirements for feasibility permit applications provided for in section 14.

The use of 'development plan' for both feasibility and commercial permits introduces unnecessary confusion

18. We caution against the use of the term 'development plan' for activities undertaken under the authority of a feasibility permit. This is potentially misleading as a development plan suggests building infrastructure to exploit the ORE resources, not study their potential.

19. We recommend adopting the term 'work programme' for feasibility permits.

Pre-application consultation requirements for feasibility permits are unreasonable

20. Section 14 of the Bill requires an applicant for a feasibility permit, prior to applying, to have consulted extensively with potentially affected parties, including the relevant iwi and hapū. Consultation also requires demonstrating how this consultation has shaped the proposed development.

21. The primary purpose of a feasibility permit is to determine the quality of the resource, the development context (e.g. geotechnical conditions), and identifying (and potentially accommodating) any over lapping interests or competitive use cases. One of the key deliverables of a feasibility study is a development proposal. In our view it would be an unusual sequence of events to start with a development proposal, informed by consultation. Other concerns include:

    a the Crown largely absolves itself of its responsibility to engage with treaty partners prior to an application round for feasibility permits. This unreasonably pushes those responsibilities onto applicants; and

b requiring potential investors to be visibly active in communities prior to an application round seriously undermines commercial interests and any first mover advantage.

22. We recommend removing the provisions in section 14 (unless a priority in time allocation strategy is adopted for feasibility permits).

Mandatory considerations for granting feasibility permits

23. Read in conjunction with the requirements of section 14, the mandatory considerations set out in section 19 appear to be getting ahead of themselves.

24. At the application stage for a feasibility permit, it seems unreasonable to expect an applicant to be able to demonstrate management of existing rights and the quantification of any benefits for New Zealand for a prefeasibility development plan. Should such a plan be provided, it is unclear to what extent this could be relied on by the decision-maker. The approach outlined appears to favour known projects, such as offshore wind developments in Taranaki, that have already been announced.

25. Under the mandatory considerations for granting application for feasibility permits, s19(1)(d) requires the Minister to consider whether;

> *"the applicant has, or is likely to have, the technical and financial capability to install, operate, maintain, and decommission the proposed ORE generation infrastructure"*

26. At the feasibility stage there is no project, or ORE generation infrastructure. It is unclear why the Minister would require an applicant to demonstrate current financial capability to decommission a project that has not been defined.

27. This suggests permit applicants will be assessed against the potential development, not the ability to undertake a feasibility work programme. This would have the effect of limiting the potential applicant pool to larger, multinational firms with sufficient current revenues and outlook to meet the decommissioning requirements of a project that doesn't have a commercial permit. This would also exclude the majority of local firms at the feasibility stage.

28. Again, we caution against the use of the term 'development plan' as this has the potential to mislead at the feasibility stage. For feasibility permits we recommend the term 'work programme' be adopted.

29. We recommend legislation make it clear that the financial and technical capability assessment of an applicant is restricted to those activities undertaken during the feasibility stage.

A commercial permit cannot be applied for without first a feasibility permit

30. This process outlined does not allow for an application without a prior feasibility permit. The minimum eligibility requirements set out in section 25 require the applicant to have undertaken consultation with Māori groups **and** be a holder of a current feasibility permit.

31. Again, we submit this approach favours the announced development of offshore wind resources and does not accommodate demonstration projects for novel technologies. We believe this further strengthens the case for the scope of the Bill being limited to offshore wind developments.

32. We are also concerned that section 25(b) unnecessarily limits the formation of joint ventures at the commercial stage. Offshore developments are costly and demanding undertakings, and it would not be unusual for joint ventures to be formed.

33. In this case the criteria in s25(b) should be amended to reflect situations where the applicants for a commercial permit include the holder of the feasibility permit as a **permit participant**.

Mandatory considerations for a commercial permit need additional considerations

34. It is surprising so little weight is given in the proposed primary legislation to the market effects and phasing of ORE projects. We expect ORE projects will need to be of a significant scale to underpin project economics. This has potentially significant impacts on market and electricity network dynamics.

35. We consider it prudent to consult the operator of the national electricity grid, Transpower and the Electricity Authority, in the mandatory considerations set out in section 29. This is to ensure any additional connection requirements, such as firming requirements or phasing constraints, are adequately incorporated into the development plan, and are not expected to delay the start of commercial operations.

36. We recommend including a requirement in section 29(1) to consult with Transpower and the Electricity Authority to ensure the proposed development includes adequate connection provisions for the stable operation of the network.

Decommissioning provisions for ORE infrastructure should be simplified

37. The proposals set out in Part 3 of the Bill, relating to decommissioning of ORE infrastructure, largely duplicate the provisions introduced into the CMA. By replicating these policy decisions, the Bill risks adding an unnecessary level of complication and administrative cost to this legislation.

38. Changes to the CMA were in response to the financial failure of an existing permit holder. The policy response, in the absence of evidence of a systemic

issue in the upstream oil and gas sector, was an attempt to eliminate any financial risk to Crown, irrespective of the costs imposed on permit holders. This resulted in the onerous layering of protections designed to ensure a risk-free return to the Crown.

39. It is widely accepted that the best form of security to manage financial risk is 'money in the bank'. Especially where the Crown controls both access to these funds and the purpose those funds are used for.

40. ORE is a developing part of the New Zealand economy. With no ORE project currently operating, the opportunity to implement a simplified, streamlined system to better manage financial risks should not be wasted. The changes to the CMA were aimed at addressing financial risks from a mature industry, and that approach need not be replicated here. Our specific recommendations include:

    a requiring commercial permit holders to build a cash reserve through periodic payments to fund decommissioning activities from the start of commercial operations;

    b this cash reserve will be administered by the Crown;

    c the quantum of these payments is periodically assessed to ensure the reserve is building at an appropriate rate to fund decommissioning;

    d ensure any consents granted under the EEZ Act and the RMA take a lifecycle approach to managing ORE infrastructure; and

    e funds accrued to meet the cost of decommissioning remain 'attached' to the permit, irrespective of whether the permit is transferred to another holder.

41. An approach that requires the building up of funds to meet the cost of decommissioning at the end of a projects economic life significantly reduces the financial monitoring requirements and the need for ongoing financial capability monitoring. This removes the need for invasive financial assessments that 'pierce the corporate veil' by empowering the regulator to require any and all parties deemed relevant to provide this information (as per s92(1)(b)).

42. Administration and monitoring of financial security is then largely reduced to ensuring funds are building at a rate to provide sufficient comfort that the risk of any costs associated with decommissioning falling to the Crown is at an acceptable level.

43. We recommend substantially reworking Subpart 3, simplifying financial security arrangements to reflect a building up of a decommissioning funds throughout the economic life of the project.

Standard of decommissioning

44. Section 73 recognises the permitting regime does not set environmental standards and outcomes for decommissioning activities. This is an improvement over similar provisions in the CMA. However, section 73(2) retains the same complete removal requirement in the absence of a valid consent for decommissioning. This is important to get right because of the impact this de facto 'clean seas' policy may have on the subsequent need for financial security.

45. The Bill also makes amendments to both the RMA and EEZ Acts. In particular, we note the new requirements in the EEZ Act (new sections 100E through H) for owners of ORE infrastructure to submit decommissioning plans. Again, this mirrors requirements for offshore oil and gas facility decommissioning.

46. We submit that a better approach is for consenting authorities to take a life-cycle approach to their consenting decisions.

47. An application for a marine consent to install ORE infrastructure should include a description of decommissioning for the same infrastructure at the end of its economic life. Essentially this would describe what would be removed and what, if any, would be abandoned in place. The intention is this would meet the requirements of a decommissioning plan and provide the basis for estimating the cost of decommissioning, and therefore, the financial security requirements. These consents are typically publicly notified, with an open consultation period.

48. Apart from the obvious differences, developments in the maritime estate have a unique context in that the Crown, in essence, acts as landowner. This provides the opportunity for landowner preferences to be incorporated into design of legislation.

49. We recommend better harmonising the Bill's decommissioning plan requirements with those required by changes the EEZ Act. Better legislative alignment can be achieved by requiring a decommissioning plan to be submitted, and consulted on, as part of the application for a marine consent to install ORE infrastructure. We also recommend this approach be incorporated into RMA reforms.

Trailing liability for transfers is not required

50. The trailing liability provisions in section 72 are an unnecessary overreach to address regulatory failure and should be removed.

51. Sections 42 through 52 of Bill provide more than adequate checks and balances for the Minister to ensure an applicant (transferee) meets the requirements as a suitable permit holder set out in section 29(1)(b) and (c) and section 29(1)(e). These sections deal with the mandatory considerations for granting a permit.

52. We also note an application for a transfer of a commercial permit must include proposals for a financial security arrangement (section 42(2)(d)). The Minister may then give approval if satisfied the transferee meets the requirements as a suitable permit holder, an acceptable financial security arrangement is proposed, and the transferee will be able to put that acceptable financial security in place before the transfer takes effect (see section 42(3)(c)). Trailing liability in this case sheds the regulatory risk onto the former permit holder.

53. The provisions in section 72 become redundant should our recommendation to require a commercial permit holder to accrue funds to meet the cost of decommissioning. Accrued funds stay with the permit, regardless of whether the operation is sold or an interest in the permit is transferred. Strengthening the case for this approach.

54. Either way, the permit transfer requires the Applicant to demonstrate sufficient capabilities (both financial and technical) to the satisfaction of the regulator. The purpose of this provision therefore can only be read as cover for regulatory failure, by shedding this risk onto former permit holders. The requirement under section 70(2) should be removed, with section 72 also deleted.

Criminalising directors' responsibilities is unhelpful

55. The proposed legislation is a continuation of the trend to criminalise the responsibilities of the directors. While consistent with the 2021 changes to the CMA, the regime would criminalise conduct ordinarily warranting no more than civil sanction.

56. In our view this remains disproportionate to the risks it seeks to manage. Importantly, it is likely many competent, high-quality directors will be deterred from taking board positions for these enterprises. We draw your attention to the opinion of Justin Smith KC, supporting our 2021 submission on Crown Minerals (Decommissioning and other matters) Amendment Bill.[1]

Recommendations

57. We recommend:

    a the legislation *only* applies to offshore wind projects. The design of the permitting system does not readily allow for the development and testing of other ORE technologies, such as wave and tidal generation, which can be better managed through existing environmental effects legislation;

    b that after an initial offering, the Crown should utilise a priority in time application process for feasibility permits. We believe this will be more

[1] We refer the reader to pages 110-122 of our submission is available at: https://www.energyresources.org.nz/dmsdocument/187

consistent with the pre-application consultation requirements and better reflect a non-competitive bidding reality;

c removing the pre-application consultation requirements for feasibility permits outlined in section 14. The Crown is best placed to undertake consultation with Treaty partners prior to opening an application round (noting that under a priority in time process the requirements of section 14 are more reasonable);

d adopting 'work programme' for activities carried out under the authority of a feasibility permit as use of the term 'development plan' for both feasibility and commercial permits introduces unnecessary confusion;

e amending the eligibility criteria in s25(b) to reflect situations where the holder of a feasibility permit has entered into a joint venture arrangement in the application for a subsequent commercial permit;

f including a mandatory requirement in section 29(1) to consult with the operator of the national electricity grid (Transpower) and the Electricity Authority when considering an application for a commercial permit;

g harmonising the consents with the standards of decommissioning;

h reworking and simplifying the provisions set out in Subpart 3 of Part 3 of the Bill. Commercial permit holders should be required to build a cash reserve for the purposes of decommissioning from the commencement of commercial operations;

i deleting the trailing liability provisions outlined in sections 70 and 72. These provisions unfairly shed regulatory risk onto former permit holders and should be removed; and

j applications for marine, and resources consents include a decommissioning plan, and for that plan to be used as the basis for determining the standards and scope for decommissioning ORE infrastructure at the end of its economic life. This also informs decommissioning cost estimates, and ultimately financial security requirements.

Concluding comments

58. Energy security and affordability are a growing concerns for all New Zealanders. We welcome steps to improve the chances of developing New Zealand's abundant offshore energy resources.

59. However, in our view the proposed legislation can be greatly simplified through policy choices. The government has the opportunity to design a new permitting regime that favours a lifecycle approach to development for an emerging, and

potentially important sector of our energy system. Care should be taken not to unnecessarily repeat policy choices in other legislation for more mature sectors.

60. We welcome the opportunity to present our submission to the Committee.