Submission by

to the

Transport and Infrastructure Committee

on the

Offshore Renewable Energy Bill

6 February 2025

Section or clause (look at this), let Justine know

OFFSHORE RENEWABLE ENERGY BILL
– SUBMISSION BY BUSINESSNZ ENERGY COUNCIL—

Introduction

1. BusinessNZ Energy Council (BEC)[1] is pleased to have the opportunity to provide feedback on the Offshore Renewable Energy Bill currently before the Transport and Infrastructure Committee.

2. The BEC is a group of organisations across New Zealand's energy sector, taking a leading role in creating a sustainable, affordable, and secure energy future for all New Zealanders. Together we seek to shape the energy agenda for New Zealand. BEC is a division of BusinessNZ, New Zealand's largest business advocacy body and the member committee of the World Energy Council (WEC).

3. We **SUPPORT** the Bill, which establishes a regulatory framework for the feasibility, construction, and operation of offshore renewable energy. We have been a long-time supporter and advocate for dedicated legislation providing a regulatory structure for the sector.

4. In our previous submissions[2] on establishing an offshore regulatory regime, we outlined key recommendations for creating a robust, clear and efficient framework. We are pleased that the Government has acknowledged these recommendations and incorporated them into the final Bill. This is a significant step forward, providing the necessary certainty and structure to unlock the commercial potential of New Zealand's offshore renewable resources.

5. This submission provides a general discussion of the Bill and includes key recommendations to enhance its effectiveness and efficiency.

Summary of recommendations

6. **Remove the maximum cap for commercial permit extensions. Instead, any extensions beyond 40 years should be evaluated on a case-by-case basis by the Minister or regulator. This approach enhances flexibility, ensures the legislation remains adaptable, and aligns with Australia's regulatory framework for offshore renewable energy permit extensions.**

7. **Clause 14 be deleted. In its current form, it unequally shifts the Crown's Treaty obligations onto permit applicants. Both iwi and permit applicants have limited time and resources, making it essential for the Crown, as Treaty partner, to take primary responsibility for evaluating and engaging with iwi. While permit applicants can still be involved, this approach ensures a more balanced distribution of responsibility.**

[1] More about BEC in APPENDIX One

[2] BEC submissions (www.bec.org.nz/submissions/)

8. **Clause 17 (b) be deleted to reduce duplication and improve efficiency.**

9. **Clause 53 (f) be deleted. This provision allows the Minister to revoke a permit if they determine the holder is unsuitable for "any other reason." The open-ended nature of this language permits arbitrary revocation and undermines commercial certainty.**

10. **Clause 53 and 54 be amended to include provisions requiring the Minister to initiate a formal process of engagement with the permit holder when concerns arise. This process should evolve collaborative efforts to resolve the issue, with reasonable time and flexibility granted. Only after all reasonable avenues have been exhausted should the Minister have the ability to revoke the permit as a measure of last resort.**

11. **Clause 70 (1) and clause 71 (1) be reworded. Mentions of "decommissioning of all ORE infrastructure" be deleted and replaced with partial decommissioning based on evidence supplied through a case-by-case assessment prior to decommissioning, taking on board environmental conditions, the balance of risk, which also includes cost, technological capability and potential alternative uses.**

12. **The regulator defines permit application areas in consultation with developers, iwi/hapū, and other stakeholders. Over time, these areas should align with relevant spatial planning under the proposed Resource Management (RM) reforms. By adopting a more adaptable framework, regulators can encourage greater competition, optimise space utilisation, and support the successful development of offshore renewable energy projects.**

13. **Clause 83 (a) outlining the Minister's determination of an acceptable financial security arrangement be clarified, providing guidance to developers on what security would be classified as "acceptable" as part of the Minister's discretion.**

14. **The Bill should insert a clause allowing for a financial security that increases gradually over time, reflecting the net-present value (NPV) decommissioning costs in the future. If the security is not reflected in NPV, the upfront cost at the commercial stage would be a significant deterrent to development.**

15. **Consultation with the permit holder be required before any such changes are made to a safety zone.**

General discussion

PART 2: Regime for offshore renewable energy permits and infrastructure protection

Limiting applications to one "per region"

16. Clause 15(c) of the Bill imposes a restriction limiting applicants to only one feasibility permit per round for the same technology type within a defined region. According to the Local Government Act 1974, a region is classified as an area governed by a regional council or where a territorial authority has been granted regional council powers. While this definition works well for terrestrial governance, it poses significant issues when applied to offshore renewable energy projects due to the extensive ocean areas covered by these regions.

17. One major concern is the sheer size of these defined regions. For instance, the Taranaki region encompasses waters along its southern, western, and northern coasts, while Waikato spans both the east and west coasts. Given the vast expanse of these regions, developers could feasibly plan multiple projects without impeding opportunities for other applicants. However, the current restriction unnecessarily limits their ability to pursue multiple projects, despite the availability of ample development space.

18. Another issue arises from the need for developers to submit multiple feasibility permit applications to increase the chances of project approval. Limiting each applicant to a single permit not only discourages competition but also reduces the likelihood of successful project execution. A more flexible approach would allow multiple applications, leading to better project selection and decision-making while ensuring that the best proposals receive approval.

19. Furthermore, the use of the Local Government Act's definition of a region introduces complications for offshore renewable energy planning. This definition was primarily intended for land-based and nearshore activities, whereas offshore projects may extend across significantly larger maritime areas. For example, the South Taranaki Bight, a prime location for offshore wind development, falls within both the Taranaki and Whanganui regions. This overlap could lead to unintended restrictions on project feasibility if a round is open but certain areas are rendered ineligible due to administrative boundaries.

We RECOMMEND that:

20. **The regulator defines permit application areas in consultation with developers, iwi/hapū, and other stakeholders**. Over time, these areas should align with relevant spatial planning under the proposed Resource Management (RM) reforms. By adopting a more adaptable framework, regulators can encourage greater competition, optimise space utilisation, and support the successful development of offshore renewable energy projects.

Applications for feasibility permits limited to 'rounds'

21. Clause 13 requires that applications for feasibility permits can only be submitted during specific application rounds. While this structure may be useful for the initial allocation of offshore wind energy projects, we find it unnecessarily restrictive beyond that stage. A rigid, time-limited process does not align with the flexible, developer-led approach outlined in the consultation document.

22. Clause 14's consultation requirements place an excessive burden on mana whenua, who may face overwhelming engagement requests if all applications are concentrated into specific rounds. A more continuous application process would alleviate this issue while maintaining the integrity of consultation efforts.

We RECOMMEND that:

23. **Apart from an initial offering, the Crown should allow feasibility permit applications at any time within defined or specified areas. This approach aligns more closely with the developer-led model and reduces the administrative pressure on Iwi by spreading consultation efforts over time.**

24. Additionally, enabling ongoing applications supports a more dynamic and adaptive development process, ensuring projects can advance efficiently while still adhering to pre-application consultation requirements under Clause 14. This change would strike a better balance between regulatory oversight and industry flexibility.

Feasibility and commercial permit extension

25. The Bill currently sets a feasibility permit duration of seven years and a commercial permit duration of 40 years, with provisions (sections 39 and 40) allowing applications to the Minister for extensions. We support the inclusion of this extension mechanism.

26. The feasibility permit extensions are capped at a total of 14 years, which we consider appropriate. However, the commercial permit extension cap of 80 years is unduly restrictive. Offshore renewable energy technologies may evolve in ways that make an 80-year operational period insufficient.

We RECOMMEND that:

27. **Removing the maximum cap for commercial permit extensions. Instead, any extensions beyond 40 years should be evaluated on a case-by-case basis by the Minister or regulator. This approach enhances flexibility, ensures the legislation remains adaptable, and aligns with Australia's regulatory framework for offshore renewable energy permit extensions.**

Process before feasibility permits can be granted

28. Clause 14 requires feasibility permit applicants to engage in consultation with iwi and hapu authorities. We understand that it is within permit holders' best interests to ensure local iwi and hapu are satisfied with the development. Developers express their support for this engagement, recognising the significance of understanding the repercussions of their actions and work programmes on iwi environmental plans.

29. The extent to which iwi and hapu will be involved in this process remains uncertain, and the demarcation of responsibilities between the developer and the Crown is somewhat unknown. We expect more detail to be outlined within regulation.

30. In its role as a Treaty partner, the Crown (as the regulator) should assume responsibility for evaluating the potential consequences of offshore wind development pre-exisiting rights before authorizing a permit for any prospective applicant. It is important that the Crown's obligation aligns more closely with its role as a Treaty partner, avoiding undue shift of responsibility onto industry stakeholders and iwi.

31. This issue is particularly acute considering the time and financial limitations faced by iwi and hapu. In cases where iwi and hapu are expected to play a more proactive role, the Crown must ensure that the relevant iwi and hapu are adequately equipped with the necessary resources to enable their meaningful participation.

32. We judge that Clause 17 (b) creates unnecessary duplication in the approval process for offshore activities. The wider public can already provide input through the consenting process under the Resource Management Act 1991. It is more appropriate to discuss a project's merits and drawbacks during this phase. Additional public consultation at the feasibility permit stage is redundant.

We <u>RECOMMEND</u> that:

33. **Clause 14 be <u>deleted</u>. In its current form, it unequally shifts the Crown's Treaty obligations onto permit applicants. Both iwi and permit applicants have limited time and resources, making it essential for the Crown, as Treaty partner, to take primary responsibility for evaluating and engaging with iwi. While permit applicants can still be involved, this approach ensures a more balanced distribution of responsibility.**

34. **Replacing clause 14 with requirements set out in the Petrol Programme 2013 (sections 2.2, 2.4 and 2.5). These should require the Minister or regulator responsible for permit allocation to collaborate with industry in consulting iwi and hapu, encompassing permit specifications and work programmes.**

35. **Clause 17 (b) be deleted to reduce duplication and improve efficiency.**

<u>Revocation of permits</u>

36. Clause 53 to 56 grants the Minister the authority to revoke permits if they are satisfied that one or more criteria outlined in the Bill are met. Grounds for revocation include, among other factors, failure by a permit holder to commence feasibility activities within 12 months, failure by a commercial permit holder to begin construction within a reasonable period after the permit's commencement, or any other reason that renders the permit holder unsuitable to retain the permit.

37. We acknowledge the rationale behind these provisions. The revocation of permits prevents entities from holding offshore allotments indefinitely, thereby ensuring that development opportunities remain open to other potential developers. Given that feasibility and commercial permits do not comprise of a traditional property right – i.e. they are not

purchased outright but rather granted by the Government for offshore renewable energy once meeting certain criteria – revocation remains a legitimate mechanism.

38. However, the threshold for revocation must be high. The Minister must establish a clear and well-founded justification before revoking a permit. Feasibility studies are costly, complex and time-consuming, and broad discretionary power, as currently written, creates significant commercial uncertainty. Developers require confidence that their right to develop will not be revoked arbitrarily. If it is necessary, it should only occur following a structured and transparent process that exhausts all reasonable avenues for resolving the issue. Sufficient notice and a reasonable timeframe must be provided to allow the permit holder to address the concerns raised.

We RECOMMEND that:

39. **Clause 53 (f) be deleted. This provision allows the Minister to revoke a permit if they determine the holder is unsuitable for "any other reason." The open-ended nature of this language permits arbitrary revocation and undermines commercial certainty.**

40. **Clause 53 and 54 be amended to include provisions requiring the Minister to initiate a formal process of engagement with the permit holder when concerns arise. This process should evolve collaborative efforts to resolve the issue, with reasonable time and flexibility granted. Only after all reasonable avenues have been exhausted should the Minister have the ability to revoke the permit as a measure of last resort.**

Variation of safety zone with no consultation

41. Clause 68(a) grants the Minister the authority to independently vary or cancel a notice declaring a safety zone at any time. This raises concerns for developers and operators of offshore renewable energy systems, as it could result in the modification or removal of essential safety measures without notice, or the imposition of unnecessary restrictions.

To address this issue, we RECOMMEND that:

42. **Consultation with the permit holder be required before any such changes are made to a safety zone.**

Record-keeping

43. Clause 115 sets out the retention of an extensive list of records for significant periods—seven years or, in some cases, decades for commercial permits. However, the scope of required records is both overly burdensome and insufficiently defined. Broad categories such as "commercial records, including any feasibility studies; scientific and technical records" could encompass hundreds of highly detailed and commercially sensitive documents.

44. While the Bill suggests that commercially sensitive information may not necessarily be disclosed, the decision is left to officials, providing inadequate certainty regarding the volume and nature of records that must be retained and potentially shared with the regulator.

45. **We strongly <u>SUPPORT</u> the sharing of information outlined in clause 117 for public good purposes**.

46. **However, we <u>OPPOSE</u> record-keeping obligations under clause 115 which imposes an unreasonable burden and cost on permit holders.**

PART 3: Decommissioning of ORE infrastructure

<u>Internalising the cost of decommissioning</u>

47. We recognise and accept that the decommission and removal of some offshore renewable energy infrastructure may be necessary. International best practice demonstrates large offshore structures typically require removal after the end of its life for several reasons. Such infrastructure can impede alternative uses, either for fishing, recreational activities, or mining. Additionally, abandoned offshore infrastructure may obstruct shipping routes and pose hazards to human health, wildlife and the broader environment due to natural attrition.

48. In the case of offshore oil and gas extraction, the abandonment of wells without proper decommissioning and removal activities increases the risk of spills, which can have severe adverse effects on marine ecosystems. In all these instances listed, abandoned infrastructure imposes either external costs on third parties or prevents others from utilising an offshore area for alternative purposes. Ultimately, these costs fall on the Crown, and taxpayers should bear the financial burden of decommissioning offshore infrastructure.

49. The cost borne by taxpayers following the Tui gas field's decommissioning highlights the importance of externalizing external costs. Those who benefit from and are responsible for the development and operation of offshore activities should bear the associated costs, in line with "polluter pays" principle – a well-established and widely accepted concept in economics that applies to various private activities.

50. Given the risk that infrastructure may not be properly decommissioned appropriately if a permit holder defaults or abandons their activities, we understand that it may be both necessary and appropriate to legislate a requirement for decommissioning and establishing a financial mechanism to withhold funds to cover these costs. This protects taxpayers from having to fund decommissioning activities of offshore infrastructure that may impose negative externalities on third parties.

51. Decommissioning requirements also align with relevant international obligations that encompass the United Nations on the Law of the Sea (UNCLOS) 1982. This requires abandoned or disused installations and structures to be removed, to ensure safety of navigation, considering generally accepted international standards. These standards, namely the International Maritime Organisation standards, were adopted in 1989. These standards set out that any infrastructure placed in the marine environment should be designed with the consideration of full removal.

<u>Risk-based decommissioning requirements</u>

52. Compared to offshore oil and gas extraction, assessing the risks associated with offshore wind infrastructure is less straightforward. Notably, offshore wind does not pose a spillage risk. The most apparent hazard is the potential collapse of a deteriorating tower, which

could endanger passing ships. Additionally, lubricants, chemicals, and materials from degraded infrastructure could contribute to pollution, as could abandoned electrical transmission cables over time.

53. Different types of activities and infrastructure pose varying levels of risk to third parties, property, and the broader environment when abandoned. For instance, offshore wind infrastructure carries significantly lower risks than oil and gas facilities.

54. Minimising the environmental risk of abandoned offshore structures is valuable, but like all risk-reduction efforts, it should be balanced. There is an optimal level of resources that should be allocated to risk mitigation. The key reality is that resources are limited, and risk cannot always be fully eliminated—at least not without significant cost. While risk can be reduced, the marginal cost of doing so increases over time, while the benefits diminish. This principle also applies to decommissioning offshore wind infrastructure, as some components, such as turbine foundations, have little to no negative environmental impact.

55. The total abandonment of offshore structures without decommissioning can hinder alternative uses, particularly when the cost of demolition and cleanup exceeds the area's value for other purposes. In such cases, the original developer has little incentive to undertake cleanup efforts, while potential new developers may be discouraged by the high removal costs.

56. An onshore example illustrates how abandoned structures can prevent valuable alternative uses. When property rates are calculated based on capital value, a derelict building may result in minimal rates being paid due to its low assessed capital value. This creates little incentive for the owner to demolish the structure and repurpose the land. However, if rates were based on land value instead, the owner would have a stronger incentive to remove the building and optimize the land for its highest-value use.

57. Without regulatory requirements or incentives, developers have little incentive to remove offshore infrastructure, potentially hindering alternative uses. Currently, competing uses are evident off the coast of Taranaki, where the area could support offshore mining. In the future, other promising and lucrative offshore mining locations may also emerge. Additionally, offshore transmission cables could obstruct deep-sea trawling, though this activity might eventually be banned. If left fully intact, offshore structures could also create obstacles for shipping routes.

58. Given the distinct risk profile of offshore wind compared to offshore oil and gas, and taking into account potential competing uses, **we strongly <u>RECOMMEND</u> that:**

59. **Decommissioning rules that are flexible and tailored to the unique circumstances and risks of offshore infrastructure**.

60. Legislation and regulations should align with the specific risks of abandonment. Since the environmental risk of leaving offshore infrastructure completely intact is low, the current stringent requirements, such as those outlined in the Crown Minerals Act 1991 for the oil and gas sector, should be reassessed to better reflect the relevant risks.

61. Exemptions to the full decommissioning of infrastructure should be considered on a case-by-case basis or technology basis, taking on board environmental conditions, the balance of risk, which also includes cost, technological capability and potential alternative uses. This flexibility in decommissioning rules depending on other variables is reflected in the

United Kingdom's regulatory regime for offshore wind.[3] This appears to be the intention of the current Section 73, which we note implies that decommissioning plans should be included in consent processes. It is crucial that these processes and expectations are clear, aligned, and not overly burdensome, considering the low level of risk involved.

Transfer of decommissioning liabilities

62. We **SUPPORT** clause 72 of the Bill requiring the Minister to remove decommissioning obligations in the circumstances of a commercial permit holder transferring a permit to new owner. This will ensure that perpetual liabilities are not in place.

63. In our previous submissions, we highlighted the dangers associated with perpetual liabilities. We reiterated that in this case, property rights would not be divestible. Clearly defined and divestible property rights are a fundamental part of any market economy. Where rights are restricted, the incentive to invest is severely weakened. This would have contradicted the aim of creating a regulatory environment that encourages investment in offshore renewable energy development. We **APPLAUD** the Government's acknowledgement of this risk and its exclusion from the Bill.

Partial decommissioning

64. Adopting a case-by-case approach from the outset, by evaluating the unique risks and characteristics of a project before construction begins, enables the development of flexible decommissioning rules and allows for the possibility of partial decommissioning.

65. While decommissioning may appear to be a simple reverse installation, it often involves many challenges, ranging from logistical expenses to intricate seabed conditions. The oil and gas industry are currently experiencing higher-than-anticipated decommissioning costs.[4] In the coming decades, the full cost of decommissioning could become prohibitively expensive and financially unviable for developers. The full removal of offshore structures, leaving the seabed in its original condition before development is costly and does not reflect the risk.

66. As mentioned earlier, there is an optimal amount of risk that can be reduced. Beyond a certain level, it becomes costly without any associated benefits to remove all structures and leave the seabed as it was originally found. In the case of offshore structures, its full removal may cause more damage and disruption to the environment than positives.

67. Offshore platforms have shown to support ecosystems by acting as artificial reefs, harboring threatened species.[5] The practise of "rigs-to-reefs" has been commonly used for US oil rigs in the past decade. Rigs are left in the seabed after the topside is cut and converted to artificial reefs, with marine fauna inhabiting steel structures.[6] Offshore wind

[3] *Decommissioning of Offshore Renewable Energy Installations Under the Energy Act 2004*, Department for Business, Energy & Industry Strategy, March 2019.

[4] *End of life planning in Offshore Wind*, Catapult Offshore Renewable Energy, Angeliki Spyroudi, April 2021

[5] Coolen JWP (2017). North Sea reefs: benthic biodiversity of artificial and rocky reefs in the southern North Sea

[6] Fowler, Ashley M (2018) Environmental benefits of leaving offshore infrastructure in the ocean

structures have attracted marine life communities, increasing fish biomass.[7] The removal of their foundations after 25 years of operation can disrupt the ecosystems that have developed over the years.

68. A report published by the Ecological Society of America concluded that complete removal of a platform resulted in 95% or more reduction in the average fish biomass and annual somatic production at the site, while partial removal resulted in far smaller losses, averaging 10% or less.[8] The complete removal of transmission subsea cables, often buried between 1 to 2 meters, requires pulling them out of trenches. Given their extensive length, this would result in significant marine disruption as well as notable costs.[9]

69. **Considering the high cost and likely environmental damage caused by decommissioning all infrastructure, we <u>RECOMMEND</u> that:**

70. **Clause 70 (1) and clause 71 (1) be reworded. Mentions of "decommissioning of <u>all</u> ORE infrastructure" be deleted and replaced with partial decommissioning based on evidence supplied through a case-by-case assessment prior to decommissioning, taking on board environmental conditions, the balance of risk, which also includes cost, technological capability and potential alternative uses.**

<u>Financial security arrangements</u>

71. Subpart 3 of the Bill outlines a requirement to put in place and maintain a financial security to cover the cost of decommissioning in the event a developer fails to decommission. As mentioned previously, we acknowledge that a financial security which withholds funds will protect taxpayers from having to fund decommissioning activities of offshore infrastructure that may impose negative externalities on third parties.

We <u>RECOMMEND</u> that:

72. **Clause 83 (a) outlining the Minister's determination of an acceptable financial security arrangement be clarified, providing guidance to developers on what security would be classified as "acceptable" as part of the Minister's discretion.**

73. This guidance would provide developers with "guardrails" on what the Minister may consider to be the most acceptable form of financial security. In the United Kingdom, several forms of financial security are accepted. Proposals for a financial security are considered on a case-by-case basis.[10] This could be a cash deposit, cash reserving, letters of credit, a bank guarantee and performance bond or insurance scheme.

We <u>RECOMMEND</u> that:

[7] Claisse JT, Pondella DJ, Love M, et al. (2014). Oil platforms off California are among the most productive marine fish habitats globally

[8] *End of life planning in Offshore Wind*, Catapult Offshore Renewable Energy, Angeliki Spyroudi, April 2021

[9] Statoil, "Sheringham Offshore Wind Farm Decommissioning Programme," tech. rep., 2014.

[10] *Decommissioning of Offshore Renewable Energy Installations Under the Energy Act 2004*, Department for Business, Energy & Industry Strategy, March 2019.

74. **The Bill should insert a clause allowing for a financial security that increases gradually over time, reflecting the net-present value (NPV) decommissioning costs in the future. If the security is not reflected in NPV, the upfront cost at the commercial stage would be a significant deterrent to development.**

75. Developers would have to set aside a large amount of capital before the development is built and operational. Hundreds of millions would be allocated for decommissioning, a process not slated to happen for over thirty years. This is difficult to justify and would severely undermine the projects' economics unnecessarily. Financial securities should not be required upfront at feasibility when turbines have not yet been installed. At the half-way point through a project's lifespan, the financial security should start being built up and steadily increase until the end of the project. This is a characteristic of Australia's decommissioning requirement.

76. **We <u>SUPPORT</u> clauses 88 to 92 relating to a financial capability assessment of developers.** We are pleased to see that this capability test, assessing the decommissioning capability of the developer, is isolated to the commercial permit stage and not duplicated as part of the feasibility process.

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).