

Victorian Traditional Owners and Renewable Energy Reforms

Issues Paper: VTIF and Other Renewable Energy Reforms, Opportunities, Analysis and Recommendations

12th April 2024

Introduction

The renewable energy transition is progressing at a rapid pace and presents Traditional Owners with a unique set of risks and opportunities. The transition will result in a radical transformation of Victorian land and sea Country, and bring billions of dollars of investment to Victoria to build the needed infrastructure. If we get the legislative and regulatory settings right, it is possible for the renewable energy sector to develop in ways that ensure Traditional Owners have a central role in planning, decision making and cultural heritage protection relevant to land and seascape use, as well as providing Traditional Owners with access to an equitable share of the benefits generated from the use of their Country's resources.

This paper focuses on proposed benefit sharing and planning mechanisms under the Victorian Transmission Investment Framework (**VTIF**). VicGrid is consulting on aspects of VTIF in coming months and it is expected the Government will legislate VTIF elements by mid-2024. In particular, this paper examines the following:

- the VTIF benefit sharing and planning processes;
- advantages and risks of proposals, and recommendations for engagement with VicGrid; and
- options for further reforms and programs to promote the best outcomes for Traditional Owners.

This paper is current as at 12 April 2024. VicGrid is yet to release details regarding the legal mechanisms for the creation and the operation of the VTIF benefit sharing and planning schemes. We understand that this information is under consideration. Traditional Owners should seek further information and advice when this information is released.

Renewable energy reforms in Victoria need to be designed to accommodate and meet the diverse circumstances of Victorian Traditional Owners, including:

- the mosaic of different levels of recognition of land rights and interests under the *Native Title Act 1993* (Cth) (**NT Act**), *Traditional Owner Settlement Act 2010* (Vic) (**TOS Act**) and *Aboriginal Heritage Act 2006* (Vic) (**AH Act**), as well as circumstances in which some groups do not have formal recognition under these statutes;
- historic dispossession and impact, noting Victoria has a relatively high proportion of freehold title which according to the NT Act limits the scope of native title that can be recognised as a result of extinguishment;
- there is currently very limited formal recognition of Sea Country rights and interests;
- there are varying risks and opportunities from renewable energy development based on the geography of each Traditional Owner group's Country; and

- Traditional Owner groups have varying degrees of internal capacity to be able to engage and respond to renewable energy developments due to a range of factors.

Central to the implementation of VTIF proposals and other regulatory reforms is that all measures must be implemented in a way that operationalises the principles of free, prior and informed consent as set out in the United Nations Declaration on the Rights of Indigenous People.

This paper was developed at the request of Traditional Owners at the Victorian Traditional Owner Renewable Energy Forum held in February 2024. It does not cover reforms of Victorian or Commonwealth legislation and regulations in relation to Offshore Renewable Energy Infrastructure, although we encourage Traditional Owners to seek advice in regards to these reforms, including through the National Sea Country Alliance hosted by the National Native Title Council.

Victorian Transmission Investment Framework (VTIF)

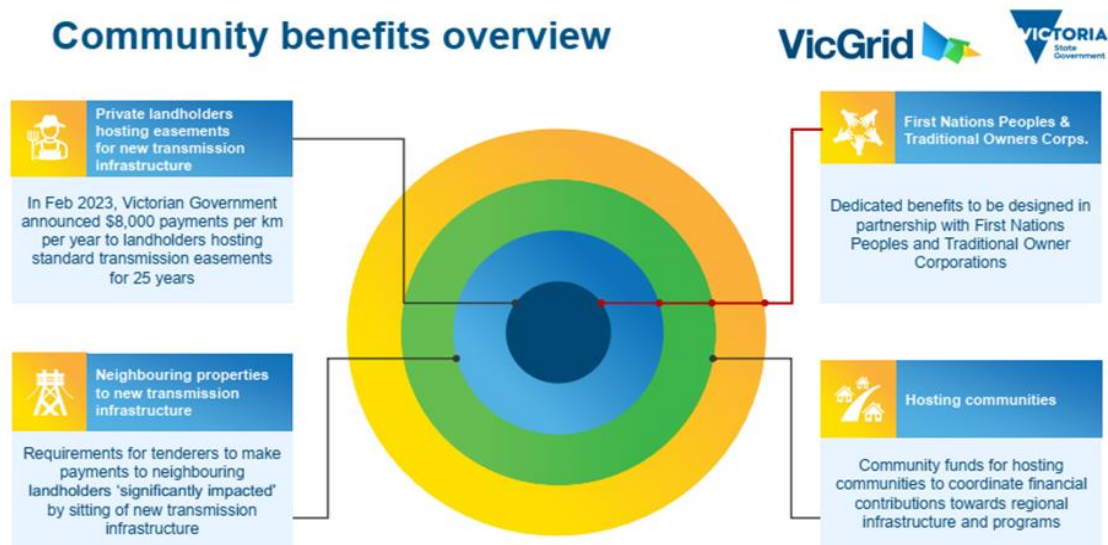
The VTIF is a new framework created by the Victorian Government for guiding how major electricity transmission infrastructure and Renewable Energy Zones (**REZs**) will be planned and developed in Victoria. The VTIF informs how development scenarios are refined through various processes and will lead to the selection of new projects through the identification of an ‘*optimal pathway*’ to be declared through a REZ declaration process.

An outline of the key features and the operation of VTIF is provided in the **attached** Summary Paper *Overview of VTIF*.

As noted above, this paper focuses on proposed benefit sharing arrangements in the VTIF final design paper, as well as processes relevant to proposed strategic land use assessment processes.

Benefit Sharing Proposal Under VTIF

VicGrid has announced it will be legislating a community benefit sharing program derived from financial contributions paid by transmission, storage and generation companies. It is proposed that there will be four community benefit sharing funds: private landholders hosting REZ infrastructure; affected neighbouring properties; hosting communities; and First Nations Peoples and Traditional Owner Corporations.



The VTIF final design confirms that community funds (**REZ Development Funds**) and funds to support Traditional Owners (**VTIF Traditional Owner Funds**) will come from financial contributions from transmission network service providers delivering major new transmission augmentation and developers of new generation and storage projects locating in REZs. However, this same clarity is not provided for funding of payments to private landowners who host major transmission line easements. Instead, it is inferred payments are distinct, and may therefore come from the State Government.

We understand that VicGrid is contemplating the establishment and funding of trusts for Traditional Owners of affected renewable energy projects (for the purposes of this paper, we will call these **Traditional Owner Trusts**). It is anticipated there will be engagement in coming months with Traditional Owner groups on co-design of the funding, structure, governance, purposes and administration of these processes and payments.

Positives, Uncertainties and Risks of Benefit Sharing Proposal

The VTIF Traditional Owner Funds proposal appears to be a centralised and standardised benefit sharing scheme arising from the collection of financial contributions from all project proponents in relation to transmission, storage and generation. Practice to date in relation to renewable energy development projects has been to negotiate arrangements with legal interest holders under relevant laws (including the NT Act and the TOS Act where relevant) and to address social licence/community benefits by way of separate arrangements with close neighbours of projects and members of the broader local community.

The proposed VTIF benefit sharing mechanism is a new approach that formalises a dedicated fund for Traditional Owners that is distinct from broader community benefit funds. It will be derived from financial contributions from transmission network service providers delivering major new transmission augmentation and developers of new generation and storage projects locating in REZs. VicGrid has suggested that funds may be derived from pooled fees from generation and storage projects for connecting to the grid. If this is the case, then the mechanism would derive benefits from projects on all tenure types, including freehold title.

The VTIF Traditional Owner Funds represent a new formalised income stream for Traditional Owners which may not be dependent on the NT Act, TOS Act or other statutory rights. Currently, benefit sharing arrangements for Traditional Owners can be distinct from broader community benefits, however this needs to be negotiated on a voluntary basis with relevant proponents.

It is our understanding from VicGrid that these payments do not constitute “consideration” for agreement making with proponents under the NT Act, TOS Act or cultural heritage legislation. Therefore, provided that a VTIF community benefit sharing scheme is in addition to and does not replace existing formal agreement making requirements, then these payments would likely constitute additional income to Traditional Owners for which no specific legal agreement is required in return.

For projects conducted over freehold land, there is currently capacity for Traditional Owners to seek to negotiate benefit sharing arrangements with proponents via relationships established from formal/legal processes (such as engagement on cultural heritage management and protection). Opportunities for broader engagement, for example via requirements under the AH Act, may help parties establish better working relationships and related benefits, as well as gain a social licence for relevant activities. Developments in relation to private sector environment, social and governance

(ESG) reporting and disclosure are likely to further increase interest in benefit sharing arrangements with First Nations Peoples from proponents and investors.

There is a risk that the proposed VTIF benefit sharing model, which involves Government overseeing engagement/consultations and Government levying and distributing fees and funds to Traditional Owners (potentially via Traditional Owner Trusts), could streamline and centralise benefit sharing in a way that becomes a disincentive for local engagement, and agreement making to establish localised social licence.

Considerations Relevant to Proposed Centralised, Standardised Benefit Sharing Process

Groups with Formal Recognition

It hasn't been announced how VicGrid will identify the Traditional Owner groups entitled to VTIF Traditional Owner Funds. It is anticipated that VicGrid may rely on previous recognition of groups under the NT Act, the TOS Act and/or the recognition and creation of Registered Aboriginal Parties (**RAPs**) under the AH Act.

In line with self-determination principles, Traditional Owners should be given the choice of how funds should be paid. There are potentially many options available, including payment to their relevant Traditional Owner Corporation (**TOC**), Registered Native Title Body Corporate (**RNTBC**), Traditional Owner Group Entity (TOGE) or RAP where these exist, or to nominated trusts or state-run trusts. Further, it may be worth considering a preferred approach to payment with a default 'back-up' should the preferred approach become problematic (eg: insolvency or restructuring), as well as embedding flexibility for Traditional Owners to nominate different approaches over time, as their circumstances change. There are several options to consider in directing how funds should be paid.

We understand that VicGrid is considering a proposal for the creation and administration of Traditional Owner Trusts and that VTIF Traditional Owner Funds be paid to Traditional Owner Trusts. It is uncertain how the Traditional Owner Trusts would be administered and how Traditional Owners would access these trusts.

Another potential risk of the benefit sharing scheme is that the creation and administration of new Traditional Owner Trusts may be both bureaucratic and potentially disempowering. It is also unclear how administration costs associated with any trusts proposed will be met. Many groups have indicated that payments directly to representative TOCs would be fairer and more efficient, and in line with the Government's self-determination principles. There may be advantages and disadvantages associated with each option, including tax implications for TOCs.

Rather than payments being made to the proposed Traditional Owner Trusts, Traditional Owner groups with previous recognition may choose to advocate for their Traditional Owner group's allocated portion of VTIF Traditional Owner Funds be paid to their relevant TOC, RNTBC, TOGE or RAP rather than to a Traditional Owner Trust. This is a matter for Traditional Owner groups to consider and to convey to VicGrid during consultations. Traditional Owner groups should seek expert legal and tax advice on the implications of the structure of such payments.

Groups Without Formal Recognition

In the case of funds allocated to groups without formal recognition, VicGrid may be reluctant to make payments to individuals or a nominated entity for fear of litigation. In such cases, the payment to well-constructed trusts may be necessary to avoid the risk of litigation.

Other advantages of the use of trusts may include:

- requiring Government to make timely payments to a trust account and avoid the risk of the entitlement returning to consolidated revenue and potentially being lost;
- allowing interest to accrue;
- the preservation of funds until outstanding recognition disputes are resolved; and
- in some cases, there may be tax advantages in the use of trusts. However, Traditional Owners should seek their own expert legal and tax advice on this question.

It will be important to consider the appropriate administration and purposes of such trusts when Traditional Owner groups consult with VicGrid on the VTIF Traditional Owner Funds. Further, as the proposed community benefit sharing scheme does not require negotiations, this is an advantage for groups without formal recognition which often do not have internal capacity and resources to easily conduct negotiations.

Entitlement to VTIF Traditional Owner Funds in REZs with Multiple Traditional Owner Groups

It is not clear how VicGrid intends to allocate funds from a REZ in which there are multiple Traditional Owner groups. There are many options as to how the Government may choose to allocate these funds, including distributions based on any of the following methodologies:

- percentage of the traditional lands of Traditional Owner groups in the REZ;
- percentage of the traditional lands over which REZ infrastructure impacts/crosses the traditional lands of the various Traditional Owner groups;
- evenly shared by the number of Traditional Owner groups in the REZ; or
- divided by agreement between the Traditional Owner groups.

This is a matter for Traditional Owner groups to consider and raise with VicGrid during consultations.

Calculation and Quantum of Payments

The quantum and methodology for calculating VTIF Traditional Owner Fund payments has yet to be announced, although we are expecting legislation covering Community Benefits to be introduced by the middle of 2024 following consultations with Traditional Owners and community in April/May.

The Government has already announced that it will be making payments to private freehold landowners of \$8,000 per kilometre per year for 25 years where there are easements related to transmission projects crossing their land and that these payments are in addition to any other compensation payments.

It is understood that VicGrid may set VTIF Traditional Owner Fund payments as guaranteed minimum payments and that financial contributions from electricity providers will be set at relatively low levels so as not to disincentivise projects.

It is unclear how VTIF Traditional Owner Funds payments will be calculated and whether such funds will apply to transmission infrastructure crossing freehold land as well as projects crossing crown land.

Further, VicGrid are yet to advise whether payments will apply to offshore transmission and generation projects for accessing the grid.

Traditional Owners may seek clarification of these outstanding queries during consultations with VicGrid.

Potential Benefits of Centralised Benefit Sharing for Smaller Projects

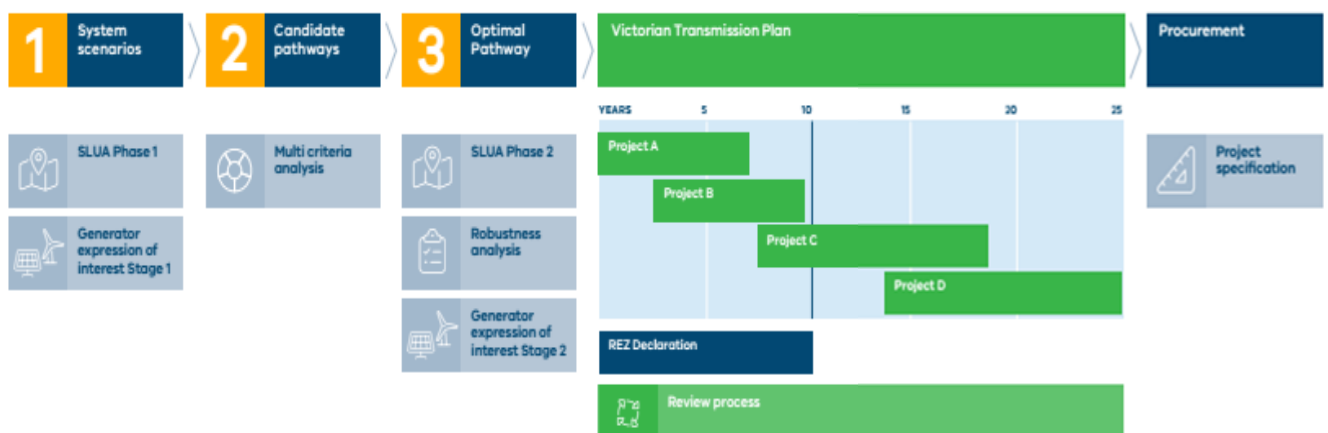
There may be resourcing benefits for smaller projects where the quantum of benefits is likely to be small and where there are limited cultural heritage and environmental considerations. In such cases, particularly as there are limited other legal agreement-making triggers, there might be advantages in providing guaranteed, minimum payments to Traditional Owners under a VTIF benefit sharing scheme without the need for Traditional Owners to dedicate resources to separate, drawn-out negotiations.

However, for larger projects, there may be benefit in conducting individual negotiations between proponents and Traditional Owners, which would likely be triggered under the NT Act or TOS Act, or the AH Act, to address a range of issues including cultural heritage and environmental protections, the granting of social licence or ESG considerations, the exploration of enterprise collaborations and partnerships, procurement opportunities and the negotiation of other potential benefits for Traditional Owners.

VTIF Proposed Planning Processes

The new VTIF planning process intends to establish a 25-year plan for Victorian transmission and REZ development. A summary of the planning process is set out below (extracted from the VTIF final design paper – see Figure 4, p14-15).

FIGURE 4 Overview of the planning process



It is proposed that steps 1-3 shown in the figure above (*system scenarios*, *candidate pathways* and identification of the ‘*optimal pathway*’) will use new planning tools such as the Strategic Land Use Assessments (**SLUA**) and a Multi Criteria Analysis (**MCA**), which aim to incorporate early stakeholder feedback. Plausible development scenarios will then be subject to a ‘*robustness analysis*’ to identify a set of transmission projects (or *candidate pathways*) and the best performing option – the ‘*optimal pathway*’.

Developing *candidate pathways* for each scenario will include stakeholder engagement, including Traditional Owners, particularly with respect to where infrastructure could be located. It is proposed that locations with transmission infrastructure included in the ‘*optimal pathway*’ will be formally declared as REZs. These will in turn influence procurement processes.

It is proposed that a REZ declaration will set out various matters, including:

- the area of the REZ for transmission and generation infrastructure (determined using outputs from the SLUA);
- transmission hosting capacity within the REZ; and
- identification of host communities for the purposes of engagement and community benefits.

It is proposed that step 1 (*system scenarios*) will involve public consultation and a stage 1 SLUA including Traditional Owner engagement. The Stage 1 SLUA will assist the identification of priority areas within the REZs for generation and transmission and areas to de-prioritise.

It is proposed that step 2 (*candidate pathways*) will involve iterative development of viable transmission investment pathways that optimise transmission and generation. It is proposed that the MCA be applied during this step to identify candidate pathways.

It is proposed that step 3 (*optimal pathway*) will involve determining the 'optimal pathway' for REZs, from candidate pathways, including through *robustness analysis*.

Potential Opportunities and Risks of Centralised, Standardised Planning Processes under VTIF

There may be potential opportunities from the SLUA and MCA processes for Traditional Owners, particularly in providing an early opportunity for Traditional Owners to identify development exclusion areas for protection from future planning. However, this will be dependent on adequate time and resources being provided to Traditional Owners to enable meaningful engagement with these processes. In the absence of key details at this stage, Traditional Owners should advocate for the retention of, and project compliance with, all current relevant environment, planning, cultural heritage legislative requirements, authorisations and processes, including with respect to any streamlined arrangements or newly enabled declaration processes under the VTIF.

As outlined above, there are significant risks that the VTIF community benefit sharing program may be viewed as a replacement, streamlined, centralised benefit sharing scheme which might then disincentivise proponents from negotiating directly with Traditional Owners on projects. Likewise, there are potential concerns that that Traditional Owner participation in the VTIF planning process, including in the SLUA and MCA for individual projects, may be seen as providing support and social licence for particular projects. If this were the case, this could be relied upon by electricity companies to avoid or minimise further engagement with local Traditional Owners and local communities directly to seek social licence (particularly on a voluntary basis), thereby undermine both Traditional Owners' and local communities' ability to negotiate localised agreements incorporating social licence, local benefits and protections.

There are significant advantages to Traditional Owners of separate negotiations regarding larger projects that by necessity involve complex developments that may impact on cultural heritage and biocultural values of a project area. In such cases, negotiations between Traditional Owners and proponents are useful to tailor the design of projects at an early stage, and reach agreement on key design, cultural heritage and environmental protections, and benefit sharing arrangements.

To address these concerns, our below recommendations include reforms of the Government's licencing, tender processes and procurement frameworks to require engagement and agreement making with Traditional Owners.

Further, at this stage it is unclear whether reforms or measures to implement VTIF, including the SLUA and REZ planning processes and associated declarations will interact with the timing of statutory cultural heritage requirements, such as CHMP triggers. Public documents regarding VTIF indicate that planning and environmental approvals will not change, however streamlined processes will be created. Traditional Owners should continue to monitor proposed draft frameworks closely to ensure interactions are well understood and not inadvertently eroded by new measures.

Recommendations

VicGrid has not released full details regarding the creation and operation of its proposed community benefit sharing scheme, REZ planning processes. Accordingly, the below recommendations are preliminary in nature and further recommendations may be provided when additional information is released.

The proposed VTIF benefit sharing scheme and VTIF planning reforms bring potential benefits and risks for Traditional Owners. The below recommendations are intended to assist Traditional Owners in their consultations and advocacy with VicGrid regarding the design and implementation of the VTIF benefit sharing scheme and REZ planning processes.

Recommendations Regarding VTIF Benefit Sharing Scheme

Proposed Creation and Administration of Traditional Owner Trusts

- Traditional Owner groups should consider what best suits their group regarding the proposed creation and administration of Traditional Owner Trusts and whether there are any circumstances in which such a trust or trusts may be useful.
- Traditional Owners may elect to recommend that funds should be paid to their representative TOC (or another entity nominated by Traditional Owners where they do not have a representative TOC) and oppose the creation of new trusts that may be both bureaucratic and disempowering to Traditional Owners.
- Traditional Owners may elect to recommend a flexible approach driven by Traditional Owners who can nominate how funds should be paid, including flexibility to change arrangements over time to reflect changing circumstances (eg: be paid directly for a period and elect to have funds paid to a nominated entity or trust over a different period, and/or change back at different periods).
- Traditional Owners should obtain expert legal and tax advice on the impact of different trust and payment structures of VTIF Traditional Owner Fund payments.

Calculation of Traditional Owner Benefits

- With respect to the calculation of VTIF Traditional Owner Funds, Traditional Owners should advocate/negotiate with VicGrid for VTIF Traditional Owner Funds to apply to all transmission, generation and storage infrastructure.
- With respect to the calculation of VTIF Traditional Owner Funds, Traditional Owners should advocate/negotiate with VicGrid for VTIF Traditional Owner Funds to apply to all infrastructure crossing private freehold land, in addition to all projects crossing crown land.
- With respect to the calculation of Traditional Owner benefits, Traditional Owners should advocate/negotiate with VicGrid for these payments to be at least at parity with private

landowners' payments to whom the Government has committed to pay \$8,000 per kilometre per year for 25 years for transmission infrastructure.

- With respect to the payment of Traditional Owner benefits, Traditional Owners should advocate/negotiate with VicGrid for these payments to be made for the life of the infrastructure not limited to 25 years.
- With respect to the calculation of financial contributions levied on transmission, generation and storage providers, Traditional Owners should advocate that Government set financial contributions for developers/proponents at a level that represents a floor contribution, while incentivising social licence/benefit sharing arrangements on a project level through instituting further complementary regulatory mechanisms in licensing, tendering and procurement processes. See below recommendations on reforms to licencing, tendering and procurement processes.

VTIF Design Considerations and Incentives to Promote Indigenous Engagement

- While there may be some value in the centralised VTIF benefit-sharing mechanism in generating a minimum set of benefits from projects on all tenure types in an efficient way, and centralised planning processes including in designating exclusion areas to protect culturally significant places; these mechanisms should not replace nor disincentivise direct placed-based engagement and negotiation between Traditional Owners and project proponents.
- It is recommended that complementary regulatory mechanisms be instituted including the reform of infrastructure licencing, commissioning tender processes and procurement frameworks to require that proponents engage and negotiate agreements with Traditional Owners.
- A recent example of improved Traditional Owner involvement in licencing regimes is the South Australian Hydrogen and Renewable Energy Act 2023 (SA) which introduces a licensing and regulatory system for the lifecycle of large-scale hydrogen and renewable energy projects in SA. While the regulations for which are yet to be released, the draft Bill includes a requirement for Indigenous Land Use Agreements to be in place prior to the grant of various licences.¹
- This approach is advocated in the Clean Energy Council and KPMG report Leading Practice Principles: First Nations and Renewable Energy Projects.²

¹ [https://assets.nationbuilder.com/fncen/pages/336/attachments/original/1694065594/South_Australia - policy overview - First Nations and Clean Energy September 2023.pdf?1694065594](https://assets.nationbuilder.com/fncen/pages/336/attachments/original/1694065594/South_Australia_-_policy_overview_-_First_Nations_and_Clean_Energy_September_2023.pdf?1694065594)

² <https://assets.cleanenergycouncil.org.au/documents/resources/reports/Leading-Practice-Principles-First-Nations-and-Renewable-Energy-Projects.pdf>

Recommendations Regarding VTIF Planning Scheme

REZ optimal planning process stage 2 (candidate pathways)- embedding cultural considerations and values

- The VTIF Final Design Paper notes the importance of economic, social and environmental matters at step 2 (candidate pathways) (see p.25 (Fig 7)). It is recommended that cultural considerations and values be embedded in the MCA and processes relevant to step 2 (identification of candidate pathways).
- It is unclear whether the stage 2 SLUA will occur at step 2 (candidate pathways) or step 3 (determining the 'optimal pathway'). This should be clarified and more detail should be sought from VicGrid regarding proposed measures to ensure Traditional Owner rights and interests, as well as cultural considerations and values are considered in the stages 1 and 2 processes.

REZ optimal planning process stage 3 (optimal pathway)- ensuring cultural considerations and values

- It is recommended that cultural considerations and values be embedded in the processes relevant to stage 3 (identification of optimal pathways) including the 'robustness analysis'. This should be reiterated with VicGrid.
- As outlined above, it is unclear whether the stage 2 SLUA will occur at stage 2 (*candidate pathways*) or stage 3 (determining the 'optimal pathway'). This should be clarified and more detail should be sought from VicGrid regarding proposed measures to ensure Traditional Owner rights and interests, as well as cultural considerations and values are considered in stage 3 processes.
- VicGrid has yet to advise how the REZ planning process interacts with the AH Act approval process and when an AH Act Cultural Heritage Management Plan (**CHMP**) is triggered. This should be clarified and more detail should be sought from VicGrid.
- VicGrid has yet to announce whether a REZ declaration triggers a CHMP. It is recommended that a REZ declaration should trigger the requirement for a CHMP under the AH Act.

Resourcing Traditional Owners to Engage with Renewable Energy Proponents and VTIF Planning Processes

- To enable Traditional Owners to properly engage with renewable energy proponents and VTIF planning processes in a manner aligned with free, prior and informed consent and self-determination, Traditional Owners need to be adequately resourced to:
 - secure expert legal, taxation, banking, environmental science and industry expertise to help Traditional Owners to consider and develop options to respond to and negotiate anticipated and actual proposals for new projects;
 - conduct cultural mapping;
 - build internal capacity;
 - develop nation-scale renewable energy strategies; and
 - engage their communities in decision-making processes.
- In light of the expected increase in renewable energy project consultations in the next 12-24 months, this resourcing of Traditional Owners should be front-ended. This will provide Traditional Owners adequate time and expertise to conduct preparations to meaningfully participate in consultations and negotiations in line with the ambitious timeframes put forward by Government.
- An important additional step is to commission expert advice for Traditional Owners to better inform groups of the VTIF processes, risks and opportunities, and to prepare advice on options for collaborative projects with proponents to better negotiate agreements including cultural landscape protection, social licence, and potentially equity stakes in projects and other benefits.
- It is recommended that VicGrid provide expert brokerage funding to provide advice and representation to Traditional Owner in negotiations with proponents on specific projects.
- It is also recommended that VicGrid provide funding for collective capacity building workshops on appropriate topics of shared interest amongst Traditional Owner groups.

Other Opportunities and Recommendations

VicGrid Procurement and Tendering Reforms

- Further to content noted above regarding the South Australian Hydrogen and Renewable Energy Act 2023 (SA), we recommend that VicGrid implements targets and requirements for Traditional Owner engagement and agreement making in its Procurement Frameworks for the commissioning and licencing of new transmission Infrastructure in REZs.
- It is recommended that VicGrid engage with Traditional Owners on the design of the Procurement Framework to ensure that Traditional Owners' perspectives are considered. Further, we recommend that Traditional Owner representatives be included on Procurement Commissioning panels to promote local engagement.

Broader Procurement and Investment Opportunities

- It is recommended that similar advocacy be conducted with DEECA, including with State Electricity Commission (SEC) and Offshore Wind Energy Victoria (OWEV), to ensure the SEC and OWEV Procurement Frameworks for the commissioning and licensing of new renewable energy infrastructure similarly include targets for Traditional Owner benefits sharing, and requirements and/or significant weighting for Traditional Owner agreement making.
- In the longer term, it is recommended that Government legislate to require engagement and agreement making as a condition of licencing and commissioning of all new renewable energy infrastructure following the examples in other jurisdictions such as South Australia's Hydrogen and Renewable Energy Act and Commonwealth Government's Capacity Investment Scheme.
- Further, we recommend that Government engage with Traditional Owners, FVTOC and FNLRs on the design and drafting of such legislation and regulations.

Social Licence, Collaborations and Opportunities Arising from Proactive Engagement with Proponents

- Even without the above adjustments to the renewable energy regulatory system, we encourage Traditional Owners to proactively engage with project proponents to negotiate agreements based on a social licence imperative.
- The VTIF and VicGrid should ensure that all relevant gateways investment and procurement points under the VTIF, including the related Transmission Plan, incentivise and include checks relevant to proponent ESG and social licence considerations, as well as specific screening criteria relevant to engagement and agreements with Traditional Owners.
- Proponent and investors desire for social licence and ethical investment presents an opportunity to negotiate significant benefits and partnerships.
- There is potential for Traditional Owner groups and corporations to harness opportunities by negotiating with electricity companies prior to the submission of tenders for many benefits including:
 - equity shares in projects;

- projects partnerships, joint ventures and revenue sharing opportunities;
- contracting opportunities in landscaping, cultural heritage and Caring for Country services;
- jobs, training, and careers opportunities;
- cultural awareness/culturally informed practice services;
- community engagement services including community development and educational project sponsorships; and
- active involvement with managing the cultural and environmental impacts of project activities.

Strategic Land Grants in REZs to Promote Traditional Owner-led Renewable Projects

- Traditional Owners could also lobby Government to grant Traditional Owners with relevant tenure to support Traditional Owners involvement in both onshore and offshore transmission, storage and generation projects. Given that VicGrid is responsible for the commissioning of new transmission, storage and substation infrastructure, this policy adoption by VicGrid could be useful to ensure that Traditional Owner gain equity in new REZ infrastructure. Similar advocacy could be made of the State Electricity Commission which is responsible for the commissioning of new generation projects.
- For example, the State could grant rights to land and regulatory approvals that allow Traditional Owners to attract high quality management, expertise and capital to construct infrastructure or to seek expressions of interest for a joint venture that forms part of the renewable energy framework and give Traditional Owners part-ownership and an ongoing income stream.

Acknowledgements

This paper was jointly prepared by the Federation of Victorian Traditional Owner Corporations and First Nations Legal and Research Services with the assistance of Emily Gerrard of the Comhar Group. It was prepared at the request of Traditional Owners at the Victorian Traditional Owner Renewable Energy Forum which was held in February 2024. This event was sponsored by the Indigenous Land and Sea Corporation.