

Submission by



to the

Ministry of Business, Innovation and Employment (MBIE)

on the

Enabling Investment in Offshore Renewable Energy Discussion Document

14 April 2023

ENABLING INVESTMENT IN OFFSHORE RENEWABLE ENERGY – SUBMISSION BY BUSINESSNZ ENERGY COUNCIL–

INTRODUCTION

1. BusinessNZ Energy Council (BEC)¹ welcomes the opportunity to provide feedback to the Ministry of Business, Innovation and Employment (MBIE) on the Enabling Investment in Offshore Renewable Energy Discussion Document. This submission comments on the questions raised in the document.
2. Achieving New Zealand's climate targets, a 50% reduction in net greenhouse gas emissions by 2030, and net-zero by 2050, requires decarbonising a large portion of New Zealand's total energy consumption. The electricity sector plays a role in achieving this aim through electrifying transport, increasing the proportion of electricity sourced from renewables, and electrifying process heat. The estimated increase in electric vehicles and electric process heat will require a significant increase in New Zealand's total electricity generation capacity.
3. BEC, in collaboration with 60 partners across business, government and academia has developed a New Zealand specific model ([TIMES-NZ](#)), exploring two possible future energy scenarios: Kea (cohesive) where climate change is prioritised as the most pressing issue, and Tūi (individualist) where climate change is one of many pressing issues. According to our modelling, electricity generation is likely to increase substantially as demand for clean energy for the industrial, commercial, and residential sectors grow. New Zealand's current electricity demand is around 43TWh each year.² In our model, Kea shows electricity demand could increase to 271PJ (75TWh) by 2050 and Tui shows electricity demand could increase to 301PJ (83TWh) by 2050. This demand is likely to be met by large increases in wind and solar generation.
4. Modelling from Transpower estimates electricity demand will increase by 20% by 2030 and 68% by 2050.³ Boston Consulting estimates New Zealand needs an extra 4.8GW of additional capacity by 2030 and 15.1GW by 2050.⁴ To meet this demand, a suite of energy sources is needed. Offshore renewable sources, from tidal and wave power, offshore solar and wind are a few of the many promising sources to meet future electricity demand.
5. BEC's [TIMES-NZ](#) model shows that onshore and offshore wind could make up 25% of electricity supply in 2030 and nearly 50% by 2050. Compared with other offshore renewable sources, offshore wind is more advanced and is receiving considerable interest from multiple developers. BlueFloat Energy is investigating a 900MW project off the South Taranaki coast and a 1.4GW project off the Waikato coast. Copenhagen Infrastructure Partners is also investigating a 1GW project, the equivalent of 11% of New Zealand's current electricity demand.
6. This interest is unsurprising considering New Zealand is exposed to ample wind resources, primarily from strong westerly winds travelling across the ocean largely uninterrupted. Mean power density calculates the annual power available per square metre of swept area of a wind turbine. The Infrastructure Commission's report on leveraging New Zealand's energy resources published in 2022, using data from the Global Wind Atlas 3.0, shows that globally, the top 10% windiest locations have mean power densities exceeding 1,330 W/m².⁵ New Zealand's wind has mean power densities of 2,406 W/m². In all, 43% of New Zealand's locations with wind resources exceed the 1,330 W/m² figure for the top 10% windiest locations in the world.⁶
7. MBIE's Roaring40s report also emphasises New Zealand's abundant wind resources, especially the high-quality wind resources off the coast of Taranaki, Auckland, and the Waikato. The total potential across

¹ More information about BEC can be found in APPENDIX ONE

² *Data tables for electricity*, MBIE, 2022

³ *Whakamama i Te Mauri Hiko* Transpower, March 2020

⁴ *The Future is Electric*, p14, Boston Consulting Group, 2022

⁵ *Leveraging our energy resources to reduce global emissions and increasing our living standards*, Technical Paper, New Zealand Infrastructure Commission, p7, 2022

⁶ *Ibid*, p7

the three sites equals 8,000MW in total capacity, the equivalent average of 30.2TWh per year.⁷ As it stands, offshore wind is still comparatively more expensive than onshore wind, solar PV and geothermal. However, the levelized costs of offshore wind energy have significantly declined from \$167/MWh in 2016 to \$119 in 2020⁸ as capacity factors have improved with turbines becoming larger and lighter with improved rotor blades.

8. This trend provides significant opportunities to unlock New Zealand's wind generation potential, not only to meet future demand from the grid, but also to decarbonise heavy industry through power-to-X applications. Offshore wind generation could be used to decarbonise hard to abate heavy transportation and energy intensive firms through the production of hydrogen. For instance, electrolysis powered by offshore wind could provide green hydrogen to produce ammonia to create urea, reducing the emissions associated with the production of fertiliser. Notwithstanding the benefits to New Zealand's emissions profile, offshore wind projects would provide employment opportunities, local economic activity, and with all things remaining equal, could dampen the price of electricity consumers face.
9. Investor confidence is immensely important. New Zealand does not have the depth of capital and expertise to build offshore wind projects without international players participating. Attracting these developers to unlock this potential, requires a workable framework that gives investors' confidence through regulatory certainty and providing exclusive rights to undertake feasibility studies and build offshore turbines in an area of interest. BEC applauds the Government's commitment to developing a legislative framework for managing the feasibility, construction, operation, and decommissioning of offshore renewable energy by 2024. The Government recognises the importance of developing a workable framework in a timely manner. Extended delays in the formation of a framework risks developers seeking opportunities elsewhere.

EXECUTIVE SUMMARY

- i. BEC **APPLAUDS** the Government's commitment to creating a regulatory framework for the permitting and licensing of offshore renewable energy.
- ii. BEC **AGREES** that the framework must be formed in a timely manner, without imposing undue burdens on potential developers, ensuring New Zealand remains competitive in the development of offshore renewable energy.
- iii. BEC **SUPPORTS** the proposed criteria and objectives for developing the framework but **RECOMMENDS** the inclusion of an efficiency criterion and a competitive process objective.
- iv. BEC **SUPPORTS** a developer-led approach and a permitting regime for allocating the right to undertake feasibility studies. Considering the infancy of New Zealand's experience with developing offshore renewable energy, an open-door approach is sensible and preferable.
- v. BEC **AGREES** the legislative framework should involve iwi, hapū and whanau, throughout the stages of permitting and development. However, requirements should not be prescriptive. Overly onerous requirements during the feasibility stage risk slowing the progression of feasibility studies. The Crown should also engage with iwi, hapū and whanau, and ensure they are adequately resourced, considering the Crown's role as a Treaty partner.
- vi. BEC **ACKNOWLEDGES** the need for a criterion to obtain permits to protect the efficient allocation of rights. However, financial assessments should only consider a developer's current financial position and accessibility to capital. Technical requirements should also consider the experience of personnel within an entity, rather than just the entity itself. A criterion that only considers the experience of the entity

⁷ *Leveraging our energy resources to reduce global emissions and increasing our living standards, Technical Paper*, New Zealand Infrastructure Commission, p8, 2022

⁸ *Ibid*, p17

risks 'locking out' a diverse range of developers and diminishing competition. Overall, the criteria should be objective and adopt a score-based system similar to regimes in Scotland and Australia.

- vii. BEC **QUESTIONS** the need for a national interest test. This will already occur with the Overseas Investment Office (OIO) approval of overseas funds.
- viii. BEC **ACKNOWLEDGES** the need for a mechanism to review a permit holders' suitability during the feasibility stage but **RECOMMENDS** a mechanism with limited scope.
- ix. BEC **RECOMMENDS** a permit duration of ten years. This considers the timely nature of feasibility studies including the required consents, supply-chain development, environmental monitoring, offtake negotiations and consultation with relevant stakeholders.
- x. BEC **SUPPORTS** a 'use it or lose it' provision and **RECOMMENDS** periodic reports demonstrating how activities are progressing to safeguard against 'land banking.'
- xi. BEC **RECOMMENDS** resolving the issue of overlapping permit applications by implementing a merit-based assessment and a negotiation mechanism.
- xii. BEC **RECOMMENDS** that the final decision on granting application permits should reside with a government agency/entity.

Problem definition

- 10. As outlined in the paper, under the current structure, potential offshore developers conduct their consent applications through the Resource Management Act (RMA), processed by 'first in, first served.' The paper summarises two problems with this structure. First, no provision is made for assessing whether intended developers are suitable to construct and operate offshore renewable energy projects in New Zealand. Second, developers lack the confidence to initiate the feasibility stage of potential development because a competing developer could receive an advantage through the RMA's consenting of first in, first served structure.
- 11. BEC believes MBIE's problem definition is well-defined and provides a sound justification for introducing a legislative framework for managing the feasibility, construction, operation, and decommissioning of offshore renewable energy projects.
- 12. BEC agrees that the first component of the policy problem, concerning the absence of an adequate structure to assess the suitability of offshore developers, does involve some risk that projects may not eventuate. Identifying whether a permit applicant is financially capable, competent, technically experienced and has a solid business plan, ensures that if any exclusive rights to undertake feasibility studies are given, there is a high degree of confidence that the permit holder can complete their relevant studies. This is important because it provides for permits through a competitive process, with the 'best' applicant and project proceeding, rather than the current 'first in first served procedure'.
- 13. BEC also agrees with the second component of the policy problem. Developers dislike uncertainty. A degree of uncertainty is to be expected in a world fraught with sudden shocks, changing market conditions, and unpredictable events. Yet the Government can reduce some uncertainty. Introducing a sound legislative framework – as raised in the paper, with the formation of a permitting regime for offshore renewable energy – can reduce uncertainty by providing exclusive rights for permit holders to undertake their feasibility studies. BEC, alongside potential developers, is pleased to see MBIE's progress in creating a permitting regime for feasibility studies. BEC agrees with MBIE that this will provide confidence to initiate feasibility studies and start the actions needed throughout the development process – which usually takes 10 years, from the beginning to the end of an offshore development.

The objectives and criteria

BEC SUPPORTS the proposed criteria and objectives.

14. There are four broad policy objectives outlined in the paper for enabling feasibility activities:
 - Enable selection of both the developer and the development to meet Aotearoa New Zealand's national interests, including appropriate safeguards and benefits for the environment.
 - Enable Māori participation in offshore renewable energy development.
 - Provide certainty for developers to invest in the short term, and
 - Ensure New Zealand remains competitive and can secure access to offshore renewable energy technology in a timely way.
15. Together with the objectives, the paper includes the criteria for proposals for regulating offshore renewable energy. These are broken into three components:
 - **Effectiveness:** Will the proposals effectively meet the described policy objectives, especially around selecting developers and developments and enabling Māori participation?
 - **Certainty:** Do the proposals provide sufficient certainty for developers to invest in New Zealand?
 - **Timeliness:** Can the proposals be implemented in a timely manner so that New Zealand remains competitive internationally?
16. Overall, BEC supports the objectives for enabling feasibility activities. BEC notes that the objectives are interdependent and will impact each other. The more weight placed on one objective, the more likely the others will be impacted. For instance, the level of stringency during the selection process, aimed at ensuring appropriate safeguards both for the environment and wider national interests, could impact New Zealand's competitiveness objective by creating additional barriers to entry; or for example, safeguards against 'land-banking' or mechanisms to revoke permits in the event of ownership changes could diminish investor certainty; meaningful involvement of Māori is vital, yet overly prescriptive rules come with costs both to iwi and developers, impacting New Zealand's competitiveness. Therefore, BEC believes the permitting regime must balance the four objectives carefully and thoughtfully.
17. BEC supports MBIE's criteria. Once more, BEC believes the criteria should balance the three components: effectiveness, certainty, and timeliness. BEC agrees that effectiveness and timeliness are important. The latter ensures New Zealand remains competitive. Capital has competing uses. The lack of implementing a permitting regime in a timely manner, risks capital and developers investing in other jurisdictions rather than New Zealand. As mentioned, certainty is also crucial. The lack of certainty and definable exclusive rights is one of the barriers, if not the most, significant to developing an offshore wind project.

BEC RECOMMENDS an additional objective to ensure a competitive process for selecting feasibility permits.

18. Notwithstanding the objective to remain competitive internationally, it is also important to ensure a transparent and competitive selection process. This will ensure the value to New Zealand is maximised through competitive pricing and the best project(s) prevailing. Therefore, a competitive process should be an objective.

BEC RECOMMENDS the inclusion of an efficiency criterion.

19. In addition to the current proposed criteria, BEC believes MBIE should consider the matter of efficiency: do the proposals efficiently allocate rights, minimising the cost and effort facing developers?
20. The efficient allocation of rights, and resources, is a desirable outcome for any economy. Minimising regulatory costs, whilst balancing competing factors within the criteria, would help ensure costs are minimised, supporting the objective of improving New Zealand's competitiveness compared with other jurisdictions. BEC notes a similar principle, the efficient allocation of resources, is reflected in other

legislation. For instance, in the proposed Natural and Built Environment Bill, the efficient allocation of resources is acknowledged as an important and guiding principle. The Crown Minerals Act 1991 (CMA), notwithstanding recent proposed changes, notes the efficient allocation of rights to prospect, explore, and mine for Crown owned minerals.

Approach: Government-led vs developer-led

BEC SUPPORTS a developer led approach.

21. BEC agrees with MBIE that a developer-led approach to managing the feasibility stage of offshore projects is preferable. New Zealand should adopt an open-door policy. This leaves applications open to commercial entities or individuals alike to decide whether an opportunity to build offshore projects resides in a specific area. As noted earlier, several developers have already identified lucrative areas with ample wind resources and are seeking certainty through obtaining exclusive rights to feasibility studies in a particular area. This contrasts with a government-directed regime, where only the Crown decides when and where offshore applications can be accepted through public tender. Under this approach, feasibility studies, including environmental assessments, are done by the Crown.
22. BEC agrees with MBIE that a government-led approach could come with a sizeable public cost. Moreover, forming the in-house capability of a public entity, in the most likely case, the Ministry of Business, Innovation and Employment, to collect relevant information on wind, soil, water, and other environmental conditions, would likely consume considerable time and resources. As noted in the paper, timeliness is an important aspect of the criterion. A developer-led approach is more likely to enable developers, with the relevant expertise, to undertake feasibility studies and successfully develop projects in a timely and efficient manner.
23. However, in addition to receiving applications directly from developers, allowing the Minister to allocate permits by public tender from time to time, is not inherently an undesirable proposition. The CMA, section 24(1), provides the Minister with this ability for the prospecting, exploration, and extraction of Crown-owned minerals. BEC **RECOMMENDS** the Government should explore this option in the future, but as it stands, a developer-led approach is sensible.
24. A hybrid structure with both open applications and public tendering occurs in Denmark. The Danish Energy Agency establishes a site-specific tender and grants a licence to develop a project once preliminary investigations have been completed and shown to be feasible. Yet the Danish model is successful due to sector expertise and institutional knowledge developed over a period of three decades.
25. Considering New Zealand's emissions targets and the considerable amount of new capacity required out to 2030 and beyond, New Zealand does not have the time to develop a government led approach. Therefore, BEC believes a developer-led open-door approach is prudent.
26. However, despite a developer-led approach, BEC **RECOMMENDS** the government should release relevant data that could help developers during the feasibility stage. This includes geological information and environmental monitoring data. Releasing relevant information could reduce the risk of unnecessary duplication.

BEC AGREES the legislative framework should involve iwi and hapū.

27. Māori have a key role to play in the development of offshore renewable energy. As Treaty partners, it is important that any legislative framework concerning offshore development has regard to the principles of Te Tiriti o Waitangi. Relevant iwi and hapū whose rohe includes a permit area or who are impacted by a permit, ought to be meaningfully consulted. Iwi and hapū ought to be given sufficient information and time to inform their views, and for the decisionmaker to act in good faith and give genuine consideration for such views.

28. Māori have multiple opportunities to participate during the feasibility process, surrounding governance, advisory and commercial matters of importance. One opportunity is co-designing the scope of environmental monitoring. This could be done to ensure the possible environmental impacts of feasibility activities, construction, and operation of offshore renewable energy projects is minimised.

BEC AGREES developers can incorporate information gathered from Māori.

29. Important information provided to developers could include the areas of cultural significance (wāhi tapu), the aspirations of iwi, hapū, whānau in a particular area of which the development will be established (this includes social and economic outcomes). And includes, information relating to the fish, mammals, marine life, and the wider environmental characteristics within an area. Developers also note the importance of identifying the impact of their actions and work programmes on iwi environmental plans.

30. The paper outlines several options that permit applicants could be required to demonstrate before receiving a feasibility permit. They are listed below.

Demonstrate initial understanding of those areas where a development may impact existing rights or tikanga, and how information will be gathered to further understand these impacts before granting a permit.

31. BEC agrees and **SUPPORTS** the underlying intent of the requirement. Developers operate in the background of ensuring a social licence to operate, seeking confidence from the affected community and or impacted groups, in this case iwi and hapū.

32. Identifying this impact is a priority for developers. They are committed to participating with and including Māori, iwi, and hapu throughout each stage. BEC also notes the importance of the Crown's responsibilities, not only as a treaty partner to engage with iwi and hapū on the impact upon existing rights or tikanga, but as the legislator, regulator, and owner of offshore resources. The Petroleum Programme 2013 is a sound example of the Crown's responsibility to engage with iwi and hapū regarding the prospecting, exploration, and extraction of offshore Crown-owned minerals, as outlined in section 2.1 to 2.10.

33. As a Treaty partner, the Crown has a responsibility to consider the impact an offshore wind development may have on existing rights before granting a permit to an applicant. BEC believes the distinction between the applicants' responsibilities to identify possible impacts and the Crown responsibilities to do the same is blurred.

34. BEC emphasises that the responsibility to engage with iwi on the impact of potential offshore projects sits equally with industry, the Crown, and the relevant agency as the permit issuer. BEC would prefer the use of similar requirements to those set out in the Petroleum Programme 2013. For instance, as outlined in section 2.2, 2.4, and 2.5 of the Programme, the Minister, and the agency in charge of dispensing permits must consult with impacted iwi and hapū about, but not limited to, the details of the permit, the work programme and whether it impacts areas of cultural significance. Like section 2.6 of the Petroleum Programme, the Crown should consider requests by iwi and hapū to protect certain areas of cultural significance, for example, in areas known as wāhi tapu sites.

35. Identifying the impact upon relevant iwi and engaging with iwi, will consume time and resources for iwi, hapū and permit applicants. BEC notes that the former is resource constrained. The matter is exacerbated by competing interests requiring iwis' attention elsewhere. If this requirement on applicants is included, the Crown should share a proportion of the cost accrued during the process, considering its broader obligation as a Treaty partner.

Demonstrate an understanding of Te Tiriti o Waitangi, mātauranga Māori, tikanga principles and the aspirations or interests of the mana moana of the area in which feasibility activities are being proposed.

36. Developers understand the importance of promoting iwi involvement and understanding a particular development's implications for Te Tiriti o Waitangi. BEC would like to see what a clear demonstration of understanding would look like. The legislative framework must be clearly defined and enforceable. Cultural competency is difficult to quantify, compared with the technical experience and financial capability of a permit holder and is therefore difficult to enforce. It becomes more complicated to compare the cultural competency of two or more competing developers seeking a permit in a specific area.
37. The document does not mention the extent to which cultural competency is weighed against financial and technical considerations. If cultural competency is of equal merit to financial and technical considerations, there is a risk of regulatory capture by a developer.

Demonstrate a sufficient level of initial discussion with relevant iwi, hapū, or whanau about the potential development prior to applying for a permit.

38. BEC **SUPPORTS** this requirement. Yet on the flipside, BEC notes developers already understand the importance of initial discussions with iwi, hapū, or whanau, and therefore a requirement to demonstrate a level of initial discussion may not be necessary.
39. BEC would like to see clarity on what would be defined as sufficient, and who would make this judgement, whether it would be the Minister, or an agency. BEC notes that the paper goes on to ask: what does good faith and meaningful participation look like? Good faith is built on trust, a qualitative measure of whether iwi or hapū trust a certain developer. This is difficult to define. Defining meaningful participation can quickly become prescriptive, and risks creating a 'tick-box' exercise. BEC emphasises that MBIE should consider this problem when drafting legislative requirements.

Provide a plan for how the feasibility assessment process will meaningfully involve iwi, hapū, and whanau throughout, including which tikanga and environmental issues will need to be assessed in more detail with involvement of iwi, hapū, and whanau.

40. BEC **SUPPORTS** this requirement. However, any planning requirements should not be prescriptive and overly onerous. A possible alternative that MBIE could consider is the requirement to report on how a developer's workstream is involving and impacting iwi, hapū, and whanau once a permit is granted. This is reflected in the CMA in s33 – a requirement that has been in place since 2013.

BEC ACKNOWLEDGES the need for a criterion to obtain permits.

41. As noted in the paper, it is common practice internationally for the permit issuer to test the suitability of an applicant seeking a permit for the feasibility, construction, and operation of an offshore wind project. These tests vary. Some jurisdictions are more stringent than others, applying multiple measures to assess suitability. The permit issuer wants to ensure exclusive rights are granted to the strongest applicant.
42. BEC believes a criterion supports the efficient allocation of rights. Without a criterion for assessing the applicant, permits could be granted to a substandard developer unable or unwilling to complete the project, thereby keeping out competing developers who may have an interest in, and the ability to, develop a project in the exclusive area. A reckless, financially questionable, and inexperienced developer, both technically and commercially, runs the risk of slowing the country's deployment of renewable generation in the long-term, leaving New Zealand behind other jurisdictions in the development of offshore renewable energy.

43. Assessing the sustainability of a developer is demonstrated in New Zealand's oil and gas sector. Under the CMA, s29A(2)(b), a permit applicant's technical and financial capability is considered before the Minister grants a permit. This ensures the Minister has confidence that an applicant will give proper effect to the proposed work programme.
44. BEC **SUPPORTS** using a technical and financial capability assessment similar to the criterion applied under the CMA. The relevant agency responsible for granting permits should review whether an applicant can operate day-to-day in accordance with good industry practice, including to meet environmental and health and safety requirements. This is important. Operating offshore is hazardous, especially in New Zealand, with sometimes extreme and changeable weather conditions. It is therefore vital that the applicant's health, safety, and environmental management credentials be assessed alongside technical and financial competence. There should also be an assessment of a developer's track record, and whether the developer is working on, or currently completing, similar projects.
45. However, in general, criteria should avoid being overly prescriptive, subjective, and complex. To ensure the criteria are as objective as possible, developers could qualify for a minimum level of compliance under the technical and financial criterion. Developers that meet additional levels of compliance beyond the set minimum could be awarded additional 'marks.' This approach is used in Australia. In Scotland, a similar method was adopted. Under ScotWind assessments, permit eligibility is granted if developers meet a 'minimum band' of the criteria. Developers who can demonstrate a greater ability to meet the criteria are given higher marks.

BEC SUPPORTS a broad definition for the technical criterion.

46. Offshore projects are large and complex. The entities that build these projects are comprised of many skilled and specialised personnel. A developer's technical experience and track record is key to a project's success, and thus should be considered as an important indicator when assessing the suitability of a developer.
47. Given the developing maturity of offshore wind internationally, an overly burdensome technical criterion would limit the development of offshore wind in New Zealand by limiting the diversity of developers and reducing competition. Therefore, a technical criterion should be broad.
48. For instance, it should include the experience of a permit holder's personnel. A company may have personnel with extensive experience in the development of offshore wind but may not have experience as an entity. If a developer can demonstrate their internal experience, this should be considered relevant.

BEC SUPPORTS a financial criterion with amendments.

49. BEC agrees that the agency responsible for allocating permits should assess whether the developer has sufficient funding for a component of the project, whether the company has a strong financial position, and a satisfactory ability to source financing for additional parts of the project.
50. A criterion with a high threshold with rigorous financial capability requirements could make perfectly capable and competent developers unsuitable and unable to receive a permit. For instance, regarding appropriate financing, a criterion requiring a permit applicant to have a high percentage of upfront capital ready for stage two or three of the project, could disqualify an applicant able to source the capital later.
51. Considering the long period of time an offshore project requires, from the feasibility stage to finally operation, the entity would likely be able to source a large portion of the capital once the permit has been granted and the relevant feasibility studies begin. A high threshold for assessing a developer's financial capability could also dampen interest in developing offshore projects in New Zealand. Therefore, BEC **RECOMMENDS** a developer's proven access to capital should be considered instead.

52. BEC **RECOMMENDS** that the consideration for the commercial return of an applicant's project should be deleted. Estimated commercial return is unreliable during a project's feasibility stage. Once additional information has been collected during the feasibility stage, with infrastructure costs slowly conceptualising, a more accurate commercial return can be calculated. Therefore, it remains irrelevant to consider commercial return during the process of allocating permits.

BEC ACKNOWLEDGES the need for a mechanism to review a permit holder's suitability during the feasibility stage but RECOMMENDS a mechanism with limited scope.

53. This mechanism could create unnecessary risk and uncertainty throughout the feasibility stage. BEC notes that this is largely not needed, as technical experience and access to capital are unlikely to change during the feasibility period. On the flipside, it is important that a permit holder's on-going financial and technical capability is maintained, especially if a permit holder experiences personnel loss, significant changes to their financial exposure or a change in ownership.

54. Despite the unlikely change to a permit holder's technical experience and access to capital, a permit holder's technical and financial capabilities could be reviewed when they apply for a commercial licence to construct and operate on the given site once the feasibility study has concluded. However, this option creates uncertainty about whether a licence would be granted, especially if the technical and financial assessment becomes more stringent over time.

55. If a mechanism is adopted to review a permit holder's suitability throughout the feasibility stage, **BEC recommends** the information sought should be well-defined and narrow. Reviewing a permit holder's suitability should also occur infrequently and should aim to be completed in a timely manner. This would provide confidence that the permit holder remains suitable, while limiting the cost and time consumed by the permit holder and relevant agency responsible for the review.

BEC QUESTIONS the need for a national interest test.

56. Compared to the financial and technical capability assessment, BEC doubts the need for a national interest test determining whether a project is contrary to the national interest. Offshore wind projects will likely involve overseas capital. This will require approval from the OIO.

57. Yet BEC is pleased to see the wording of this test is recommended to be 'permits should be granted only if the prospective development is not contrary to New Zealand's national interest. This contrasts with 'permits should be granted only if the prospective development is consistent with the national interest.' The wording of the latter is more onerous, as it gave decision-makers full discretion to disallow all transactions, not just sensitive transactions, unless they were perceived to be in the country's national interest.

58. If a national interest test is introduced, BEC is pleased to see MBIE supports aligning the test with the Overseas Investment Act 2005, maintaining legislative coherence, and easing administrative burden upon developers. It ensures that investors are only tested once.

BEC RECOMMENDS a permit duration of ten years.

59. The discussion paper proposes a permit duration of five years, with the option of an additional two years. Feasibility studies are time and resource intensive. Extensive technical and environmental studies, including engineering design work is required. This will take a considerable amount of time for developers to complete. Ensuring permits provide sufficient time is reinforced by the current lack of information about the extent to which environmental baseline monitoring will occur. For example, the types of birds, fish and mammals that will be studied, and the length of time they will be studied. Providing clarity about required monitoring would alleviate uncertainty surrounding project timelines.

60. Several activities throughout the feasibility stage entail consents, under both the Resource Management Act (RMA) and from the Environmental Protection Agency (EPA). However, this creates a regulatory barrier during the feasibility stage. For instance, to place a buoy in the ocean to collect data on wind speeds or to conduct seabed surveys for placing structures would require consents. A five-year permit does not provide adequate time to receive consents for all the actions that must be undertaken during the feasibility stage.
61. There is also notable uncertainty relating to the transition period between the RMA and the new regime. Offshore wind projects will proceed during the transition period, and it is unknown how long it will take to receive consents during this transition, and under the new regime. Moreover, there is uncertainty about how offshore developments in the Economic Exclusion Zone (EEZ) would be treated under the new National Planning Framework.
62. Notwithstanding the RMA, before any construction begins, supporting infrastructure must be in place. This includes adequate capacity to import relevant materials at local ports and execute the required actions to build the necessary transmission infrastructure. This will take time. New Zealand is also geographically isolated, and a small market, compared with other jurisdictions constructing offshore wind projects. Supply chains will need to be developed and running smoothly, ensuring relevant materials and technology are available and arrive on time. Again, this will take time.
63. Therefore, BEC recommends a ten-year duration for feasibility permits. This provides more confidence that there is sufficient time for extensive environmental baseline monitoring, receiving consents under the RMA and the new regime, while balancing consultation with iwi and hapū, and building supporting infrastructure.

BEC SUPPORTS a 'use it or lose it' provision and RECOMMENDS periodic reports demonstrating progressing activities.

64. The discussion document rightly identified the possibility of developers being granted a permit, then subsequently delaying their feasibility activities while they wait for the right conditions or opportunities to develop elsewhere before deciding to undertake feasibility activities in New Zealand. In other words, developers could 'land bank' their permits. The discussion document proposes two possible options aimed at discouraging land banking: a 'use it or lose it' provision and a 12-month period in which activities must commence.
65. BEC supports a 'use it or lose it' provision. This promotes and protects the efficient allocation of rights. To identify whether a developer has started a feasibility study, rather than requiring a 12-month start period, BEC recommends adopting periodic reporting, possibly on a two-yearly basis. A 12-month start date is relatively arbitrary. Instead, periodic reports could describe the activities that have occurred, and the activities that are planned to occur. BEC emphasises that a narrowly defined assessment of commenced activities would not be appropriate, as the feasibility stage requires many activities with different durations and varying commencement and completion points, such as technical, environmental, cultural, and engineering assessments, financing activities, offtake negotiations and financial analysis.
66. However, BEC emphasises that periodic reporting should not create an unnecessary burden upon developers, and permit issuers. Extensive reporting is contradictory to the objective of ensuring New Zealand remains competitive with competing jurisdictions. BEC also reiterates that any reporting should be full and frank. Therefore, reporting should not be publicly disclosed. Publicly released information will undermine the permit holder's confidence to share full and frank disclosure, as this information will likely contain commercially sensitive information.
67. In addition to this periodic reporting, on-going meetings with the relevant permit issuer could be required. Permit holders would be able to demonstrate their activities' progress and communicate any barriers delaying their planned work programme, including but not limited to, regulatory, workforce, financial and supply chain barriers, and blockages.

BEC RECOMMENDS resolving the issue of overlapping permit applications by implementing a merit-based assessment and a negotiation mechanism.

68. As noted above in paragraph 45, the criteria for permit eligibility should be based on developers demonstrating a minimum level of compliance for each technical and financial criterion, with additional scoring for developers who can demonstrate a higher level of compliance. If two or more applications overlap, and their criteria scores are equal, applicants should be allowed to resolve the issue between themselves through negotiating the size of their permit application or possibly unitising by way of initiating a joint development in the permitted area. If an agreement is not reached between disputing developers with equal scoring in a particular area, a permit could be granted through lottery.

BEC RECOMMENDS that the final decision on granting application permits should reside with a government agency/entity.

69. As noted earlier, the criteria for assessing the eligibility of a permit applicant should be objective through setting a minimum compliance threshold by 'scoring' each applicant. The final decision to accept permits should reside with a relevant agency or entity, not be at the Minister's discretion. The Minister's discretion exacerbates the risk of political uncertainty and threatens the objectivity of assessing the suitability of a permit applicant.

APPENDIX ONE – BACKGROUND INFORMATION ON THE BUSINESSNZ ENERGY COUNCIL

The [BusinessNZ Energy Council \(BEC\)](#) is a group of leading energy-sector business, government and research organisations taking a leading role in creating a sustainable, equitable and secure energy future.

BEC is a brand of BusinessNZ and represents the [World Energy Council](#) in New Zealand. Together with its members, BEC is shaping the energy agenda for New Zealand and globally.



BusinessNZ is New Zealand’s largest business advocacy body, representing:

- Regional business groups: [EMA](#), [Business Central](#), [Canterbury Employers’ Chamber of Commerce](#), and [Business South](#)
- [Major Companies Group](#) of New Zealand’s largest businesses
- [Gold Group](#) of medium sized businesses
- [Affiliated Industries Group](#) of national industry associations
- [ExportNZ](#) representing New Zealand exporting enterprises
- [ManufacturingNZ](#) representing New Zealand manufacturing enterprises
- [Sustainable Business Council](#) of enterprises leading sustainable business practice
- [BusinessNZ Energy Council](#) of enterprises leading sustainable energy production and use
- [Buy NZ Made](#) representing producers, retailers, consumers of NZ-made goods

BusinessNZ is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

In addition to advocacy and services for enterprise, BusinessNZ contributes to Government, tripartite working parties and international bodies including the International Labour Organisation ([ILO](#)), the International Organisation of Employers ([IOE](#)) and the Business and Industry Advisory Council ([BIAC](#)) to the Organisation for Economic Cooperation and Development ([OECD](#)).

