File No:	22 12 05
Document No:	25952657
Enquiries to:	Katrina Andrews

Private Bag 3038
Waikato Mail Centre
Hamilton 3240, NZ

waikatoregion.govt.nz
0800 800 401

13 April 2023

Ministry of Business, Innovation and Employment
PO Box 1473
Wellington 6140
Attn: Offshore Renewable Energy Submissions

Email: offshorerenewables@mbie.govt.nz

Tēnā koe,

Waikato Regional Council Submission to the Discussion Document: Enabling Investment in Offshore Renewable Energy

Thank you for the opportunity to submit on the Discussion Document: Enabling Investment in Offshore Renewable Energy. Please find attached the Waikato Regional Council's staff submission regarding this document. This submission was signed out under delegated authority by the Director Science, Policy and Information on 13 April 2023.

Should you have any queries regarding the content of this document please contact Katrina Andrews, Policy Advisor, Strategic and Spatial Planning directly on (07) 8590 929 or by email Katrina.Andrews@waikatoregion.govt.nz.

Nāku iti noa, nā,

Tracey May
Director Science, Policy and Information

Submission from Waikato Regional Council on the Discussion Document: Enabling Investment in Offshore Renewable Energy

Introduction

1. We appreciate the opportunity to make a submission on the Discussion Document: Enabling Investment in Offshore Renewable Energy. We acknowledge the effort made by Ministry of Business, Innovation and Employment (MBIE) staff in preparing the discussion document, which is detailed, clear and provides a significant number of prompts to assist submitters.

2. We support the government's recognition of the emissions reduction benefits of new electricity generation technologies and the commitment to develop regulatory settings to enable investigation of offshore renewable energy.

3. We look forward to further involvement in the development of the broader regulatory settings and would welcome the opportunity to comment on any issues explored during this process.

4. We also encourage MBIE to engage with the Ministry for the Environment in relation to questions posed in the discussion document, as they may have existing expertise in some of these matters.

Summary

5. We support the government's recognition of the strategic importance of offshore renewable energy and the need to enable feasibility activities in a timely manner. Offshore renewable energy will contribute to urgently needed decarbonisation efforts and support economic diversification.

6. It is important that future regulations provide appropriate protection of Aotearoa New Zealand's national interests, including protection and enhancement of the natural environment and enabling Māori and community participation in feasibility activities, while also providing clarity and certainty for developers to invest.

7. We also note the importance of taking an integrated approach to the management of offshore renewable energy resources, for the benefit of present and future generations.

8. We provide specific responses to the questions set out in the discussion document below.

Submitter details

Waikato Regional Council
Private Bag 3038
Waikato Mail Centre
Hamilton 3240

Contact person:

Katrina Andrews
Policy Advisor, Strategic and Spatial Planning
Email: Katrina.Andrews@waikatoregion.govt.nz
Phone: (07) 8590 929

Responses to Questions Posed in the Discussion Document

Chapter 3: Why does the government need to enable feasibility activity now?

We recommend the objective relating Māori participation be amended to *"Enable Māori participation in feasibility activities for offshore renewable energy, including early engagement for the purpose of potentially enabling Māori participation in any future development",* or similar, to recognise that this discussion document relates to the feasibility stage of offshore renewable energy developments only.

As research undertaken during the feasibility stage will provide significant insights into New Zealand's marine environment and offshore energy resources, we consider it should be a requirement for developers to share all information from feasibility studies with regulators, including central government and regional councils.

Whilst we consider the proposed criteria are generally appropriate, we recommend that further detail be added to these to ensure they achieve the desired outcomes when assessing proposals for regulation.

We consider 'effectiveness' to be most crucial of the three proposed criteria, to ensure proposals are of benefit to Aotearoa New Zealand's national interests.

1. **Do you agree with the proposed policy objectives outlined in the discussion document? Why or why not?**

We agree with the proposed objectives. It is crucial that regulations enable selection of developers and developments to meet New Zealand's national interests, including appropriate protection and safeguards for the environment, as well as developers' competence to deliver the project on time and to the agreed quality, the ability to meet renewable energy objectives and benefits to the economy and local communities.

We support the suggestion on Page 14 of the discussion document that projects be examined at the feasibility stage to ensure developers collect appropriate data and complete a detailed environmental impact assessment prior to seeking relevant consents to construct. As stated in the discussion document, research undertaken during the feasibility stage will provide significant insights into New Zealand's marine environment and offshore energy resources. It is critical that government holds the data about natural and physical resources within the territorial sea and Exclusive Economic Zone (EEZ), as well as coastal areas that may be impacted by offshore activities. We consider that it should be a requirement for developers to share all information from feasibility studies with regulators, including central government; for the purpose of ensuring alignment with strategic goals (e.g., the New Zealand Energy Strategy) and regional councils; for the purpose of managing the natural and physical resources of their region and effects on these resources.

We also agree that it is important New Zealand remains competitive and can secure access to offshore renewable energy technology in a timely manner. Enabling investment in offshore renewable energy is one mechanism to assist with decarbonisation efforts. Offshore renewable energy projects will also support diversification of New Zealand's energy infrastructure and overall economy. To support this, it is important the regulations provide adequate certainty for developers.

We note that an objective relating to Māori participation would assist in assessing the feasibility of activities. However, we further note that the discussion document is concerned with the feasibility stage of offshore energy projects, whereas the second objective *"Enable Māori participation in offshore renewable energy development"* is expressed in terms of offshore energy development generally. We therefore suggest that this objective be reworded to *"Enable Māori participation in feasibility activities*

for offshore renewable energy, including early engagement for the purpose of potentially enabling Māori participation in any future development", or similar.

2. **Are there other objectives that we should consider that are not captured above? If so, what are they are why are they important?**

It is important the regulations ensure that any feasibility activities are conducted in an environmentally sustainable and, if possible, an environmentally positive manner.

In addition to detailed environmental impact assessment, the scope of feasibility activities should also include quantification of social costs and benefits for communities and the national economy, for example, benefits potentially derived from surplus renewable energy. We also consider it important that the life-cycle costs of potential developments are considered early in the process, even if uncertainty is high.

As noted above, it should be a requirement that all information from feasibility studies is shared with regulators.

3. **Do you agree with the proposed criteria for assessing the proposals for regulating offshore renewable energy? Why or why not?**
4. **Are there other criteria that we should consider that are not captured above? If so, what are they are, why are they important?**

We consider the criteria are generally appropriate. However, the loose wording of the criteria leave them open to differing interpretations. Therefore, it is difficult to determine what practical impact they will have when assessing proposals for regulation. We consider further work is needed to add more detail to the criteria, to ensure they achieve the desired outcomes.

5. **Do you agree that the criteria should be equally weighted? Why or why not?**

All three criteria need to be appropriately satisfied, however we consider 'effectiveness' to be most crucial, to ensure proposals are of benefit to Aotearoa New Zealand's national interests.

Chapter 4: Proposals for managing feasibility activities

We consider the government should have a role making information available on known values and constraints, and in storing data collected as part of feasibility assessments. We also consider the government should be involved to the extent required to ensure feasibility activities align with the proposed New Zealand Energy Strategy.

We agree with a developer-led approach in the short-to-medium term and that greater government involvement may be appropriate in the medium-to-long term.

We consider the permitting approach would better meet the stated policy objectives but consider collaboration between developers, government, iwi and hapū and communities should be possible where appropriate.

6. **What role do you think government should have in gathering feasibility information for offshore renewable energy development?**

The government should have a role in identifying where information exists on known values and constraints within areas under investigation and make this available.

While we support a developer-led approach, it is important the government has access to and holds information about offshore energy resources, their potential, and how these fit within New Zealand's future energy-scape. Data and information collected as part of feasibility assessments should therefore be stored and analysed to build a national widely available picture of the resources.

We also consider central government should be involved in feasibility activities to any extent required to ensure these align with the proposed New Zealand Energy Strategy.

7. **Do you agree that, at least in the short-to-medium term, a developer-led approach to gathering feasibility information is appropriate for Aotearoa New Zealand? Why or why not?**
8. **Is there another approach not considered above that may be more suitable?**

Given the time constraints identified with a government-led approach, we agree with a developer-led approach in the short-to-medium term, to ensure that feasibility activities can occur in a timely manner in line with New Zealand's emissions reduction goals.

We agree with the suggestion in the discussion document that greater government involvement may be appropriate in the medium-to-long term, to align with the proposed resource management reforms.

9. **Do you agree with the two shortlisted options (permitting and collaborative) that we have identified? If not, what other viable options might we be looking at?**

We agree with the two shortlisted options.

10. **Assuming a developer-led process to propose sites and assess feasibility, do you think the permitting approach or the collaborative approach would deliver a better outcome for Aotearoa New Zealand and why?**

We consider the permitting approach would better meet the stated policy objectives, particularly in relation to providing certainty for developers to invest. However, we do not view the two options as entirely mutually exclusive. Higher-quality data expectations should not be limited to a collaborative approach. If there is a particular circumstance suited to collaboration between developers, government and/or iwi and hapū, for example conducting environmental monitoring, this should be possible and encouraged.

Regardless of the process, there must be an opportunity for the government to select the most appropriate developer and development for New Zealand's national interests.

11. **How could a collaborative approach be designed to enable the objectives set out above, and what could the government do to support collaboration?**

Either a permitting or collaborative approach should be designed in such a way that ensures central government has sufficient confidence that work is contributing to the national climate change Emissions Reduction Plan and proposed New Zealand Energy Strategy objectives, and local government has enough information to support resource management/environmental regulation.

In either approach, a clear set of regulations which are transparent and enforceable, are crucial to providing certainty for developers and communities.

12. **Have we captured a complete list of trade-offs between the two shortlisted options? What else, if anything, should we be considering?**

As mentioned above, we do not necessarily see the two options as being entirely mutually exclusive.

Chapter 5: Māori involvement in the assessment of feasibility

> We consider those undertaking feasibility assessments should look for opportunities to work together with tangata whenua.
>
> We recommend developers consult with tangata whenua (mana moana) groups early during the feasibility phase and endeavour to work with tangata whenua in good faith to achieve mutual outcomes. We consider resourcing should be made available to tangata whenua groups to participate meaningfully in this process.
>
> We note it is not clear what "economic interests" Page 22 of the discussion document is referring to and what "implementing" these might mean in practice. We consider this matter is best left to the parties involved rather than being part of the regulatory framework.

13. **What broad opportunities do you see for iwi, hapū, and/or whānau to be involved in the feasibility stage of development (both before and during studies)?**

14. **Are the above requirements sufficient to achieve this? How can the requirements be implemented to reduce undue burden on mana moana or developers?**

We consider those undertaking feasibility studies should look for opportunities to work together with tangata whenua, iwi and hapū to achieve environmental, cultural, socioeconomic, and employment outcomes from offshore renewable energy investigation.

We recommend developers consult with tangata whenua (mana moana) groups early during the feasibility phase and endeavour to work with tangata whenua in good faith to achieve mutual outcomes and protect, restore, or enhance any potential sites of significance and other taonga impacted by the activities.

We agree with most of the suggested requirements for developers listed on Page 22 of the discussion document and consider they should be part of the process. The only exception is the suggestion that throughout the duration of the permit, *"developers could be required to… identify relevant economic interests in the construction and operation of the development, and a plan for implementing these if the development proceeds".* It is not clear from the discussion document what "economic interests" this is referring to and what "implementing" these might mean in practice. This is a commercial matter, the nature of which will vary on a case-by-case basis. We therefore consider this is best left to the parties involved rather than being part of the regulatory framework.

15. **What information/mātauranga Māori and process/tikanga will be important for developers to incorporate into their feasibility plans, and how should iwi, hapū, and/or whānau be involved in gathering this information?**

The approach taken should be determined by tangata whenua (mana moana) groups. It is important to ensure that developers talk to an inclusive set of groups to achieve this. The process and content for mātauranga Māori will be up to tangata whenua (mana moana) groups to determine. Resources should be available to these groups to participate meaningfully in this process and in the consultation process as a whole.

16. **What mechanisms for monitoring and enforcing these requirements are appropriate (regular reporting by developers that is reviewed by iwi etc)?**

17. **How should the adequacy of iwi involvement be assessed? What does good faith and meaningful participation look like?**

Adequacy of involvement is highly subjective and dependent upon participation, outcomes, and satisfaction. Developers will need to demonstrate commitment to processes, tikanga, meeting objectives for tangata whenua-specific outcomes and provision of adequate resourcing, time, and effort. Developers should look to treat tangata whenua communities as a priority group that they must have a trusted relationship with.

At a minimum, developers need to be aware of Treaty and legislative obligations placed on consent authorities, for example coastal statutory acknowledgement areas, or summary notice obligations under the Marine and Coastal Area (Takutai Moana) Act 2011. These can help form the foundation for the development of relationships with tangata whenua (mana moana) and help identify associations and interests they have in the area under investigation.

We agree that greater participation, which involves and empowers mana moana to play a more active role in feasibility activities, will have significant impacts on time, resources and capability of both developers and mana moana. Guidelines for developers should be prepared and recognition to put in place that ongoing Crown support and advice is also needed.

Chapter 6: Considerations for a permitting framework

We recommend that permit conditions should enable the government to adjust accordingly if circumstances change such that a developer can no longer deliver, including the ability to revoke the permit. Permits should be clear about the scope of changes that would trigger a review.

We recommend there be strict criteria on the transferability of permits.

We suggest that existing case law in relation to section 125 of the Resource Management Act 1991 could inform the establishment of tests for ‘use-it or lose-it’ provisions.

We seek clarification on the proposed process for receiving feasibility assessment applications in relation to a particular area, i.e., whether there will be a time limit for lodging applications on a certain area.

We agree it is appropriate for a single central government entity to hold responsibility for inviting and assessing applications, however, consider it important that regional councils are involved/kept informed of the process given the interactions with resource management roles and responsibilities.

We consider information in relation to New Zealand’s natural and physical resources should be publicly available to support a transparent process, except where proven commercial or cultural sensitivity issues exist. We recommend that decisions to grant or decline feasibility permit applications also be made publicly available.

18. **Do you agree that developers should be required to meet prequalification criteria to be eligible for exclusive feasibility rights?**

Yes, developers should be able to demonstrate that they are capable of fulfilling their obligations, in order to meet national interests.

We also agree there should be ongoing consideration to ensure permit holders continue to meet the criteria.

19. Are our proposed criteria appropriate? Are they complete? If not, what are we missing?

We consider the proposed criteria are appropriate.

20. How should we consider material changes to permit holders' status and capability? Do you think mechanisms to review permit criteria would be appropriate?

Yes, it is appropriate to enable regulator review of feasibility permits in the event of significant change in developer status. If circumstances change such that a developer can no longer deliver, the permit conditions should enable the government to adjust accordingly, including the ability to revoke the permit. It would, however, be important for the permit to be clear about the scope of that discretion i.e., what nature of changes would trigger a review.

We also consider it appropriate for strict conditions to be imposed on the transferability of permits. Enabling unfettered transfer would defeat the purpose of developer scrutiny in the first instance.

21. Do you agree that a feasibility licence should last for five years with an option to extend for a further two years?

Yes, we consider this to be an appropriate timeframe.

22. Do you agree that a feasibility licence should be subject to 'use-it or lose-it' provisions, with permits not exercised within 12-months lapsing? What circumstances would trigger the use it or lose it provisions?

We agree that feasibility licences should be subject to 'use-it or lose-it' provisions, as this would add certainty to the process. It is important that feasibility studies and subsequent stages are able to progress in a timely manner, which includes avoiding 'land-banking' activities.

Existing case law in relation to section 125 ("Lapsing of consents") of the Resource Management Act 1991 (RMA) could be looked at to assist with establishing clear tests for 'use-it or lose-it' provisions.

23. How should government best deal with the issue of overlapping applications?

This should be approached on a case-by-case basis, to determine which application is best-placed to conduct feasibility activities in line with the identified objectives and national interest.

We note that it is not clear from the discussion document how the process for receiving feasibility assessment applications in relation to a particular area is proposed to work. The document indicates that it does not favour a 'first-in, first-served' approach, which seems to imply that there might be a form of time limit for applications to be made on a certain area. We would like to understand how this process is proposed to work in practice.

24. Do you agree that a single national entity should hold responsibility for inviting and assessing applications?

In order to deliver on what we understand to be the proposed New Zealand Energy Strategy, we agree that it makes sense for a single central government entity to hold this responsibility.

We consider it important that regional councils are involved/kept informed of the process, given their regulatory role within the coastal marine area and their strategic role in integrating infrastructure with

land use (RMA section 30(1)(gb)) through regional policy statements. Even if offshore energy projects are located outside the territorial sea within the EEZ, there will still be structures such as cables required to bring energy/electricity to land that may traverse the coastal marine area and merge with terrestrial energy corridors.

25. Do you agree that the Minister of Energy and Resources, acting on advice from officials, should make the final decision on applications for permits?

We see merit with this approach.

We do query what role regional councils will have in the process, given the interaction with the relevant Regional Coastal Plan (or in the future, the proposed Regional Planning Committees responsible for the Regional Spatial Strategies/Natural and Built Environment Plans). Activities within the coastal marine area should comply with the relevant resource management plan.

26. Do you agree with charging fees sufficient to recover the costs of inviting, and assessing feasibility permit applications, and monitoring permit holders?

Yes, we agree with this.

27. What other steps would ensure that processes are transparent and fair for developers?

The ability for all information to be publicly available on the relevant websites. This includes making project-scale feasibility information available to other developers if an initial developer chooses not to proceed with a development.

We also consider the decisions to grant or decline feasibility permit applications should be made publicly available. A right of objection to the decision-maker by the applicant party could also be considered.

28. Do you think that public submissions should be sought on permit applications? What other steps would ensure sufficient opportunity for iwi, hapū, whānau, and stakeholders to inform decision-making?

Yes, we consider that enabling early public input on feasibility activities through a submissions process would contribute to increased certainty for both developers and communities.

Refer to Questions 13 to 17 above in relation to iwi/hapū/whanau involvement.

29. Do you agree that permit-holders should regularly report on the progress of their feasibility studies? How frequently should the reporting be?

We consider it appropriate that permit-holders should report on their progress annually.

30. What reporting standards should the Government set to make the disclosures meaningful?

Developers should be required to lodge a programme of work, and to report against that programme.

Reporting should be required that is consistent with the United Nations Framework Classification for Resources (UNFC) Specifications to Renewable Energy Resources (Renewable Energy Specification) Wind Energy.[1]

[1]https://unece.org/DAM/energy/se/pdfs/UNFC/UNFC_Solar_and_Wind_EnergySpecifications/UNFC_Wind_Specifications.pdf

This enables public comparison of the different energy projects happening and being planned across New Zealand.

31. Who should have access to this information? How should it be shared?

Information in relation to New Zealand's natural and physical resources should be publicly available to support a transparent process, except where proven commercial or cultural sensitivity issues exist. This should be managed in line with the Official Information Act 1982, which has criteria for withholding any commercially or culturally sensitive information.

32. Do you agree that developers not complying with obligations could face compliance actions, with risk loss of rights to conduct feasibility studies as a last resort? What sorts of non-compliance could lead to the loss of these rights?

We agree that developers not complying with obligations could face enforcement actions. The legislation should clearly set out monitoring and enforcement roles and responsibilities.

Examples of non-compliance that could lead to compliance action include undertaking actions for which specific authorisation is required but not held or failure to report as required.

Chapter 7: Information on existing uses, interests, and values

We recommend it should be possible to exclude areas from consideration based on adverse effects on certain ecological values. It may also be appropriate to exclude areas based on the existence of cultural values, in consultation with mana moana.

We recommend that a hierarchy similar to the proposed Te Oranga o te Taiao in the Natural and Built Environment Bill or the existing Te Mana o te Wai under the National Policy Statement for Freshwater Management 2020 could be employed to assist with establishing priorities between different uses, interests and values.

We consider the effects of different uses need to be considered in an integrated way, which takes into account interactions between different activities and the potential for cumulative environmental and ecological effects.

33. Are there other uses, interests, and values not covered above that can be readily mapped? What are they?

Other uses/interests/values not covered in the discussion document include:

- Ecological systems, including projected climate change implications involving ocean currents and marine species migration (e.g., impacts on food for seabirds).
- Seabird flyways and fly heights of local species.
- Iwi environmental management plans.
- Areas identified in regional coastal plans (or in the future, proposed Regional Spatial Strategies).
- Other navigational areas.
- Internet fibre cables of national importance.

34. Of the uses, interests, and values identified above, which ones do you consider should be prohibitive, i.e., the existence of those uses, interests, and values in a given area should exclude an area from consideration for offshore renewable energy generation? Why?

It should be possible to exclude areas from consideration based on adverse effects on certain ecological values, for example significant adverse effects on the survival of a population of threatened or at-risk species.

It may also be appropriate to exclude areas based on the existence of cultural values, in consultation with mana moana.

35. What opportunities do you envisage for offshore renewable energy developments and other uses, interests and values to co-exist, or be co-located in the same space?

There may be opportunities for low impact commercial fishing, recreational fishing, or tourism activities to co-exist in the same space. There could also be opportunities for the creation of marine mammal sanctuaries if infrastructure denies use for navigation by shipping, bottom-trawling, and seafloor disturbances.

36. How could conflicts with existing uses, interests and values be managed?

It is important to identify known uses at an early stage and establish priorities where possible. We suggest that a concept or hierarchy similar to the proposed Te Oranga o te Taiao in the Natural and Built Environment Bill or the existing Te Mana o te Wai under the National Policy Statement for Freshwater Management 2020 could be employed to assist with this.

Ecological impacts need to be well-managed at all stages of renewable energy projects, particularly the construction stage. This includes consideration for the ability of indigenous species to adapt to offshore energy infrastructure.

37. What uses, interests and values cannot readily be mapped? How should these be taken into account when considering the feasibility of establishing offshore wind farms?

Tangata whenua values and habitats of highly mobile species are two examples which may not be easily mapped but should be given careful consideration in feasibility activities. Tangata whenua values should be identified in conjunction with relevant mana moana groups.

The effects of different uses or activities need to be considered in an integrated way, which takes into account interactions between different activities and the potential for cumulative environmental and ecological effects.

There may also need to be consideration for potential future values (e.g., ecological, or potential recreational or tourism values) where feasibility studies identify new information about natural features or resources in the marine environment.