



BRIEFING

Offshore renewable energy regulatory settings: Proposed phased development

Date:	7 October 2022	Priority:	High
Security classification:	In Confidence	Tracking number:	2023-1286

Action sought		
	Action sought	Deadline
Hon Dr Megan Woods Minister of Energy and Resources	<p>Agree to the proposed two-phase development of offshore renewable energy regulatory settings;</p> <p>Note and discuss 9(2)(f)(iv) and for responding to applications for exclusivity ahead of the new regulatory settings;</p> <p>Forward this briefing to Hon David Parker, Minister for the Environment and Minister for Oceans and Fisheries, and Hon Poto Williams, Minister of Conservation.</p>	14 October 2022

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Ayesha Myra Amin	Acting Manager, Offshore Renewable Energy and Hydrogen	9(2)(a)	✓
Francis van der Krogt	Principal Policy Advisor		

The following departments/agencies have been consulted
Ministry for the Environment, Department of Conservation, Ministry for Primary Industries, Te Arawhiti

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments



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Purpose

This briefing provides advice on three related matters:

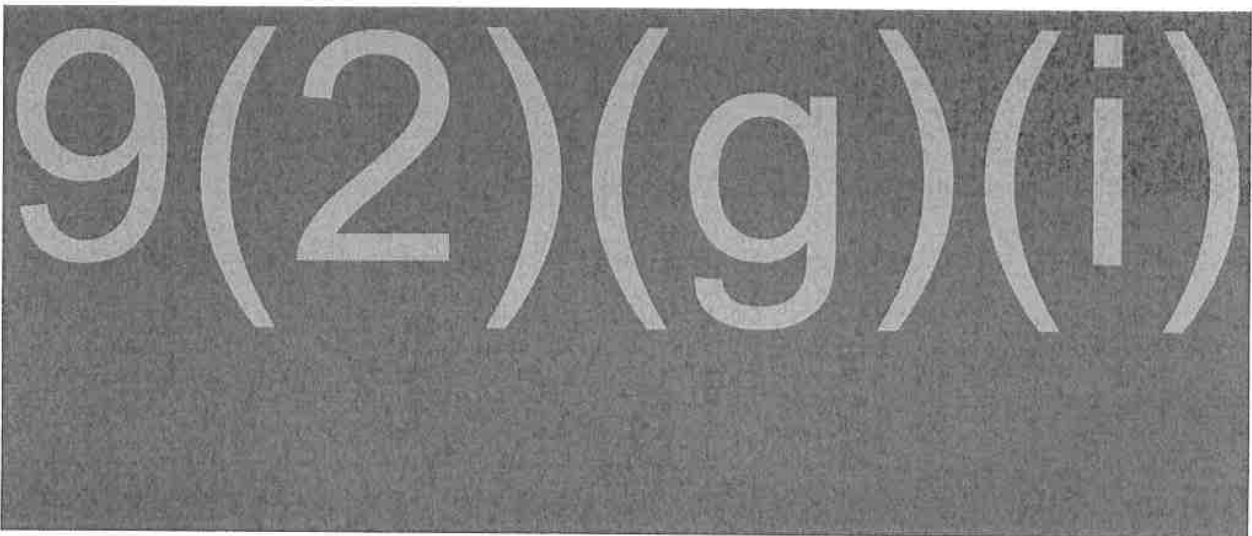
- a two-phased approach to developing regulatory settings for offshore renewable energy
- options to implement aspects of the new settings earlier, 9(2)(g)(i)
- 9(2)(g)(i)

Executive summary

We propose a two-phased approach to developing regulatory settings to provide more investment certainty

The two phases would be as follows:

- **Phase One:** Consultation from December 2022 to mid-April 2023 on proposed approaches to allocating exclusive rights to conduct feasibility activities, and identifying areas with the most potential for development in a way that also manages other competing uses and interests. This should provide more regulatory clarity for developers and a formal process to engage in the development of regulatory settings. Consultation would focus especially on engagement with iwi in relevant coastal areas.
- **Phase Two:** Consultation in mid-2023 on the remaining aspects of the regulatory settings such as giving effect to Te Tiriti, iwi engagement and participation, the criteria for and conditions of commercial licences, decommissioning obligations, offences and penalties, compliance and monitoring, fees, and alignment with environmental regulatory frameworks.



9(2)(g)(i)

To ensure policy consistency across existing and emerging 'blue economy' industries such as offshore renewables and aquaculture, any further work on iwi and hapū rights and interests would need to be undertaken in a co-ordinated manner. Our proposed phased approach and consultation processes seek to manage this.

9(2)(g)(i)

Some developers may seek exclusive rights ahead of any new regulatory settings. At least one developer is likely to seek, in the near future, a consent to construct and operate a wind farm in the Coastal and Marine Area off the coast of Taranaki.

9(2)(g)(i)

Recommended action

The Ministry of Business, Innovation and Employment (MBIE) recommends that you:

Two-phased approach to developing regulatory settings

- a. **Agree** to the following approach to phase the development of offshore renewable energy regulatory settings:
- **Phase One:** From December 2022 to mid-April 2023, consult on proposed approaches to allocating exclusive rights to conduct feasibility activities, and identify areas with the most potential for development in a way that also manages other competing uses and interests, and
 - **Phase Two:** In mid-2023, launch further consultation on the remaining aspects of the regulatory settings such as giving effect to Te Tiriti, iwi engagement and participation, the criteria for and conditions of commercial licences, decommissioning obligations, offences and penalties, compliance and monitoring, fees, and alignment with environmental regulatory frameworks;

Agree / Disagree / Discuss

- b. **Agree** to seek Cabinet agreement to consult, via a discussion document, on proposed offshore renewable energy areas and approaches to allocating exclusive use of the seabed for feasibility activities (Phase One policy issues above);

Agree / Disagree / Discuss

- c. **Note** that should you agree to (b) above, MBIE will provide you with a draft discussion document in mid-November 2022 for consultation with your Ministerial colleagues and Cabinet consideration in December;

Noted

Implementing aspects of the new regime in 2023, through granting exclusive rights to developers for feasibility testing

- d. **Note** that you have sought advice on how to enable offshore renewable energy development within current regulatory settings, ahead of comprehensive settings in 2024;



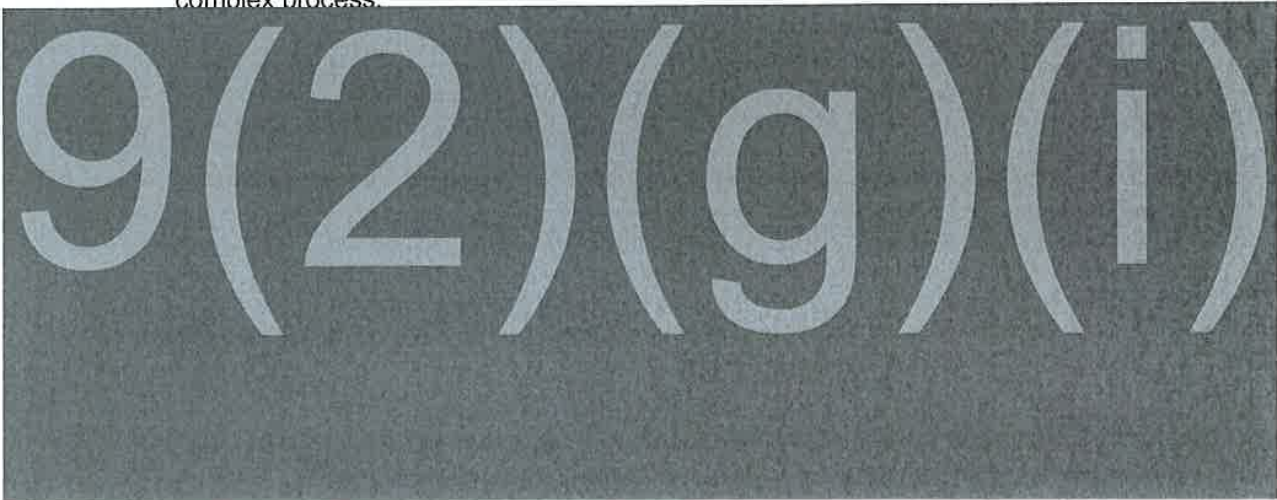
Responding to applications seeking exclusive rights ahead of new regulatory settings

- h. **Note** that we are aware of one developer seeking exclusivity of sites in the Coastal and Marine Area through applying for a resource consent, which may not result in optimal outcomes;

Noted

- i. **Agree** that officials can signal to developers that:

- they should engage in our formal processes from December 2022 around the design of regulatory settings;
- early applications may be 'called-in' by the Minister of Conservation for a Board of Inquiry or Environment Court process to determine the consent. This is likely to be a complex process:



- k. **Forward** this briefing to Hon David Parker, Minister for the Environment and Minister for Oceans and Fisheries, and Hon Poto Williams, Minister of Conservation.

Yes / No

Ayesha M Amin

Ayesha Myra Amin
Acting Manager, Offshore Renewable Energy and Hydrogen

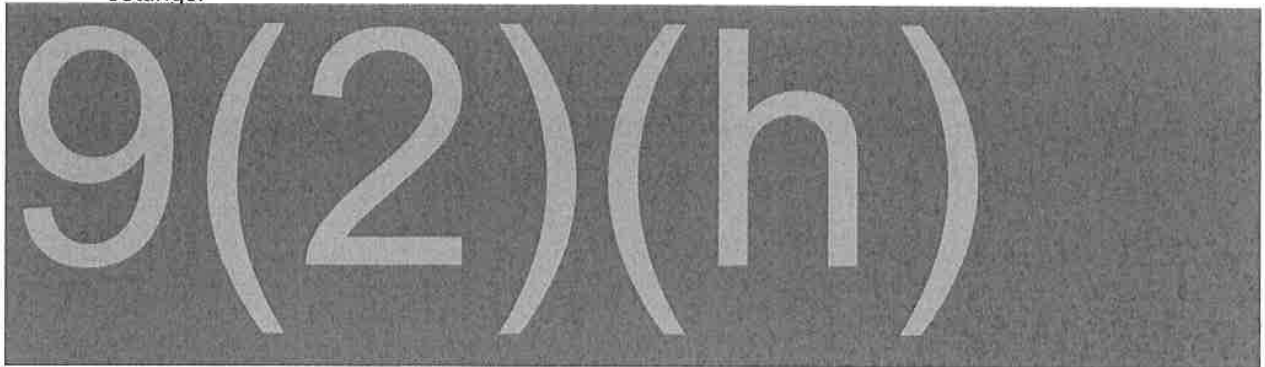
7 / 10 / 2022

Hon Dr Megan Woods
Minister of Energy and Resources

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Background

1. The Emissions Reduction Plan commits the Government to develop regulatory settings to enable investment in offshore renewable energy generation (such as offshore wind farms) and innovation. The Plan notes that regulatory settings are expected to be in place by July 2024.
2. In August 2022, you directed us to undertake work to enable development of offshore renewable energy through an interim solution, ahead of the development of comprehensive settings.



5. In the September briefing, we also updated you on our development of policy options for interim measures and undertook to provide you with further advice in October, along with advice on managing the risk that some developers are likely to seek exclusivity of sites through applying for a resource consent.

Maximising the benefits to New Zealand requires shaping the market with appropriate signals and regulatory interventions

6. Achieving the maximum benefits for New Zealand from the development of offshore renewable energy requires a well-managed market underpinned by appropriate regulatory settings that:
 - help to balance competing priorities such as the alternative economic uses for coastal and marine areas, and the environmental value of these areas,
 - inform the allocation of energy generation locations to suitable developers, and allocation between competing developers,
 - create clear processes and expectations for all parties,
 - integrate with existing regulatory frameworks,
 - give industry the confidence to invest, and
 - recognise and honour the Crown's Te Tiriti obligations and obligations under existing marine settlement legislation (including aquaculture and fisheries) and the Marine and Coastal Area (Takutai Moana) Act 2011.
7. Regulatory settings would specify rules for:
 - "where" offshore generation is permitted
 - "who" can establish and operate offshore energy infrastructure
 - "what" they are permitted and obligated to do in using the resource, and for how long.

8. Fit-for-purpose regulatory settings for offshore wind in particular are desirable because, compared to onshore wind, the offshore domain involves more technical risk/complexity, the optimal offshore spaces are not as abundant and hence there is more competition to manage, and as a 'frontier area' there is a risk of a rush for resources. **Annex One** provides more information on the current regulatory environment.
9. Regulatory settings would seek to align with the system of managing environmental impacts through relevant legislation and processes and with the new system being proposed under the Natural and Built Environment Bill (NBA) and Spatial Planning Bill (SPA).

A two-phased approach to developing regulatory settings would enable more rapid progress

10. While Government has committed to developing comprehensive offshore renewable regulatory settings in 2024, developers are seeking to make investments in exploration and feasibility activities in the next two years. There is therefore an opportunity to provide more clarity now on the Government's preferred processes for allocating exclusive rights to conduct feasibility activities in a given space.
11. A phased approach to developing regulatory settings would seek to:
 - encourage and enable continued market interest in establishing offshore renewable energy generation
 - preserve the Crown's ability to identify suitable areas for potential development and allocate offshore areas to the preferred developers, weighing priorities and objectives appropriately and setting appropriate permissions and obligations
 - maintain momentum towards the 2024 goal of establishing permanent, dedicated regulatory settings for offshore renewables.
12. We propose two phases:
 - **Phase One:** From December 2022 to mid-April 2023, consult on proposed approaches to allocating exclusive rights to conduct feasibility activities, and identify areas with the most potential for development in a way that also manages other competing uses and interests
 - **Phase Two:** In mid-2023, launch further consultation on the remaining aspects of the regulatory settings such as giving effect to Te Tiriti, iwi engagement and participation, the criteria for and conditions of commercial licences, decommissioning obligations, offences and penalties, compliance and monitoring, fees, and alignment with environmental regulatory frameworks.

Phase One: Consulting on the Government's proposed approach to allocating exclusive rights for feasibility activities, and the areas with the most potential for development

13. In December 2022, the Government could launch a public consultation on proposed areas that appear most economically and environmentally suitable for establishing offshore renewable energy infrastructure, and the proposed criteria and process for allocating exclusive rights to undertake feasibility activities.
14. The value of identifying potentially suitable areas is to give stakeholders a clear indication of where developers have expressed most interest and the nature of other competing uses and interests in those areas. MBIE has begun work that can inform the choice of areas. **Annex Two** provides more information on this work and preliminary findings.
15. With regards to processes for allocating exclusive rights, internationally these are usually staged, with initial rights granted solely for surveys and project development (feasibility) and further rights to construct and operate granted based on an agreed process. Australia, for example, offers three types of licences: feasibility, commercial and non-commercial (for research, exploration and demonstration projects). Regardless of format, allocation processes should be clear, transparent and fair to minimise the risk of legal objections, which could in turn undermine investor confidence if a process is judicially reviewed and decisions changed.
16. Public consultation from December 2022 to mid-April 2023 could therefore:
 - present the Government's proposed approach to offshore renewable energy in the context of the drive to decarbonise and meet New Zealand's net-zero goals, along with the economic development (and export) opportunities that offshore renewables offer
 - discuss overseas regimes for comparison (especially the Scottish and Australian models)
 - outline the indicative approach to identifying offshore renewable energy areas
 - identify potential areas for consultation, explaining the criteria for selecting these areas, how they interact with existing uses and values of the marine space, and the implications of identifying them (this approach is similar to Australia's model)
 - propose approaches to allocating exclusive rights for the purpose of feasibility activities, including the role of iwi and hapū
 - foreshadow other potential aspects of the regime to shape developers' incentives.



Interactions with the proposed Spatial Planning Act and National and Built Environments Act

18. A new resource management system that applies to the Coastal and Marine Area is proposed to be delivered through two Acts: the Spatial Planning Act (SPA) and the Natural and Built Environments Act (NBA).
19. The SPA will require a regional spatial strategy for each region, to be developed by central government, local government and Māori working together. Strategies will identify areas that are suitable for development, including for example renewable energy, and the NBA will include an allocation process. Together, they include regulatory frameworks for spatial planning and allocation that could be used to deliver settings for offshore renewable energy.

20. However, these reforms do not currently extend to the EEZ and any proposals for offshore renewable energy regulatory settings need to apply consistently to both the Coastal and Marine Area and EEZ.

9(2)(f)(iv)

Phase Two: Consulting on the remaining aspects of the regulatory regime

22. In mid-2023, Phase Two could launch a further consultation on remaining elements such as:
- the interface with the RMA, Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act), SPA and NBA
 - giving effect to Te Tiriti
 - iwi engagement and participation
 - the criteria and process for granting commercial operating licences to developers (including offtake agreements, and how any requests for government financial support would be considered)
 - the conditions and obligations associated with commercial licences, such as those relating to management plans, local impact and community engagement
 - decommissioning obligations and requirements
 - offences and penalties
 - compliance and monitoring
 - fees.
23. This phase would draw on the consultation findings from Phase One, and would also focus on iwi, industry, local authorities, affected communities, and other stakeholders.

9(2)(g)(i)

9(2)(g)(i)

9(2)(iv)

9(2)(f)(iv)

Responding to applications for exclusive rights ahead of the new regulatory regime

Applications for consent could be lodged before the new regulatory settings are established

9(2)(g)(i)

9(2)(g)(i)

We propose ways to respond to potential early applications

36. We propose signalling to developers that:
- they should engage in our formal processes from December 2022 around the design of regulatory settings,
 - early applications may be 'called-in' by the Minister of Conservation for a Board of Inquiry or Environment Court process to determine the consent. This is likely to be a complex process.

9(2)(g)(i)

Agency views

9(2)(g)(i)

Next steps

39. A phased approach to the regulatory regime would involve the following timeline for announcements and milestones:
-

¹ MBIE's Electricity Market Measures project is considering whether there is a case for policy interventions, such as through offtake mechanisms, to bring forward or de-risk investment in renewable generation projects and to ensure orderly retirement of existing non-renewable generation to help manage supply disruption risk and/or wholesale price volatility. It is too early to know whether this work will result in decisions to support or reduce market risks for new renewable energy development, whether offshore or onshore.

Mid-November 2022	Ministerial consultation with Cabinet colleagues on draft discussion document for Phase One as described in this brief.
December 2022	Cabinet consideration and Ministerial announcement of discussion document on Phase One. (Lodge for DEV 1/12; DEV 7/12; Cabinet 12/12; announcement on 13/12)
December 2022 to mid-April 2023	MBIE conducts public consultation on Phase One, including face-to-face meetings with iwi. <i>Note: We have proposed a longer consultation than is usual due to the intervening summer holidays and the potential sensitivity of this issue.</i>
Mid-2023	Launch of discussion document on Phase Two.

40. As we develop options for the public consultation document and consult, we will provide you with advice in parallel around implementing any aspects as an interim measure in 2023.

Annexes

Annex One: New Zealand's current regulatory environment

Annex Two: Identifying areas with potential for offshore renewable energy developments

Annex One: New Zealand’s current regulatory environment

Offshore wind developers can currently conduct feasibility activities in the Coastal Marine Area and Exclusive Economic Zone with limited barriers

1. Prior to construction, developers typically undertake a range of feasibility assessments and environmental studies to support eventual consent applications. This includes wind and wave monitoring, bathymetric surveys, geotechnical surveys, and surveys of the benthic environmental, marine mammals and seabirds. Onshore and human impact surveys may also be conducted.
2. In the Exclusive Economic Zone (EEZ), ‘marine scientific research’ is a permitted activity provided certain conditions are complied with.² Seismic surveying is also a permitted activity provided it complies with the Department of Conservation’s 2013 Code of Conduct.³ These activities could continue to occur and be regulated by the Environmental Protection Authority (EPA).
3. In the Coastal Marine Area, the classification of an activity varies by regional council. If it is permitted, the activity can be carried out without obtaining a resource consent, provided the permitted activity standards are met. If it is controlled, a resource consent is needed and the local authority will grant the consent if the controlled activity standards and terms are met. Whether a feasibility activity is permitted or controlled depends on the coastal plan for the specific region. However, these activities could continue to occur subject to developers applying for appropriate consents from relevant local authorities.
4. In the areas that offshore wind developers are seeking to explore (Waikato, Taranaki and Southland), activities have a range of classifications from permitted to controlled.

Offshore wind developers may also construct wind farms in the CMA and EEZ subject to securing relevant consents

5. To place structures in the CMA and/or EEZ, developers will require either a resource consent (coastal permit) or marine consent (or potentially both).
6. In the Coastal and Marine Area, the standard consenting pathway is by application to the relevant consent authority (which, in the case of offshore wind development, will be the relevant regional council(s)). An application to construct an offshore wind farm in the CMA is likely to be publicly notified and it is very likely that a hearing would be required. A decision of the council on an application is appealable to the Environment Court, including by any submitter. The Court hears the appeal ‘de novo’, ie considers the application and evidence afresh. Further rights of appeal on questions of law are available.
7. There are alternative pathways for resource consent applications. An applicant may seek that the application be referred directly to the Environment Court for determination. Or, applications which are considered to be “proposals of national significance”, can be called by the Minister for Conservation to be referred to a Board of Inquiry (or the Environment Court). A Board of Inquiry must determine the application within nine months. A decision of a Board of Inquiry may be appealed to the High Court on a question of law only.

² See [Regulation 5](#) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects—Permitted Activities) Regulations 2013.

‘Marine scientific research’ is defined as ‘research (whether fundamental or applied) carried for the purpose of increasing knowledge about the marine environment, marine resources, or living marine organisms’. It includes any related scientific activity, but excludes any research carried out in relation to prospecting, exploration, or mining, and seismic surveying.

³ See [Regulation 7](#) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects—Permitted Activities) Regulations 2013.

8. In determining applications for resource consent through any of the RMA consenting pathways, a primary consideration for the decision-maker is whether the application meets the purpose and principles set out in part 2 of the RMA (considered in light of any direction given by relevant planning instruments promulgated by central and local government). The purpose of the RMA is to "promote the sustainable management of natural and physical resources".
9. Part 2 also sets out a number of principles which guide decision-making under the RMA. Particularly relevant to this situation is the obligation under section 6 that decision-makers must recognise and provide for a number of matters of national importance, including:
 - the preservation of the natural character of the coastal environment (including the coastal marine area)
 - the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development
 - the protection of significant habitats of indigenous fauna
 - the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga
 - the protection of protected customary rights.
10. Under section 7, decision-makers must have particular regard to a number of other matters, including, relevantly:
 - kaitiakitanga
 - the efficient use and development of natural and physical resources
 - the benefits to be derived from the use and development of renewable energy.
11. Finally, section 8 requires decision-makers to take into account the principles of the Treaty of Waitangi.
12. Additionally, decision-makers must have regard to:
 - any actual and potential effects on the environment of the proposed activity
 - any measure proposed or agreed to ensure positive effects on the environment to offset or compensate for any adverse effects of the proposed activity on the environment
 - the relevant provisions of planning documents (which include national environmental standards, national policy statements, the New Zealand Coastal Policy Statement (NZCPS), regional policy statements and regional and district plans)
 - if the consent application relates to an activity in an area where a planning document prepared by a customary marine title group under the Marine and Coastal Area (Takutai Moana) Act 2011 (MACA) applies, to any resource management matters in that document until all the relevant local authority's obligations in respect of that document have been fulfilled.
13. There are a number of higher order planning documents which will be relevant to the development of offshore wind. The National Policy Statement on Renewable Electricity Generation provides that the need to develop, operate, maintain and upgrade renewable electricity generation activities throughout New Zealand, and the benefits of renewable electricity generation, are matters of national importance. The document contains provisions which elevate the importance of providing for renewable electricity in decision-making under the RMA. The National Policy Statement on Electricity Transmission contains a number of

policies promoting the operation, maintenance, upgrading and development of the electricity transmission network which will be relevant to any transmission lines proposed.

14. There are also higher-order planning documents focused on coastal management, such as the New Zealand Coastal Policy Statement, with which offshore wind development would need to be consistent. Regional coastal plans (prepared by regional councils) will also be particularly relevant to offshore wind development.
15. The status of the proposed activity under the relevant plans is also relevant. Of particular importance is the additional 'gateway' test which applies to 'non-complying' activities. If the consent application is classified as non-complying under the relevant plans, a decision-maker must be satisfied either that:
 - the adverse effects of the proposed activity on the environment will be minor; or
 - the proposed activity is not contrary to the objectives and policies of the relevant plans.
16. In the EEZ, the EPA will receive and undertake initial processing of a marine consent application. Such an application would almost certainly be publicly notified and decided by a Board of Inquiry appointed by the Minister for the Environment. A hearing may also be held if a submitter requests it. A Board of Inquiry must make a decision on an application no later than nine months after public notification. Where marine consent is granted, this will typically include imposition of a range of conditions of consent that must be complied with. The maximum marine consent duration under the EEZ Act is 35 years. A decision can be appealed by the applicant or any submitter to the High Court on a point of law.
17. An activity carried out partly in the EEZ or continental shelf and partly in the territorial sea (CMA) is defined as a 'cross-boundary activity' under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act). Where a person proposes to undertake a cross-boundary activity, that person can apply separately for EEZ Act and RMA consents or can prepare a joint application covering both.

Annex Two: Identifying areas with potential for offshore renewable energy developments

1. Marine spatial planning processes, even if targeted to a particular sector and delivered at a relatively high level, can make any subsequent permitting process more predictable and certain. Spatial planning processes can consider and balance other existing users as well as significant environmental, cultural, socio-economic and security rights and interests.
2. Economic considerations include wind speed and power, water depth, distance to ports and staging areas, grid connections, and proximity to users. Planning for offshore renewable energy will also need to be responsive to cultural obligations under Treaty settlement Acts. Environmental considerations include protected areas under the Marine Management Acts⁴ and Marine Reserves⁵, along with areas known to be important habitats for threatened species.
3. The needs of other users are also relevant. Other uses include cable and pipeline zones, high traffic shipping routes⁶ and NZ Defence Force firing practice, exercise and submarine safe bottoming areas⁷; impact of existing petroleum⁸ and minerals⁹ permits and infrastructure; areas of high intensity fishing effort (2007-19)¹⁰.

MBIE has begun early work on marine spatial planning

4. Identified areas could be large (as in Australia's zones) and developers would be asked to propose preferred sites, or areas could identify specific sites (as in the US). The latter approach would require more up-front work and may limit the ability of developers to optimise locations. However, identifying specific sites would simplify subsequent permitting processes as it avoids the risk of overlapping sites.
5. As can be seen in Figures 1-3 below, early findings confirm areas of significantly high wind energy, particularly in central and southern regions, that align with suitable water depth for fixed turbines and acceptable distance to onshore grid connection points. These regions would lend themselves to a first phase of development.
6. For the Taranaki region, particular attention will need to be paid to the impact of oil and gas infrastructure and existing petroleum and minerals permits.
7. It should be noted that there is a smaller potential resource to the northeast of East Cape, but there may be challenges with national grid connection.

⁴ <https://www.mpi.govt.nz/fishing-aquaculture/sustainable-fisheries/protected-areas/>

⁵ <https://www.doc.govt.nz/nature/habitats/marine/type-1-marine-protected-areas-marine-reserves/>

⁶ Derived from Automatic Information System (AIS) data, provided by Maritime NZ

⁷ https://www.linz.govt.nz/sites/default/files/cust/hydro_202223-almanac_full-nautical-almanac_pdf.pdf

⁸ <https://data.nzpam.govt.nz/permitwebmaps/?commodity=petroleum>

⁹ <https://data.nzpam.govt.nz/permitwebmaps/?commodity=minerals>

¹⁰ <https://data-mpi.opendata.arcgis.com/maps/mpi-all-fishing-intensity-2007-2019/about>

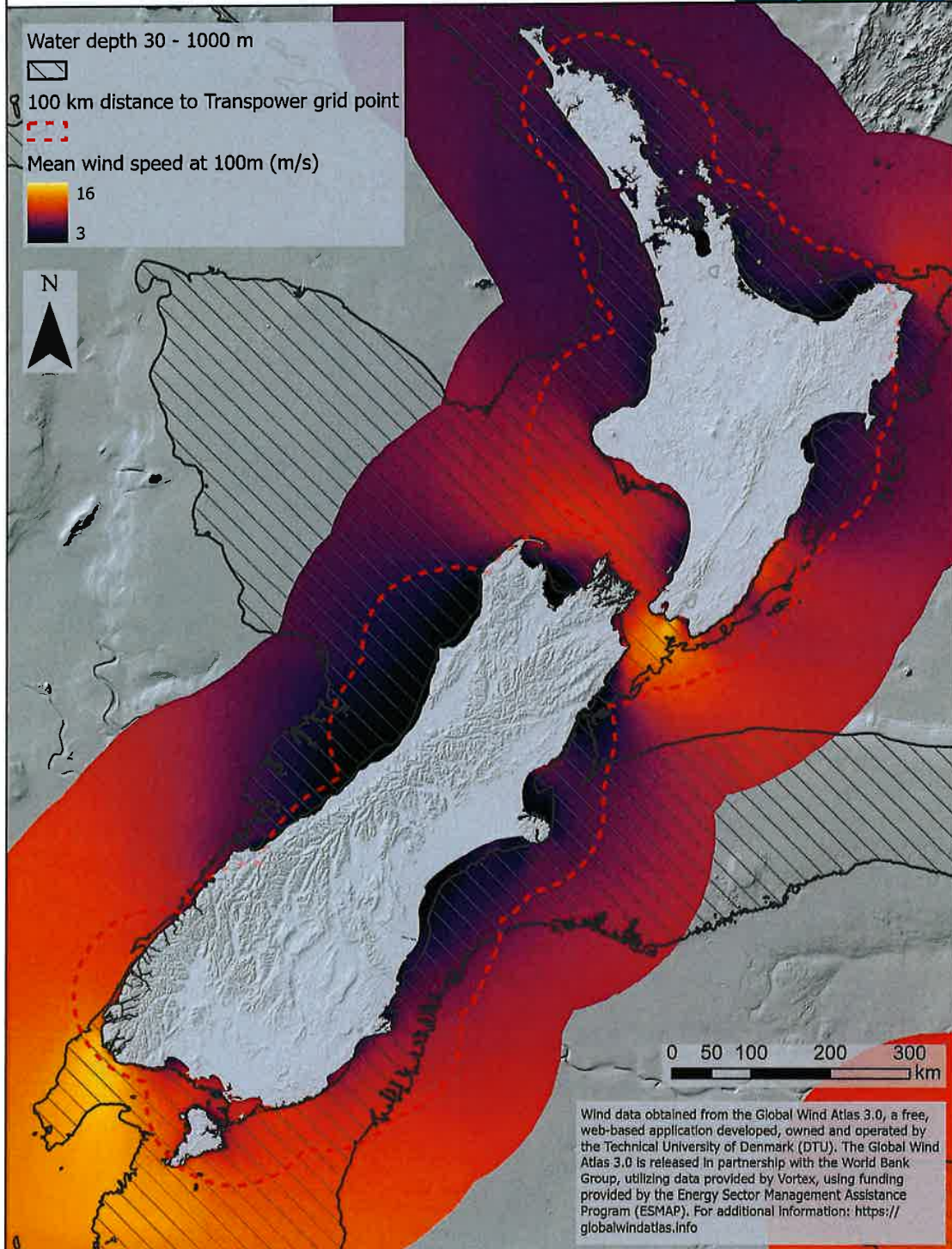


Figure 1

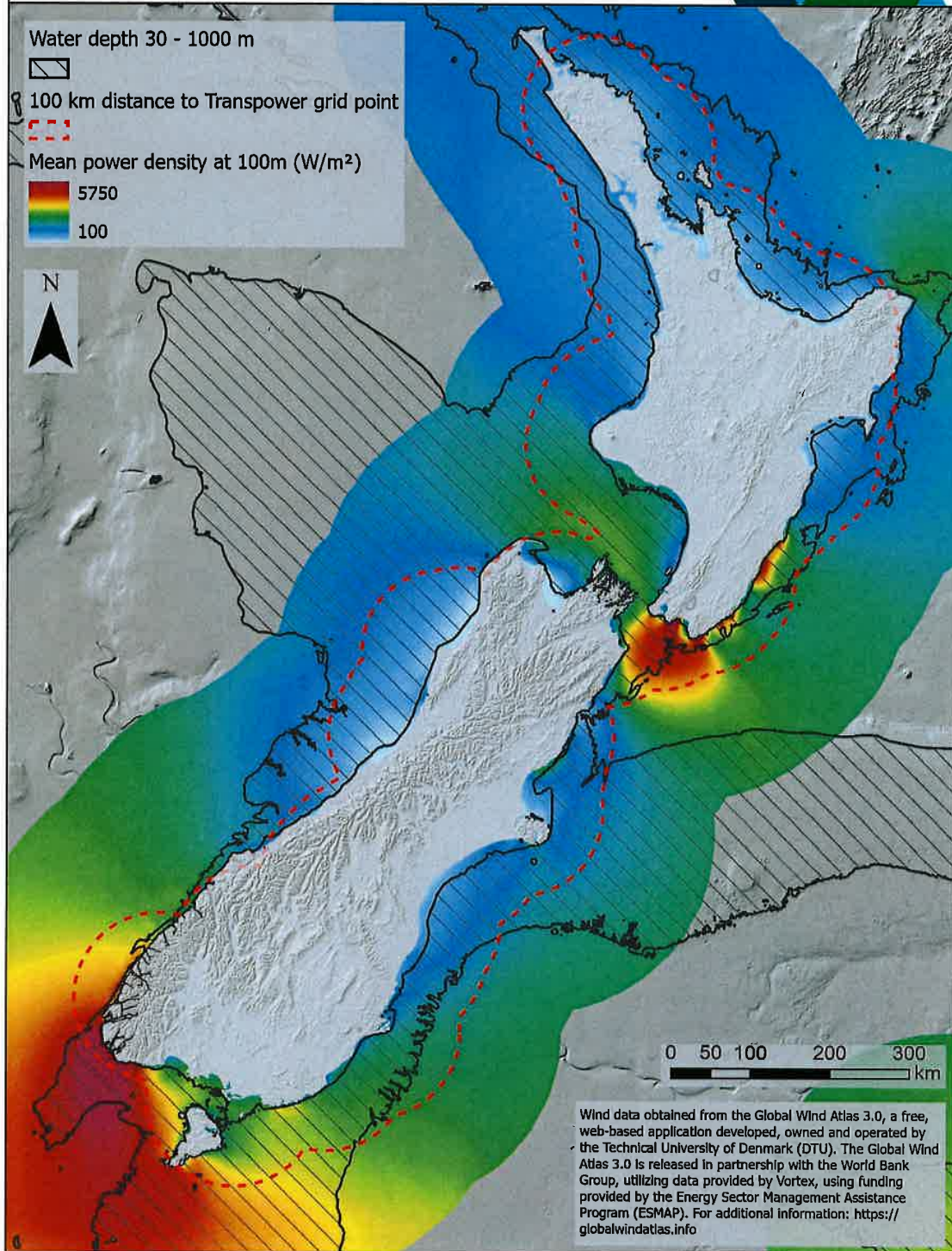


Figure 2

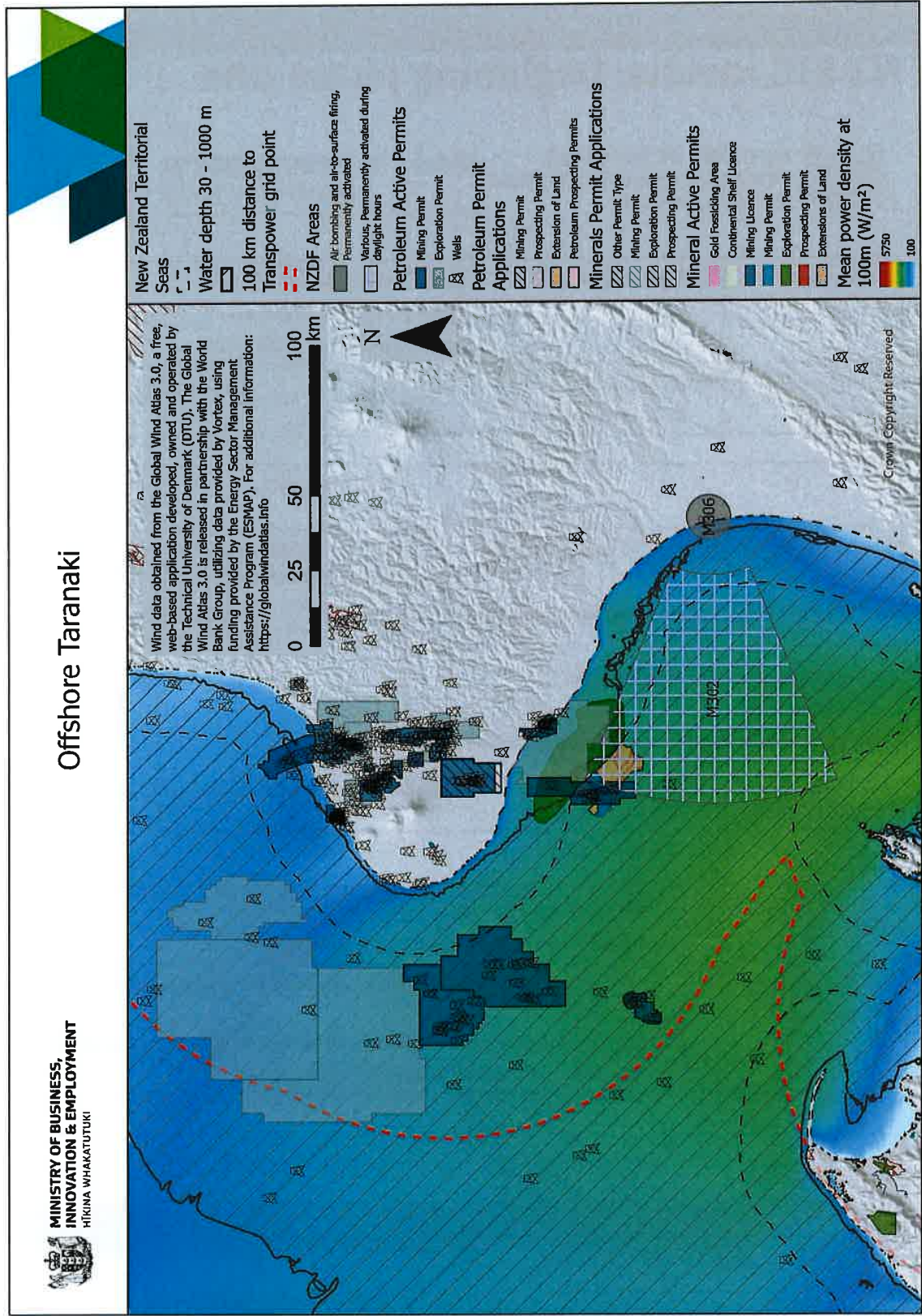


Figure 3