

# Victorian Offshore Wind Farm Feasibility Access Licence — Regulatory Guidance Note

This Guidance Note provides information about the rights and responsibilities of parties, the application process and approval pathway for the Victorian Offshore Wind Farm Feasibility Access Licence.

We acknowledge and respect Victorian Traditional Owners as the original custodians of Victoria's land and waters, their unique ability to care for Country and deep spiritual connection to it.

We honour Elders past and present whose knowledge and wisdom has ensured the continuation of culture and traditional practices.

DEECA is committed to genuinely partnering with Victorian Traditional Owners and Victoria's Aboriginal community to progress their aspirations.



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# Introduction

The Department of Energy, Environment and Climate Action (DEECA) has prepared this guidance document to assist offshore wind farm (OSW) developers to prepare applications for the Victorian Offshore Wind Farm Feasibility Access Licence (Licence) and inform stakeholders about this process. This note will be updated periodically as needed.

The pro-forma Licence and application form are available on DEECA's website [here](#).

**Disclaimer:** This guidance is for informational purposes only and does not replace legal advice or detailed consultation with regulatory authorities. Applicants should seek independent legal advice in relation to the operation of the Licence.

# Part 1: Overview of Licence and application process

## Context

The licensing framework underpinning the Licence is provided for in the *Land Act 1958* (Vic) (Land Act), the *Crown Land (Reserves) Act 1978* (Vic) (CLR Act), and *Forests Act 1958* (Vic) (Forests Act) (together, the Authorising Acts).

The Authorising Acts enable OSW developers to access onshore and offshore public land for the purpose of undertaking specified feasibility activities required to inform the placement of connection assets within Victoria.

The purpose of creating the Licence was to create a clear pathway to access public land for the purposes of exploring the feasibility of onshore and offshore transmission assets. The licence is not mandatory but avoids the need to seek consent from each relevant public land manager each time land is to be accessed for feasibility studies and provides a clear path for compliance with Native Title obligations. Access to private land requires direct negotiation with private landowners, led by the developer.

To implement the licensing framework as provided in the Authorising Acts, DEECA has developed a pro forma licence, available on DEECA's website [here](#).

The Licence provides the following benefits to potential Licensees and other interested stakeholders:

- OSW developers are provided with an OSW specific authorisation that can be updated as feasibility work programs evolve through varying the works plan.
- OSW developers do not need to seek multiple public land holder consents each time feasibility activities change and can submit updated works plans for approval, as required by the Licence, for assessment and approval. Separately, it is important to note multiple *Marine and Coastal Act 2018* (Vic) (MAC Act) consents may still be necessary depending on the scope of works, development and/or use applied for under a consent application.
- The rights and obligations of OSW developers will be clearly articulated and understood by key stakeholders, those being industry and the community.
- Ensures DEECA has visibility over potential transmission corridors that are being explored through feasibility studies. This will enable DEECA to better contribute to orderly transmission planning.
- Provides a clear pathway to meet future act requirements under the *Native Title Act 1993* and promotes meaningful partnerships with local Traditional Owners

A transparent decision-making process for the granting of the Licence.

Developers are expected to engage with all relevant Traditional Owners and respect cultural heritage for feasibility activities. It is the applicant's responsibility to ensure that legislative obligations under the *Aboriginal Heritage Act 2006* (Vic), *Native Title Act 1993* (Cth) and *Traditional Owner Settlement Act 2010* (Vic) are met.

- For the **Gippsland** Licence, the Deed Poll relating to Traditional Owner rights has been co-designed with Gunaikurnai Land and Waters Aboriginal Corporation (GLaWAC) streamlining the native title process in relation to validating the grant of a Licence over GLaWAC Country as a valid future act.

This Licence is not intended to enable construction or operation of a transmission asset, and this Licence is not designed to mirror a transmission and infrastructure licence under the *Offshore Electricity Infrastructure Act 2021* (Cth) (OEI Act). DEECA is considering options to enable and authorise the construction of offshore connection assets.

# Application process

## Public land access pathways

Where a developer is proposing to undertake works on land where the MAC Act applies, there are two alternate pathways for obtaining licence and relevant consents.

- Option 1: Feasibility activities on public land from coastal waters to the VicGrid transmission hub (>200m inland)
  - apply for Access Licence and MAC Act consent in parallel
  - MAC Act application could be for all proposed activities or staged depending on readiness/timing within its area of authority
  - Access Licence workplan will not require information relating to MAC Act permitted activities - for activities outside MAC Act, the works plan should outline those proposed activities
- Option 2: For those undertaking feasibility activities in coastal waters and public shoreline land (<200m inland)
  - apply for MAC Act consent for all proposed activities or staged depending on readiness/timing.

A Licence is not a legal requirement on land and waters where consent under the MAC Act is required. If works are proposed beyond marine and coastal land (>200m inland), the Licence provides a streamlined approach to seeking necessary land manager consents on public land. For developers that are pursuing options 1 or 2, the guidance below clarifies requirements for the Licence, Traditional Owner Agreements, and the works plan required under a Licence. The Licence works plan does not require information relating to MAC Act activities where a consent has already been obtained under the MAC Act; only proposed activities outside the MAC Act consent need to be outlined in the Licence works plan.

## Mandatory matters and actions for consideration

The following pre-conditions must be satisfied prior to the Secretary of DEECA (as the Minister for the Environment's authorised delegate) granting a Licence under one or more of the Authorising Acts. These pieces of legislation are collectively the laws that allow for the grant of a Licence over public land. A Licence may invoke any one, or combination, of the Authorising Acts.

As the decision maker, the Secretary of DEECA must consider the following matters or take the following actions in relation to applications for Licences prior to making a decision:

- The land to be licensed is to be used for one or more of the following purposes:
  - Assessing the desirability or feasibility of constructing or installing offshore electricity transmission infrastructure.
  - Determining the optimal placement of offshore electricity transmission infrastructure as defined in the Authorising Act/s.
  - Carrying out an activity for the purpose of obtaining a permit or consent required by or under the any Act of Victoria or the OEI Act for the construction or installation of offshore electricity transmission infrastructure.<sup>1</sup>
- The following matters have been considered under the Authorising Acts in deciding to grant a Licence:
  - Whether or not the applicant is the holder, or applying for the licence on behalf of the holder, of a Commonwealth licence within the meaning of the OEI Act.
  - Whether the granting of the Licence would contribute to achieving an OSW energy generation target or a renewable energy generation target set by the State of Victoria.
  - All other matters that the Secretary of DEECA considers relevant.<sup>2</sup>
- The decision maker has consulted the Minister responsible for administering the *Electricity Industry Act 2000* (Vic) (currently the Minister for Energy and Resources). This does not require the Minister for

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<sup>1</sup> Land Act s 140AB(1); CLR Act s 17BB(1); Forests Act s 57DA(1).

<sup>2</sup> Land Act s 140AB(2); CLR Act s 17BB(2); Forests Acts 57DA(3).

Energy and Resources to approve the grant of a Licence, but the Secretary of DEECA must ensure that the Minister is consulted.

- If the Licence is to be issued under the CLR Act, the trustees or committee of management that manages the land (if any) have been consulted.
- If the Licence is granted under the Land Act, the land is not otherwise subject to a lease granted under the Land Act.

## Other regulatory approvals that may be required at time of application

Developers must separately apply and obtain other regulatory approvals as necessary to undertake feasibility studies.

### MAC Act

The MAC Act sets objectives and guiding principles for the planning and management of the State's marine and coastal environment. It states that a person *'must not use or develop, or undertake works on, marine and coastal Crown land'* without a MAC Act consent.<sup>3</sup>

DEECA understands that most feasibility study activities undertaken in Victorian waters or nearshore will require a MAC Act consent. Therefore:

- If feasibility activities proposed at the time of application require a MAC Act consent, applicants for a Licence are expected to have applied for a MAC Act consent at the time of application. In this case, a decision to grant a Licence cannot be made unless and until a MAC Act consent is granted (noting the assessment for the MAC Act and Licence can progress in parallel).

To expediate approvals for a MAC Act consent, developers are encouraged to batch lower risk activities if they wish to undertake preliminary low risk feasibility activities to determine what more invasive activities they wish to undertake. Developers are encouraged to have early discussions with the relevant DEECA Region office to be clear about what information will be required in the application to avoid any unnecessary delays and minimise the need for requests for further information.

### Other approvals

Information on other key approvals that may be required is provided below:

- The *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) establishes a system of environmental assessment and approval by the Commonwealth for actions that significantly affect Matters of National Environmental Significance. Further information on the EPBC Act is available from the Commonwealth Government's [website](#).
- Permits are required for activities that impact protected and threatened flora listed under the [Flora and Fauna Guarantee Act 1988](#) (Vic).
- The [Heritage Victoria website](#) can be used to determine whether a permit for works on a non-Aboriginal heritage site is required.
- A planning permit for [management of native vegetation](#) may be required.

There are also distinct legislative obligations to Traditional Owner groups that are paramount in our responsibilities in managing Victoria's resources. The key legislation includes:

- [Aboriginal Heritage Act 2006 \(Vic\)](#) and [Aboriginal Heritage Regulations 2018 \(Vic\)](#) – this legislation regulates impacts on Aboriginal cultural heritage, including determining the need for a [Cultural Heritage Management Plan](#) or Permit. Aboriginal cultural heritage refers to the knowledge and lore, practices and people, objects and places that are valued, culturally meaningful and connected to identity and Country.
- [Native Title Act 1993 \(Cth\)](#) and [Traditional Owner Settlement Act 2010 \(Vic\)](#) – these two Acts relate to the recognition of Traditional Owner land and water rights and interests, including:
  - the Traditional Owners have a right to provide input into or even object to proposals
  - in some instances, whether they are entitled to compensation.

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<sup>3</sup> See *Marine and Coastal Act 2018* (Vic) s 4 for the definition of 'marine and coastal Crown land' and s 65(1) for the requirement for a MAC Act consent.

To assist with compliance with these Acts, evidence that the applicant has entered into an agreement (by way of the Deed Poll for the Gippsland Licence) with the relevant Traditional Owner/s must be provided for a Licence to be granted.

If other regulatory approvals are required, the status of these approvals must be disclosed in the application form. If a decision to grant the Licence is made prior to these approvals being secured, the Licensee must secure such approvals prior to commencing feasibility studies as outlined in the works plans (see 'Detailed Guidance' section below).

## Applying for a Licence

To apply for a Licence:

1. Complete the application form, found [here](#) (on 'Regulatory Information' page of the Offshore Wind Energy Victoria (OWEV) website).
2. Email your application form to [offshorewind@deeca.vic.gov.au](mailto:offshorewind@deeca.vic.gov.au).

## Assessment and decision making

While DEECA will process applications for a Licence as soon as practicable, the estimated maximum time taken to assess and make a decision in relation to a complete application for a Licence will be 60 days from the date of receipt.

DEECA notes that this assessment timeframe is contingent on:

1. The complexity of the works plan submitted, with a simpler works plan containing low impact activities to be assessed and approved sooner, and more complex, higher impact activities to be assessed within 60 days.
2. DEECA receiving a complete application from OSW developers with all of the information required to assess and grant the Licence. If additional information is needed to assess an application, assessments may take longer than 60 days. However, DEECA will use its best endeavours to only request additional information if reasonably necessary for assessment.
3. Where departures are sought from the standard Licence terms, additional legal advice may be required. If legal advice is required, this may impact DEECA assessment timeframes.

Applications will be assessed by DEECA and granted by the Secretary of DEECA, currently an authorised delegate of the Minister for Environment.

Licensees are expected to seek any relevant permits prior to applying for the Licence.

## Works plan

The works plan<sup>4</sup> forms a key condition of the Licence that DEECA expects the applicant to develop to a level that is commensurate with the feasibility activities proposed. The works plan will form a condition of the Licence and provides OSW developers and DEECA an opportunity to collaborate on appropriate conditions in relation to activities proposed by an OSW developer.

While applications for a licence and a MAC Act consent can be submitted and considered in parallel, before a Licence is approved, consent under the MAC Act must first be granted if activities are proposed in marine and coastal land, that being land that is less than 200 metres inland or in Victorian coastal waters. To avoid duplication and confusion between a Licence and consent under the MAC Act, an OSW Developer is not required to provide information relating to activities covered by a MAC Act consent in a works plan.

This approach is applicable in situations where a developer already has consent under the MAC Act or is intending to apply for consent at the same time as a Licence.

The works plan should:

- Acknowledge that consent under the MAC Act covers the relevant proposed area of works
  - Further information would not be required in the works plan
  - A condition will be inserted in the Licence requiring a Developer to hold a valid MAC Act consent for any activities within marine and coastal land.

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<sup>4</sup> The 'works plan' refers to the plans for the Licensee's Works as approved by DEECA. See clause 5.1 and Annexure 2 of the Licence for further detail.

- For activities that are proposed outside of public land subject to the MAC Act, the works plan should outline those proposed activities, their level of anticipated impact, and the measures that will be taken to avoid or mitigate those impacts.

An application for a Licence should include a map and coordinates for the full licence area, including any areas that are subject to consent under the MAC Act.

### **Applying to vary the Licence or works plan**

If the Licensee wishes to vary the Licence after it has been granted, they can request a variation by submitting a written variation request to the Licensor detailing the proposed changes and the reasons for the variation. The Licensor must respond to a variation request within 21 days.<sup>5</sup>

Any changes to the works plan can be made through this variation process.

### **Notification and publication**

When a Licence is granted, DEECA intends to seek consent from a Licensee to publish limited information relating to that Licence to maintain a public register of licences. This register will not contain the executed Licences, and the intent is to publicly share the following details in a section of the OWEV website:

- name of Licensee
- term of Licence
- contact details
- link to a map.

DEECA will notify all existing Licensees when a new Licence has been granted. This will assist Licensees to coordinate with each other where there are overlapping Licence areas.

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<sup>5</sup> The variation process is detailed further in clause 17.1.2 of the Licence.

# Rights and Obligations of Licensees

## Obligations of Licensees

If granted a Licence, Licensees are expected to comply with the conditions set out within the Licence. The Licence is not an exhaustive document setting out the entirety of the Licensee's legal obligations and is not designed to supplant or supersede Victorian legislative requirements as a whole.

The Licence sets out the rights and obligations of a Licensee in detail. The Licence requires Licensees to do the following:

- pay fees as set out in the Licence itself
- ensure works take place in a safe and timely manner without unreasonable interference with the regular use and enjoyment of the licensed area
- ensure adequate insurance is in place
- ensure defaults are remedied adequately and quickly
- comply with legislative obligations under the *Aboriginal Heritage Act 2006 (Vic)*, *Native Title Act 1993 (Cth)* and *Traditional Owner Settlement Act 2010 (Vic)*.
- comply with native title and enter into an acceptable agreement with the relevant Native Title holders.
- ensure compliance with environmental protection legislation
- ensure compliance with cultural heritage obligations
- not cause or contribute to contamination, noting that this does not apply to naturally occurring contamination, but contamination caused or increased by the actions of the Licensee
- vacate the area licensed in a condition that is consistent with compliance with the Licence with the area restored, if required, to a state that is satisfactory to the Secretary of DEECA.

The obligations set out in the Licence are standard expectations that align with other licences granted over public land.

## Rights of Licensees

The grant of a Licence gives the Licensee the ability to use public land on a non-exclusive basis to undertake feasibility activities to determine where connection assets are best located, to comply with other legislative requirements, or to inform an application for a permit or authorisation required to establish an offshore windfarm. DEECA expects that OSW developers will seek a Licence that aligns with the term of their Commonwealth feasibility licence granted under the OEI Act.

Gathering the information required to determine the optimal corridor to locate an export cable requires a broad variety of activities. A Licence is intended to enable such activities and OSW developers may seek approval to undertake geophysical and geotechnical work that may include but is not limited to acoustic surveying, core sampling and drilling, and observation of wildlife. The issuing of a Licence is not a guarantee that any further Victorian licence will be issued.

## Part 2: Detailed guidance

This section seeks to provide further detailed guidance on specific matters. DEECA suggests that OSW developers seek independent legal advice relating to this Licence prior to submitting an application.

### Exclusivity and term

A Licence will be granted on a non-exclusive basis. This is due to the large area that may need to be assessed when determining the optimal placement of connection assets along with areas that may be needed to satisfy other approval processes.

DEECA is working on an approach to grant tenure for construction. This approach will be based on emerging global best practice and the evolving framework established in the OEI Act. The approach and the Victorian position on exclusivity will be settled through a policy development process underway.

The maximum term for a Licence is 21 years to align with other similar licences granted over public land. The expectation is that applicants will seek a Licence term that aligns with the term of their feasibility licence granted under the OEI Act.

OSW developers may apply for a one-off Licence that encapsulates the entirety of the area required to undertake feasibility studies or activities required to seek other approvals. These activities will not be authorised until an approved works plan is in place, and the works plan is expected to evolve and be updated via variation if required as feasibility study programs mature.

### Costs and fees

The costs and fees set out in relation to the Licence reflect the costs incurred by DEECA in assessing an application. The Licence fee of \$25,000 is a one-off fee that will only be incurred when a Licence is granted.

For Licences issued adjacent to, or in relation to licences under the OEI Act that relate to the **Gippsland Declared Area**, the payment to GLaWAC as per the Deed Poll is also a one-off payment under the Licence. The payment to GLaWAC is to be paid directly to GLaWAC, with evidence of payment to be provided to DEECA.

### Use of licensed area

DEECA expects Licensees to engage and coordinate access to areas where overlapping areas have been licensed. To assist with this, DEECA will notify Licensees if they are applying for access over an area that is already licensed and inform a Licensee that an application has been received that overlaps with their licensed area. If a Licence over an overlapping area is granted, DEECA will inform each Licensee of the overlap and provide details of the overlapping area.

### Engagement and coordination with existing rights holders and Licensor

DEECA expects Licensees will engage with existing rights holders prior to an application for a Licence and during the term of their Licence if granted. A Licence does not supplant or supersede existing rights. This regime has been designed to provide access to public land, not modify existing rights.

DEECA expects that Licensees will cooperate with existing rights holders and users of public land in undertaking their feasibility studies. While it is inevitable that access may need to be limited for the purpose of safety, it is not expected that existing activities will be interfered with unreasonably, or that Licensees will behave in a manner that erodes social licence for OSW development.

In relation to the **Gippsland Declared Area**, DEECA highlights the vibrant fishing, petroleum, carbon capture and sequestration industries that exist in the region, along with the Basslink and Marinus Link interconnectors in the region, which will need to be considered.

In relation to the **Southern Ocean Declared Area**, DEECA highlights proximity to the Bonney coast upwelling, a significant ecological feature, fishing and petroleum industries that have historically and continue to operate in the area, along with significant vessel traffic in and out of the port of Portland.

Potential Licensees should provide details of their efforts to determine if anyone holds existing rights over any public land within their planned licence area, along with the outcome of any such investigation with their application for this Licence.

Licensees are expected to liaise with the Licensor to gain access to the licensed area and comply with any directions provided. It is not expected that this will occur every time a Licensee intends to access the licensed area, and the provision of an approved detailed works plan would acquit this requirement as the works plan may include a list of activities proposed to be undertaken and a schedule as to when those activities would take place. DEECA would expect a notification to be provided when access will take place pursuant to a work plan, but this would not trigger a need to liaise with the Licensor.

## Interaction with MAC Act consent

OSW developers may apply for a Licence for any feasibility studies on public land, whether they are onshore or in Victorian waters.<sup>6</sup> However, as outlined above, there are different options as to how a developer may wish to seek access to public land. The Licence does not supplant the need for consent under the MAC Act if activities on marine coastal land are proposed.

Where a Licence is being sought, applicants may apply for a licence and MAC Act consent in parallel. The MAC Act consent application may apply to all proposed feasibility activities or consents may be sought through a staged approach depending on an applicant's readiness,

There is similarity between information required to seek consent under the MAC Act and a Licence. Given DEECA considers both of these authorisations, the information provided in an application for consent could be used for a Licence application, provided it is relevant and tailored to the activities proposed under a works plan.

### Example:

An OSW developer planning feasibility studies across marine and coastal land and public land up to the connection hub will need to apply for MAC Act consent for all proposed activities across Victorian coastal waters and the shoreline areas. For works beyond 200 metres inland on public land, the applicant may consider an Access Licence as a streamlined approach if there are multiple public landholders. If a MACA consent and Access Licence are both sought, these applications can be lodged together and assessed in parallel, with complementary works plans that clearly outline activities within each respective area.

Alternatively, if the proposed works are limited to marine and coastal land under the MAC Act, or predominantly within this area, the OSW developer may apply for MAC Act consent for the feasibility activities. Where specific works are proposed on a defined parcel of public land outside the MAC Act area, the applicant may seek consent to use the land directly from the relevant land manager and consult with the appropriate Native Title holder as required.

## Plan of Licensed Area and works plan

The Licence has been designed to facilitate a flexible approval approach due to the iterative nature of feasibility studies for OSW projects. This is achieved through the plan of licenced area (in Annexure 1) and works plan (in Annexure 2).

The Licence is intended to be the authorisation that provides OSW developers with access to public land, while the works plan will provide Licensees the authorisation to undertake specific activities and will provide DEECA with an understanding of where it should focus its compliance effort.

The area licenced remains static throughout its term, and the works plan should evolve through variations as the outputs of feasibility activities are known. As Licensees develop a better understanding of their potential connection corridor, they may seek a variation to their works plan to conduct further investigations as needed.

### Plan of licenced area – Annexure 1

The plan of licensed area should contain the entire area that an OSW developer reasonably expects to investigate to determine its export cable route into VicGrid's consolidated connection point. The area required should be set out in Annexure 1 – Plan of Licensed Area.

Annexure 1 – Plan of Licensed Area contains four points as an example if the area to be licensed is quadrilateral. The licensed area is not limited to four points. When describing the land to be licensed, public

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<sup>6</sup> Coastal waters are defined as water between the limits of Victoria and extend 3 nautical miles seaward from the territorial sea baseline and is regarded as public land owned by the Crown in the Right of Victoria.

land parcels should be identified to ensure the application is as accurate as possible. The area licenced should cover the entire extent of land required to determine the ideal path for an export cable and is likely to be larger than the final area that will comprise a cable corridor.

OSW developers should seek a reasonable area that allows for the investigation of their proposed connection corridor, or alternate corridors if necessary, noting that the Licence will be issued on a non-exclusive basis.

**Example:**

An offshore wind developer may elect to seek a Licence for public land adjacent to VicGrid’s consolidated connection point and extending to the boundary of Victorian waters. DEECA would expect to be provided precise coordinates, preferably in a shape file, or any other format as agreed with the relevant local DEECA office, with as many points required to accurately represent the shape of the area sought, of the outer bounds of that application area, with precise details of feasibility activities taking place within to be provided in the works plan when they are known.

## **Works plan – Annexure 2**

The works plan is intended to be an evolving companion document to the Licence that is updated to reflect the activity that a Licensee is undertaking. The works plan is a flexible document that will allow a Licensee to amend their work program incrementally and seek authorisations as required. For clarity, activities in a licensed area already subject to consent under the MAC Act do not need to be incorporated into a works plan. A developer is expected to notify DEECA once activities authorised under a MAC Act consent are completed.

The works plan is prepared by the Licensee and once approved by DEECA, becomes a condition of the Licence.

DEECA intends for Licensees to apply for one Licence and apply for a variation of the works plan if/as required as feasibility studies occur. This approach enables OSW developers to tailor the Licence to their needs, for example:

- If an OSW developer has determined the cadence of their feasibility activities and is certain when they will occur, they may elect to provide a detailed works plan.
- If initial investigations are limited, an OSW developer may choose to only provide details of these initial investigations in the works plan and then as further investigations become more certain, vary the works plan through the variation process outlined in the Licence.

**Example:**

A Licensee may seek approval of a works plan that begins with onshore geophysical studies in Q1 2026 and onshore geotechnical studies in Q2 2026, with a subsequent iteration of the works plan setting out an offshore geophysical survey campaign spanning Q3-Q4 2026 approved via variation to the Licence, specifically the works plan.

The details sought in Annexure 2 of the Licence are provided as a non-exhaustive list of what an OSW developer may choose to provide. OSW developers will not be required to provide details of every item listed as part of their works plan.

This process allows OSW developers to propose risk management and mitigation measures in the preparation of their works plan, as opposed to these being determined solely by DEECA.

The details required as to the boundaries of the Licence are sought to create a clear understanding of the areas that an OSW developer is seeking to licence and will assist in identifying overlaps. Noting that survey plans may evolve considerably, and early investigations generally tend to assist in the refinement of the final connection corridor, DEECA expects the outer bounds of an investigation area to be known, with precise details of where surveys will occur within the licence area as set out in Annexure 1 – Plan of Licensed Area to be provided in the works plan.

## **Exclusion of third parties**

Powers to exclude third parties are designed to ensure that access is not limited unreasonably. Temporarily limiting access on the basis of safety is not unreasonable and would be allowed to the minimum extent required to ensure licensed areas are investigated efficiently.

Licensees will be responsible for ensuring safety to the extent required by general duties established under work health and safety legislation, along with any specific requirements related to offshore work, while works are taking place in a particular area. This is not a blanket requirement that applies to the licensed area as a whole and does not mean that overlapping licence areas result in the conferral of responsibility on both parties, unless works are taking place concurrently.

## Insurance

Government requirements relating to public liability insurance are designed to hedge against considerable risk that would require intervention by DEECA.

DEECA notes that works insurance may be commensurate to the risk of the works taking place. A value of \$20 million has been specified in the Licence, but the Licence provides applicants an option to nominate a lesser amount of works insurance where justifiable. The Licence states that the Licensor has the discretion to specify a works insurance amount less than the default amount, having regard to the value and nature of the works that the Licensee proposes to undertake.

If a potential Licensee outlines the nature and value of the works taking place and is able to demonstrate that a specific amount is commensurate to the risk of particular works proposed, the Licensor may specify that amount as the works insurance amount that must be in place.

## National parks

The Licence does not address the requirements if a permit is required under the *National Parks Act 1975* (Vic). If any part of the licensed area is within a national park, OSW developers are expected to seek appropriate permits, permission or authorisations, and Licence drafting will be reflected accordingly.

Agreement with Traditional Owners and native title requirements Native title is the recognition that Aboriginal and Torres Strait Islander people have rights and interests to land and waters according to their traditional law and customs. Proposed actions that affect Native Title are classed as 'future acts' under the *Native Title Act 1993* (Cth).

For the grant of a Licence containing any land that is subject to a native title determination to be a valid future act under the *Native Title Act 1993* (Cth), an agreement should be reached between a Licensee and the relevant native title Party. Articulating this in the Licence itself highlights this requirement.

It should be noted that the native title aspects of the Licence apply only to areas where native title has been determined to exist. Those licence provisions do not apply to Registered Aboriginal Parties who may be impacted by a connection corridor who will be involved and engaged as required under cultural heritage protection legislation.

## Gippsland Declared Area

In relation to the Gippsland Declared Area, the native title party is GLaWAC. GLaWAC's native title rights and interests consist of the following non-exclusive rights to:

- access, enter or remain on the land and waters
- use and enjoy land and waters
- take the resources of the land and waters to satisfy personal, domestic or communal needs (this excludes commercial purposes)
- protect and maintain place and areas on the land and waters that are of importance in accordance with Gunaikurnai traditional laws and customs.

Without limiting the rights listed above, GLaWAC has the right to undertake the following activities on land and waters:

- camp, including the building of shelters or other temporary structures inland of the high-water mark of the sea
- engage in cultural activities
- engage in rituals and ceremonies
- hold meetings and gatherings
- teach and learn about physical, spiritual, and cultural aspects of locations of importance.

DEECA has worked with GLaWAC to co-design a standard deed poll that is provided with the Licence to be used for the Gippsland declared area as Annexure 4 to prevent the need for negotiation between GLaWAC and each OSW developer intending to apply for a Licence.

The standard deed poll is intended to simplify reaching agreement with GLaWAC in order to validate the grant of a licence as a future act to undertake feasibility studies, by setting out the terms GLaWAC accepts upfront. If an OSW developer has initiated negotiation or agreement making processes, this would not supplant this requirement, unless it is clearly articulated that the purpose of an agreement is to provide compensation for any impact on native title rights.

The amount of community benefit is pre-determined in relation to the Licence in line with Victorian Government guidelines that exist in relation to how benefits are to be determined in situations where licences or authorisation attract a fixed fee. This amount compensates GLaWAC for the impact on their land that feasibility studies may have along with impact on native title rights.

## **Environmental and cultural heritage obligations**

The Licence does not change or replace any Victorian or Commonwealth laws/legislation that extend to existing Crown land, environmental, biodiversity, marine protection or cultural heritage.

OSW developers also have a general environmental duty, as do all Victorian individuals and businesses, to manage their activities to reduce the risk of harm:

- to human health and the environment
- from pollution or waste.

## **Contamination**

Contamination refers to any such contamination caused by a Licensee and not to naturally occurring contamination. The provisions relating to contamination in the Licence are designed to create a framework that sets an expectation that a Licensee does not cause, contribute to, disturb or interfere with contamination. If the Licensee causes or contributes to any contamination in or near the licensed area, the Licensee must notify DEECA, the Environment Protection Authority and any other relevant authority that this has occurred and must remediate the contamination.

## **Sensitive information**

Confidential information provided to DEECA will be managed as set out in the Licence. Confidential information will not be shared with any third party without the express written consent of the Licensee except in the case of express circumstances set out in the Licence. These circumstances are:

- to the reasonable extent required by Law
- if required by Court Order
- to a Minister or Parliament in relation to statutory or portfolio duties, or for public accountability reasons
- to a Victorian Government entity or statutory authority where disclosure serves the Licensor's legitimate interests
- to any state, territory or Commonwealth government where disclosure occurs under a structured intergovernmental agreement
- to the officers, employees, agents, or other relevant advisors of any of the entities that would be provided information in the circumstances above.

Confidential information provided under any of the circumstances above would be marked as confidential information and DEECA expects that this information would be treated with sensitivity.

## **Feasibility report**

The Licence contains a condition that allows the Licensor to request a feasibility report once every 12 months that sets out the status of its investigations and requires the Licensee to provide the Licensor a copy of any report or findings relating to the desirability or feasibility of constructing or installing offshore electricity transmission infrastructure. The purpose of seeking feasibility reports is to further the Victorian Government's understanding of the areas explored by Licensees. This information may be utilised to inform policy development or other government activities. Culturally sensitive information will be treated as Confidential Information if it is marked as such.

## **Broad discretionary powers**

The Licence is designed as a licence under public land legislation that authorises a broad range of activities.

The intent behind the Licence is to be permissive and provide a clear understanding of the rights and obligations that will apply to Licensees.

For example, where a Licensee is required to remove chattels or equipment to the satisfaction of the Licensor, this would be taken to mean that an area is restored to as close as is reasonably possible to the state that it was in prior to works taking place, requiring remediation beyond this measure would be beyond reasonable satisfaction of the Licensor.

Works being completed to the reasonable satisfaction of the Licensor would be achieved by compliance with the Licence, and the clause relating to how works are carried out must address the entire life cycle of works, meaning that the Licensor must be satisfied with the state of the licensed area at the conclusion of works.

The Licensor retains absolute discretion in consenting sub-licensing of a Licence due to a licence being issued over public land.

## Part 3: Frequently asked questions

This section addresses some of the frequently asked questions about the Licence. Further detail on many of these topics is provided in Part 2 above.

### What is the Victorian Offshore Wind Farm Feasibility Access Licence?

A Victorian Offshore Wind Farm Feasibility Access Licence (Licence) extends the Victorian public land management framework onto the seabed in relation to offshore electricity generation activities. This Licence is issued under one or more of the following statutes:

- *Land Act 1958* (Vic)
- *Crown Land (Reserves) Act 1978* (Vic)
- *Forests Act 1958* (Vic).

### What activities will be permitted under the Licence?

Permissible activities will primarily be limited to activities on public land that are required to determine the feasibility and optimal location of offshore electricity transmission infrastructure. This may include, but is not limited to, activities such as:

- ground surveys
- daytime and nocturnal surveys for native flora and fauna
- observing or taking photographs of relevant environmental matters
- water and soil sampling and/or sub-surface excavations to understand geological conditions.

### What land does this scheme apply to?

This Licence may apply to Victorian public land which includes onshore land and the seabed up to the limit of Victoria's jurisdiction which is three nautical miles. Public land is any land vested in or owned by a minister, government department, public authority or municipal council or land otherwise used for a public purpose.

This is not an Australian Government, or Commonwealth licence. For further information about these see <https://www.dcceew.gov.au/energy/renewable/offshore-wind>.

### Who can apply for the Licence?

A person or corporation who holds a feasibility licence under the *Offshore Electricity Infrastructure Act 2021* (Cth) or a person or corporation applying on behalf of the holder of such a licence.

### Is the Licence Mandatory?

No, the Licence is not mandatory, however, it provides a streamlined approach to obtaining the necessary consent from each relevant public land manager each time land is to be accessed for feasibility studies. It also provides a clear path for compliance with Native Title obligations.

The Licence does not supplant the need for consent under the MAC Act if activities on marine coastal land are proposed.

### Is the Licence exclusive?

No. The Licence gives a non-exclusive right to undertake feasibility studies relating to the location of offshore connection assets or to seek any other authorisation or permit required by the law. This means that multiple OSW developers may hold a Licence over the same area of land.

It is the obligation of each Licensee to coordinate access with other Licensees. DEECA will notify licensees when a new Licence is granted over an area where they already hold a Licence.

### How does this affect people/groups with existing rights in an area?

This Licence does not remove or limit the rights of anyone who already holds rights over an area of public land. For example, if a licence to fish over an area has been issued, that right will still exist if a Licence is granted.

Licensees should be aware that groups such as fishers, other transmission or cabling companies and local coastal organisations might have existing rights over areas that they wish to explore.

It is DEECA's expectation that potential Licensees will:

- Establish whether anyone holds existing rights over their planned licence area
- Coordinate, cooperate, and engage respectfully with any existing rights holders to arrange access or arrange anything else required to undertake feasibility investigations.

Potential Licensees should provide details of their efforts to determine if anyone holds existing rights over any public land within their planned licence area, along with the outcome of any such investigation with their application for this Licence.

### **Does the Licence cover private land?**

No. The Licence only gives a right to access Victorian public land. OSW developers still need to make arrangements with private landholders for any activities on private land, DEECA will not be involved in this process.

### **Does the Licence cover land subject to the *National Parks Act*?**

The Licence does not address the requirements if a permit is required under the *National Parks Act 1975* (Vic). If any part of the licensed area is within a national park, OSW developers are expected to seek appropriate permits, permission or authorisations, and Licence drafting will be reflected accordingly.

### **Does the Licence cover land subject to the *Victorian Plantations Corporation Act*?**

No. The Licence does not allow land under the *Victorian Plantations Corporation Act 1993* (Vic) to be licensed as this Act does not enable a licence to be granted for any purpose other than plantations purposes.

### **Does the Licence change existing environmental and cultural heritage legislation?**

No. The Licence does not change or replace any of Victoria's (or the Commonwealth's) existing Crown land, environmental, biodiversity, marine protection or cultural heritage laws/legislation. In fact, the Licence emphasises to developers that they have a duty to comply with those laws/legislation.

### **Does the Licence authorise any construction?**

No. This Licence is solely about feasibility activities. It does not authorise construction of any infrastructure or transmission infrastructure. It does not seek to replicate the transmission and infrastructure licence under the *Offshore Electricity Infrastructure Act 2021* (Cth).

The best way to manage or regulate construction of infrastructure or transport infrastructure in Victorian territory will be considered by DEECA in due course.

### **How does the Licence interact with existing approvals developers may have?**

This Licence does not replace, supplant, or modify any approval that an OSW developer has been granted or has applied for. DEECA expects OSW developers to apply for and utilise the Licence as their key method for gaining access to public land, along with any other relevant permits that are required by Victorian law. A non-exhaustive list on other regulatory approvals that may be required is provided above in Part 2 of this document.

### **Is a *Marine and Coastal Act* consent still required?**

If the proposed feasibility activities will 'use, develop, or undertake works on, marine and coastal Crown land',<sup>7</sup> then consent under the MAC Act is still required. This licensing scheme does not replace or alter the MAC Act in any way.

For further information on whether a MAC Act consent is required and how to apply, contact your local DEECA office.

### **What is a works plan?**

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<sup>7</sup> MAC Act ss 4, 65.

A works plan is a Licence document developed by an OSW developer that outlines the activities to be undertaken and the measures that will be applied to ensure that work is undertaken safely and in compliance with applicable legislation. A works plan must be approved before any activities commence and should be updated as the feasibility studies program is refined. This ensures that OSW developers can seek progressive approvals of the activities they need to undertake to determine the feasibility of their connection corridor, or seek other approvals, and DEECA is assured that these activities will take place with adequate controls in place.

### **How long is the Licence granted for/what is the term of the Licence?**

The maximum term is up to 21 years, in alignment with existing land management frameworks. However, it is not anticipated that a term of 21 years will be granted for the purposes of investigation. The licence term would align with the intended program of investigation works outlined in the developer's application and the developer's Commonwealth feasibility licence.

### **How do you apply for the Licence?**

To apply for a Licence:

1. Complete the application form, found [here](#) (on 'Regulatory Information' page of the OWEV website).
2. Email your application form to [offshorewind@deeca.vic.gov.au](mailto:offshorewind@deeca.vic.gov.au).

DEECA will assess and determine your application within 60 days, provided that the application is complete. DEECA will contact you if further information is required. Further information about the application process is provided in Part 2 above.

### **Who can I speak to if I have further questions?**

For further information about the Licence, contact [offshorewind@deeca.vic.gov.au](mailto:offshorewind@deeca.vic.gov.au).

# Definitions

**Authorising Acts** – means the licensing framework underpinning the Licence and the acts under which a Licence is granted which can be any or all of the: *Crown Land (Reserves) Act 1978* (Vic), *Land Act 1958* (Vic), and/or *Forests Act 1958* (Vic).

**CLR Act** – means the *Crown Land (Reserves) Act 1978* (Vic).

**EPBC Act** – means the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

**DEECA** – means the Department of Energy, Environment and Climate Action Victoria.

**EMAC – Eastern Maar Aboriginal Corporation**

**Forests Act** – means the *Forests Act 1958* (Vic).

**Gippsland Declared Area** – refers to the area off Gippsland declared by the Minister for Climate Change and Energy as suitable for offshore renewable energy on 19 December 2022. See here for further information: [Gippsland, Victoria declared offshore wind area - DCCEEW](#).

**GLaWAC** – refers to the Gunaikurnai Land and Waters Aboriginal Corporation.

**GMTOAC** – Gunditj Mirring Traditional Owner Aboriginal Corporation.

**Land Act** – means the *Land Act 1958* (Vic).

**Licence** – means the Victorian Offshore Wind Farm Feasibility Access Licence.

**Licensee** – a holder of a Victorian Offshore Wind Farm Feasibility Access Licence.

**Licensor** – means the Victorian Minister who is responsible for administering the act under which the Licence is granted (the *Crown Land (Reserves) Act 1978* (Vic), *Land Act 1958* (Vic), and/or *Forests Act 1958* (Vic)). At the time of publication of this note, that minister is the Minister for the Environment.

**MAC Act** – means the *Marine and Coastal Act 2018* (Vic).

**OEI Act** – means the *Offshore Electricity Infrastructure Act 2021* (Cth).

**OSW** – means offshore wind farm or offshore wind.

**OWEV** – Offshore Wind Energy Victoria.

**Southern Ocean Declared area** – refers to the area off south-western Victoria declared by the Minister for Climate Change and Energy as suitable for offshore renewable energy on 6 March 2024. See here for further information: [Southern Ocean region off Victoria, declared offshore wind area - DCCEEW](#).