

Energy Outlook



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Welcome to Energy Outlook

Welcome to the second edition of Simpson Grierson's Energy Outlook. In this edition, we take stock of the new Government's impact on the renewable energy sector and consider what may be in store for the rest of 2024. We also examine the Fast-Track Approvals Bill and the energy sector's response to it.

We have already observed a significant shift in approach during the first six months of the new coalition Government. The new Government has given very clear indications that it intends to encourage renewable energy development by streamlining consent processes, incentivising investment, and reducing regulations. Anecdotally, the new Government is also interested in hearing from key industry participants as to what reforms are necessary to deliver New Zealand's net zero emissions targets and remove barriers to a thriving energy sector.

The renewable energy sector is also grappling with new technological advancements, supply chain adjustments and developments, and the ongoing challenge of sourcing the key components for renewable projects. Despite these hurdles, the sector's pace of innovation and adaptation is rapidly growing, with an exciting and challenging journey ahead.

We expect the remainder of 2024 to be a year of significant growth and transformation in the renewable energy sector. We hope you find this edition of Energy Outlook both enlightening and useful in charting your course through these exciting times.

Ngā mihi,





Michael Sage Partner

Simpson Grierson Energy Outlook 2024

Navigating the Impact of New Government Policies on Renewable Energy in New Zealand

Government policy plays a pivotal role in shaping the renewable energy sector's trajectory towards net zero, with the new Government confirming its commitment to New Zealand's international and domestic targets.

There have been policy developments affecting the renewable energy sector, with more significant changes indicated for the year ahead. In this article, we look at the Government's actions in its first 100 days, its commitments for the next quarter, and its long-term promises for the renewable energy sector.

If the Government follows through on its policy commitments, we expect to see comprehensive changes to existing consent processes, resulting in a better environment for renewable energy growth. 2024 looks set to be a year of significant change for New Zealand's renewable energy sector.

The First 100 Days

On 29 November 2023, the Government released its plan for its first 100 days in power. The Government committed to:



• Stop work on the Lake Onslow pumped hydro scheme:

The Ministry of Business, Innovation and Employment (MBIE) confirmed on 1 December 2023 that all work on the \$16 billion pumped hydro scheme had ceased, and existing work was set to be disestablished. MBIE is continuing its work to ensure sufficient energy storage for electricity generation as part of a wider review of the electricity system, including potential "dry year" solutions.



 Begin efforts to double renewable energy production, including drawing up a National Policy Statement on Renewable Electricity generation:

The Government stated that it has sought advice from officials, but no concrete actions have been announced and the Government has not yet released a draft national policy statement. There has been no word on whether the Government plans to build on the Proposed National Policy Statement for Renewable Electricity Generation that MBIE consulted on in 2023, or whether it intends to start with a blank slate. In the meantime, the National Policy Statement for Renewable Electricity Generation 2011 remains in force.



• Repeal the Clean Car Discount Scheme:

The Clean Car Discount ended on 31 December 2023 and the Government introduced road user charges for most light electric and hybrid vehicles on 1 April 2024 by way of a pre-paid distance licensing regime (currently \$76 per 1000 kilometres for fully electric vehicles under 3,500kg and \$53 per 1,000 kilometres for plug-in hybrids).



Repeal the Spatial Planning and Natural and Built Environment Act; introducing a fast-track consenting regime

On 20 December 2023, Parliament passed legislation repealing the Spatial Planning Act and the Natural and Built Environment Act in Phase 1 of its work programme to reform the Resource Management Act 1991. On 7 March 2024, the Government introduced the Fast-Track Approvals Bill to create a "one-stop-shop" for consents and other regulatory approvals for projects of national significance. We discuss the Fast-Track Approvals Bill in more detail later in this edition.

Commitments for the Next Quarter

On 2 April 2024, the Government released its action plan for quarter two (from 1 April to 30 June 2024). There is only one renewable energy task on the agenda, which is a commitment to taking "decisions on measures to increase investment in renewable electricity generation".

The Government also indicated that it would "take decisions on the removal of the ban on offshore oil and gas exploration" during the upcoming quarter. National, ACT, and New Zealand First all campaigned on repealing the ban on new offshore oil and gas exploration permits and on 9 June the Government announced that it would introduce legislation to repeal the ban in the second half of 2024.

Resource Management (Freshwater and Other Matters) Amendment Bill

On 23 May 2024 the first Bill to amend the RMA was introduced into Parliament. The Resource Management (Freshwater and Other Matters) Amendment Bill will be sent to the Primary Production Select Committee for consideration after its first reading.

The Bill focuses on targeted changes for freshwater consenting, farming, coal mining, and biodiversity. The freshwater consenting changes include removing the need (and ability) to consider the hierarchy of obligations (Te Mana o Te Wai) contained in the National Policy Statement for Freshwater Management 2020 (NPSFM 2020) in resource consent processes until the NPSFM 2020 is replaced. These changes would assist in the consenting of renewable energy projects that affect the health and well-being of water bodies and freshwater ecosystems.

Importantly for the energy sector, the Bill seeks to create a more streamlined and efficient pathway to create or amend national direction under the RMA. This pathway will be available to use when the National Policy Statement for Renewable Electricity Generation (NPS-REG) and National Policy Statement for Electricity Transmission (NPS-ET) are reviewed, which are changes to national policy that have been well signalled by Government, although it has not yet announced a timeframe for the review.

The key changes to accelerate the process to prepare or amend national direction are:

- Creating a single process for preparing national environmental standards and national policy statements, instead of having the option to use a board of inquiry process.
- Enabling the Minister to amend existing national direction, without using the standard process, if the amendment is for specified purposes (including implementing an international obligation, giving effect to an emissions reduction plan or national adaptation plan, changing timeframes, or making minor amendments).
- Creating a new bespoke, more flexible evaluation process for national direction which is more general and focuses on effectiveness, impact on the environment and impact on the economy, and reasonably practicable alternative options.



Long-Term Policies for 2024 and Beyond

On 8 April 2024, the Government announced nine Government targets it intends to deliver by 2030, including a clear commitment to achieving net zero emissions in Target Nine. There were no targets explicitly related to renewable energy, but the Government has committed that by 2030 it will be on track to meet New Zealand's 2050 net zero climate change targets, with total net GHG emissions of no more than 290 megatonnes from 2022 to 2025 and 305 megatonnes from 2026 to 2030 (in aggregate). For context, New Zealand's net GHG emissions in 2020 were approximately 79 megatonnes.

Seven months in, most Government action to date has been stopping or repealing work done by the previous Government. There have been some initial steps towards expediting renewable energy projects and streamlining the consent process, as discussed above. However, in its Electrify NZ Plan, the National Party made a number of commitments, including to:

- Require decisions on resource consents for nonhydro renewable generation within one year of application.
- Increase the minimum duration of consents for all renewables, including hydro, to 35 years.
- Eliminate consents for upgrades to existing transmission and local lines infrastructure and most new infrastructure.

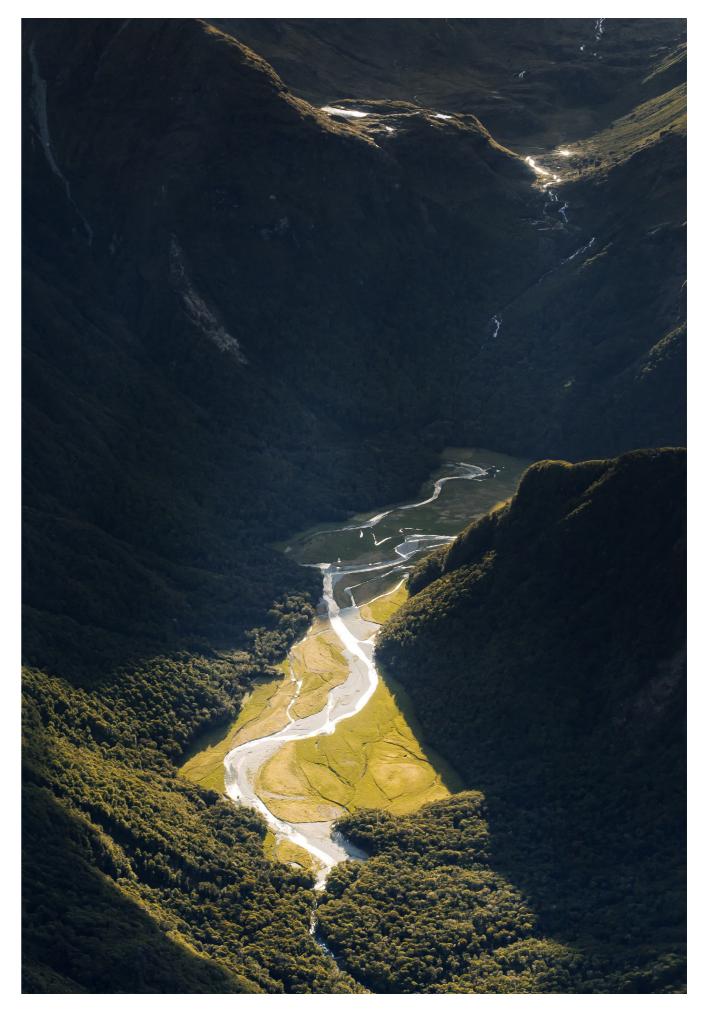
Electrify NZ also provides for the issue of a new NPS-REG which will outline conditions that can be attached to new consents for solar, wind, geothermal and biomass and make them a controlled activity under the RMA. Provided a new development meets the conditions, councils will not be able to decline consents, making consents for most types of renewable generation near-automatic provided national rules are met.

Electrify NZ provides that NPS-REG will be issued within a year of the Government taking office, with a consultation draft meant to be available within six months, which would have been late May 2024. Although the Government has not yet issued a consultation draft, a recently released briefing to the Ministers for Energy, the Environment, and RMA Reform indicated that the Government is still committed to updating the NPS-REG and is planning to address a number of the Electrify NZ commitments through its work programme for RMA reform. The work programme is currently in phase 2 of the reform, which will take the form of two Bills to amend the RMA. The first is discussed above. The second, intended to be introduced later this year, will make changes to the RMA to support the Electrify NZ policies which seek to double renewable energy in

A big unknown for the renewable energy sector is whether the Government intends to progress modern slavery legislation during the current term. This has the potential to significantly increase compliance requirements for many in the energy sector. We discuss modern slavery further in the next part of this update.

In addition to Government policy commitments, we are also expecting MBIE's response to its consultation on advancing New Zealand's Energy Transition and the release of the Energy Roadmap in late 2024.

If the Government meets these commitments, the renewable energy sector is poised to experience significant change in 2024. The sector will have to adapt to substantial regulatory change and shifting investment patterns. Investors and developers will need to navigate these changes quickly but carefully, ensuring that they are in a position to take advantage of favourable policy changes as soon as possible.



Modern Slavery

One of the key unknowns for the renewable energy sector is whether the Government intends to progress modern slavery laws this term. Globally, the renewable energy sector is becoming increasingly concerned about the impact of modern slavery on the transition to renewable energy. In 2023, the Global Slavery Index found that for over half of G20 countries, solar panels are in the top five imported goods most at risk of being produced with forced labour. A 2022 report by the Clean Energy Council found that:



 Approximately 40-45% of the world's solar-grade polysilicon originated from the Xinjiang Uyghur Autonomous Region of China, where it's alleged that approximately 2.6 million Uyghur and Kazakh citizens are subject to "surplus labour" programmes.



 The rapid growth in the demand for balsa wood, used inside wind turbine blades, has allegedly led to exploitation of workers in the Amazon region of Ecuador and incursions on indigenous land rights in Peru.



• 15-30% of global cobalt production, used in lithium-ion batteries, is sourced from small-scale mining in the Democratic Republic of the Congo. It's estimated that at least 35,000 children, some as young as seven, work in cobalt mines.



Several of New Zealand's major trading partners already have modern slavery legislation in place, with both Australia and the United Kingdom planning to strengthen their current regimes. In 2022, MBIE consulted on proposed modern slavery legislation that would have required:

- All organisations in New Zealand, regardless of size, to take action if they became aware of modern slavery in their international operations and supply chains, and modern slavery and worker exploitation in their domestic operations and supply chains.
- Entities with annual revenue over \$20 million to disclose the steps they are taking to address modern slavery in their international operations and supply chains, and modern slavery and worker exploitation in their domestic operations and supply chains.
- Entities with annual revenue over \$50 million to undertake due diligence to prevent, mitigate, and remedy modern slavery in their international operations and supply chains, and modern slavery and worker exploitation in their domestic operations and supply chains.

In August 2023, the previous Government announced that it was planning to draft modern slavery legislation to establish a public modern slavery register to provide transparency over organisations' supply chains. The proposed legislation represented a significant step back from the MBIE consultation, as it would remove the obligations to undertake due diligence and the requirement to take action, leaving only the obligation for entities with annual revenue over \$20 million to disclose the steps they are taking to address modern slavery in their international operations and supply chains, and modern slavery and worker exploitation in their domestic operations and supply chains.

At the time of the announcement, the previous Government estimated that it would take six months for MBIE to draft the proposed modern slavery legislation, meaning that it would not be ready until after the 2023 election. MBIE has not yet released a draft, likely because the new Government has not decided whether it intends to progress modern slavery legislation this term. Prime Minister Christopher Luxon has previously indicated strong support for modern slavery legislation, but Workplace Relations and Safety Minister, Brooke van Velden, has remained non-committal so far. New Zealand committed to taking steps to prevent modern slavery in the United Kingdom-New Zealand Fair Trade Agreement, which took effect on 31 May 2023, and pressure is growing, both domestically and internationally.

Regardless of whether the Government enacts modern slavery legislation this term, those in the renewable energy sector should proactively consider integrating modern slavery prevention strategies into their operational frameworks. Proactive action is particularly important because many investors and financial institutions are already bound by modern slavery laws in other jurisdictions, leading to hesitancy in engaging with New Zealand-based developments whose supply chains are not transparent or verified as free from modern slavery practices. Renewable energy developers in New Zealand are already facing inquiries from investors and funders about the origins of components for their developments.

In addition, the growing international focus on ethical sourcing is likely to lead to growing demand for, and lower availability of, ethically sourced renewable materials. By proactively establishing and maintaining slavery-free supply chains, New Zealand's renewable energy developers can not only align more closely with global best practices but also position themselves ahead of growing international demand. Getting ahead of potential changes could enhance New Zealand's appeal to conscientious investors and partners and secure a more stable and ethical foundation for New Zealand's transition to renewable energy.



Fast-Track Approvals: A One-Stop Shop?

Since its introduction on 7 March 2024, the Fast-Track Approvals Bill (FTA Bill) has garnered significant attention, signalling the Government's clear intention to cut red tape on infrastructure developments with regional and national significance. The cost and delays associated with consenting large projects in New Zealand are well documented, with some projects facing years of delay or litigation before the project starts or is abandoned.

Two key problems for consenting renewable energy projects are that:

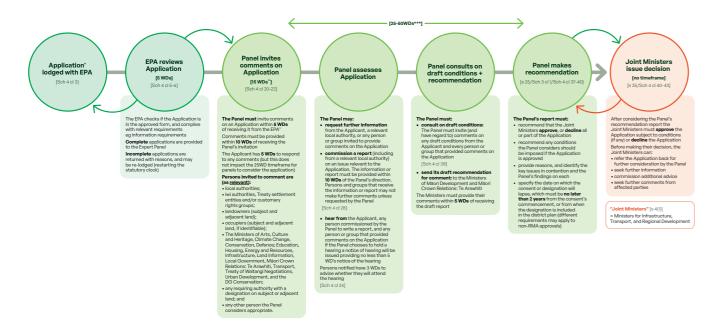
- They often require a range of consents and other regulatory approvals, each with its own appeal rights or judicial review risk; and
- The submission and appeal rights under the Resource Management Act 1991 (RMA) mean that a project can be tied up in litigation for years, often by a small number of aggrieved stakeholders.

The FTA Bill integrates various approval processes—including those under the RMA, Wildlife Act, Heritage New Zealand Pouhere Taonga Act, and others—into a single streamlined procedure overseen by an expert panel but with final decisions on whether a project will be approved to be made by three Government Ministers.

If a project receives approval under the Fast-Track Approval process, the approval can only be appealed on a point of law (i.e. showing that the panel has made a mistake of law), and appeal rights are limited to applicants, submitters, the Attorney-General, and any person with a greater interest than the public generally. This should have the effect of reducing the scope of appeals, making the consenting process more efficient and certain, and facilitating faster project timelines.

However, there are several ministerial decision points in the current version of the FTA Bill. Ministerial decisions remain subject to judicial review and environmental groups, including Forest and Bird, have promised to challenge ministerial decisions if the FTA Bill passes. If a project faces judicial review, particularly at multiple points in the process, there is the real potential for it to not have a "fast" consenting experience under the FTA Bill as currently framed.

Process and timeframes for consideration of a Part-A listed project under the Fast-track Approvals Bill: core RMA process



Click on image to enlarge

Progress on the Bill

Submissions on the FTA Bill closed on 19 April 2024 and 27,000 submissions were made. Simpson Grierson made a detailed submission on a range of technical aspects about the FTA Bill which can be viewed here. Select Committee hearings are currenting taking place. 550 organisations and 550 individuals have been given an opportunity to be heard orally. Partner Sally McKechnie and Senior Associate Hamish Harwood presented Simpson Grierson's submission to the Select Committee in May.

Several Renewable Energy Generators have also made wide ranging submissions on the FTA Bill. Key themes from these submissions include:

- That insufficient consideration has been given to the overall balancing of the needs for economic development and the sustainability of the environment.
- That the aim of "more economic growth, more projects, more roads, more mines, more renewable energy, more building stuff" overall has the potential to result in more infrastructure problems – as a result of insufficient scrutiny and/ or a lack of adherence to cohesive regional spatial planning.
- There is a need for more specific criteria relating to the security of electricity supply and/or increasing renewable electricity generation.
- Whether the fast-track process can be used to change or vary existing consents or whether it is necessary to implement a new project.
- That the regime for reconsenting needs improvement.
- That the suggested 2-year timeframe for consents to lapse should be extended given financial/ investment considerations of large-scale projects (and timeframes should be more relaxed generally).
- The need to incorporate the Public Works Act more fully.
- The need to align and focus various processes under the FTA Bill generally.

The coalition Government's intention to cut red tape, in order to speed consenting up, is abundantly clear. The 'one-stop' shop aspect of the FTA Bill is an innovation that will be welcomed by proponents of projects that need to engage with and obtain approvals from multiple regulatory bodies that are often uncoordinated.

However, the FTA Bill as drafted needs significant work if it is to achieve its purpose which is "to provide a fast-track decision-making process that facilitates the delivery of infrastructure and development projects with significant regional or national benefits".

Applications to be Listed in the Bill

Between 3 April and 3 May 2024, the Government opened applications to be listed in a schedule of the FTA Bill. Listing will mean that the project is automatically referred into the fast-track process laid out in the FTA Bill.

The Government has appointed an independent advisory group consisting of David Tapsell, Rosie Mercer, Vaughan Wilkinson, David Hunt, Mark Davey, and Murray Parrish to advise on which projects should be included in the FTA Bill. We understand that several hundred applications were made for inclusion in the Schedules to the FTA Bill. Simpson Grierson experts assisted several clients across a range of industries with lodging applications to be listed in the FTA Bill.

Once a project is included in the approvals process, it is referred to expert panels to make substantive recommendations about the projects, including any conditions.

The Ministers make the final decision to grant or decline the approvals and consents after considering the panel's recommendations. They can also ask the panel to reconsider any recommendations, commission additional advice or seek further comments from affected parties.



Future of Offshore Wind in New Zealand

In order for New Zealand to achieve net-zero by 2050, the Government is in favour of the energy sector exploring offshore wind. A comprehensive National Impact Study (Study), prepared by PwC and commissioned by a consortium of offshore wind developers, infrastructure providers, economic development agencies and energy sector associations, sets out the potential roadmap for offshore wind energy to significantly contribute to the nation's economic growth, energy security, and environmental sustainability.

The report was designed to support national discussions on the feasibility and potential impacts of offshore wind in New Zealand and to assess how it could contribute to New Zealand's net-zero 2050 target and enhance energy security. We examine the key findings below:



Offshore wind presents a significant economic opportunity, with projections suggesting it could inject between NZ\$12 billion and NZ\$94 billion into the economy over the lifetime of the projects envisaged in the uptake scenarios.



The construction phase in the different uptake scenarios could create between 5,000 and 30,000 jobs, with up to 3,900 ongoing operational roles.



To meet its net-zero targets, New Zealand needs to triple its renewable energy production. Offshore wind could reduce national energy-related emissions by 18% to 30% (excluding industrial feedstocks).



Offshore wind is the least emissions-intensive of current renewable generation options and generates power more consistently and efficiently.



The proposed locations for offshore wind farms are mostly a long way offshore in relatively inhospitable environments, so they are likely to have lower visual and community impacts.

Regulatory Environment for Offshore Wind

Currently, there is no dedicated regulatory regime for offshore wind in New Zealand. While prospective wind farmers could apply for marine consents to authorise the construction and operation of an offshore windfarm now, New Zealand needs a permitting regime that allocates space to developers through prospecting and then generation licences. The previous Government produced two consultation documents during 2023 that generated useful engagement on the topic.

The current Government is committed to creating a regulatory framework for offshore wind and has indicated that there will be a 2-permitting approach, with a 7-year feasibility licence that provides the exclusive right to apply for a commercial permit for up to 40 years. The Government is planning to introduce legislation by the end of 2024 which will likely pass by mid-2025. The Government is planning to open the first round of permit applications by late 2025, with the first feasibility permits granted in 2026.

It is unclear whether any new regulatory regime will amend the consenting requirements for activities at sea. Currently, consents for an offshore wind farm would fall under the RMA if within 12 nautical miles of the coast or the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act) for developments in the Exclusive Economic Zone (EEZ), between 12 and 200 nautical miles of the coast.

One notable clue is in the Fast-Track Approvals Bill. Clause 18(I) of the Bill makes offshore renewable projects ineligible for the Fast-Track process until "separate offshore renewable energy permitting legislation comes into force". Clearly, this Government is anticipating both a new permitting regime passing into law, and that offshore renewable projects will be able to use the Fast-Track regime in due course.

The consenting experience under the EEZ Act regime has been mixed. Overall, the EEZ regime is protectionary. Seabed mining activities have, to date, largely been unsuccessful. After approximately a decade of application processes and appeals, Trans-Tasman Resources (TTR) withdrew its application for marine consents to extend its seabed mining area under the EEZ Act. It may well have pegged its hope on being able to use the Fast-Track process.

In contrast, the oil and gas sector has successfully navigated the EEZ Act with a range of exploration, appraisal, and development drilling campaigns gaining approval. The reason for the difference in experiences likely relates to the confined and well understood nature of oil and gas activities, contrasting with the comparatively expansive and untested (at least in New Zealand) seabed mining proposals.

It remains unclear whether a well-planned offshore wind farm could be consented under the EEZ Act and the RMA in their current form, as neither Act was drafted with offshore wind in mind. The answer to that question will largely be informed by the results from the baseline environmental campaigns. However, if this Government is committed to seeing offshore wind become a reality, some relatively modest changes to the EEZ Act and RMA would go a long distance to ensuring that the potential benefits from offshore wind farms are given appropriate weight in decisions made under those regimes.

The regulatory environment is further complicated by competing demands for access to the seabed. In May, BlueFloat Energy, Elemental Group, Taranaki Offshore Partnership, Sumitomo Corporation, and Parkwind NV wrote a report for the Government ministers likely to be involved in the Fast Track process pointing out that mineral permits and applications cover most of the potential offshore wind zone. Offshore wind farms cannot be developed in the same area as an operational seabed mining project, which can disrupt the seabed floor up to 11 metres down.

According to the report, "If seabed mining activities proceed in the Taranaki Bight...New Zealand's best sites for the lowest cost offshore wind projects could be blocked until at least the 2070s. [T]he granting of a consent to seabed mining projects in the Taranaki Bight would significantly jeopardise any ongoing investment in South Taranaki offshore wind projects." The report concludes that "seabed mining does not co-exist with offshore wind anywhere else in the world." TTR holds a permit to extract minerals from the seabed in the Taranaki Bight and had applied for extension of the permit area. TTR accepts that offshore wind and seabed mining cannot take place simultaneously in the same location but has rejected the report's claims that they could not co-exist in the Taranaki Bight or that wind farms could not be developed in the medium term on seabed that had been mined.

Infrastructure Demands

The Study concludes that, on balance, offshore wind has the potential to provide significant economic and environment benefits and is likely to provide better outcomes for New Zealand's future energy landscape. However, unlocking the full potential of offshore wind will require significant upgrades to port and energy transmission infrastructure. The Study estimates port upgrades will cost between \$320 million and \$720 million. In September 2023, Transpower estimated that it would cost \$120 million to \$160 million to connect the two 1 GW offshore windfarms envisaged in the lowest uptake scenario but adding a second another 1 GW offshore windfarm in Taranaki would require upgrades costing between NZ\$1 billion and NZ\$1.1 billion.

Given the substantial existing infrastructure deficit in New Zealand, the requirement for significant additional investments in ports and transmission networks might pose challenges to the rapid scaling of offshore wind energy, potentially affecting its adoption despite its strategic benefits for New Zealand's renewable energy future.



Downstream Conference 2024

Partner Simon Vannini and Solicitor Sabine O'Connor attended the Downstream Conference 2024, the New Zealand Energy Sector's Annual Strategic Forum. Sabine, who was recently awarded a 2024 Young Energy Professionals Scholarship, represented the Young Energy Professionals Network among the diverse assembly of industry leaders and innovators. The conference provided a unique platform for Sabine and Simon to engage in discussions with energy sector leaders and stay up to date of the latest trends and developments in the industry.

The diverse array of speakers, engaging panel discussions, and insightful roundtables underscored the importance of collaboration in navigating the complexities of the energy trilemma and emphasised that a unified approach is key to overcoming challenges and fostering a sustainable future in New Zealand

Notable sessions included updates on demand-side flexibility initiatives, observations from the Australian electricity market and its world-leading levels of variable renewable generation in some regions,

discussions on carbon capture and storage, hydrogen utilisation, and the implications of climate change on energy planning. Also highlighted were considerations for what consumers want and need from the electricity sector, and discussions were led on how the sector should protect consumers as New Zealand transitions towards a low-carbon future.

Particularly interesting were the insights shared by Hon Simeon Brown, Minister of Energy, and Hon Shane Jones, Minister of Resources, regarding the Fast-Track Consenting regime for significant regional and national projects, including those in renewable energy. Understanding the Government's strategic goals and plans in this sector emerged as a timely takeaway, offering some insight into navigating consent and approval processes for large-scale renewable energy projects in the evolving regulatory environment.

This conference was a great opportunity to talk to our existing clients and other market participants about legal and sector challenges and opportunities.

Australian Clean Energy Summit 2024

Two of our renewable energy team members, Partner Mike Sage and Special Counsel Rob Macredie, will be attending the ACES 2024 conference in Sydney over 15 to 17 July 2024. Please do get in touch with Mike or Rob if you are an Australian or overseas renewable energy investor, developer, generator, retailer, offtaker or other market participant and would like to meet and discuss opportunities in the New Zealand market.



Status report: renewable energy projects

New Zealand's renewable energy sector is growing fast. On the map we highlight current and future clean energy projects. More detail is available in the maps below.















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