

## Application for authorisation for proposed conduct

---

### 1 Parties to the proposed conduct

#### 1.1 Provide details of the applicants for authorisation, including:

- (1) name, address (registered office), telephone number and ACN

RMIT University, on behalf of itself, and each of the entities involved in the Melbourne Renewable Energy Project 2 (the **Project**), including those set out at Schedule 1 of **Annexure A** and potential future participants (together, the **Applicants**), seek authorisation for the proposed conduct as detailed in this application.

- (2) contact person's name, position, telephone number and email address

Claire Forster, Partner  
Norton Rose Fulbright Australia  
Level 18, Grosvenor Place  
225 George Street, Sydney NSW 2000

- (3) a description of business activities

RMIT University is a multi-sector university of design, technology and enterprise, whose functions are prescribed by the *Royal Melbourne Institute of Technology Act 2010* (Vic). A description of business activities carried on by the remaining Applicants is in Schedule 1 of **Annexure A**.

- (4) email address for service of documents in Australia

#### 1.2 If applicable, provide details of the other persons and/or classes of persons who also propose to engage, or become engaged, in the proposed conduct and on whose behalf authorisation is sought.

The Applicants may wish to permit additional entities to become a party to the confidential Memorandum of Understanding and the Project. The Applicants also seek authorisation to enable any future participants in the Project to have the benefit of authorisation, provided that the total electricity consumption of the group does not exceed 1% of electricity consumption in Victoria.

For the abundance of caution authorisation is also sought for the successful tender(s) to engage in the proposed conduct and be parties to the relevant supply arrangements with the Applicants.

### 2 The proposed conduct

#### 2.1 Provide details of the proposed conduct, including:

- (1) a description of the proposed conduct and any documents that detail the terms of the proposed conduct

The Applicants propose to establish a joint renewable energy purchasing group to implement the Melbourne Renewable Energy Project 2 (the **Project**).

The Project involves establishing a joint renewable energy purchasing group, whereby the Applicants would pool their electricity demand and place a single tender into the market calling for proposals for an electricity supply arrangement and an equivalent quantity of large-scale generation certificates (**LGCs**) from a specific renewable energy project connected to the National Electricity Market (**NEM**). The electricity supply and the LGCs may be provided by a single retailer (if the retailer is a vertically integrated "gentailer"), or by a consortium including a retailer and developer.

It is expected that the winning tenderer would enter into Retail Service Agreements with each applicant, purchasing electricity generation from the NEM. The winning tenderer would also enter into a LGC supply agreement with each applicant purchasing an equivalent quantity of LGCs from a specific renewable energy project connected to the NEM.

Each Retail Service Agreement and each LGC Supply Agreement between the Applicant and successful tenderer would be on the same (or substantially similar) terms and conditions.

See section 3 of **Annexure A** for further detail regarding the proposed conduct and proposed tender process.

- (2) the relevant provisions of the *Competition and Consumer Act 2010* (Cth) (**CCA**) which might apply to the proposed conduct.

The relevant provisions of the CCA which might apply to the proposed conduct are sections 45, 45AF, 45AG, 45AJ and 45AK.

- (3) the rationale for the proposed conduct

The Applicants wish to pool their individual demands for renewable electricity to collectively negotiate as a group, creating scale that would allow them to aggregate their electricity demand into an electricity load which is sufficiently large to contract the generation output of an existing or new utility scale renewable energy generation system.

See section 2 of **Annexure A** for further details.

- (4) the term of authorisation sought and reasons for seeking this period. By default, the ACCC will assume you are seeking authorisation for five years. If a different period is being sought, please specify and explain why.

The Applicants seek both interim and final authorisation for the Project. Final authorisation is requested for a period of 15 years, being the expected term of the tender process and term of each Agreement between the successful tenderer and each Applicant (which represents the Applicants' best estimate of the minimum period of purchasing commitment by each Applicant that would be required to secure pricing from a Project).

- 2.2 Provide documents submitted to the applicant's board or prepared by or for the applicant's senior management for purposes of assessing or making a decision in relation to the proposed conduct and any minutes or record of the decision made.

Enclosed with this application is a copy of the Memorandum of Understanding entered into by the Applicants dated 17 September 2019. This document governs the framework for cooperation and management of this project and appoints RMIT University as the leader of relevant interactions. The Memorandum of Understanding is confidential and contains commercially sensitive material about the Applicants. The Applicants request that it be **excluded from the public register**.

- 2.3 Provide the names of persons, or classes of persons, who may be directly impacted by the proposed conduct (e.g. targets of a proposed collective bargaining arrangement; suppliers or acquirers of the relevant products or services) and detail how or why they might be impacted.

The class of persons who may be directly impacted by the proposed conduct include electricity suppliers. They will have the opportunity to participate in the tender process described in **Annexure A**.

### 3 Market information and concentration

- 3.1 Describe the products and/or services, and the geographic areas, supplied by the applicants. Identify all products and services in which two or more parties to the proposed conduct overlap (compete with each other) or have a vertical relationship (e.g. supplier-customer).

Further detail regarding the products and/or services, and the geographic areas, supplied by the Applicants is contained in Schedule 1 of **Annexure A**.

The Applicants consider the relevant markets are both:

- (1) a market for the generation and wholesale supply of electricity in the National Electricity Market (**NEM**) or, in the alternative, in Victoria; and
- (2) a market for the retail supply of electricity to commercial and industrial customers in Victoria.

See section 4 of **Annexure A** for further details.

- 3.2 Describe the relevant industry or industries. Where relevant, describe the sales process, the supply chains of any products or services involved, and the manufacturing process.

The ACCC is well acquainted with the electricity industry and supply chain, including in the context of the ACCC's *Retail Electricity Pricing Inquiry Final Report* (June 2018) and its ongoing public inquiry that will monitor the prices, profits and margins in the supply of electricity in the NEM from 2018 to 2025. Further information appears in **Annexure A**.

- 3.3 In respect of the overlapping products and/or services identified, provide estimated market shares for each of the parties where readily available.

The Applicants' combined load committed to the Project represents less than 0.05% of the total consumption in the NEM, and 0.2% of the total consumption in the Victorian market.

- 3.4 In assessing an application for authorisation, the ACCC takes into account competition faced by the parties to the proposed conduct. Describe the factors that would limit or prevent any ability for the parties involved to raise prices, reduce quality or choice, reduce innovation, or coordinate rather than compete vigorously. For example, describe:

- (1) existing competitors
- (2) likely entry by new competitors
- (3) any countervailing power of customers and/or suppliers
- (4) any other relevant factors.

The Applicants comprise of group of entities involved in a diverse range of industries and sectors, including higher education, funds management, construction, food and



beverages, property investment, asphalt supply and a local government. There is limited overlap between the Applicants, if any, in the supply of goods or services in any relevant downstream market and the Project will not enable the Applicants to raise prices, reduce quality or choice, reduce innovation or coordinate other than to the extent required under the Project in accordance with any ACCC authorisation.

Rather, the Applicants consider the Project will promote innovation and competition by providing an opportunity for new electricity generators to enter and compete in the market for generation and wholesale supply of electricity to the NEM. By increasing investment in renewable energy, it may also lead to a reduction of development and construction costs for renewable energy generation systems, by promoting economics of scale, and the associated improvement in business practices that arises from increased experience in developing renewable energy.

See section 6 of **Annexure A** for further detail.

#### **4 Public benefit**

- 4.1 Describe the benefits to the public that are likely to result from the proposed conduct. Provide information, data, documents or other evidence relevant to the ACCC's assessment of the public benefits.

The Project will provide significant public benefits by increasing demand for renewable energy generation and promoting new investment in renewable energy. This will promote economic, environmental and social benefits.

See section 6 of **Annexure A** for further detail.

#### **5 Public detriment (including likely competitive effects)**

- 5.1 Describe any detriments to the public likely to result from the proposed conduct, including those likely to result from any lessening of competition. Provide information, data, documents, or other evidence relevant to the ACCC's assessment of the detriments.

The Applicants do not believe there to be any potential detriments to the public likely to result from the conduct.

#### **6 Contact details of relevant market participants**

- 6.1 Identify and/or provide names and, where possible, contact details (phone number and email address) for likely interested parties such as actual or potential competitors, key customers and suppliers, trade or industry associations and regulators.

The Applicants have not identified any likely interested parties. It notes that ARENA and the Clean Energy Council have historically been supporters of authorisations of this nature and may be of assistance to the ACCC in assessing this application.

#### **7 Additional information**

- 7.1 Provide any other information or documents you consider relevant to the ACCC's assessment of the application.

A detailed submission in support of the Applicants' application for interim and final authorisation is at **Annexure A**.

**8 Declaration by Applicant(s)**

Pursuant to the Memorandum of Understanding dated 17 September 2019, the lead Applicant, RMIT University, declares that, to the best of its knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertakes to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the *Criminal Code* (Cth).



Signature of authorised person

Partner, NORTON ROSE FULBRIGHT,  
Office held *solicitor acting on behalf of the Applicant*

*CLAIRE FORSTER*  
(Print) Name of authorised person

This *23* day of *October 2019*

Note: If the Applicant is a corporation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the Applicant, this fact must be stated.

# Annexure A: Submission in support of an application for interim and final authorisation

## Melbourne Renewable Energy Project 2

RMIT University and others

[**Note.** Information highlighted in blue is commercial-in-confidence and redacted from the version published on the ACCC's public register.]

**CONTENTS**

	<b>PAGE</b>
1. EXECUTIVE SUMMARY .....	1
2. INTRODUCTION .....	2
2.1 Background and context .....	2
2.2 Options for buying renewable energy .....	3
2.3 Renewable energy investment in the NEM and in Victoria .....	3
2.4 Upstream Renewable Energy Project .....	4
2.5 The Applicants .....	4
2.6 Renewable energy policies and targets of the Applicants .....	5
3. SCOPE OF THE AUTHORISATION .....	5
3.1 Proposed arrangements .....	5
3.2 Ongoing administration of the RSA and LGC SPA .....	6
3.3 Period for which authorisation is sought .....	6
3.4 Application for interim authorisation .....	7
3.5 Application for expedited draft determination .....	7
3.6 Why authorisation is being sought .....	7
4. MARKET DEFINITION .....	8
5. COUNTERFACTUAL .....	9
6. PUBLIC BENEFITS ARISING FROM PROPOSED CONDUCT .....	9
6.1 Public benefits of the project .....	9
6.2 Environmental benefits .....	9
6.3 Economic benefits .....	10
7. PUBLIC DETRIMENT .....	11
 <b>Schedule</b>	
1 The Applicants .....	13



1. **EXECUTIVE SUMMARY**

This application is made by RMIT University for itself and on behalf of the entities set out in Schedule 1 and potential future participants in the Melbourne Renewable Energy Project 2 (together, the **Applicants**).

The Applicants seek interim and final authorisation from the Australian Competition and Consumer Commission (**ACCC**) for the Melbourne Renewable Energy Project 2 (the **Project**). The Project follows and adopts a similar model to the first Melbourne Renewable Energy Project, which was authorised by the ACCC on 21 July 2016. The Project involves establishing a joint renewable energy purchasing group, whereby the Applicants would pool their electricity demand and place a single tender into the market calling for proposals for an electricity supply arrangement and an equivalent quantity of large-scale generation certificates (**LGCs**)<sup>1</sup> from a specific renewable energy project connected to the National Electricity Market (**NEM**). The electricity supply and the LGCs may be provided by single retailer (if the retailer is a vertically integrated "gentailer"), or by a consortium including a retailer and developer.

It is expected that the winning tenderer would enter into Retail Service Agreements with each applicant, purchasing electricity generation from the NEM. The winning tenderer would also enter into a LGC Supply Agreement with each applicant purchasing an equivalent quantity of LGCs from a specific renewable energy project. Specifically, the Applicants seek:

- (a) interim and final authorisation to jointly conduct a tender process to identify and select an electricity retailer that will supply electricity to the Applicants, on the basis that the supplier (individually, or with a developer) will supply LGCs from a specific renewable energy project connected to the NEM;
- (b) final authorisation for each Applicant to enter into a Retail Service Agreement and LGC Supply Agreement with the successful tenderer on the same general agreed terms and conditions for the acquisition of energy from the successful retailer (who may be a sole bidder, or may be a member of a retailer and developer consortium); and
- (c) final authorisation for each of the Applicants to consult with each other and make joint decisions regarding the administration and operation of some aspects the Retail Service Agreement and LGC Supply Agreement (specifically, periodic and other price reviews, and termination for breach of project environmental conditions).

The Applicants consider that the Project will provide significant public benefits by increasing demand for renewable energy generation in the NEM and promoting new investment in renewable energy (promoting both environmental and economic benefits), and will not lead to any public detriments (including any lessening of competition in any relevant market).

Although the Melbourne City Council is not a member of the purchasing group and will not enter into the agreements outlined in paragraph (b) and (c) above, the Melbourne City Council is included as an Applicant to the extent it is facilitating the Project and providing assistance to the other Applicants using insights gained from the first Melbourne Renewable Energy Project.

---

1 LGCs are created annually based on the actual amount of electricity generated by a renewable energy generation system, registered with the Clean Energy Regulator under the Renewable Energy (Electricity) Act 2000. LGCs are traded in an open market, and are generally bought and surrendered by RET-liable entities to fulfil their statutory surrender obligations.



## 2. INTRODUCTION

### 2.1 Background and context

Each of the Applicants is committed to securing a reliable supply of renewable energy in order to reduce the impact of their operations on the environment.

Two of the key benefits to using renewable energy are that it is sustainable, and can be produced with little to no carbon emissions. It is also becoming increasingly inexpensive, compared to traditional generation sources. The importance of increasing the production and use of renewable energy, over traditional sources, is reflected in:

- (a) Australia's international commitment to reduce emissions, including as part of the commitment made at the 2015 United Nations Climate Change Conference held in Paris between 30 November and 12 December 2015 (the **Paris Agreement**).
- (b) Australia's Renewable Energy Target (**RET**). As of July 2019, RET aims to ensure that at least 33,000 GWh of Australia's electricity comes from renewable sources by the year 2020;<sup>2</sup> and
- (c) various stated-based emissions reduction initiatives.

In order for Australia to achieve these goals, significant new investment will be required in the renewable energy industry.<sup>3</sup> The Victorian Government has also introduced the *Renewable Energy (Jobs and Investment) Amendment Bill 2019* to legislate increasing Victoria's Renewable Energy Target (**VRET**) to 50 per cent by 2030.

The ACCC is familiar with these types of arrangements and has previously authorised similar joint purchasing arrangements for electricity, including:

- (a) On 21 July 2016 the ACCC granted authorisation for Melbourne City Council and 13 others to implement the first Melbourne Renewable Energy Project, which involved an arrangement to jointly negotiate the terms and conditions of certain electricity sale agreements and to conduct a collective tender process for 15 years.
- (b) On 17 May 2017, the ACCC granted authorisation for the South Australian Chamber of Mines and Energy Inc, on behalf of 27 participating members, to establish a joint electricity purchasing group for 11 years.
- (c) On 22 November 2017, the ACCC granted authorisation for the Eastern Energy Buyers Group to establish a joint energy purchasing group for gas and electricity for 11 years.
- (d) The ACCC is also currently considering an application by the Large Format Retail Association for authorisation to pool its members' electricity demand and collectively invite tenders, and negotiate with suppliers, on the basis of that aggregated demand for 11 years and has granted interim authorisation.

---

2 Renewable Energy (Electricity) Amendment Act 2015 (Cth).

3 The Applicants' commitments under this Project will go beyond contributing to the RET: approximately 20% of the renewable energy certificates generated in connection with the Project will contribute to the RET, and the remainder will be voluntarily surrendered by the Applicants.

## **2.2 Options for buying renewable energy**

Whilst the market is evolving, there are limited options for energy users who wish to attain a 100% renewable energy supply. Generally, customers are limited to either developing their own on-site generation (such as rooftop solar panels), pursuing GreenPower purchasing arrangements with electricity retailers, or purchasing and voluntarily surrendering LGCs.

The problem with using on-site generation for many businesses, including the Applicants, is that it is relatively expensive and impractical to develop on-site generation that can reliably meet all of the business's energy requirements. Indeed, it is sometimes not possible to operate rooftop solar panels in inner city areas because of "overshadowing" by neighbouring buildings, and because of the age of heritage buildings.

GreenPower purchasing arrangements are offered by energy retailers participating in the GreenPower scheme.<sup>4</sup> A customer may choose to "offset" its electricity account with a nominated percentage (from 10 to 100%) of renewable energy. The Government reviews a retailer's sale and purchase records to ensure that the retailers are buying renewable energy equivalent to the GreenPower purchases of their customers. GreenPower purchasing arrangements are unattractive to the Applicants because they can be costly, are open to significant price fluctuations, and do not directly promote investment in new renewable energy sources as they ordinarily rely on existing renewable energy sources (although increased use of GreenPower purchasing arrangements may indirectly lead to new investment in renewable energy generation if more customers commit to those arrangements than can be supplied by existing sources). By way of illustration, GreenPower purchases in the City of Melbourne account for only 1.2% of the total electricity consumed in that municipality (based on 2013 data<sup>5</sup>).

## **2.3 Renewable energy investment in the NEM and in Victoria**

The Project is seeking proposals that involve renewable energy generation system that is connected to the NEM. The evaluation criteria will favour a system located in Victoria.

In 2019, only 21% of Australia's power supply was obtained from renewable energy sources.<sup>6</sup> The predominant source of renewable energy was hydro power (7.5%), followed by wind (7.1%) and solar power (5.2%).

Renewable energy investment is even lower in Victoria. Despite the RET, the primary source of energy generation in Victoria is from brown coal power plants. Renewable energy projects developed to date have occurred disproportionately outside Victoria. Only 21% of electricity generated in Victoria is supplied by renewable energy sources.<sup>7</sup> The regions with the highest level of renewable energy generation are South Australia (53% of total generation), and Tasmania (96% of generation).<sup>8</sup>

Considerable uncertainty about Federal Government policy has caused a drop in investor confidence and slowed down development of renewable energy projects across the country.

---

4 A joint initiative of Australian Capital Territory, New South Wales, South Australian, Queensland and Western Australia government agencies.

5 Analysis conducted by the Melbourne City Council, based on data provided by CitiPower and GreenPower.

6 Clean Energy Council, Clean Energy Australia Report 2019, 9.

7 Clean Energy Council, Clean Energy Australia Report 2019, 10.

8 Clean Energy Council, Clean Energy Australia Report 2019, 10.

In order to achieve the transition to renewable energy contemplated by policies such as the Paris Agreement, significant new investment will be required in renewable energy in the years ahead—both in Victoria, and throughout Australia. This requires innovative solutions to renew investor confidence in renewable energy projects in Victoria, and beyond.

**2.4 Upstream Renewable Energy Project**

The Applicants wish to develop an option for switching to renewable energy by pooling together their electricity demands, so that their combined load can directly contract the generation output of a specific renewable energy project.

The objective of the Project is for each Applicant to promote investment in renewable energy. The Applicants seek to do this by aggregating their electricity demand into an electricity load which is sufficiently large to contract the generation output of an existing or new utility scale renewable energy generation system. A contracted offtake is a valuable component in supporting the financing and investment in such projects.

**2.5 The Applicants**

The Applicants are a diverse group who are united by their commitment to securing renewable, carbon neutral energy and promoting new investment in renewable energy. The details of the business carried on by each Applicant is set out in Schedule 1.

It is estimated that the Applicants will acquire a combined total of around 100 gigawatt-hours (**GWh**) per annum of electricity through this Project. At the time of making this application, the Applicants' expected individual loads that will be committed to the Project are as follows:

**Note.** This table contains confidential, commercially sensitive information.

<b>Applicant</b>	<b>Load committed to Project (GWh)</b>	<b>% of Total Load committed to Project</b>
RMIT University		
ISPT		
Deakin University		
CBUS Property		
Mondelez		
Fulton Hogan		
Citywide North Melbourne Asphalt JV		
<b>Total</b>	<b>100 GWh</b>	<b>100%</b>

The total combined load will be finalised as the Project progresses, and there are likely to be annual fluctuations in the total load across the group in the region of +/- 20%.



**2.6 Renewable energy policies and targets of the Applicants**

The Project will enable a number of the Applicants to meet their own renewable energy targets. For example, RMIT University has committed to be Carbon Neutral by 2030. Recently completing a \$128 million program to cut energy use and greenhouse gas emissions. RMIT University has also signed a power purchase agreement under the Melbourne Renewable Energy Project for a portion of its electricity requirements. RMIT University has also rolled out over 600kW of on-site solar PV.

**3. SCOPE OF THE AUTHORISATION**

**3.1 Proposed arrangements**

The Applicants seek to conduct a joint tender process whereby proposals will be sought for an electricity supply arrangement under which a retailer enters into an electricity supply agreement with each Applicant, which collectively support the demand for utility scale renewable energy generation system connected to the NEM. The tender process will call for either "shovel ready" renewable energy generation system that is capable of supplying a quantity of carbon neutral electricity into the NEM that is equivalent to the quantity purchased by the Applicants under the electricity supply agreements (but may have a higher generation capacity) or existing renewable energy generation.

Subject to obtaining interim authorisation, the formal tender is intended to be issued [REDACTED] [REDACTED], once the terms of the tender have been agreed by the Applicants. [REDACTED]  
[REDACTED]  
[REDACTED]

The tender process is open and transparent and will operate as follows.

- (a) The tender will be an open tender [REDACTED]  
No late tenders will be accepted.
- (b) [REDACTED] the tenders will be reviewed by an evaluation panel. The evaluation panel will comprise of representatives of the Applicant group. The evaluation panel may also engage non-voting advisors (including legal, financial and technical advisors). The evaluation panel will evaluate the tenders against prescribed criteria, which the Applicants can make available to the ACCC on a confidential basis, on request.
- (c) Once the evaluation panel has agreed on one (or more) preferred tenderers, one or more representatives of the Applicants will negotiate the contractual terms (discussed further below) with the preferred tenderer or tenderers. [REDACTED]  
[REDACTED]
- (d) Once negotiations are completed [REDACTED] the evaluation panel will make a recommendation to the Applicants on the preferred tenderer, and contract terms.
- (e) Each Applicant will then undergo its own governance process to make a final decision as to whether or not to award the tender to the preferred tenderer.

The tender process will call for proposals to either construct a renewable energy source that will generate a sufficient amount of electricity to meet the Applicants' aggregate demand for electricity, and supply an equivalent quantity of electricity to the Applicants or supply

electricity from an existing renewable energy generation plant. The proposed Project structure is for:

- (a) the developer to be responsible for constructing and generating the renewable energy source; and
- (b) the retailer (with an electricity retail licence) to supply energy to the Applicants.

However, it is possible that a single bidder will take the role of developer and retailer.

Where there is a consortium bidding, the Applicants expect that the retailer will enter into a Power Purchase Agreement with the developer under which it will pay the developer for the generation it dispatches into the NEM. The retailer will supply electricity to the Applicants under a Retail Services Agreement (**RSA**) and LGCs under an LGC Supply and Purchase Agreement (**LGC SPA**). The retailer will have a separate RSA and LGC SPA with each Applicant.

While the Applicants will not contract directly with the developer for electricity, the RSA between the retailer and the Applicants will effectively underwrite the developer's investment by creating a secure revenue stream to ensure the viability of the Project.

The Applicants expect that the terms of each RSA and LGC SPA will be on substantially similar terms and conditions except as required to meet individual customer needs, and the tender is expected to be conducted on that basis.

The "commencement date" for each Applicant will depend on when their pre-existing contractual commitments expire (or can be terminated), and so will not necessarily be the same, but no electricity will be supplied under any RSA and until the renewable energy generation system has been constructed and starts generating electricity.

### 3.2 **Ongoing administration of the RSA and LGC SPA**

Once each RSA and LGC SPA is in force, it will run on its own terms and be administered independently. Whilst it is not envisaged that close coordination amongst the Applicants will be required thereafter, there will be certain "triggers" in the RSA that will entitle the Applicant to join with the other Applicants to negotiate collectively with the retailer. These triggers are limited and will relate to significant events that will have an impact on the purchasing group as a whole. The triggers are:

- (a) periodic and other price reviews; and
- (b) termination for breach of project environmental conditions.

Importantly, the Applicants operate in diverse sectors and industries and there is limited overlap, if any, in downstream markets for the supply of goods or services between the Applicants. Any risk that the ACCC authorising the Project would lead to additional coordination between the Applicants, is negligible.

### 3.3 **Period for which authorisation is sought**

The authorisation is requested for 15 years. This is based on the length of time the tender process is anticipated to take, plus the term of the RSA and LGC SPA.

██  
██  
██

The term of the RSA and LGC SPA



represents the Applicant's best estimate for the minimum period of commitment that would be required in order to underwrite the investment, noting that the ACCC has acknowledged "*the investment case and ability to source funding for many new generation projects can be heavily reliant on having customer commitments to off take for up to 10–15 years.*"<sup>9</sup>

### 3.4 **Application for interim authorisation**

The Applicants request that the ACCC grant interim authorisation in respect of this application, in order to allow the Applicants to conduct the joint tender for the Project, which the parties seek to issue [REDACTED]. The Applicants will not award the tender unless and until final authorisation is granted.

Interim authorisation is being sought to enable the Applicants to progress the tender process while its authorisation application is being determined. The Applicants submit that interim authorisation is justified because:

- (a) carrying out the joint tender process is unlikely to have any impact on any relevant market, as it will not result in any change in the purchasing behaviour of, or the entry into any final contracts by, the Applicants; and
- (b) the Project is now ready to move into the joint tender phase, and any further delay to progressing the Project through the tender process phase will have significant flow-on delay to the commencement of a renewable energy project (which, in the case of windfarms and solar farms, would be likely to take between 2 to 3 years to build), and the achievement of each Applicant's renewable energy policies and targets. This may make it more difficult for the Applicants to remain committed to the Project, as they may need to explore alternative ways to meet those policies and targets within their relevant timeframes.
- (c) Each of the Applicants also have existing ongoing electricity supply agreements, which are due to expire on or before the June 2020. If the successful bidder or bidders is not ready to supply electricity by June 2020 or offer a short term bridging solution, then the cost savings and other benefits of the Project may be diluted.

Given timing considerations, the Applicants request the ACCC determine the application for interim authorisation within 28 days. The Applicants note the ACCC has previously granted interim authorisation for similar collective bargaining arrangements for joint purchasing of electricity set out in paragraph 2.1.

### 3.5 **Application for expedited draft determination**

Given the reasons outlined above the Applicants request that the ACCC expedite its Draft Determination to coincide with Interim Authorisation. Given the ACCC's familiarity with the subject matter of this application and the previous opportunities that the ACCC has had to undertake market inquiries on the same matters, we see no reason why consultation would be necessary in advance of a Draft Determination.

### 3.6 **Why authorisation is being sought**

The Applicants may be considered to be competitors in the acquisition of energy under the *Competition and Consumer Act 2010 (CCA)*. Accordingly, it is arguable (although the Applicants do not concede) that making and giving effect to the arrangements and

---

9 ACCC, Restoring electricity affordability and Australia's competitive advantage: Retail Electricity Pricing Inquiry – Final Report (June 2018), xiv.



understandings underpinning the Project (including, technically, Melbourne City Council's involvement in the Project) may be seen as:

- (a) having the purpose or effect of substantially lessening competition (that is, an anti-competitive contract, arrangement, understanding or concerted practice prohibited under section 45(1) of the CCA);
- (b) having the purpose or effect of fixing, controlling or maintaining the price of goods or services to be acquired by the Applicants (that is, a cartel provision prohibited under sections 45AF, 45AG, 45AJ, 45AK of the CCA); or
- (c) having the purpose of allocating between the parties to the arrangement the persons or classes of persons who are likely to supply goods or services to any of the parties to the arrangement (that is, a cartel provision prohibited under sections 45AF, 45AG, 45AJ, 45AK of the CCA).

The Applicants wish to have the certainty afforded by authorisation that the arrangements do not breach these prohibitions.

#### **4. MARKET DEFINITION**

The proposed conduct concerns an arrangement to jointly negotiate acquisition terms for, and collectively acquire, renewable energy. The Applicants submit that the following markets are relevant to the assessment of the Project's effect on competition:

- (a) a market for the generation and wholesale supply of electricity in the NEM or, in the alternative, in one or more regions of the NEM, including Victoria;
- (b) a market for the retail supply of electricity to commercial and industrial end customers in Victoria.

Wholesale electricity in eastern and southern Australia is traded through the NEM, covering the Australian Capital Territory, New South Wales, South Australia, Queensland, Victoria and Tasmania. Generators in the NEM sell electricity through a wholesale spot market in which changes in the supply–demand balance determine prices.

The main customers are energy retailers, which bundle electricity with network services for sale to residential, commercial and industrial energy users.<sup>10</sup> The total consumption of electricity in the NEM in 2018–19 was 195.7 terawatt hours (TWh),<sup>11</sup> of which Victoria consumed 44.7 TWh.<sup>12</sup> Victoria is a net exporter of electricity, but exports are partially offset by hydro generation imports from Tasmania.

As discussed in further detail below, the Applicants' combined load committed to the Project represents less than 0.05% of the total consumption in the NEM, and 0.2% of the total consumption in the Victorian market.

---

10 Australian Energy Regulator, *State of the Energy Market 2014*, 22.

11 Australian Energy Regulator, National Electricity Market electricity consumption, <<https://www.aer.gov.au/wholesale-markets/wholesale-statistics/national-electricity-market-electricity-consumption>> as at 23 November 2015.

12 Australian Energy Regulator, Electricity supply to regions of the National Electricity Market, <<https://www.aer.gov.au/wholesale-markets/wholesale-statistics/electricity-supply-to-regions-of-the-national-electricity-market>> as at 17 October 2019.

**5. COUNTERFACTUAL**

If the Applicants are unable to proceed with the Project, then each Applicant will need to independently pursue a source of renewable energy.

This will mean that each Applicant must seek to meet their commitment to moving to increased use of renewable energy through existing means. As explained in section 2.2, the options for customers wishing to buy renewable energy are currently limited. If the Project does not proceed, then the Applicants are likely to enter into individual arrangements to:

- (a) invest in a small scale renewable energy systems, which will be disproportionately expensive and will only meet a small part of their energy demands;
- (b) commit to individual GreenPower purchasing arrangements, which the Applicants consider will be unlikely to lead to any new direct investment in renewable energy projects in the NEM; and/or
- (c) purchase LGCs, which are subject to volatile price movements and are unlikely to have the effect of driving new investment in renewable energy (particularly given the scale of LGC purchases by individual Applicants would be too small to make any material impact on the spot price of LGCs).

As a consequence, each Applicant may be delayed in switching to renewable energy, and it may not be possible to shift 100% of their demand to renewable energy in the medium term without incurring substantially greater cost than under this Project. Alternatively, some Applicants may seek to meet their individual environmental and carbon neutrality objectives by acquiring international carbon credit certificates (which will not promote any investment in Australia).

**6. PUBLIC BENEFITS ARISING FROM PROPOSED CONDUCT**

**6.1 Public benefits of the project**

The Project will provide a range of public benefits, including:

- (a) environmental benefits; and
- (b) economic and associated social benefits (including job creation and regional development).

Further, as explained below in section 7, the Applicants believe the Project will promote competition by providing an opportunity for new electricity generators to enter and compete in the market for generation and wholesale supply of electricity in the NEM. By increasing investment in renewable energy, it may also lead to a reduction of development and construction costs for renewable energy generation systems (by promoting economics of scale, and the associated improvement in business practices that arises from increased experience in developing renewable energy).

**6.2 Environmental benefits**

The public benefit of reducing greenhouse emissions is clear, as all members of the public have an interest in preserving the quality of air, water and living standards. Further, Australia's commitment under the Paris Agreement to contribute to achieving no more than 2 degrees of global warming (with an aspiration to achieve no more than 1.5 degrees) is estimated to require Australia to reduce greenhouse gas emissions by between 26 – 28% by 2030.



If the Project is successful, then the conversion of the energy loads committed to this Project by the Applicants from traditional to renewable energy sources is estimated by the Applicants to reduce greenhouse gas emissions by 100,000 tonnes per year. This is a significant reduction in greenhouse gas emissions.

### 6.3 **Economic benefits**

#### *New Renewable Energy Projects*

The energy demand from any single Applicant is highly unlikely to be sufficient to underpin investment in a new renewable energy project. It is only by "pooling together" their demand that they can create the necessary conditions for new investment in renewable energy.

The Project clearly falls within the ambit of statements made by the ACCC in favour of joint energy purchasing groups, including:

*"The ACCC is generally supportive of buying groups for electricity, particularly where they are structured in such a way as to provide scale and a customer base that will help underwrite new investment in generation capacity. These types of arrangements, where successful, can be an important avenue to new entry and therefore a new source of competition in wholesale markets."<sup>13</sup>*

The Applicants are committed to selecting a new renewable energy project, thereby promoting new entry in energy generation, and the evaluation criteria will favour a project that will be constructed in Victoria. New investment in renewable energy will increase economic activity (and, more specifically, in the area that the renewable energy project will be located, which is highly likely to be in a rural or regional area).

It is predicted that energy users interested in acquiring renewable energy will ultimately benefit from the Project as it will generate investor confidence in renewable energy projects in Australia.

Importantly, the Project builds on the success and learnings from the first Melbourne Renewable Energy Project, which was the first time a group of energy users with smaller loads came together to use that load to underpin a new investment in renewable energy in this way. The Applicants, being high profile local organisations, intend to lead by example in conscious energy consumption and encourage others to follow in their footsteps.

Increased investment in renewable energy will have pro-competitive outcomes. It will diversify Australia's energy supplies and reduce dependence on non-renewable fossil fuels. Recent processes run by the ACT Government and the Australian Renewable Energy Agency have identified a large number of renewable energy projects that would be able to supply renewable electricity on competitive terms, if launched. This Project would create demand that would underpin the development of such new renewable energy projects.

#### *Jobs creation and regional development*

The Clean Energy Council has acknowledged the economic benefits of renewable energy, stating that:

*"Local communities are already seeing the rewards from investment in renewables in Victoria – almost 20 wind and solar projects are underway, adding up to more than \$5*

---

13 ACCC, Restoring electricity affordability and Australia's competitive advantage: Retail Electricity Pricing Inquiry – Final Report (June 2018), 350.



*billion of investment and close to 4000 direct jobs. Long-term policy and security will lead to more opportunities for the whole state, breathing life into the areas around new renewable energy projects and giving people extra opportunities outside the capital cities.”<sup>14</sup>*

In introducing the *Renewable Energy (Jobs and Investment) Amendment Bill 2019*, the Victoria Government also noted the benefits of renewable energy, stating that “*An increased VRET will create around 24,000 jobs by 2030 and provides certainty and investor confidence for the renewable energy industry, driving an additional \$5.8 billion in economic activity in Victoria.*”<sup>15</sup>

If the Project is approved, the Applicants estimate that it will create jobs in construction of the renewable energy generation system, and subsequent operation

Further, most jobs expected to be created by the Project are located in rural and regional areas. Increased employment and industry develops regional areas and strengthens the economies of local communities. The broader economy would also benefit from the development of, and procurement of services and equipment necessary for, new energy projects.

#### *Promoting retail competition*

The Project is being designed to enable smaller, standalone, retailers to combine with a developer to compete to provide the Project. This will create opportunities for greater differentiation between retailers and potentially sponsor the involvement of smaller players in larger opportunities. This again aligns with desired outcomes stated in the ACCC’s Retail Electricity Pricing Inquiry Final Report.

The combined electricity volume of the Applicants and the length of the agreements is likely to encourage increased competition for the tender and the retail supply of renewable electricity, enabling the Applicants to seek more competitive pricing and terms than if the Applicants otherwise sought to negotiate individual supply agreements.

#### *Transaction costs*

Conducting a tender for a project of this complexity is a detailed and rigorous process which requires significant time and resources. The process requires the preparation of tender documents and the advertising, receipt and evaluation of tenders. Once a successful tender is selected, the process of contract preparation, negotiation and administration must follow.

Conducting a joint tender and contract administration process will be more efficient as it will eliminate the replication of work by each Applicant, and the need for specialist energy and legal advisors would make the costs prohibitive for any individual Applicant to undertake a Project of this kind. This will save the time and expenditure that would be incurred by each Applicant if required to conduct separate tender processes. These savings will ultimately benefit the customers of each Applicant.

## **7. PUBLIC DETRIMENT**

The Applicants submit that the authorised conduct will not have any material public detriment, and, in particular, is likely to be pro-competitive rather than anti-competitive.

---

14 Clean Energy Council, Clean energy charges up Victoria economy, 21 November 2018.

15 Minister for Energy, Environment and Climate Change, More Renewable Energy to Boost Jobs and Cut Power Bills, Media Release, 13 August 2019.

**PUBLIC VERSION**

The Applicants' combined electricity demands equate to 0.05% of the NEM, and 0.2% of the Victorian market as of 2018-19:

	<b>Applicants</b>	<b>Victoria</b>	<b>NEM</b>
Annual electricity consumption	100 GWh (0.1 TWh)	44.7 TWh	195.7TWh

Whether the relevant market is the National or the Victorian electricity market, the amount of energy the Applicants wish to purchase under the Project (even when taking into account an annual fluctuation of +/- 20%) is so comparatively small that it cannot have any material impact on competition. The significant volume of electricity required by other users of electricity other than the Applicants remains available to alternative suppliers who are not successful tenderers in the Project.

The long term offtake available under this Project presents an opportunity for new electricity generators to enter and compete in the market. This will contribute to expanding the renewable energy sector, bringing down development and construction costs (through economies of scale and improved business practices) and improving Australian businesses' ability to construct renewable energy infrastructure. These outcomes are essential to Australia achieving its commitment to the RET and the Paris Agreement, and mean that the Project is likely to have pro-competitive effects in related markets, by facilitating that investment and increasing electricity supply and opening up opportunities for smaller retailers.

**SCHEDULE 1**

**The Applicants**

**1. Royal Melbourne Institute of Technology ABN 49 781 030 034**

Address: 124 La Trobe Street, Melbourne, VIC 3000

Description of business: The Royal Melbourne Institute of Technology is an Australian public university

**2. Deakin University ABN 56 721 584 203**

Address: 1 Gheringhap Street, Geelong, VIC 3220

Description of business: Deakin University is an Australian public university.

**3. ISPT Pty Ltd ACN 064 041 283**

Address: Level 11, 8 Exhibition Street, Melbourne VIC 3000

Description of business: ISPT is an unlisted property fund manager.

**4. Fulton Hogan Australia Pty Ltd ABN 42 135 849 115**

Address: PO Box 56, Hawthorn, VIC 3122

Description of business: Fulton Hogan is a large construction, roadworks and aggregate supplier.

**5. Mondelez Australia Pty Ltd ABN 78 004 551 473**

Address: Level 10, 75 Dorcas Street, South Melbourne, VIC 3205

Description of business: Mondelez is a confectionery, food and beverage company.

**6. Cbus Property Pty Ltd ACN 115 826 741**

Address: Level 7, 550 Bourke Street, Melbourne, VIC 3000

Description of business: Cbus Property is a wholly owned subsidiary of Cbus (industry superannuation) involved in direct property investment.

**7. Citywide North Melbourne Asphalt Pty Ltd ABN 19 608 698 700**

Address: 208-292 Arden Street, North Melbourne, VIC, 3051

Description of business: Citywide North Melbourne Asphalt is a joint venture between Citywide and Fulton Hogan providing asphalt throughout metropolitan Melbourne.

**8. Melbourne City Council ABN 55 370 219 287**

Address: 90-120 Swanston Street, Melbourne VIC 3000

Description of business: Melbourne City Council is the local government body responsible for the municipality of Melbourne.