

Deloitte.



**Final Report – Assessment of
Social License Costs**
Australian Energy Regulator

6 March 2023

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Glossary

AER	Australian Energy Regulator
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AIATSIS	Australian Institute of Aboriginal and Torres Strait Islander Studies
Capex	Capital Expenditure
CCP	AER Consumer Challenge Panel
CER	Consumer Energy Resources
CESS	Capital Expenditure Sharing Scheme
CPA	Contingent Project Application
EBSS	Efficiency Benefit Sharing Scheme
IAP2	International Association for Public Participation
ISP	Integrated Systems Plan
MAR	Maximum Adjusted Revenue
NEO	National Electricity Objective
NER	National Energy Rules
NSW	New South Wales
Opex	Operating Expenditure
PACR	Project Assessment Conclusions Report
PADR	Project Assessment Draft Report
REZ	Renewable Energy Zone
RIT-T	Regulatory Investment Test for Transmission
SBP Scheme	NSW Government Strategic Benefit Payments Scheme
TNSP	Transmission Network Service Provider
UNDRIP	The United Nations Declaration on the Rights of Indigenous Peoples
VTIF	Victorian Transmission Investment Framework

Executive summary

The Australian energy market is undergoing a period of rapid transformation with large-scale synchronous generators increasingly being replaced by utility-scale renewable assets and Consumer Energy Resources (CER).

Social license is critical to community acceptance of electricity transmission infrastructure projects

To accommodate this influx of utility-scale renewable assets, new electricity transmission infrastructure projects are required. Given these projects are increasingly being proposed and undertaken in greenfield areas, the importance of ensuring community acceptance of these projects – and thus obtaining and maintaining the appropriate ‘social license’ – is receiving increasing focus. The absence of social license can create delays to electricity transmission infrastructure projects, increasing costs and (in the worst case) lead to the abandonment of a project.

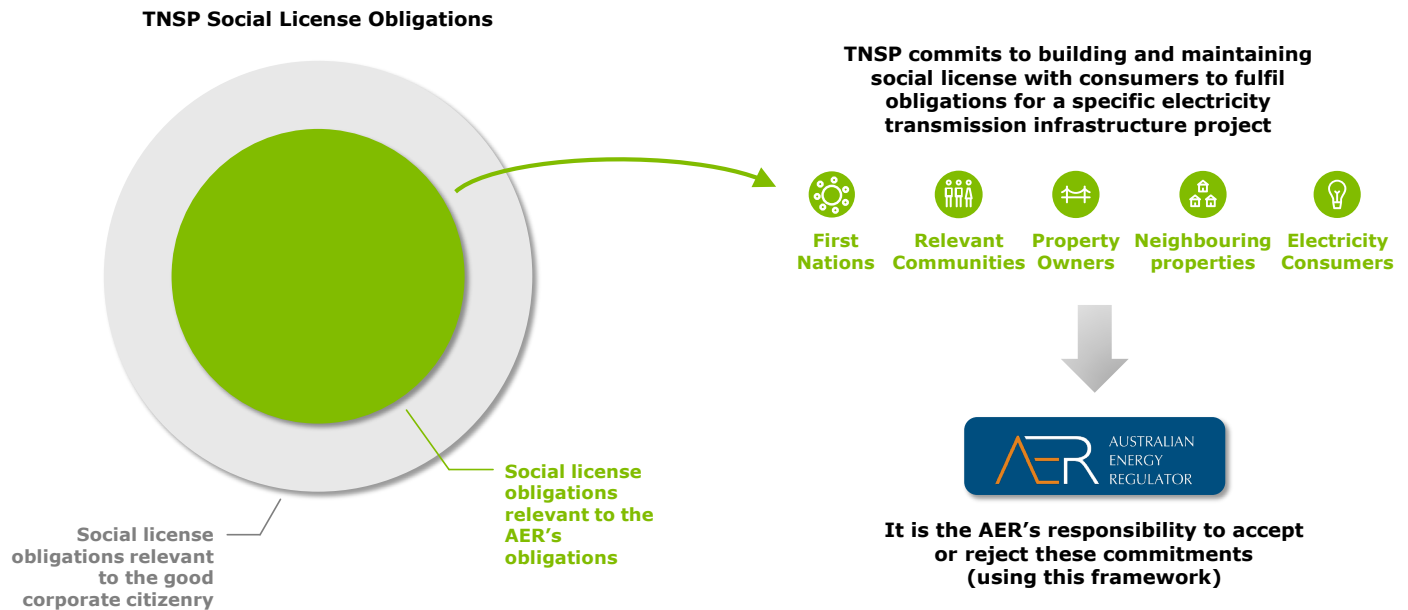
Social license incorporates three elements: trust, legitimacy and credibility

At its core, the concept of social license revolves around a community’s acceptance of an organisation and rests on three key elements: trust, legitimacy and credibility. Notably, social license is an organic concept that requires ongoing and specifically tailored engagement with affected communities rather than a ‘one size fits all’ approach.

While social license is a broad concept, for the purpose of this report we are adopting a specific definition of social license, framed by the AER’s regulatory remit. This refers specifically to the activities undertaken by transmission network service providers (TNSPs) to build and maintain community acceptance of an electricity transmission infrastructure project. It includes both stakeholder engagement as well as the activities that TNSPs may undertake to address community concerns, for example, undertaking activities to mitigate the visual impact of a particular electricity transmission infrastructure project.

Vitality, nothing in this report seeks to define the social license obligations a TNSP may have as a good corporate citizen (i.e., corporate social responsibility), operating within the social and economic fabric of Australia or to the brand identity of a TNSP. The corporate social responsibility of a TNSP remains its own and is separate to the AER’s assessment process through its regulatory framework. For example, a TNSP may choose to sponsor a local sporting event in a community to improve its standing as an organisation. This expenditure is outside the scope of the framework proposed in this report which focuses on (and proposes cost recovery for) the activities undertaken by TNSPs to build and maintain community acceptance of a specific electricity transmission infrastructure project.

Figure i Delineation between a TNSP’s various social license obligations



The AER assesses the prudence and efficiency of social license expenditure

Given the role that social license has in supporting the timely delivery of electricity transmission infrastructure projects, and the project risks inherent in an organisation having its social license withdrawn by poor conduct, the AER is increasing its focus on the methodologies it uses to assess the prudence and efficiency of social license expenditure. The Australian Energy Market Commission (AEMC) recently issued its *Transmission Planning and Investment – Stage 2 report*¹. In this report, the AEMC identified several areas where the AER could provide additional guidance to assist TNSPs with obtaining and maintaining social license.

In response to the AEMC’s recommendations, the AER engaged Deloitte to provide context and develop an illustrative example of a framework to identify the types of social license expenditure that could be included in TNSP revenue proposals and to inform the AER on how it could assess and incentivise efficient behaviour. The purpose of this report is to provide advice on what the AER could consider in relation to social license engagement and activities, and how the costs of social license engagement and activities could be assessed by the AER.

Importantly, this framework does not seek to define additional or alternative pathways by which TNSPs will be allowed to recover expenditure. Rather, the framework is intended to sit within the AER’s existing assessment remit and to inform the AER as to how it could assess the prudence and efficiency of social license engagement and activities as required under the National Electricity Rules (NER) and forecast expenditure guidelines.

The recovery of social license expenditure under this framework is intended to be over and above any legislative or regulatory requirements (e.g. increased easement payments) that may be imposed by governments.

In addition, this report does not seek to provide guidance on the costs associated with social license activities in the Regulatory Investment Test (RIT-T) and how TNSPs might ensure that a credible option can “be implemented in sufficient time to meet the identified need”. These concepts will be assessed internally by the AER.

¹ AEMC, *Transmission Planning and Investment Stage 2 Report* (27 October 2022) <www.aemc.gov.au/sites/default/files/2022-10/stage_2_final_report.pdf>.

This report provides a framework for the AER to assess social license

In this report, we discuss and distinguish between social license engagement and activities:

- **Engagement** – the actions TNSPs undertake to work directly with the public to ensure that concerns and aspirations are consistently understood and considered. This includes liaising with relevant communities including landowners, affected community members, First Nations Australians and the broader electricity consumer group through methods such as community forums, stakeholder meetings, consultative committees and advisory groups
- **Activities** – the actions TNSPs commit to so that the community is satisfied with the electricity transmission infrastructure project (e.g. alterations to the construction of the transmission lines, planting of flora, etc).

We propose a framework for social license engagement and activities which identifies the procedural and substantive requirements that a TNSP must undertake to satisfy the AER's requirements and thus have its costs approved by the AER.

A TNSP must submit a social license engagement plan

In order to recover expenditure associated with social license engagement, a TNSP must submit a social license engagement plan that meets the requirements proposed in this framework. A plan is required at any point where a TNSP intends to recover costs. It is the TNSP's responsibility to determine the threshold of when social license engagement should be undertaken and at what point costs should be attempted to be recovered.

The framework is designed in a way that the AER can assess whether the TNSP's proposed social license engagement plan aligns with the principles outlined in this report with the goal of providing a yes/no answer. The AER's assessment of the social license engagement plan is not intended to provide implicit approval for the TNSP's actions but rather outline if the engagement plan meets the proposed content requirements.

Early engagement is critical

TNSPs should undertake social license engagement as early as possible. Failure to engage early might lead to, for example, a poor credible option selection at the RIT-T, or to distrust between a community and a TNSP which might ultimately lead to project delays and higher costs. The AER will review the timing of engagement. A failure to engage early might result in an assessment that social license costs are not prudent, and thus cannot be passed through to customers.

The framework proposes a set of general and First Nations² specific principles (see below) that the AER should utilise to assess engagement plans submitted by TNSPs. These principles have been based on the guidelines produced at both the state and federal level as well as international best practice. First Nations specific principles³ are considered because a substantial amount of relevant land is either held by First Nations communities or (as Crown land) is under claim by a First Nations community, and so specific rights holding obligations may arise. It is also the case that a focus on First Nations communities, as land-based communities with specific vulnerabilities, is a worthy litmus test for other segments of the community.

² The term First Nations in this context includes Indigenous and Aboriginal people to acknowledge the diversity of Australia's First Peoples.

³ The Australian Energy Ministers' Communique includes a commitment to a co-designed and resourced First Nations Clean Energy Strategy to ensure that First Nations Australians are involved in shaping the clean energy transformation. When released, the AER will need to revisit the First Nations social license engagement principles detailed to ensure that they are aligned with this Strategy.

Figure ii Social license engagement principles

- | | | | |
|---|-----------------|----|---------------|
| 1 | Early & Ongoing | 6 | Collaborative |
| 2 | Inclusive | 7 | Effective |
| 3 | Understandable | 8 | Proportionate |
| 4 | Transparent | 9 | Proactive |
| 5 | Innovative | 10 | Conscientious |

Figure iii First Nations social license engagement principles

- | | | | |
|---|------------------|----|---------------|
| 1 | Respect | 6 | Flexible |
| 2 | Additional | 7 | Comprehensive |
| 3 | Genuine | 8 | Advised |
| 4 | Culturally Aware | 9 | Informed |
| 5 | Place-based | 10 | Monitored |

Social license engagement is tested for both scope and cost

For the scope test, a TNSP is required to justify how the proposed engagement is directly attributable to the electricity transmission infrastructure project. It is acknowledged that there are various engagement actions that TNSPs are required to undertake as part of their 'business as usual' operations. In the context of social license, any engagement actions that fall below the 'involve' level of engagement as detailed in the AER Better Resets Handbook⁴ should be considered business as usual and would not pass the scope test.

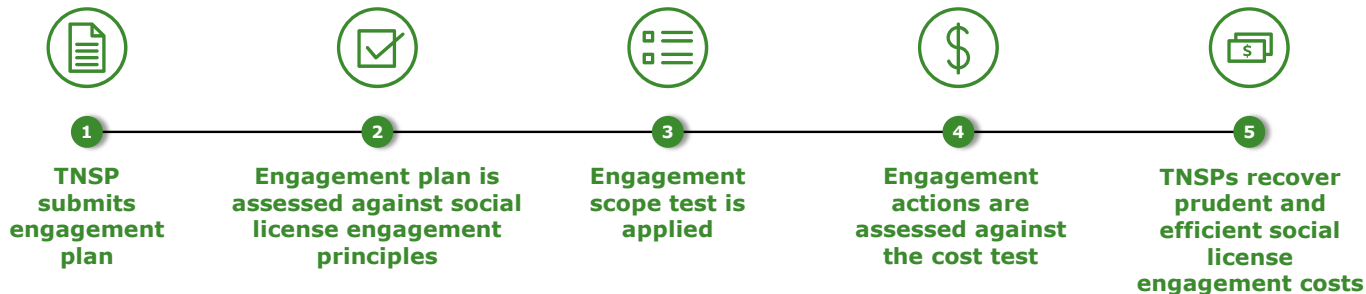
Social license engagement actions that pass the scope test would then be subjected to a cost recovery test to assess whether the costs of the engagement actions are efficient. To justify this, TNSPs will need to provide evidence of having undertaken a competitive procurement process, benchmarking⁵ or some other relevant process when deriving expenditure. If the AER assesses these costs as efficient, a TNSP may be eligible to

⁴ AER, *Better Resets Handbook* (2021) <<https://www.aer.gov.au/networks-pipelines/better-resets-handbook>>.

⁵ Benchmarking is unlikely to be used for assessment until there is a meaningful history of social license decisions by the AER.

recover some or all of these costs, as long as it also meets the requirements of the AER’s existing Expenditure Forecast Assessment Guidelines and Better Resets Handbook.⁶

Figure iv Social license engagement assessment summary



A TNSP must submit a social license activity plan

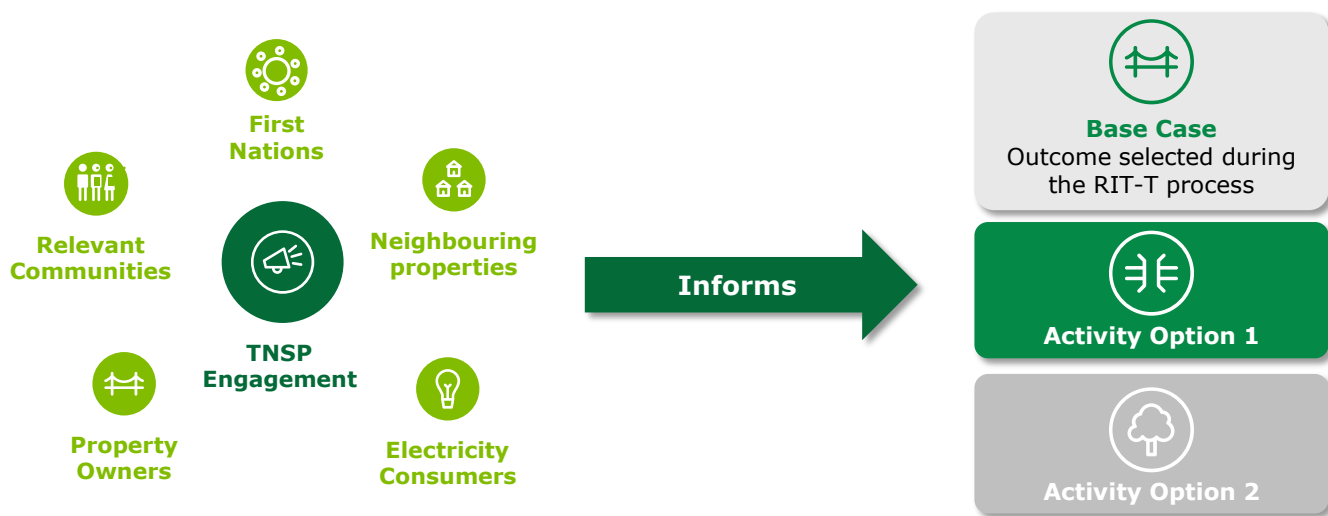
Similar to social license engagement, it is proposed that social license activity expenditure will only be able to be recovered based on a TNSP submitting a compliant social license activity plan. A social license activity plan should be submitted at any point prior to when expenditure is proposed to be recovered (e.g. during a Contingent Project Application (CPA) process).

A social license plan needs to include an options analysis

This plan should include an options analysis that justifies why the social license activities are required to achieve the optimal outcome for the project. Specifically, TNSPs should present an options analysis that considers a minimum of two options for achieving the social license activity objectives stated in the plan. The options chosen for assessment should be incremental to the base case i.e. over and above the outcome that was selected during the RIT-T process.⁷ Further the options chosen should reflect a representative sample of the full range of activities that could feasibly be undertaken to address a specific social license objective (which might differ in location, timing, size and form).

Ultimately, these options should only include incremental social license activities compared to what has been selected during the RIT-T process (base case). This would be based on the identified need to undertake further action to build and maintain social license for a specific electricity infrastructure transmission project.

Figure v Social license options analysis process



⁶ AER, *Expenditure Forecast Assessment Guideline for Electricity Distribution* (November 2013) <<https://www.aer.gov.au/system/files/Expenditure%20Forecast%20Assessment%20Guideline%20-%20Distribution%20-%20FINAL.pdf>>.

⁷ The analysis that is undertaken during the RIT-T to determine a credible option is outside the scope of this report.

Social license activities are tested for both scope and cost

In line with the engagement assessment above, we propose that a scope test should also be used by the AER to assess social license activity expenditure. This would require the TNSP to justify how the expenditure is directly related to the provision of a particular electricity transmission infrastructure project.

Social license activities that pass the scope test would then be assessed via a cost test, to determine if the expenditure is an efficient investment that is in the long-term interests of electricity consumers. To pass this test, a TNSP will be required to provide economic justification that demonstrates that the cost forecasts are prudent and efficient. This would involve the TNSP demonstrating that it is making social license expenditure decisions using a quantitatively based economic framework such as a cost-benefit analysis that is consistent with achieving the social license objectives identified in the social license activity plan. It is acknowledged that in some circumstances the TNSP may not choose the social license activity with the highest cost-benefit ratio (as the decision may be guided by qualitative considerations that are difficult to value). In these circumstances, the TNSP must provide robust justification on why this option has been preferred.

Figure vi Social license activities assessment summary



TNSPs should be responsible for managing trade-offs between different consumer’s interests

It is our view that the TNSP (rather than the AER) should be responsible for managing the trade-offs between various stakeholder groups and co-developing the social license activities to be representative of all consumers. This representation should be justified via extensive engagement to prove that these activities are the preferred option. The AER’s role should instead be to review how the TNSP has undertaken the engagement and activity development process and make sure it is in line with the principles outlined via the scope and cost tests.

Recovery of costs

As noted in the AEMC report, the NER provides existing pathways that could be used by TNSPs to recover social license expenditure for electricity transmission infrastructure projects, namely:

- The revenue determination process
- The CPA process
- Cost pass throughs, where TNSPs can seek to amend their revenue determination for specific pass through events that are beyond their reasonable control.

Our report aligns to the AEMC’s conclusion that there are no major barriers to TNSPs being able to recover efficient social license expenditure under the existing avenues delineated by the NER given:

- Any social license expenditure recovered under the revenue determination process is likely to only be accepted as capex, due to the opex step change threshold requirements defined by the AER
- To recover social license expenditure as part of a CPA, a TNSP must meet the existing requirements noted under Rule 6A.8 of the NER.
- The cost pass through recovery avenue should only be used to recover social license costs in very rare circumstances – i.e. if these cost pass throughs meet the NER criteria for a ‘service standard’ or regulatory change event.

Next steps

We consider this framework's approach to be consistent with the existing skills and capabilities of the AER to assess revenue proposals and contingent project applications. The framework places the responsibility on TNSPs to provide evidence to meet the assessment questions outlined in this report.

Consultation with key stakeholders is critical

The framework has not been tested with TNSPs (and other key stakeholders), and given social license is a concept that is based on trust, credibility and legitimacy, it is imperative that feedback is sought from these parties. To this end, it is recommended that the AER use this report to inform the development of its social license framework and socialise it with TNSPs and other key stakeholders (e.g., the AEMC). In addition, targeted consultation with community representative groups (e.g., Energy Consumers Australia) should occur to explain the context for the proposed social license framework.

This report does not seek to provide guidance on the costs associated with social license activities in the Regulatory Investment Test (RIT-T) which we understand is being developed internally by the AER. It is recommended that consultation is undertaken on the whole approach taken for social license (i.e. including the RIT-T) as the conclusions drawn under the RIT-T will likely affect the approach outlined in this report.

Defined prioritisation principles would guide TNSPs consideration of competing social license objectives

While outside the scope of this report, it is acknowledged that TNSPs might need to make trade-offs between various social license objectives (e.g., minimising costs and minimising biodiversity impacts) when undertaking electricity transmission infrastructure projects. Given the uncertainty of this prioritisation, governments (in consultation with the AER) might wish to provide guidance on a project-by-project basis as to how social license objectives should be prioritised. This guidance would assist TNSPs balance competing priorities when determining what social license activities to undertake. Examining whether the government's guidance has been reflected in a TNSP's social license activity plan would assist the AER in its assessment of social license activity expenditure.

1. Introduction

1.1 Social license is central to the success of new electricity transmission infrastructure projects

The electricity market in Australia is entering a period of rapid change, with large-scale synchronous generation increasingly exiting the market as the penetration of renewable energy resources and Consumer Energy Resources (CER) grows. To support this transition, there is a large pipeline of electricity transmission infrastructure projects⁸ (e.g., Project Energy Connect, Marinus Link and VNI West) that will need to be undertaken over the next decade. These projects will predominantly be built, maintained and operated by transmission network service providers (TNSPs). Given the greenfield nature of many electricity transmission infrastructure projects, the importance of ensuring community acceptance of these projects – and thus obtaining the appropriate ‘social license’ – is receiving increasing focus. The absence of social license can create delays to transmission projects, increasing costs and (in the worst case) lead to the abandonment of a project.

Social license initially emerged in the 1990s as a concept associated with the mining industry.⁹ In its broadest sense, it refers to the ongoing acceptance of an organisation’s activities by a community. There is a growing recognition that social license cannot simply be assumed; rather, it requires investment in engagement and other activities (that may include a form of financial or other compensation for communities) to build the elements of trust, legitimacy and credibility that are central to the concept of social license. This is particularly the case for engagement with First Nations¹⁰ communities.

It is not uncommon for TNSPs to incur costs in dealing with affected stakeholders when building electricity transmission infrastructure projects (e.g. jurisdictional planning and approval processes). However, social license has increasingly been raised as a key regulatory issue. Specifically, social license has been discussed in the context of gaining community trust for investments in critical energy infrastructure, identifying and defining costs that go beyond meeting minimum legislative obligations, and how the efficiency and prudence of social license costs will be assessed by the Australian Energy Regulator (AER).

Under the National Electricity Law and National Electricity Rules (NER), the role of the AER is guided by the National Electricity Objective (NEO),¹¹ which is to promote efficient investment in, and efficient operation and use of, electricity services for the long-term interests of consumers of electricity with respect to:

- price, quality, safety, reliability and security of supply of electricity
- the reliability, safety and security of the national electricity system.

The AER is responsible for regulating TNSPs by setting the maximum amount of revenue they can earn from consumers. The AER determines the prudence and efficiency of expenditure and must be cognisant of the relevant requirements under Chapter 6A *Economic Regulation of Transmission Services* in the NER.¹²

1.2 The AEMC recommended the AER provide greater clarity for social license

The Australian Energy Market Commission (AEMC) commented on the AER’s approach to assessing the prudence and efficiency of social license activities in its *Transmission Planning and Investment – Stage 2* report.¹³ The purpose of the AEMC’s report was to assess the ability of the current regulatory framework to

⁸ AEMC, *Electricity supply chain* <www.aemc.gov.au/energy-system/electricity/electricity-system/electricity-supply-chain#:~:text=Transmission%20networks%20allow%20the%20bulk,voltages%20to%20end%2Duse%20customers>.

⁹ Hall, N., Lacey, J., Carr-Cornish, S. and Dowd, A.M., ‘Social license to operate: understanding how a concept has been translated into practice in energy industries’ (2015). *Journal of Cleaner Production* 301.

¹⁰ The term First Nations in this context includes Indigenous and Aboriginal people to acknowledge the diversity of Australia’s First Peoples.

¹¹ Australian Government Department of Climate Change, Energy, the Environment and Water, *National Energy Transformation Partnership* (12 August 2022) <www.energy.gov.au/government-priorities/energy-ministers/priorities/national-energy-transformation-partnership>.

¹² AEMC, *NER* (1 December 2022) <<https://energy-rules.aemc.gov.au/ner/431/192564#6A>>.

¹³ AEMC, *Transmission Planning and Investment Stage 2 Report* (27 October 2022) <www.aemc.gov.au/sites/default/files/2022-10/stage_2_final_report.pdf>.

support the timely and efficient delivery of electricity transmission infrastructure projects, while also making sure that these projects were in the long-term interests of energy consumers. As part of the report, the AEMC identified several areas where additional guidance could be provided by the AER to assist TNSPs with obtaining and maintaining social license.

Among other things, the AEMC recommended that:¹⁴

- The AER should provide additional guidance to stakeholders regarding how the costs associated with building and maintaining social license for major transmission projects should be considered and assessed as part of the regulatory process, including:
 - the consideration and assessment of costs associated with social license activities in the RIT-T
 - the AER’s approach to the assessment of efficient costs under different cost recovery avenues
 - the application of cost pass throughs for unexpected and unavoidable costs, including those incurred under jurisdictional planning and environmental approval processes
- The AER should provide additional guidance to stakeholders around its expectations about how TNSPs engage and consult with local communities and other stakeholders affected by major transmission projects at key stages in the planning process, including:
 - the definition of “credible option” as it relates to the requirement for a credible option to be implemented in sufficient time to meet the identified need.

1.3 Purpose and context of this report

Following the recent publication of the AEMC’s report, the AER engaged Deloitte to provide advice to the AER on:

- The types of social license costs that an efficient and prudent TNSP would incur, including consultation and engagement actions
- How it could assess the prudence and efficiency of these social license costs (for non-legislative obligations).

This report is intended to inform the AER as it develops its guidance to:

- TNSPs on the AER’s expectations regarding when and how TNSPs engage with the community and how social license costs are recovered
- Communities on the type and timing of social license engagement they should expect from TNSPs at various points in the project lifecycle.

This report provides an illustrative example of a social license assessment framework to inform the AER as it develops its own assessment framework and consults with stakeholders. This report does not seek to provide guidance on the costs associated with social license activities in the Regulatory Investment Test (RIT-T) and how TNSPs might ensure that a credible option can “be implemented in sufficient time to meet the identified need”. These concepts will be assessed internally by the AER.

Given the potential magnitude of the benefits associated with maintaining or building social license, the AER considers it necessary to provide additional guidance on how it will assess TNSPs’ social license expenditure (e.g. this report). Amongst other things this report is intended to assist the AER in making sure that the benefits of building and maintaining social license, however prominent, are not outweighed by the costs involved. The AER’s assessment and reasonable expectations of social license engagement and activities should consider the broader community who may not be directly impacted by the project but are affected by its outcomes (e.g., access to secure, reliable, and affordable energy).

In developing the report, we have been cognisant of the relevant requirements under Chapter 6A *Economic Regulation of Transmission Services* in the NER¹⁵ and the NEO. Therefore, the outcomes proposed in this report sit under the existing NER and expenditure forecast assessment guidelines (e.g., not proposing any additional

¹⁴ Ibid. The AEMC also recommended that changes be made to the NER to ensure that the expectations on TNSPs to engage and consult local communities and other affected stakeholders at key points in the planning process are consistent for all electricity transmission infrastructure projects listed in the Integrated Systems Plan (ISP) (see Section 6 for additional detail).

¹⁵ AEMC, *NER* (1 December 2022) <<https://energy-rules.aemc.gov.au/ner/431/192564#6A>>.

pathways by which expenditure is allowed to be recovered). Table 1.1 outlines how this report’s framework fits within the existing assessment requirements delineated in the NER.

Table 1.1 How the social license framework fits within the existing NER assessment requirements

Social license area	Framework requirements	NER Assessment Requirements
Engagement	Engagement principles	Demonstrates prudence ¹⁶
	Engagement scope test	Demonstrates prudence
	Engagement cost test	Demonstrates efficiency ¹⁷
Activities	Activities principles	Demonstrates prudence
	Activities scope test	Demonstrates prudence
	Activities cost test	Demonstrates efficiency

Finally, consultation with key stakeholders (e.g., the Australian Energy Market Operator (AEMO), TNSPs and consumers) has not been undertaken during the development of this report. We recommend that the AER undertakes such consultation.

1.4 Report structure

The remainder of this report is structured as follows:

- **Section 2** sets out in further detail the definition of social license for the purposes of this report and the current challenges for TNSPs gaining social license in the context of electricity transmission infrastructure projects
- **Section 3** sets out the proposed TNSP social license community engagement framework (including the framework for First Nations engagement)
- **Section 4** sets out the proposed TNSP social license activities assessment framework
- **Section 5** sets out the proposed cost recovery framework for TNSP social license activities
- **Section 6** outlines our preliminary views on the AEMC recommended rule changes and the interlinkage with the outcomes of this report
- **Section 7** outlines how the proposed social license frameworks for TNSPs align with the current skill set of the AER and the recommended next steps.

¹⁶ Prudence is determined by the AER as per clause S6A.2.2 in the NER <<https://energy-rules.aemc.gov.au/ner/347/37125>>.

¹⁷ Efficiency is determined by the AER as per clause S6A.2.2 in the NER <<https://energy-rules.aemc.gov.au/ner/347/37125>>.

2 The need for social license

The AER exists 'to ensure energy consumers are better off, now and in the future.'¹⁸ Thus, the AER has a critical role to play in the future of the relationship between Australian communities and the Australian energy sector. Social license is central to this relationship. It emerged as a concept in the 1990s, at a time where societal values towards the natural environment, and industries that negatively impact the environment, were changing.¹⁹

The energy industry is familiar with the challenge of balancing industrial development and protecting the environment. Adapting to climate change has catalysed a step change in renewable energy investment across Australia, leading state governments to issue guidance for new renewable projects to reflect social license concerns and manage community expectations about new energy investments. Examples include:

- The newly established NSW Government Strategic Benefit Payments Scheme (SBP Scheme) for new major transmission projects. Under the SBP Scheme, private landowners hosting new high voltage transmission projects critical to the energy transformation and future of the electricity grid will be paid a set rate of \$200,000 per kilometre of transmission line hosted, paid out in annual instalments over 20 years²⁰
- The recently announced Victorian landholder payments scheme which will provide landholders of new transmission easements a standard rate of \$8,000 per year per kilometre of transmission hosted for 25 years.²¹
- The Tasmanian Government's Draft Guideline for Community Engagement, Benefit Sharing and Local Procurement to specifically guide the practice of renewable energy project development.²²

The focus of this report is upon the nexus between social license and electricity transmission infrastructure projects, many of which are associated with the renewable energy transition. At the heart of social license for electricity transmission infrastructure projects is the requirement for access and use of land. This typically requires engagement and shared decision making with the owners (or rights holders) of that land including about trade-offs in land use and decisions to be made about the 'right' land to be used. Often that land is owned, or rights are held by First Nations Traditional Owners or community. When considering social license among Australia's First Nations, it is noteworthy that the energy industry has had a deep (and sometimes problematic) relationship with Indigenous landscapes. In response, both state and federal governments have sought to develop guidelines specifically for engagement with First Nations. This includes the NSW Government's Electricity Infrastructure Roadmap consultation guidelines for First Nations peoples²³ and the Federal Government's First Nations Clean Energy Strategy which is currently under development.²⁴

¹⁸ AER, *About Us* <<https://www.aer.gov.au/about-us>>.

¹⁹ Hall, N., Lacey, J., Carr-Cornish, S. and Dowd, A.M., 'Social license to operate: understanding how a concept has been translated into practice in energy industries' (2015). *Journal of Cleaner Production* 301.

²⁰ NSW Government, *Strategic Benefits Payment Scheme* (October 2022) <<https://www.energyco.nsw.gov.au/sites/default/files/2022-10/policy-paper-strategic-benefit-payments-scheme.pdf>>.

²¹ Victorian Government, *Landholder Payments For A Fairer Renewables Transition (February 2023)*, <<https://www.premier.vic.gov.au/landholder-payments-fairer-renewables-transition>>.

²² Tasmanian Government, *Draft Guideline for Community Engagement, Benefit Sharing and Local Procurement* (2022) <http://www.recfit.tas.gov.au/renewables/guideline_community_engagement>.

²³ NSW Government Climate and Energy Action, *First Nations Guidelines* <<https://www.energy.nsw.gov.au/nsw-plans-and-progress/major-state-projects/electricity-infrastructure-roadmap/first-nations>>. First Nations Clean Energy Network, *Energy Ministers meet, commit to First Nations Clean Energy Strategy* <https://www.firstnationscleanenergy.org.au/energy_communicue#:~:text=The%20Energy%20Ministers'%20Communique%20includes,Network%20is%20set%20out%20below>.

²⁴ >. First Nations Clean Energy Network, *Energy Ministers meet, commit to First Nations Clean Energy Strategy* <https://www.firstnationscleanenergy.org.au/energy_communicue#:~:text=The%20Energy%20Ministers'%20Communique%20includes,Network%20is%20set%20out%20below>.

2.1 The definition of social license

In its original definition, social license was conceived of as 'social license to operate'. In other words, it was the community acceptance of an organisation's execution of its required activities. This acceptance rests on three key elements: trust, legitimacy and credibility.

Trust: This is the strong belief in the reliability, truth, or ability of someone or something. This has often been assumed to exist but in fact takes time and effort to establish, particularly with vulnerable communities.

Credibility: This is the individual or company's capacity to provide true and clear information to the community and fulfil any commitments made.

Legitimacy: This is the extent to which an individual or organisation plays by the 'rules of the game'. That is, the norms of the community, be they legal, social, cultural, formal or informal in nature.

More recently, the concept of intergenerational equity has emerged as a distinct but related theme to social license, most notably where the assets of the society are to be used for intergenerational gain or the extraction of social assets will affect multiple generations. While social license has typically been anchored in the present and in terms of ensuring the costs and benefits of development are accepted by those affected, intergenerational equity has a temporal element. It typically refers to whether future generations will accept the decisions made today and the impact on them. In many respects, intergenerational equity reflects the First Nations concept of 'seven generations.' In the Gathang language of the Worimi nation, First Nations communities speak of 'Maa-Bularrbu', which acknowledges that responsibility is to the 'next seven again'. It is the Elders' responsibility to carry those next seven generations in the way they care for their community, children, knowledge and Mother ('NayiriBarray' – Mother/country).

It is worthwhile observing that social license can be applied not only to an organisation but to a system more broadly. For example, concerns about the lack of social license as part of the Black Lives Matter movement in the United States of America focused specifically on policing, but also extended to other aspects of the criminal justice system. To this end, while the focus of this report is upon the social license activities that the TNSP must undertake, there is a broader question of the community's trust and acceptance of the regulatory ecosystem for energy.

Social license is not a static concept. Rather it is an evolving relationship between communities and organisations and its existence (by definition) is dependent on acceptance of the license terms by those communities, rather than the organisations themselves. To this end, social license requires ongoing commitment and engagement between organisations and communities. Given communities are not homogenous, social license may not exist among all communities or individuals at the same time. As such, social license typically requires engagement and other activities to be tailored to different groups or communities.

2.2 The application of social license to the AER's regulatory processes

While the above definition is broad, the focus of this report as detailed in section 1 is much more specific, framed by the AER's regulatory remit. It is limited to the following:

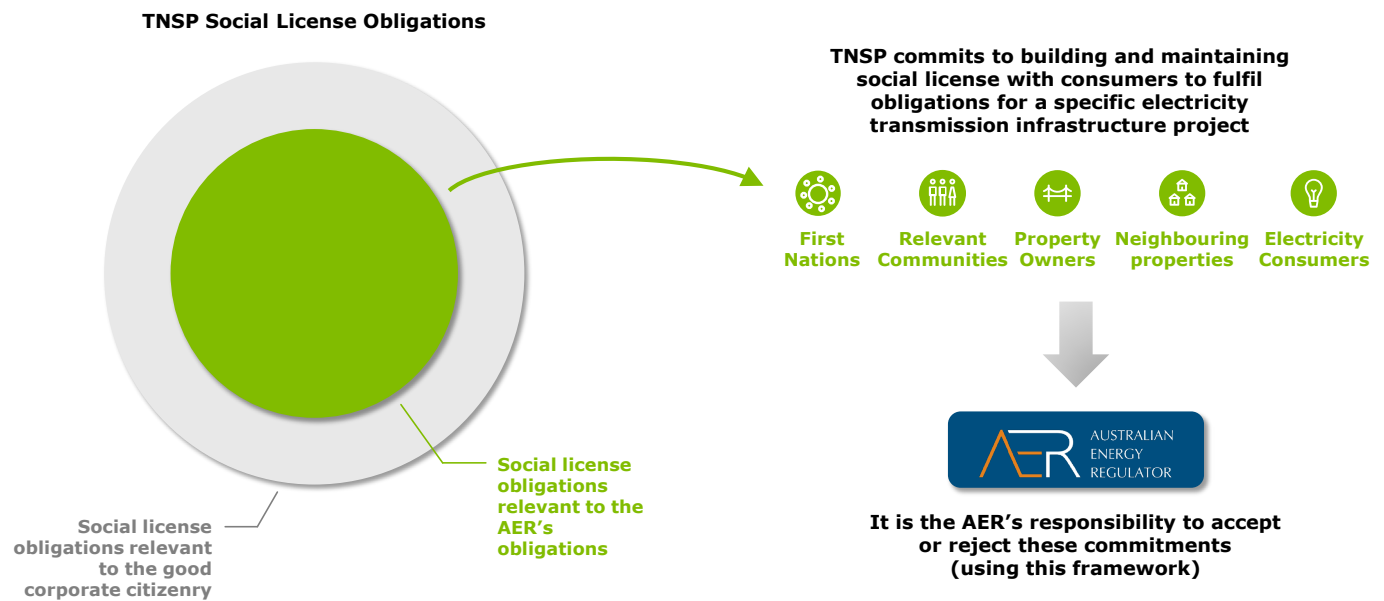
- Providing advice to the AER on what it could consider in terms of when and how TNSPs should be engaging with the community with regard to the specific social license activities to be undertaken under the NER
- Clarifying the type and timing of engagement that communities should expect from TNSPs at various points in the project lifecycle
- Clarifying how the costs associated with social license could be assessed by the AER.

To this end, the definition of social license for the purpose of this report refers specifically to the activities undertaken by TNSPs to build and maintain broad, community acceptance of an electricity transmission infrastructure project. It includes both the engagement TNSPs may undertake as well as the activities that are then agreed upon to address community concerns about a particular electricity transmission infrastructure

project.²⁵ For the purpose of this report, the definition of social license does not extend to whether or not a particular electricity transmission infrastructure project should go ahead; it instead focuses on the activities proposed by TNSPs to build and maintain broad community acceptance of electricity transmission infrastructure projects in the context of needing to augment their networks.

Vitaly, nothing in this report seeks to define the social license obligations a TNSP may have as a good corporate citizen (i.e., corporate social responsibility), operating within the social and economic fabric of Australia or to the brand identity of a TNSP. The corporate social responsibility of a TNSP remains its own and is separate to the AER’s assessment process through its regulatory framework. Instead, it focuses on (and only proposes cost recovery for) the activities undertaken by TNSPs to build and maintain broad, community acceptance of a specific electricity transmission infrastructure project.

Figure 2.1 Delineation between a TNSP’s various social license obligations



In this report, we distinguish between two aspects of social license obligations related to electricity transmission infrastructure projects:

- **Engagement** – the actions TNSPs undertake to work directly with the public to ensure that concerns and aspirations are consistently understood and considered. This includes liaising with relevant communities including landowners, affected community members, First Nations Australians and the broader electricity consumer group through methods such as community forums, stakeholder meetings, consultative committees and advisory groups
- **Activities** – the actions TNSPs commit to so that the community is satisfied with the electricity transmission infrastructure project (e.g., alterations to the construction of the transmission lines, planting of flora, local procurement and employment associated with the construction of the transmission line).

Under the NER, the AER has a mandate to ensure efficient investment in, and operation of networks with respect to the price quality, safety, reliability and security of supply of energy, in the long-term interests of energy consumers. By extension, this report focuses on the social license activities that consumers should pay for. It is not intended to define an exhaustive list of social license activities that TNSPs should undertake, nor provide limits to networks’ corporate social responsibility.

If a TNSP views social license activities to be necessary to achieve the project outcomes, then this report sets out an example of the minimum standard of what needs to be considered.

²⁵ The AEMC has recommended changes to the RIT-T process which may impact each TNSPs engagement obligations. Should these changes be implemented they may impact the extent to which TNSPs can recover costs under this framework. As noted in section 1.3, the RIT-T process is outside the scope of this report.

2.3 The relationship between social license, planning and cost recovery

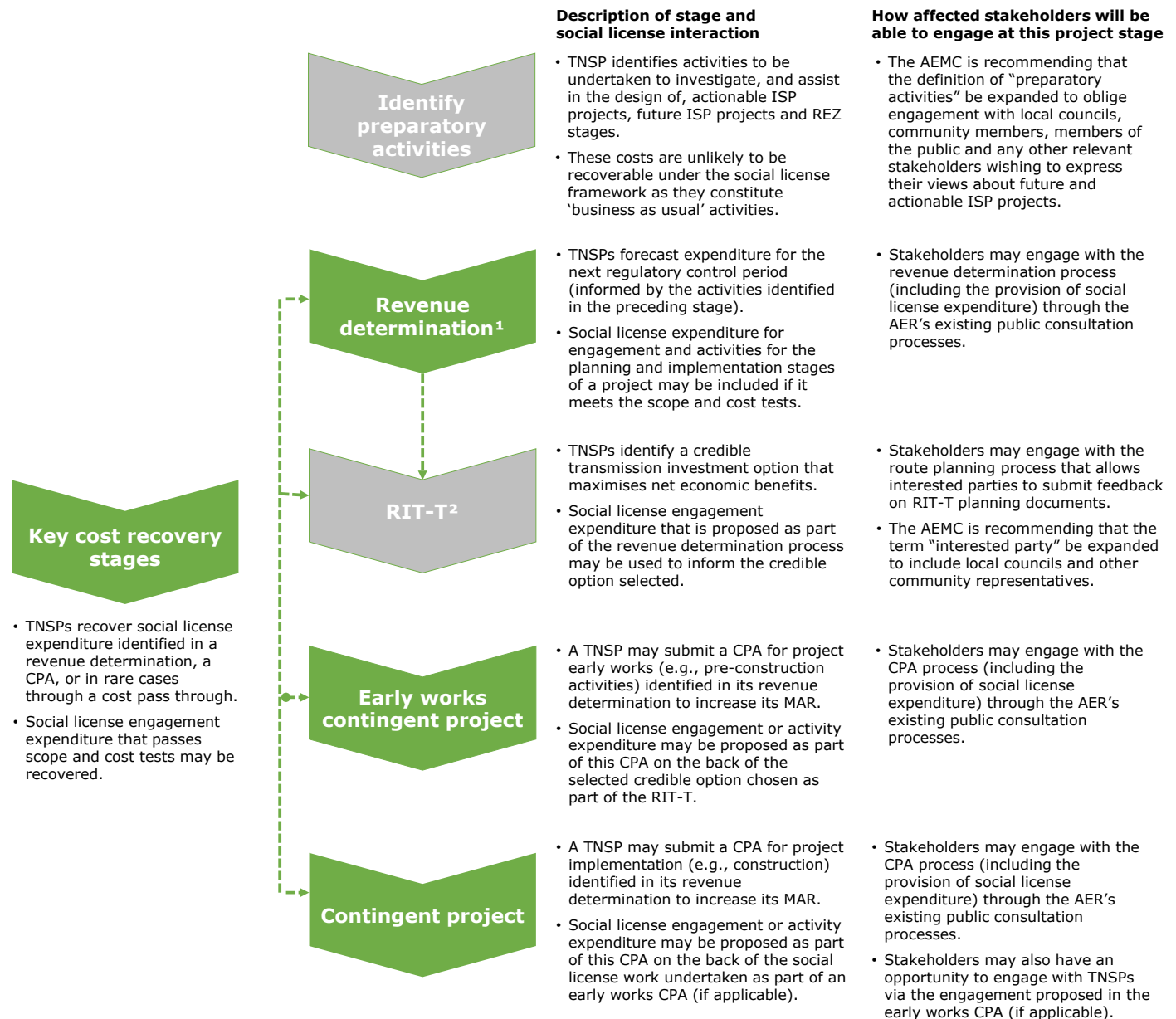
Social license is relevant to all stages of an electricity transmission infrastructure project, as outlined in Figure 2.2 below. While this report does not seek to provide guidance on the costs associated with social license activities in the RIT-T and how TNSPs might ensure that a credible option can “be implemented in sufficient time to meet the identified need”, it is acknowledged that social license is critical to these stages where route selection occurs.

As noted by the AEMC, gathering stakeholder feedback at the RIT-T stage of a project is essential in helping TNSPs identify and manage specific risks associated with locating an electricity transmission infrastructure project. It is noted that the credible option selection is a vital component of building and maintaining social license, and directly impacts subsequent stages (e.g. the CPA and cost recovery stages).

TNSPs should undertake social license engagement as early as possible. Failure to engage early may lead to, for example, a poor credible option selection at the RIT-T, or to distrust between a community and a TNSP which ultimately leads to project delays and higher costs. The AER will review the timing of social license engagement. A failure to engage early may result in an assessment that social license costs were not prudent, and thus cannot be passed through to customers.

It is acknowledged that TNSPs are also required to integrate the planning of new electricity transmission infrastructure projects with specific jurisdictional processes outside of the national regulatory framework. The transmission planning undertaken at the jurisdictional level is critical to overall social license outcomes as this is where key decisions are made with regard to Renewable Energy Zone (REZ) placement, land use and environmental assessments. We believe that the framework we have developed in this report will assist with undertaking social license engagement that improves the outcomes and timeliness of these related jurisdictional planning processes.

Figure 2.2 The link between social license, planning and cost recovery



Notes:

¹ During the period between the revenue determination and RIT-T, the TNSP may conduct social license activities as part of its planning to an ISP (i.e. a TNSP conducts the preparatory activities identified at the outset of the revenue determination).

² At a similar time to the RIT-T, a REZ Design Report (RDR) may be required (if triggered by AEMO)

Green stages are covered by the social license framework outlined in this report while grey stages are not.

2.4 Current concerns regarding social license in the AER's regulatory processes

As noted in section 1, the AER is bringing a closer focus to its methodologies for considering the prudence and efficiency of social license activities. Accordingly, the AER has not yet provided specific guidance to TNSPs on the scope of social license activities and their associated costs. Historically, the assessment of social license costs has been difficult for the AER because:

- It is unclear which type of activities directly support the NEO and the timeliness and efficiency in delivery of planned network projects
- It is unclear how TNSPs' existing engagement actions differ from social license engagement actions

- Regulatory obligations set minimum standards TNSPs need to satisfy, however it may not prescribe the amount and scope of social license activities needed to achieve this
- There may be an incentive for TNSPs to inflate the scope and amount of social license activities required to satisfy minimum standards
- In the absence of an established methodology, it is difficult for the AER to determine the level of prudent and efficient social license activities, particularly in greenfield projects and in the absence of factors that lead to competitive prices (e.g., markets, competitors) or available benchmark costs.

This report is intended to provide clarity around these issues, particularly in relation to the scope and costs of social license engagement and activities. This report is intended to ultimately support development of the AER's social license cost assessment framework.

2.5 Learnings from other jurisdictions regarding social license engagement

Previous reports from various Australian jurisdictions provide limited information on the mechanisms or frameworks to recover social license costs in relation to electricity transmission infrastructure projects. However, these reports do provide valuable information on what constitutes high quality social license engagement and activities.

Recent state government guidelines on community engagement from Australian jurisdictions such as Tasmania, and NSW highlight that good social license engagement includes the following:^{26 27}

- Having clearly defined objectives for engagement
- Having a solid baseline understanding of the local community the TNSP is interacting with
- Preparing a timetable of proposed engagement actions
- Using innovative engagement approaches to ensure the message is tailored to all community members (e.g., by not limiting engagement to traditional media)
- Ensuring transparency in engagement by communicating how much the project can be influenced by the community, description of the previous engagement undertaken and its outcomes and the key decisions that have been made to date and rationale for those decisions
- Prioritising engagement early in the planning process (despite project uncertainties) as engagement is most effective when communities can engage meaningfully in the project.

In addition, to specifically support the development of REZs, the Victorian²⁸ and NSW Governments²⁹ have developed frameworks that emphasise the need for social license activities.³⁰ In these contexts, social license activities refer to those that share the rewards of renewable energy development with local communities with the aim to contribute to the future vitality and success of a region.³¹ According to the government frameworks, these activities should be:

- Tailored, appropriate and mutually beneficial
- Flexible and innovative
- Targeted, strategic and long-term
- Inclusive
- Transparent.

²⁶ Tasmanian Government, Department of State Growth Renewables, Climate and Future Industries Tasmania, *Renewable Energy Development in Tasmania* (2022) <https://recfit.tas.gov.au/__data/assets/pdf_file/0010/399205/Guideline_for_Community_Engagement,_Benefit_Sharing_and_Local_Procurement.pdf>.

²⁷ NSW Government, Department of Planning and Environment, *Undertaking Engagement Guidelines for State Significant Projects* <<https://www.planning.nsw.gov.au/-/media/Files/DPE/Guidelines/Policy-and-legislation/SSPT-Guidelines/GD1265-RAF-Engagement-Guidelines-final.pdf>>.

²⁸ Victorian State Government, Environment, Land, Water and Planning, *Victorian Transmission Investment Framework Preliminary Design* (2022) <<https://engage.vic.gov.au/victorian-transmission-investment-framework>>.

²⁹ NSW Government, Climate and Energy Action, *Electricity Infrastructure Roadmap* <<https://www.energy.nsw.gov.au/nsw-plans-and-progress/major-state-projects/electricity-infrastructure-roadmap>>.

³⁰ The Victorian and New South Wales guidelines refer to social license activities as 'benefit sharing activities'.

³¹ Victorian State Government, Environment, Land, Water and Planning, *Community Engagement and Benefit Sharing in Renewable Energy Development: A Guide for Renewable Energy Developers* (2017) <https://www.planning.vic.gov.au/__data/assets/pdf_file/0022/126418/Community-Engagement-and-Benefit-Sharing-in-Renewable-Energy-Development1.pdf>.

It is clear from other jurisdictions that undertaking such activities during the development stage of a project is an effective principle for enhancing the social and economic outcomes for the local community and build community support. A fair process must also accompany the design and delivery of these activities for it to be well received.³² This framework proposed in this report will refer to 'social license activities' when discussing the activities that TNSPs may undertake to build and maintain social license within an affected community.

The wind generation industry in particular has demonstrated that social license activities that are tailored to the local community can help ensure value for money. Aside from increasing support for projects, it can lower complaints and the time and costs associated with handling them (and therefore minimise project approval delays).³³

We have also included learnings for engagement based on the International Association for Public Participation (IAP2) Public Participation Spectrum.³⁴ The IAP2 framework aligns with the measures noted in the AER's Better Resets Handbook,³⁵ including the definitions for what constitutes *inform* levels of engagement all the way to *empower*.

For engagement with First Nations communities, TNSPs should ensure that engagement is culturally appropriate. First Nations engagement should constitute discrete, planned activities undertaken by and with experienced First Peoples engagement specialists. The National Energy Transformation Partnership is currently designing a First Nations Clean Energy Strategy to ensure First Nations people help drive the energy transformation.³⁶

Section 3 and 4 build on the lessons from other jurisdictions in the design of a framework within which the AER could assess the prudence and efficiency of social license engagement and activities by TNSPs for electricity transmission infrastructure projects.

³² Ibid.

³³ Ibid.

³⁴ 'IAP2 Public Participation Spectrum', *International Association for Public Participation* <<https://iap2.org.au/resources/spectrum/>>.

³⁵ AER, *Better Resets Handbook* (2021) <<https://www.aer.gov.au/networks-pipelines/better-resets-handbook>>.

³⁶ Australian Government, Department of Climate Change, Energy, the Environment and Water, *National Energy Transformation Partnership* (2022) <<https://www.energy.gov.au/government-priorities/energy-ministers/priorities/national-energy-transformation-partnership>>.

3 Social license - Engagement framework for TNSPs

This section is intended to inform the AER on the social license engagement actions that TNSPs could be required to undertake. To this end, this section of the report provides a method, as an illustrative example, to address the following recommendations from the AEMC:

"Engagement – *that the AER provide additional guidance to stakeholders around its expectations on TNSPs regarding engagement and consultation with local communities and other stakeholders affected by major transmission projects at key stages in the planning process.*"³⁷

"Cost recovery – *that the AER provide additional guidance to stakeholders regarding how the costs associated with building and maintaining social license for major transmission projects should be considered and assessed as part of the regulatory process.*"³⁸

3.1 Definition of social license engagement actions

As noted in section 2, we define 'social license' as the actions undertaken by TNSPs to build and maintain broad community acceptance of a specific electricity transmission infrastructure project. It includes both the engagement TNSPs may undertake as well as the identified actions to address community concerns about a specific electricity transmission infrastructure project.³⁹

This section focuses on the engagement actions which include the communication tools, practices, standards and behaviours that a TNSP utilises to develop and maintain social license with stakeholders during the development of an electricity transmission infrastructure project.

3.1.1 Social license is narrower than a TNSP's typical community engagement

For the purpose of this report, social license engagement differs from the broader community engagement a TNSP may undertake because it is linked to building and maintaining broad community acceptance (and therefore minimising project delivery risk) for a particular electricity transmission infrastructure project. Other engagement may be broader and may relate to the TNSP's overall business activity, other projects or to other concerns.

In the context of social license engagement, the relevant 'community' refers to the people affected by the proposed site of the electricity transmission infrastructure project. This will depend upon the local people's identification with significant settlements and towns as well as relative population densities.⁴⁰ It is also noted that a First Nations community's relationship with place may not be connected to size or scale of community but 'significance' of place, and so should always be understood as 'relevant community'.

While the framework proposed in this section focuses on social license engagement actions within the relevant community, it is important to acknowledge that the AER's assessment and reasonable expectations of engagement actions should consider the broader community who may not be directly impacted by the project but are affected by its outcomes (e.g., access to secure, reliable, and affordable energy). In light of this, it is proposed that for a TNSP to be successful in recovering expenditure for social license engagement, it must prove that it has considered the broader community.

³⁷ AEMC, *Transmission Planning and Investment – Stage 2 Final Report* (27 October 2022) <https://www.aemc.gov.au/sites/default/files/2022-10/stage_2_final_report.pdf>.

³⁸ Ibid.

³⁹ The AEMC has recommended changes to the RIT-T process which may impact each TNSPs engagement obligations. Should these changes be implemented it may impact the extent to which TNSPs can recover costs under this framework. As noted in section 1.3, the RIT-T process is outside the scope of this report.

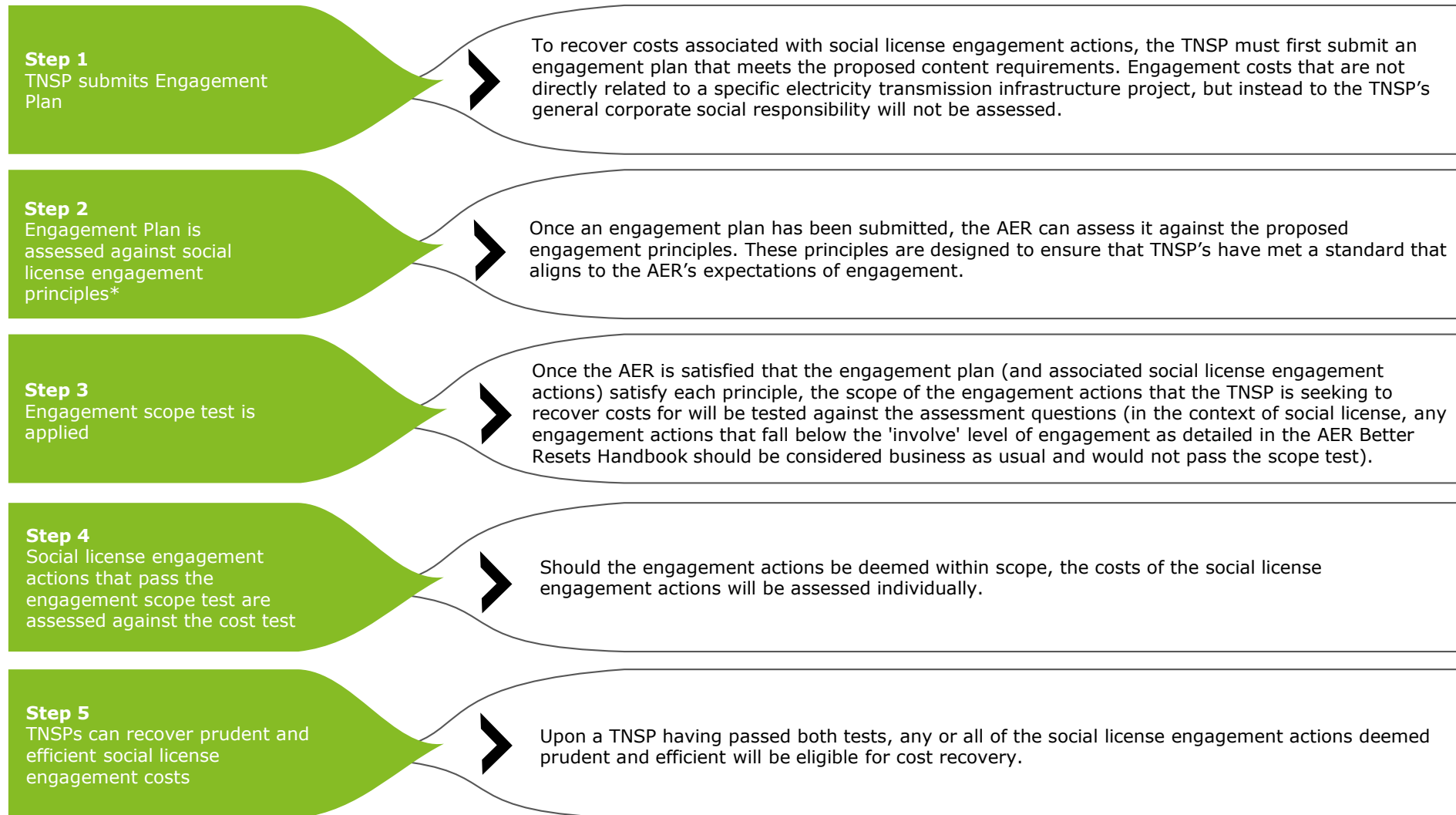
⁴⁰ Many of the sources referenced in this report refer to the relevant community as the 'affected' or 'local' community group. For the purpose of this report, these terms are interchangeable.

3.2 Social license engagement assessment approach summary

The proposed approach for assessing the prudence and efficiency of social license engagement actions is outlined in Figure 3.1. This process should be completed in parallel with requirements detailed in the AER's Expenditure Forecast Assessment Guidelines and Better Resets Handbook.⁴¹

⁴¹ AER, *Expenditure Forecast Assessment Guideline for Electricity Distribution* (November 2013) <<https://www.aer.gov.au/system/files/Expenditure%20Forecast%20Assessment%20Guideline%20-%20Distribution%20-%20FINAL.pdf>>.

Figure 3.1 Proposed approach for assessing social license engagement actions



* In the case of a TNSP failing to meet either test, the AER may initially lodge an information request for the social license engagement action in question to provide the TNSP the opportunity to justify the cost and for the AER to determine what other information may be needed to make a final decision. If the AER still believes the cost does not pass either test, the TNSP will be unable to recover the cost.

3.3 Social license engagement plan

3.3.1 Social license engagement plan requirements

A TNSP should submit an engagement plan if it is seeking to recover some, or all, of the costs associated with a social license engagement. This engagement plan should be submitted before the commencement date of the engagement actions proposed and must at a minimum include the requirements set out in Table 3.1.

The framework is designed in a way that the AER can assess whether the TNSP’s proposed social license engagement plan aligns with the principles outlined in this report with the goal of providing a yes/no answer. The AER's assessment of the social license engagement plan is not intended to provide implicit approval for the TNSP's actions but rather outline if the engagement plan meets the proposed content requirements.

Table 3.1 Social license engagement plan requirements

<p>Objectives of the engagement strategy – covering the electricity transmission infrastructure project that the engagement is directly related to and the outcome that the TNSP is aiming to achieve (including how the intended outcome might evolve over time to best suit the community) and how these would impact the community (both the people who live within and identify with the geographic area surrounding the project and also the broader community impacted by the outcomes of the project e.g. through price increases).</p>
<p>Key communication considerations – covering how the TNSP intends to tailor social license engagement actions to the community. This will include considerations based on the community’s demographics, previous engagement experience in the community, or other notable considerations that may have impacted previous engagement such as the community’s historical linkage with the fossil fuel industry for example.</p>
<p>Details of a stakeholder impact assessment – including social context and profile, a community map, and social impact stakeholder identification, evaluation and mitigation strategies.⁴²</p>
<p>Summary of stakeholder engagement completed to date – a list of all actions (if applicable) with description of each, their objective, and outcome.</p>
<p>First Nations engagement strategy – applicable if there is reasonable belief that First Nations people, community or place were impacted or will be impacted by the long-term consequence of the project (if not included the TNSP should include an explanation for why a First Nations engagement strategy is not required).</p>
<p>Communication protocols and tools – description of any materials that will be used to assist social license engagement actions such as websites, newsletters, photomontages.</p>
<p>Schedule of actions – proposed timeline of all social license engagement actions relevant to the electricity transmission infrastructure project (including description of who is responsible, usage of local community and/or external experts).</p>
<p>Monitoring and evaluation reporting plan – proposed methods for monitoring and evaluation (e.g., SMART⁴³ goals), monitoring metrics (e.g., newsletters, updates etc) and frequency of monitoring and reporting.</p>

The engagement plan must cover all proposed social license engagement relevant to the electricity transmission infrastructure project.

⁴² Victorian State Government, Environment, Land, Water and Planning, *Victorian Transmission Investment Framework Preliminary Design* (2022) <<https://engage.vic.gov.au/victorian-transmission-investment-framework>> for examples of these items.

⁴³ SMART – Specific, Measurable, Achievable, Realistic, and Time-Bound.

3.3.2 Threshold, timing and form of social license engagement plan

Social license engagement may be proposed via a social license engagement plan at any time prior to when social license engagement is proposed to be recovered. It is the TNSP’s responsibility to determine the threshold of when social license engagement should be undertaken and at what point costs should attempt to be recovered. For example, if the TNSP expects to undertake social license engagement to inform the RIT-T credible option selection process, a plan should be submitted prior, potentially at the revenue determination stage. Similarly, a TNSP might propose to undertake social license engagement as part of the expenditure proposed in a CPA. This would require an engagement plan to be submitted along with the CPA. Small cost items, such as one-off or unplanned engagement actions with few stakeholders, would likely be considered immaterial and therefore the TNSP would be expected to absorb these costs within its existing allowance for engagement for its periodic revenue determination.⁴⁴

It is important to highlight that undertaking social license engagement is critical to TNSPs being able to recover social license activity expenditure in later stages of the project process. For the AER to approve social license activity expenditure it must be convinced that the TNSP has undertaken extensive and early engagement with key stakeholders, particularly during the planning stage of an electricity transmission infrastructure project (see section 3.7.1). This requirement incentivises networks to engage with key stakeholders as early as practicable.

As noted in section 2.3, the onus will be on TNSPs to time the submission of social license engagement and activity plans defined in this framework to align with the requirements expected at the jurisdictional level. A preferred structure or form of engagement plan is not proposed if at a minimum it includes all information identified above. TNSPs will also need to ensure that they submit the relevant information the AER requires under its Expenditure Forecast Assessment Guidelines and Better Resets Handbook.⁴⁵

In appropriate circumstances, it is proposed that the AER may discuss potential divergencies with the TNSP.

3.4 Social license engagement principles

It is proposed that the AER’s assessment of social license engagement actions will be based on the principles in Table 3.2. These principles will go towards justifying the prudence of the social license engagement in the context of the assessment approach under the NER.⁴⁶ Social license engagement actions with First Nations are proposed to be assessed, in addition, using specific principles set out in section 3.5.

Table 3.2 Social license engagement principles

Social license engagement principles
Early and Ongoing - Engagement should begin as early as practical and be undertaken continuously throughout the lifecycle of the project.
Transparent - Engagement should be conducted in a sincere, genuine and transparent fashion. Project impacts on a community should be communicated as soon as they are confirmed.
Proactive - Engagement with affected communities should be above and beyond the minimum ‘inform’ standards of the IAP2 framework. ⁴⁷

⁴⁴ Non RIT-T projects are also not considered as part of this framework as they do not meet the cost threshold that constitutes a major electricity transmission infrastructure project for the purposes of this report. As per clause 5.16.3(5) of the NER, the cost threshold for investments subject to the RIT-T is an estimated capital cost of \$5 million. It is assumed that the electricity transmission infrastructure projects considered in this report are unlikely to have capital costs underneath this cost threshold. AEMC, NER (1 December 2022) <<https://energy-rules.aemc.gov.au/ner/431/192564#6A>>.

⁴⁵ AER, *Expenditure Forecast Assessment Guideline for Electricity Distribution* (November 2013) <<https://www.aer.gov.au/system/files/Expenditure%20Forecast%20Assessment%20Guideline%20-%20Distribution%20-%20FINAL.pdf>>.

⁴⁶ Prudence is determined by the AER as per clause S6A.2.2 in the NER <<https://energy-rules.aemc.gov.au/ner/347/37125>>.

⁴⁷ ‘IAP2 Public Participation Spectrum’, *International Association for Public Participation* (2022) <<https://iap2.org.au/resources/spectrum/>>.

Social license engagement principles

Inclusive - Engagement should include all relevant stakeholders, in particular:

- Landholders and asset owners along potential transmission line routes
 - Vulnerable community members and groups
 - Local councils
 - State planning agencies and departments
 - First Nations people
 - Environment and other special interest groups.
-

Understandable - TNSP engagement should have clear goals in relation to delivering engagement. Stakeholders should be easily able to understand when and how they can engage with the project planning process.

Collaborative - Engagement should be undertaken in an inclusive and collaborative fashion. The TNSP must be open as to what can and cannot be influenced in the project planning process.

Effective - Engagement outcomes should be measurable with defined metrics for what success looks like.

Proportionate - Engagement levels should be commensurate with the scale of the project and its potential impact on stakeholders and be directly attributable to the project outcomes.

Innovative - There is no one size fits all approach to engagement. TNSPs should tailor their engagement to best suit the needs and circumstances of the communities impacted.

Conscientious – Thorough engagement should be undertaken that is in good faith and considerate to the long-term interests of consumers of electricity.

3.5 First Nations social license engagement principles

In addition to the social license engagement principles set out in Table 3.2, we propose that the AER assesses expenditure using the First Nations engagement principles set out in Table 3.3. These principles should be used to assess TNSP expenditure on direct engagement with First Nations communities,⁴⁸ or in instances where First Nations communities are expected to be impacted by the development of major electricity transmission projects. First Nations specific principles are considered because a substantial amount of relevant land is either held by First Nations communities or (as Crown land) is under claim by a First Nations community. It is also the case that a focus on First Nations communities, as land-based communities with specific vulnerabilities is a worthy litmus test for other segments of the community.

The principles consider current guidelines published by Australian states and territories, as well as the Commonwealth Government.

In addition to the above, the Australian Energy Ministers' Communique includes a commitment to a co-designed and resourced First Nations Clean Energy Strategy⁴⁹ to ensure that First Nations Australians are involved in shaping the clean energy transformation. When released, the AER will need to revisit the First Nations social

⁴⁸ The term First Nations in this context includes Indigenous and Aboriginal people to acknowledge the diversity of Australia's First Peoples.

⁴⁹ First Nations Clean Energy Network, *Energy Ministers meet, commit to First Nations Clean Energy Strategy* <https://www.firstnationscleanenergy.org.au/energy_communique#:~:text=The%20Energy%20Ministers'%20Communique%20includes,Network%20is%20set%20out%20below>.

license engagement principles detailed below to ensure that they are aligned with this Strategy. These principles align with the principles outlined by the First Nations Clean Energy Network.^{50,51}

Table 3.3 First Nations communities engagement principles

First Nations communities engagement principles⁵²
<p>Respect – TNSPs should ensure that their projects and engagement methodologies respect both the rights and responsibilities of First Nations peoples in their landscapes. Following the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)⁵³ is a fundamental step to recognising these rights, as well as understanding that First Nations communities have practices they are culturally bound to undertake, which TNSPs will need to adhere to.</p>
<p>Additional – TNSPs should meet the social license engagement principles outlined in Table 3.2 and understand that the First Nations communities engagement principles set out here do not replace, but are in addition, to them.</p>
<p>Genuine – TNSPs must be open to engagement with local First Nations communities having a genuine impact on a project, as opposed to being only a symbolic effort. Recognising and dealing with the First Nations community as the formal voice of that landscape, and with knowledge and leadership information useful to the TNSP, will be a helpful principle to aid respectful, genuine engagement.</p>
<p>Culturally Aware - TNSPs should be aware of cultural protocols and cross-cultural communications when working with First Nations stakeholders. There are many public resources available, including through the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS). As a first step a TNSP should recognise that each community will have its own knowledge and resources and advice to offer about how to become informed about the culture of that community.⁵⁴ For First Nations communities, all culture is local, and all landscapes are culturally unique. The first step is to always listen and engage with the community directly, and respectfully.</p> <p>TNSPs will need to be prepared to listen and engage with complex social, economic, cultural and environmental needs of First Nations communities and understand the complexities of engaging with First Nations peoples:</p> <ul style="list-style-type: none"> • Structural power imbalances between investors and First Nations communities are deep and complex and TNSPs should seek to minimise these when engaging • The transactional model of relationship building in business is inappropriate for building relationships with First Nations communities • Certain gender roles and responsibilities can be important to the preservation of traditional First Nations culture, and these should be considered and respected • Consultation with First Nations communities can come at a direct personal cost or cultural load. These costs can be mitigated by understanding the extractive nature of the request, the proprietary community provenance of knowledge and ensuring appropriate compensation.

⁵⁰ First Nations Clean Energy Network, *Best practice principles for clean energy projects* <https://www.firstnationscleanenergy.org.au/best_practice_principles_for_clean_energy_projects>.

⁵¹ Some of the principles set out by the First Nations Clean Energy Network cover more than just social license engagement actions such as benefit sharing. The principles set out above only take into consideration those that impact social license engagement actions.

⁵² NSW Government, Climate and Energy Action, *First Nations Guidelines* <<https://www.energy.nsw.gov.au/nsw-plans-and-progress/major-state-projects/electricity-infrastructure-roadmap/first-nations>>.

⁵³ United Nations, Department of Economic and Social Affairs, *United Nations Declaration on the Rights of Indigenous Peoples*, <<https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>>.

⁵⁴ Australian Institute of Aboriginal and Torres Strait Islander Studies, *Core Cultural Learning*, <<https://aiatsis.gov.au/about/what-we-do/core-cultural-learning>>.

First Nations communities engagement principles⁵²

Place-based - A place-based approach to engagement with First Nations communities should be strongly considered. Recent, specific guidelines and features of a place-based engagement approach are available for Queensland⁵⁵ and Victoria,⁵⁶ which can be leveraged across Australia.

Flexible - Understand that no 'one size fits all' for engagement with First Nations communities exists and that TNSPs should be flexible on the context, time and place, purpose, scale, communication style, and cultural protocols of the community they are engaging with. Being flexible on time and information needed should be made available if requested.

Advised - Consider if a First Nations working group has already been convened and who should be contacted. Contact relevant bodies which might include the Local Aboriginal Land Council, traditional owners in the area, and Registered Native Title Body Corporate. Advice is available from state heritage and Aboriginal affairs agencies, the National Indigenous Australians Agency, and the National Native Title Tribunal.

Informed – Be informed about the history and context of a particular community, its past relationship with government, infrastructure and agreement making. Every community will have unique story of past corporate and government engagement that will inform present approaches. Every community will also have unique story for that country and have places of significance that will inform the importance of place to the local First Nations communities.

Comprehensive - Consider what other First Nations Communities should be consulted such as businesses employing First Nations people, First Nations training organisations, or registered First Nations businesses.

Monitored - Identify, track, and prioritise shared values, goals and outcomes between the TNSP and local First Nations communities.

3.6 Standards for high quality social license engagement

Examples of engagement actions that could be considered as high-quality are provided in Table 3.4. The AER does not set specific requirements on what may constitute high-quality engagement standards and this information should be gathered from other government and industry body sources that have relevant experience. The engagement actions listed are not exhaustive, but rather an indication of the actions that may be used, depending on the issue and objective.

Table 3.4 Examples of high-quality engagement actions and tools

Activity	Engagement tool
Scoping and research	<ul style="list-style-type: none"> Identify any early engagement that has been carried out that is relevant to the project and the outcomes of that engagement through stakeholder identification and mapping, as well as one-on-one stakeholder meetings to build initial relationships in the community Develop a detailed, site-specific social baseline that can be used to objectively compare the project's engagement and project outcomes with anticipated outcomes. This may include a snapshot of the community's economic, cultural, social, demographic, and geographic environment

⁵⁵ QCOSS, *Place-Based Approaches for Community Change*, <<https://www.qcoss.org.au/place-based-approaches/>>.

⁵⁶ Victorian Department of Premier and Cabinet (2020), *A Framework for Place-Based Approaches*, <<https://www.vic.gov.au/framework-place-based-approaches>>.

Activity	Engagement tool
Working with local groups and representatives	<ul style="list-style-type: none"> Formally engage with appropriate local, state and federal government representatives, local community organisations, environmental, advocacy and education groups, Traditional Owner groups, and community energy groups
Fact sheets and other forms of factual communication	<ul style="list-style-type: none"> Use project websites, factsheets, newsletters, press releases and local media placements to inform the community of the planned infrastructure project to provide them with the information they need to make an informed assessment of its potential impacts on themselves and the local community
Two-way communication	<ul style="list-style-type: none"> Reach out directly to stakeholders that were identified as part of the scoping and research activities via phone, group or committee briefings, one-on-one briefings, virtual meetings, email, or social media Use these tools to allow the community to provide clear feedback on the project on what they support, do not support, wish to be adjusted, or have not been considered
Community education	<ul style="list-style-type: none"> Allow the community the opportunity to physically see/hear the project and its impact. This can include publicly displayed photomontages, virtual demonstrations, field trips or open days
Community outreach	<ul style="list-style-type: none"> Not every stakeholder that could be impacted by the project may have the time or ability to reach out to the TNSP to provide feedback. The TNSP should help find opportunities for stakeholders to engage by taking the time to organise: <ul style="list-style-type: none"> neighbourhood meetings low level media and public events drop-in information sessions public launches at different stages of the project’s development open days
Community liaison/ engagement employee	<ul style="list-style-type: none"> A local employee on the ground can provide a consistent, familiar face for the community to provide feedback to on the project. This employee should be primarily focused on community engagement Consideration should be given to making this role permanent and ongoing to allow for the community to provide feedback over the asset’s lifetime
Complaints management	<ul style="list-style-type: none"> The TNSP is expected to carefully consider and respond to any complaints raised by the community relating to the project in a transparent and timely method that is reported on internally and externally Complaints should be able to be submitted through a dedicated phone line, key contact, web form, one-to-one meetings, process notifications, and newsletter updates The TNSP should handle these complaints through process and resolution reporting, with trained staff, and aim for an immediate and comprehensive response to all complaints

Activity	Engagement tool
Decision making/feedback loops	<ul style="list-style-type: none"> • The TNSP should try to delegate some decisions to the community, and relay back the rationale for any decisions made and how feedback that has been received has been addressed when possible • The delegation of decision making can utilise one way or two-way communication tools such as online forms, public comments, or forums
Monitoring and evaluation	<ul style="list-style-type: none"> • A TNSP should have established internal and local community evaluation processes to manage engagement, complaints, and be able to provide the information required to submit an engagement plan as outlined in section 3.3

The timing and importance of each social license engagement tool outlined above may flex over the course of the project’s lifecycle. For example, scoping and research will likely be most significant at the very beginning of the project’s lifecycle, while during construction, this tool may only need to be monitored and updated less frequently.

The examples of high-quality engagement in Table 3.4 are based on state government guidelines.^{57, 58, 59, 60, 61, 62, 63, 64} Historically, the AER has recognised that different levels of engagement are appropriate depending on the objective, outcomes, timeframes, resources and levels of concern or interest in the project. The IAP2 framework (see Table 3.5) aligns with the measures noted in the AER’s Better Resets Handbook. It is expected that TNSPs would see the ‘involve’ level of engagement as a minimum and are encouraged to move beyond this level.

⁵⁷ Victorian Department of Environment, Land, Water and Planning, *Community Engagement and Benefit Sharing in Renewable Energy Development* (2017) <https://www.planning.vic.gov.au/__data/assets/pdf_file/0022/126418/Community-Engagement-and-Benefit-Sharing-in-Renewable-Energy-Development1.pdf>.

⁵⁸ NSW Department of Planning and Environment, *Undertaking Engagement Guidelines for State Significant Projects* (2022) <<https://www.planning.nsw.gov.au/-/media/Files/DPE/Guidelines/Policy-and-legislation/SSPT-Guidelines/GD1265-RAF-Engagement-Guidelines-final.pdf>>.

⁵⁹ Western Australia Department of Planning, Lands and Heritage, *Guide to Best Practice Planning Engagement in Western Australia* <<https://www.wa.gov.au/system/files/2022-03/Engagement-Guide.pdf>>.

⁶⁰ Government of South Australia, *Better Together: 6 principles of engagement* <<https://www.bettertogether.sa.gov.au/principles-overview>>.

⁶¹ Tasmanian Government, Department of State Growth, *A guideline for community engagement, benefit sharing and local procurement* (2022) <https://www.stategrowth.tas.gov.au/__data/assets/pdf_file/0010/399205/Guideline_for_Community_Engagement,_Benefit_Sharing_and_Local_Procurement.pdf>.

⁶² Northern Territory Government, *Best Practice Guide for Remote Engagement and Coordination* <https://bushready.nt.gov.au/__data/assets/pdf_file/0018/282231/Best-practice-guide.pdf>.

⁶³ ACT Government, *Engaging Canberrans, A guide to community engagement* (2011) <https://hrc.act.gov.au/wp-content/uploads/2018/07/communityengagement_FINAL.pdf>.

⁶⁴ Queensland Government, *Online community engagement guideline* (2010) <<https://www.forgov.qld.gov.au/information-and-communication-technology/qgea-policies-standards-and-guidelines/online-community-engagement-guideline>>.

Table 3.5 IAP2 Spectrum of Public Participation⁶⁵

	Inform	Consult	Involve	Collaborate	Empower
Public Participation Goal	To provide the public with balanced and objective information to assist them in understanding the problem, alternatives, opportunities and/or solutions	To obtain public feedback on analysis, alternatives and/or decisions	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution	To place final decision making in the hands of the public
Promise to the Public	<i>We will keep you informed</i>	<i>We will keep you informed, listen to and acknowledge concerns and aspirations, and provide feedback on how public input influenced the decision</i>	<i>We will work with you to ensure that your concerns and aspirations are directly reflected in the alternatives developed and provide feedback on how public input influenced the decision</i>	<i>We will look to you for advice and innovation in formulating solutions and incorporate your advice and recommendations into the decisions to the maximum extent possible</i>	<i>We will implement what you decide</i>
Example of engagement actions	<ul style="list-style-type: none"> • Factsheets • Email bulletins • Media releases • Dedicated project web pages • Written reports • Corporate documents 	<ul style="list-style-type: none"> • Public analysis and advice • Focus groups • Surveys • Public meetings • Meetings with selected stakeholders • Webinars and other online forums 	<ul style="list-style-type: none"> • Workshops • Consultative committees • Other advisory committees or groups 	<ul style="list-style-type: none"> • Consensus building • Participatory decision making • Partnerships 	<ul style="list-style-type: none"> • Delegated decisions

The onus will be on the TNSP to establish what social license engagement actions will need to be performed, and to justify to the AER that those engagement actions support the NEO and create inclusive, genuine opportunities for relevant communities to influence new electricity transmission infrastructure projects.

3.7 Tests for social license engagement actions

3.7.1 Social license engagement actions scope test

To assess the scope of the proposed social license engagement actions, it is proposed the AER determine whether the proposed engagement is directly attributable to the electricity transmission infrastructure project. This assessment will go towards justifying the prudence of the social license engagement in the context of the

⁶⁵ 'IAP2 Public Participation Spectrum', *International Association for Public Participation* <<https://iap2.org.au/resources/spectrum/>>.

assessment approach under the NER.⁶⁶ To receive approval for each scope item, a TNSP must address the following assessment questions:

- Are the social license engagement actions directly attributable and proportionate to the provision of a particular electricity transmission infrastructure project?
- Are the social license engagement actions needed and appropriate to achieve the project outcome?
- Are these social license engagement actions over and above a TNSP's existing engagement?
- Are these social license engagement actions distinct from corporate social responsibility?

The onus will be on the TNSP to justify how the scope of social license engagement actions proposed meets these assessment questions. In some cases (based on scope, complexity or scale), the AER's Consumer Challenge Panel (CCP) should also undertake a review. These decisions can then provide precedence to determine eligibility for similar social license engagement actions in future scope tests.

It is acknowledged that there are various engagement actions that TNSPs are required to undertake as part of their 'business as usual' operations. In the context of social license, any engagement actions that fall below the 'involve' level of engagement as detailed in the AER Better Resets Handbook⁶⁷ should be considered business as usual. Furthermore, if the AER judges a TNSP's proposed engagement actions to be well below the standards of high-quality engagement (see section 3.6), these should also be considered business as usual.⁶⁸

There is also a distinction between social license engagement actions and a TNSP's corporate social responsibility. While it is reasonable to expect TNSPs to undertake actions over and above those outlined in this report, it is not expected that consumers should pay for them. Actions based on corporate social responsibility would ordinarily be expected to be borne by shareholders. Examples of these might include sponsorship of a local sporting event. It is acknowledged that there is some subjectivity between what might be considered to be corporate social responsibility and social license engagement actions. The onus would be on the TNSP to demonstrate that the actions are social license engagement actions.

TNSPs may have different levels of existing community acceptance

TNSPs are likely to have varying baseline levels of trust, credibility and legitimacy within a community when undertaking electricity transmission infrastructure projects. As a result, the level of engagement required to build and maintain social license may vary between TNSPs (or across separate electricity transmission infrastructure projects undertaken by a TNSP). To assess the efficiency of this expenditure, the AER may benchmark social license engagement costs against previous submissions and even other TNSPs where appropriate. Assessing social license expenditure in this manner may become more common as additional social license data from previous TNSP determinations becomes available. As per the proposed scope test, the onus will be on the TNSP to demonstrate that the social license engagement actions are required, appropriate and proportionate.

3.7.2 Social license engagement actions cost recovery test

It is proposed that social license engagement actions that pass the scope test would then be subjected to a cost recovery test to assess whether the costs of the social license engagement actions are efficient. This assessment will go towards justifying the efficiency of the engagement in the context of the assessment approach under the NER.⁶⁹ To recover costs for social license engagement actions, a TNSP will need to address the following assessment question:

- Are the costs proposed by the TNSP efficient,⁷⁰ demonstrated via competitive procurement, benchmarking or another relevant process?

⁶⁶ Prudency is determined by the AER as per clause S6A.2.2 in the NER <<https://energy-rules.aemc.gov.au/ner/347/37125>>.

⁶⁷ AER, *Better Resets Handbook* (2021) <<https://www.aer.gov.au/networks-pipelines/better-resets-handbook>>.

⁶⁸ The AER sets out business as usual for stakeholder engagement when applying for the RIT-T. AER, *Application Guidelines. Regulatory investment test for transmission* (2020) <<https://www.aer.gov.au/system/files/AER%20-%20Regulatory%20investment%20test%20for%20transmission%20application%20guidelines%20-%2025%20August%202020.pdf>>.

⁶⁹ Efficiency is determined by the AER as per clause S6A.2.2 in the NER <<https://energy-rules.aemc.gov.au/ner/347/37125>>.

⁷⁰ Ibid.

It might be the case that TNSPs have not undergone a competitive procurement process, and do not have a history of relevant costs that they can use as a benchmark.⁷¹ In this instance, the TNSP will need to provide the following data to allow the AER to perform a bottom-up assessment of the costs:⁷²

- Objective, methodology and intended outcomes of the relevant engagement actions, including the number of community members to be consulted
- The number of employees expected to be required to undertake the engagement actions and the type of personnel required
- The hourly cost of those employees
- The expected length of time needed to undertake the social license engagement actions
- Details of any external procurement including their role, outcomes, cost, and evidence it was competitively sourced
- Costs that are seeking to be recovered as a percentage of the total costs of engagement.

If the AER assesses these costs are efficient, the TNSP may be eligible to recover some or all of these costs, assuming they submit the relevant information the AER requires under its Expenditure Forecast Assessment Guidelines and Better Resets Handbook.⁷³

⁷¹ Benchmarking is unlikely to be used for assessment until there is a meaningful history of social license decisions by the AER.

⁷² Should a TNSP be unable or choose not to provide this information a justification will need to be provided.

⁷³ AER, *Expenditure Forecast Assessment Guideline for Electricity Distribution* (November 2013) <<https://www.aer.gov.au/system/files/Expenditure%20Forecast%20Assessment%20Guideline%20-%20Distribution%20-%20FINAL.pdf>>.

4 Social License – Activities Framework for TNSPs

This section is intended to inform the AER on the social license activities (as distinct from social license engagement) that TNSPs could be required to undertake. To this end, this section of the report provides a method, as an illustrative example, to address the following recommendation from the AEMC:

*"Cost recovery - that the AER provide additional guidance to stakeholders regarding how the costs associated with building and maintaining social license for major transmission projects should be considered and assessed as part of the regulatory process."*⁷⁴

4.1 Definition of social license activities

In the context of this section, the definition of 'social license activities' refers to actions proposed or undertaken by TNSPs to assist with building or maintaining social license with the relevant community in relation to electricity transmission infrastructure projects. These activities are separate from the engagement actions described in section 3 of this report but related in the sense that social license activities are usually the initiatives that are proposed following extensive engagement with the relevant community.

As noted in section 3 the 'relevant community' refers to the people affected by the proposed site of the electricity transmission infrastructure project. This will depend upon local people's identification with significant settlements and towns as well as relative population densities. It is also noted that First Nations community relationships with place may not be connected to size or scale of community but 'significance' of place. This is why First Nations must always be considered 'relevant community'.⁷⁵

4.1.1 The costs and benefits of social license activities should consider all consumers

While social license activities will be typically undertaken within the relevant community, the AER's assessment and reasonable expectations of these activities is that it should also consider the broader community who may not be directly impacted by the project but are affected by its outcomes (e.g., access to secure, reliable, and affordable energy). For a TNSP to be successful in recovering expenditure for social license activities, it must therefore demonstrate that it has also engaged with the broader community.

The 'scope' of social license activities is defined for the purposes of this report as the specific actions or initiatives TNSPs propose to undertake to achieve their social license objectives. Such initiatives may include easement or neighbour compensation, visual impact mitigation and undergrounding. However, these social license activities will only be considered prudent and efficient (and therefore recoverable) if they pass the scope and cost tests detailed in section 4.5.

4.2 Social license activity assessment process summary

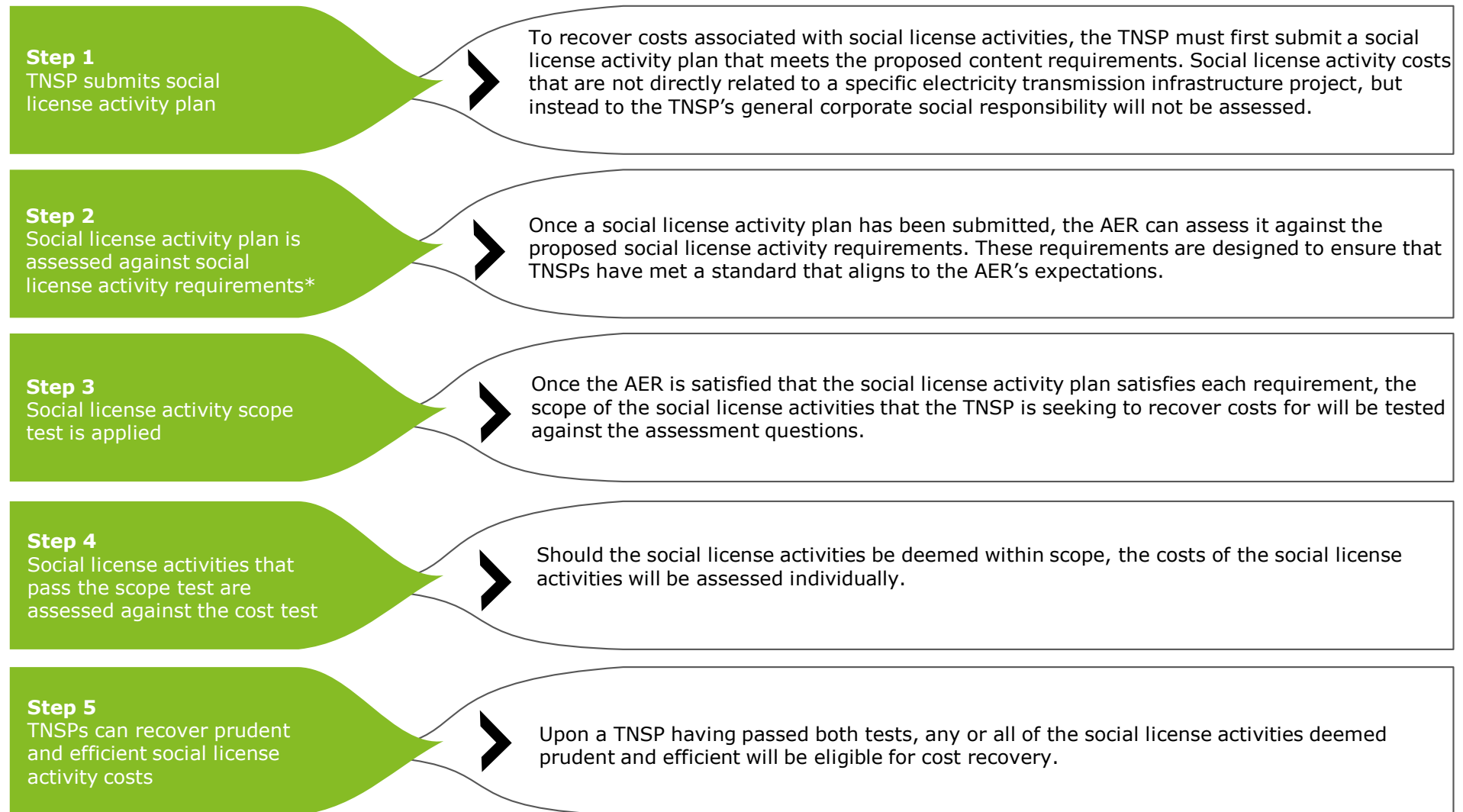
The proposed approach for assessing the prudence and efficiency of social license engagement actions is outlined in Figure 4.1. This process should be undertaken in parallel to what the AER requires under its Expenditure Forecast Assessment Guidelines and Better Resets Handbook.⁷⁶

⁷⁴ AEMC, *Transmission Planning and Investment Stage 2 Report* (27 October 2022) <www.aemc.gov.au/sites/default/files/2022-10/stage_2_final_report.pdf>.

⁷⁵ Note that the AEMC report refers to the relevant community as the 'affected community'.

⁷⁶ AER, *Expenditure Forecast Assessment Guideline for Electricity Distribution* (November 2013) <<https://www.aer.gov.au/system/files/Expenditure%20Forecast%20Assessment%20Guideline%20-%20Distribution%20-%20FINAL.pdf>>.

Figure 4.1 The social license activities assessment process



* In the case of a TNSP failing to meet either test, the AER may initially lodge an information request for the social license activity in question to provide the TNSP the opportunity to justify the cost and for the AER to determine what other information may be needed to make a final decision. If the AER still believes the cost does not pass either test, the TNSP will be unable to recover the cost.

4.3 Social license activity plan

4.3.1 Social license activity plan requirements

It is proposed that a TNSP should submit an activity plan if it is seeking to recover some, or all, of the costs associated with a social license activity. A TNSP must provide a social license activity plan that includes the requirements outlined in the table below.

Table 4.1 Social license activity plan requirements

Social license activity objectives - covering the electricity transmission infrastructure project that the social license activities directly relate to, the outcome that the TNSP is aiming to achieve through the social license activities (including the risks and potential outcomes if the activities are not undertaken) and how these would impact the community (both the people who live within and identify with the geographic area surrounding the project and also the broader community impacted by the outcomes of the project e.g. through price increases).

The proposed social license activities and how they were selected – including a detailed description of each activity, the proposed activities including activity type, duration and programme and their costs. The selection of these activities should be informed by an options analysis (see section 4.3.3).

Linkage to the electricity transmission infrastructure project - details of how the proposed social license activities are directly associated with the provision of the particular project.

Details of how these activities are consistent with the NEO – provide details of how the proposed social license activities are in the long-term interests of consumers of electricity⁷⁷ with respect to:

- price, quality, safety, reliability and security of supply of electricity
 - the reliability, safety and security of the national electricity system.
-

Details of how consumers were consulted when determining the activities - noting that 'consumers' in this context includes both consumers directly affected by the particular transmission infrastructure project as well as the broader customer base. This should include the estimated potential implications for the project (e.g. time and cost) if the social license activities are not undertaken based upon consumer feedback.

4.3.2 Threshold, timing and form of plan submission

The recovery of social license activities is most likely to be proposed in the CPA and cost recovery stages of an electricity transmission infrastructure project, following the conclusion of the RIT-T process. A social license plan should be submitted at any point period prior to when social license activity expenditure is proposed to be recovered. For example, a TNSP might propose expenditure for social license activities as part of a CPA. To be considered, a plan would be required to be submitted along with the CPA that details the extensive consultation and engagement that has been undertaken during the RIT-T or early works CPA process to select these specific activities.

As noted in section 2.3, the onus will be on TNSPs to time the submission of social license activity plan defined in this framework to align with the requirements expected at the jurisdictional level. A preferred structure or form of an activity plan is not proposed if, at a minimum, it includes all information identified above. TNSPs will also need to submit the relevant information the AER requires under its Expenditure Forecast Assessment Guidelines and Better Resets Handbook.⁷⁸ In appropriate circumstances, it is proposed that the AER may discuss potential permitted divergencies with the TNSP.

4.3.3 Options analysis

A minimum of two options should be presented

As part of the social license activity plan, TNSPs should present an options analysis that considers a minimum of two options for achieving the social license activity objectives stated in the plan. Each option should be incremental to the base case i.e. what was proposed during the RIT-T (see discussion below). The options

⁷⁷ In this context, consumers of electricity include both the relevant community and the broader electricity consumer base. See section 4.1.1 for more details.

⁷⁸ AER, *Expenditure Forecast Assessment Guideline for Electricity Distribution* (November 2013)

<<https://www.aer.gov.au/system/files/Expenditure%20Forecast%20Assessment%20Guideline%20-%20Distribution%20-%20FINAL.pdf>>.

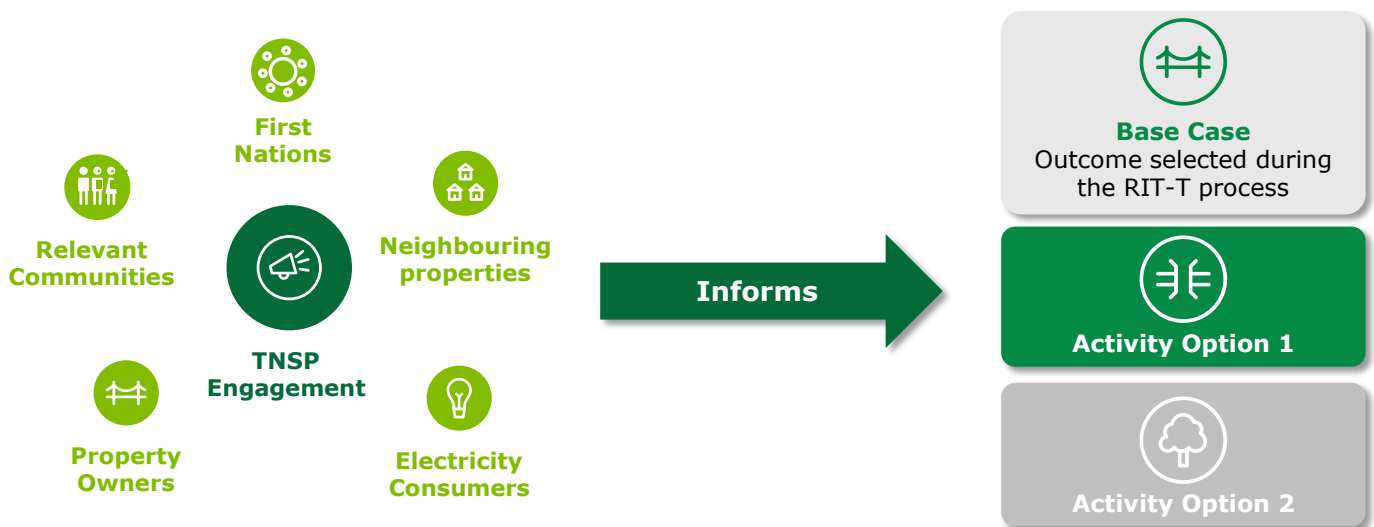
chosen for assessment should reflect a representative sample of the full range of activities that could feasibly be undertaken to address a specific social license objective (which may differ in location, timing, size and form).

The costs and benefits of each option should be analysed against the base case

The costs and benefits of each option should be analysed against a base case representing the outcome that was selected during the RIT-T process.⁷⁹ The purpose of the options analysis is to justify why the social license activities proposed are required to achieve the optimal outcome for the project. Ultimately, these options should only include incremental social license activities compared to what has been selected during the RIT-T process. This would be based on the identified need to undertake further action to build and maintain social license for a specific electricity infrastructure transmission project.

TNSPs must be able to prove that the social license engagement they have undertaken since the RIT-T demonstrates that the base case cannot be achieved without additional social license activities.⁸⁰ These activities should be presented as an alternative option (or options) to the base case, which have been co-developed in conjunction with key stakeholders. The options proposed should reflect not only the relevant community’s preferences, but also the interests of the wider electricity consumer base.

Figure 4.2 Diagram of social license options analysis process



For each option presented, TNSPs should quantify the estimated incremental costs and benefits of the option relative to the base case. They should then be ranked by the total estimated net benefit for electricity consumers compared to the base case option.

Each option must include the following social license activity costs (if relevant):

- The present value of costs incurred in undertaking the social license activity
- The present value of operating and maintenance costs relevant to the social license activity
- The present value costs of complying with laws, regulations and applicable administrative requirements in relation to the provision of social license activities outlined in the option
- Any other costs that the TNSP determines to be relevant to the options analysis.

As part of the options analysis process, TNSPs should submit a cost timeline consistent with other parts of the regulatory submission (that is, the stream of annual cost cash flows) for the social license activities. TNSPs should also highlight any assumptions underpinning the costs.

⁷⁹ The analysis that is undertaken during the RIT-T to determine a credible option is outside the scope of this report.

⁸⁰ A TNSP may engage with a community after finalising the RIT-T and find that the credible option is also the option that is preferred by consumers. In this case no further social license activity expenditure is expected to be necessary to deliver the project.

Benefits should also be quantified where possible

Each option must also identify the benefits associated with undertaking the proposed social license activities. These benefits will vary between projects but may include minimising the impact on high-value tourist, recreational and/or agricultural land.

However, the selection of appropriate social-license activities should not be based purely on cost benefit analysis. This is due to many social license benefits being difficult to quantify in dollar terms (i.e. the value of sacred land). As such, when proposing social license activities, TNSPs should always use a hybrid approach that not only leverages options analysis but is also based firmly upon the overall preferences of the consumer base. These preferences should be derived from extensive consultation with both the relevant community and broader customer base to justify how the activities proposed result in the best overall outcome for consumers. Due to their direct contact with communities, as well as their experience in constructing and maintaining electricity transmission infrastructure projects, we believe TNSPs are best placed to achieve this balance. The option proposed should be the one with the greatest net benefit.

In this sense, the option that is selected during the options analysis may not necessarily be the one that scores the highest during the cost benefit analysis. Rather the ideal option is the one that best considers community preference by optimising the deliverability of the project while minimising expenditure. While social license expenditure may mean delivering a project on time at an increased cost, this must be balanced with the costs of project delay or termination due to community opposition. TNSPs should adopt a risk-based approach to deliverability and clearly demonstrate how the social license expenditure proposed minimises these risks. The option selected as part of the social license plan should be the one that maximises the likelihood of the project being delivered on time while also minimising costs for the overall consumer base.

4.3.4 Governments may wish to issue principles to guide competing social license objectives

While outside the scope of this report, it is acknowledged that TNSPs might need to make trade-offs between various social license objectives (e.g., minimising costs and minimising biodiversity impacts) when undertaking electricity transmission infrastructure projects. Given the uncertainty of this prioritisation, governments (in consultation with the AER) might wish to provide guidance on a project-by-project basis as to how social license objectives should be prioritised. This guidance would assist TNSPs balance competing priorities when determining what social license activities to undertake. Examining whether the government's guidance has been reflected in a TNSP's social license activity plan would assist the AER in its assessment of social license activity expenditure.

4.4 Social license activities assessment principles

We propose that the AER's assessment of social license activities should be based upon the following principles. This will go to justifying the prudence of the activity in the context of the assessment approach under the NER:

- Being directly related to the provision of a particular electricity transmission infrastructure project as per the NER
- Clearly linked to the preferences of both the relevant community and also the broader community impacted by the outcomes of the project (e.g. through price increases) as indicated by extensive and early social license engagement
- Being an efficient investment that is in the long-term interests of electricity consumers in the National Electricity Market. This goes toward justifying the efficiency of the social license activity in the context of the assessment approach under the NER.

The application of these principles is described further in sections 4.5.2 and 4.5.3 below.

4.5 Assessment tests for social license activities

4.5.1 National Electricity Rules context

As per section 6 of the NER, the AER has the discretion to consider the extent to which a TNSP's expenditure forecast includes expenditure to address the identified concerns of the electricity consumers over a network asset's lifecycle. When assessing the expenditure, the AER is required to take consumer preferences into account.

It is through this lens that the AER can assess whether a TNSP is able to recover costs for social license activities. "Consumer preferences" in this context are considered to be both the community directly relevant to

a network transmission infrastructure project, as well as the broader consumer base as a whole. As part of its Rule 2012 No.9 final determination, the AEMC inserted clauses 6A.6.6(e)(5A) and 6A.6.7(e)(5A) into the NER. In that determination, the AEMC noted:

What consumers want and are prepared to pay for, whether in terms of reliability or some other element, will assist in showing what is efficient. The more confident the AER can be that consumers' concerns have been taken into account, the more likely the AER could be satisfied that a proposal reflects efficient costs.⁸¹

Taking *consumers' concerns* into account allows the AER some discretion in accepting a TNSP regulatory forecast that may propose infrastructure options that provide a higher quality of service (and therefore more in-line with community preferences), even if other options are less expensive but are less in line with community preferences. As the AEMC noted:

For example, it may be the case that that a majority of affected consumers are unhappy with the visual impact of a proposed new line. If the NSP engages with consumers, it may decide that the best way to address the concerns of consumers would be to build the line underground, even if this is the more expensive option.⁸²

However, the discretion that clauses 6A.6.6(e)(5A) and 6A.6.7(e)(5A) provide is limited to forecast expenditure that relates to the provision of prescribed transmission services, or to the conducting of engagement with electricity consumers in relation to the provision of prescribed transmission services. As such, these clauses do not enable the AER to accept non-network expenditure that is incurred more generally for the purposes of improving relationships with the community.

This distinction between what is beneficial for the 'relevant community' and what is prudent for the broader consumer base is central to determining what is the efficient level of social license expenditure. There may be substantial debate among these stakeholders about the costs forecast, with both sides often supported by expert opinion. As per the NER, the concerns of both of these stakeholder groups must be taken into account due to their position as being 'electricity consumers'. However, the NER does not privilege one particular stakeholder's concerns over another. As such, while the AER must consider the concerns of local communities when assessing a TNSP's social license expenditure, it must not do this without considering the economic effects of doing so on the wider consumer group. Ultimately as a regulator, the AER's role is to balance competing views and make an overall decision that it believes best contributes to the achievement of the NEO.

4.5.2 Social license activities scope test

Based on the NER context above, the main test for assessing the scope of proposed social license activities is to determine whether the proposed social license activities are directly associated with the electricity transmission infrastructure project and can be justified based on consumer preferences identified during engagement. To receive approval for each scope item, we suggest that a TNSP would need to address the following assessment questions:

- How the proposed social license activities are directly associated with the provision of a particular transmission infrastructure project
- How the proposed social license activities are linked to relevant community preferences as indicated by extensive and early social license engagement
- How the activities maximise the likelihood of the project being delivered on time while also minimising costs for the overall consumer base
- How trade-offs between different consumer groups have been considered in the proposed social license activities
- How the proposed social license activities are consistent with the NEO.

It is acknowledged that there are various activities that TNSPs are required to undertake as part of their 'business as usual' operations. In the context of social license, any activity that does not meet the scope test assessment questions outlined above (i.e. directly related and efficient) would be considered to be business as

⁸¹ AEMC, *National Electricity Amendment (Economic Regulation of Network Service Providers) Rule 2012* (29 November 2022) <<https://www.aemc.gov.au/rule-changes/economic-regulation-of-network-service-providers>>.

⁸² Ibid.

usual. The onus will be on the TNSP to justify how the scope of social license activities proposed meets all of the assessment questions.

Social license activities must be directly associated with a particular electricity transmission infrastructure project and associated with consumer preferences

To pass the scope test, a TNSP will need to justify how the social license activities proposed are not only directly associated with a particular electricity transmission infrastructure project but linked to consumer preferences. To demonstrate these preferences, TNSPs will be required to detail how the trade-offs between the relevant stakeholder groups have been managed and clearly identify how the input from these groups has influenced the preferred option presented as part of the options analysis.

An assessment of social license activities will also examine if early engagement was undertaken

The TNSP must identify a clear link between the early engagement undertaken prior to the credible option being selected (during the RIT-T) and how consumer's preferences have been taken into account since. If there are indications that the activities proposed by TNSPs could have been avoided due to further early engagement, then the TNSP's proposed expenditure will not pass the scope test.

Worked Example

A TNSP might propose to underground a portion of a new transmission project as part of its regulatory proposal and/or CPA. According to the accompanying social license plan submitted by the TNSP, the route proposed during the RIT-T process is no longer feasible without modification due to the extensive engagement the TNSP has completed following the selection of the credible option. While the TNSP conducted extensive engagement during the RIT-T process, community sentiment has since changed given competing projects that have been undertaken in other areas. The TNSP's plan includes an options analysis that compares the base case (above ground) to an option of undergrounding portions of the route in locations that are of particular stakeholder concern. While the options analysis indicates that the undergrounding option is likely to incur a higher cost compared to the base case, the TNSP submits that this option is reasonable due to:

- The undergrounding costs being directly related to the provision of the transmission service as it is an integral component of the transmission line.
- Feedback during extensive social license engagement indicates that there is widespread consumer support for the undergrounding option. The TNSP's activity plan demonstrates there is a clear trade-off between the stakeholders that are directly affected (e.g. a local tourist town) and the broader consumer base (in this case represented by a consumer advocate group). The TNSP's engagement with these two stakeholder groups indicates that while the consumer group is concerned about the additional cost of undergrounding, they have deemed it to be acceptable given the potential risks of delay to the project and the amenity benefits to the tourist town.
- The undergrounding costs being consistent with the NEO in that the increased costs are reasonable in the circumstances, particularly when factoring in the risk to the project outcomes if undergrounding does not occur.

Given the above, the AER may consider these undergrounding activities to meet the scope test for social license activities. These activities would then be assessed as part of the cost recovery test.

Worked Example

Conversely, another TNSP may propose to capitalise expenditure to enable employees to volunteer in a local community's social services. According to the TNSP's proposal, extensive consultation has demonstrated that this volunteerism is extremely well received within the community and has dramatically improved community acceptance of the network. However, the application of the proposed scope test would indicate that this activity does not meet the proposed scope test requirements as:

- The employee volunteerism costs are not directly associated with the provision of the particular transmission infrastructure project. It is not clear if there is any linkage between the employee volunteerism and the particular transmission infrastructure project.

- It is unclear whether trade-offs between different stakeholders have been considered. While the engagement with the directly affected community has indicated support for this expenditure, the TNSP has not consulted the wider consumer base on whether this expenditure is in their best interests.
- The proposed social license activities do not fully meet the objectives of the NEO, in that, it is not clear how the volunteerism could promote efficient investment in, and efficient operation and use of, electricity services for the long-term interests of consumers of electricity with respect to:
 - price, quality, safety, reliability and security of supply of electricity
 - the reliability, safety and security of the national electricity system.

There might be a situation where employee volunteerism for a period of time could be directly linked to a particular electricity transmission infrastructure project. In this case the onus would be on the TNSP to demonstrate that the above scope tests could be met.

The TNSP (rather than the AER) should be responsible for managing the trade-offs between various stakeholder groups and co-developing the social license activities to be representative of all consumers. This representation should be justified via extensive engagement to prove that these activities are the preferred option. The AER's role should be instead to review how the TNSP has undertaken the activity development process and make sure it is in line with the principles outlined via the scope and cost tests.

If a social license activity does not satisfy the scope test it will not be further assessed under the cost recovery test.

4.5.3 Social license activities cost recovery test

Under the proposed framework, social license activities that satisfy the scope test would be subject to a cost recovery test to assess whether the proposed costs of the social license activities are efficient. To recover costs for activities, a TNSP would need to address the following assessment questions:

- Have the proposed social license activity costs already been included in the TNSP's existing revenue allocation?
- Has the TNSP undertaken a competitive procurement exercise to undertake engagement?
- In the absence of a competitive procurement exercise, has the TNSP undertaken benchmarking or options analysis of those costs?

As with the scope test, the onus will be on the TNSP to justify why the costs proposed satisfy the questions above. As with all network expenditure, the costs that are submitted must be supported by economic justification and supporting information that demonstrates that forecasts are prudent and efficient. In line with the AER expenditure assessment guidelines, 'economic justification' involves the TNSP demonstrating that it is making social license expenditure decisions under a quantitatively based economic framework that is consistent with achieving the social license objectives identified in the social license plan.⁸³ This justification could take the form of benchmarking, market testing or bottom-up assessment of the costs.

If evidence of efficiency in the form above is unsatisfactory, the AER may amend the forecast expenditure or substitute it with an estimate using the methodology defined in its Expenditure Forecast Assessment Guidelines.⁸⁴

In the instance that the AER needs to undertake its own benchmarking, the TNSP should provide the following information to allow the AER to perform a bottom-up assessment of the costs:⁸⁵

- Objective, methodology and outcomes of the relevant social license activity
- The number of employees required to undertake the activity and the type of personnel required
- The hourly cost of those employees

⁸³AER, *Expenditure Forecast Assessment Guideline for Electricity Transmission* (November 2013)

<<https://www.aer.gov.au/system/files/Expenditure%20Forecast%20Assessment%20Guideline%20-%20Transmission%20-%20FINAL.pdf>>.

⁸⁴ Ibid.

⁸⁵ Should a TNSP be unable or choose not to provide this information a justification would have to be included to explain why it is not available.

- The length of time the social license engagement actions took
- Costs that are seeking to be recovered as a percentage of the total costs of the project, including third party costs.

If the AER assesses these costs as efficient, the TNSP may be eligible to recover some or all of these costs, as long as they also satisfied the AER's requirements outlined in the Expenditure Forecast Assessment Guidelines and Better Resets Handbook.⁸⁶ For example, a TNSP may propose expenditure for the purpose of compensating property owners that own land adjacent to the properties where transmission lines are proposed to be built. While landowners are typically compensated under jurisdictional legislation for transmission projects, there are usually no legislative requirements to compensate neighbouring lots. As such, the TNSP may submit neighbour compensation as social license costs as part of its forecast expenditure.⁸⁷ Assuming this social license activity has satisfied the scope test, the cost recovery test will then be applied to assess if the costs for the neighbouring owners are efficient. For instance, if:

- The TNSP provides reasonable evidence that these neighbour compensation costs are exclusive of previous expenditure forecasts
- The TNSP provides evidence that the costs have been benchmarked
- The TNSP provides evidence of extensive consultation and endorsement from directly affected consumers and broader consumer groups
- The TNSP has provided justification that any cost increases will maximise the likelihood of a specific electricity transmission infrastructure project being delivered on time while costs are minimised as part of its social license activity plan scope (see section 4.5.2).

It is proposed that the AER may then accept the TNSP's social license activity expenditure forecast and allow it to be recovered under the appropriate cost recovery avenue (see section 5). If the AER is not satisfied that the expenditure reflects the social license activity objectives (through a lack of economic justification for example), then the AER may not accept the expenditure, providing reasons for its decision in line with the NER.⁸⁸

It is also expected that social license activities are continuously undertaken by TNSPs and that these activities evolve throughout the lifecycle of each project. It is expected that social license activities do not end at the conclusion of the cost recovery process. Instead, TNSPs should be continuing to evolve their social license activity processes to best suit the relevant community's needs.

4.5.4 Exceptions for cost recovery for regulatory and/or statutory obligations

The social license activity costs described above are in addition to any costs imposed by specific jurisdictional requirements. As they are typically non-discretionary, these costs will not be assessed by the above framework and will instead be able to be recovered via cost pass throughs or the regular expenditure forecast frameworks as applicable. An example of this would be the recently established New South Wales Strategic Benefits and Payments scheme which compensates landholders over and above land acquisition costs.⁸⁹

⁸⁶ AER, *Expenditure Forecast Assessment Guideline for Electricity Distribution* (November 2013)

<<https://www.aer.gov.au/system/files/Expenditure%20Forecast%20Assessment%20Guideline%20-%20Distribution%20-%20FINAL.pdf>>.

⁸⁷ The AEMC has recommended changes to the RIT-T process which may impact what TNSPs may be able to recover under this mechanism. Should these changes be implemented, it may impact the extent to which TNSPs can recover costs under this framework. As noted in section 1.3, the RIT-T process is outside the scope of this report.

⁸⁸ AEMC, *NER Clause 6A.14.2: Reasons for decisions* (18 May 2022) <<https://energy-rules.aemc.gov.au/ner/388/112214>>.

⁸⁹ NSW Government, EnergyCo, *Strategic Benefit Payments Scheme* (October 2022) <<https://www.energyco.nsw.gov.au/community/strategic-benefit-payments-scheme>>.

5 Recovery of costs for social license engagement and social license activities

As noted in the AEMC’s Transmission Planning and Investment - Stage 2 draft report, the NER provides avenues for the recovery of social license expenditure undertaken by TNSPs for electricity transmission infrastructure projects. The three key avenues are:⁹⁰

- Preparatory activities, for which forecast expenditure is approved via the revenue determination process
- Forecast costs assessed in the RIT-T and recovered under the CPA process
- Cost pass throughs, where TNSPs can seek to amend their revenue determination for specific pass through events that are beyond their reasonable control.

In the final version of the Stage 2 report, the AEMC noted that these avenues were sufficient and that there were no major barriers in the NER to TNSPs being able to recover efficient expenditure associated with key activities undertaken to build and maintain social license for electricity transmission infrastructure projects.⁹¹ Our report aligns to this conclusion and as such, we have focussed primarily on these three expenditure recovery avenues.

We have also considered the incentives that should apply to TNSPs in the context of social license engagement and social license activities. We consider the existing efficiency incentive schemes (e.g., Efficiency Benefit Sharing Scheme (EBSS) and the Capital Expenditure Sharing Scheme (CESS)) that are administered by the AER⁹² to be sufficient for the purposes of social license engagement and social license activities and therefore are not proposing any modifications.

Rather, the purpose of this section is to advise the AER on a method for how TNSPs could approach recovering costs (for both social license engagement and social license activities) under the existing expenditure recovery avenues of the NER and in the context of the AER’s existing Expenditure Forecast Assessment Guidelines and Better Resets Handbook.⁹³ This could improve the predictability around how the assessment of prudent and efficient social license expenditure incurred by TNSPs will be undertaken and strengthen the incentive for TNSPs to undertake key activities to build and maintain community acceptance at key points throughout the project lifecycle.

5.1 Social license cost recovery via the revenue determination process

The AEMC Stage 2 final report made it clear that stakeholders required further clarity on how the AER would assess the recovery of both social license engagement and social license activities during the revenue determination process.⁹⁴

⁹⁰ AEMC, *Transmission Planning and Investment – Stage 2 Final Report* (24 November 2022) <<https://www.aemc.gov.au/market-reviews-advice/transmission-planning-and-investment-review>>.

⁹¹ Ibid.

⁹² AER, *Better Regulation: Expenditure incentives* (November 2013) <<https://www.aer.gov.au/system/files/AER%20Better%20Regulation%20factsheet%20-%20expenditure%20incentives%20-%20November%202013.pdf>>.

⁹³ As noted in section 1.3, this report does not seek to provide additional guidance on the costs associated with social license activities in the RIT-T and how TNSPs might ensure that a credible option can “be implemented in sufficient time to meet the identified need”. These concepts will be assessed internally by the AER.

⁹⁴ AEMC, *Transmission Planning and Investment – Stage 2 Final Report* (24 November 2022) <<https://www.aemc.gov.au/market-reviews-advice/transmission-planning-and-investment-review>>.

For example, the AER did not approve Transgrid’s proposed step change in its opex forecast related to ISP preparatory activities of which some were related to stakeholder engagement.⁹⁵ In assessing Transgrid’s proposal, the AER noted that these costs should be considered business-as-usual, as they were not justified by further analysis – a decision that has since been reflected in Transgrid’s revised revenue proposal.⁹⁶

Our view is that expenditure associated with social license engagement and activities that satisfies the tests proposed in this report should be able to be recovered during the revenue determination or CPA process, as long it meets the additional requirements laid out in this section.

Importantly, the social license engagement that informs proposed social license activities should assist with the AER’s assessment of the prudence of the proposed expenditure. Both the proposed social license engagement and social license activities will also need to be assessed in terms of their efficiency.

Whether social license costs are recovered as capex or opex is detailed below.

5.1.1 Social license costs recovered under capital expenditure forecasts

As with other forecast capital expenditure (and in line with this report’s framework) it is proposed that the AER will assess social license expenditure by assessing the prudence of the expenditure, and the efficiency of the proposed social license expenditure to meet the justified social license objectives. TNSPs may propose social license capex if:

- The expenditure is non-recurring
- The expenditure is related to specific electricity transmission infrastructure project as outlined in a TNSP’s revenue proposal
- The expenditure has not been included elsewhere (e.g., as part of regulatory or jurisdictional obligations)
- The expenditure is required to meet the capex criteria as defined in the NER⁹⁷
- The expenditure and activities meet the requirements and are eligible for the assessment tests proposed in this report.

Proposed social license expenditure should be included in either the augmentation capital expenditure driver category or contingent project breakdowns of a TNSP’s revenue proposal. To be eligible for social license capex, TNSPs will need to submit the relevant information the AER requires under its Expenditure Forecast Assessment Guidelines and Better Resets Handbook.⁹⁸

Social license capex that arises from legislative obligations (e.g., state legislation specifying environmental requirements or local procurement requirements) would not be subjected to the framework proposed in this report and instead would only be assessed as per the AER Guidelines and Better Resets Handbook.⁹⁹

5.1.2 Social license costs recovered under operational expenditure forecasts

The AER relies upon a ‘base-step-trend’ approach to assessing the majority of opex categories a TNSP might propose expenditure under.¹⁰⁰ In order for TNSPs to recover expenditure for building and maintaining social license under opex, the TNSP must justify why it represents a material step change from its base opex.^{101 102}

As noted by the *Better Resets Handbook*, step changes must be driven by regulatory changes that cannot be managed under the existing forecast, significant future offsets of capex, or major external factor(s) outside the control of the TNSP.¹⁰³ The AER notes that opex step changes in revenue determinations are typically limited to

⁹⁵ AER, *Draft Decision Transgrid Transmission Determination 2023 to 2028* (September 2022) <https://www.aer.gov.au/system/files/AER%20-%20Transgrid%202023-28%20-%20Draft%20Decision%20-%20Overview%20-%20September%202022_1.pdf>.

⁹⁶ Transgrid, *2023-28 Revised Revenue Proposal* (December 2022) <<https://www.aer.gov.au/system/files/Transgrid%20-%202023-28%20Revised%20Revenue%20Proposal%20-%202022%20Dec%202022%20-%20PUBLIC.pdf>>.

⁹⁷ AEMC, *NER in clause 6A.6.7* (8 December 2021) <<https://energy-rules.aemc.gov.au/ner/347/37125>>.

⁹⁸ AER, *Expenditure Forecast Assessment Guideline for Electricity Distribution* (November 2013) <<https://www.aer.gov.au/system/files/Expenditure%20Forecast%20Assessment%20Guideline%20-%20Distribution%20-%20FINAL.pdf>>.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² AER, *Better Resets Handbook* (2021) <<https://www.aer.gov.au/networks-pipelines/better-resets-handbook>>.

¹⁰³ Ibid.

a few well justified ones, or none at all. As such, we believe that it is unlikely that social license costs will meet the AER thresholds to be recovered under an opex step change, as the bulk of these costs are typically occurred prior to the commencement of a project and therefore would not result in a sustained increase in opex.

However, where the social license engagement results in proposed social license activities that are opex in nature, recurring and material then this may result in a proposed opex step change. The prudence and efficiency of this proposed opex would be assessed in line with sections 3 and 4 of this framework, as well as the AER's Expenditure Forecast Assessment Guidelines and Better Resets Handbook.

5.2 Social license cost recovery via contingent project applications

Rule 6A.8 of the NER allows for a TNSP's revenue allowance to be adjusted during a regulatory control period through the contingent project mechanism.¹⁰⁴ This mechanism allows networks to identify potential contingent projects that are excluded from their ex-ante revenue allowance but can become part of the Maximum Adjusted Revenue (MAR) if the AER is satisfied that:

- the proposed contingent project is reasonably required to be undertaken in order to achieve any of the capital expenditure objectives
- the proposed contingent capital expenditure is material,¹⁰⁵ reasonably reflects the capital expenditure criteria and is not otherwise provided for in the total forecast capital expenditure for the relevant regulatory control period
- the proposed contingent project and the contingent capital expenditure is compliant with the regulatory information instrument
- the trigger events in relation to the proposed contingent project are appropriate.¹⁰⁶

Social license expenditure that passes the scope and cost tests outlined in this report is proposed to be eligible for recovery as part of a TNSP's CPA if the application meets the requirements above. This expenditure should be identified as social license related as part of the CPA and will be assessed as per the capex and opex guidelines outlined by the AER.¹⁰⁷

5.3 Social license cost recovery via cost pass throughs

It was noted in the AEMC's Draft Stage 2 Report that TNSPs may seek to recover unexpected or unavoidable material social license expenditure through the cost pass through avenue defined in the NER.¹⁰⁸ As per the NER, to seek approval of the AER to pass through expenditure, a TNSP must submit to the AER a written statement with the specifications defined in Clause 6A.7.3 within 90 business days of the event occurring. In assessing the eligibility of TNSPs to recover expenditure under this type of cost pass through, the AER could use the following assessment questions:

- What type of event is this cost pass through proposed as?
- Is the pass through event a contingent project or a trigger event associated with a contingent project?
- Is the social license expenditure proposed directly related to a prescribed transmission project?
- Is the social license expenditure already accounted for in any other component of a TNSP's revenue determination?
- Was the pass through event a consequence of acts or omissions of the TNSP?
- Did the social license expenditure require the TNSP to incur materially higher costs than it would have incurred but for the event?
- Has the pass through event occurred?
- Did the TNSP submit a written statement of its pass through application within 90 business days of the positive change event occurring?

¹⁰⁴ AEMC, *NER in clause 6A.8* (8 December 2021) <<https://energy-rules.aemc.gov.au/ner/347/37125>>.

¹⁰⁵ In this context, 'material' is defined by expenditure exceeding \$30 million or 5% of the value of the MAR for the first year of the relevant regulatory control period whichever is the larger amount. This is noted in rule 6A.8.1(b)(2)(iii).

¹⁰⁶ AEMC, *NER in clause 6A.8.1(b)* (14 November 2022) <<https://energy-rules.aemc.gov.au/ner/423>>.

¹⁰⁷ AER, *Expenditure Forecast Assessment Guideline for Electricity Distribution* (November 2013) <<https://www.aer.gov.au/system/files/Expenditure%20Forecast%20Assessment%20Guideline%20-%20Distribution%20-%20FINAL.pdf>>.

¹⁰⁸ AEMC, *Transmission Planning and Investment Review– Stage 2 Report* (27 October 2022) <<https://www.aemc.gov.au/market-reviews-advice/transmission-planning-and-investment-review>>.

- Did the TNSP specify details of the positive change event, including the date on which the event occurred, in its written statement?
- Did the TNSP specify in its written statement the eligible pass through amount, the proposed positive pass through amount, and the amounts proposed to be recovered from consumers in each regulatory year?
- Did the TNSP specify in its written statement evidence of the actual and likely increase in costs that occurred as a consequence of the positive change event?

5.3.1 Types of cost pass through events

According to clause 6A.7.3 of the NER, a cost pass through event for a transmission determination is defined by any of the following:

1. A regulatory change event
2. A service standard event
3. A tax change event
4. An insurance event
5. Any other event specified in a transmission determination as a pass through event for the determination
6. An inertia shortfall event
7. A fault level shortfall event

Our view is that in the context of social license expenditure, only events 1, 2 and 5 are applicable given social license costs are unlikely to be incurred under tax change, insurance, inertia shortfall or fault level shortfall event.¹⁰⁹ We support the AEMC's view that the cost pass through recovery avenue should only be used to recover costs for building and maintaining social license in very rare circumstances.¹¹⁰ In light of this, we have summarised whether TNSPs should be able to recover costs under each of these events below.

5.3.2 Social license cost pass throughs via a regulatory change event

The NER defines a 'regulatory change event' as a change in a regulatory obligation or requirement that:¹¹¹

- Occurs during the regulatory control period
- Substantially affects the manner in which the TNSP provides prescribed transmission services
- Materially changes the costs of providing those services
- Falls within no other category of a pass through event.¹¹²

Our view is that any unexpected social license expenditure that cannot be predicted is most likely going to be the result of changes in legislation. As such, we believe that TNSPs should not be able to claim social license cost pass throughs under a regulatory change event unless they are related to a specific change in legislation, and these pass throughs do not meet the criteria for a service standard event (see section 5.3.3). In these circumstances, this cost pass through would not be subjected to the framework proposed in this report and instead would only be assessed as per the AER Guidelines and Better Resets Handbook.¹¹³

While these circumstances are unlikely, to be able to claim social license costs under a regulatory change event pass through, the TNSP must meet the materiality threshold defined in the NER as a change of 1% of the maximum allowed revenue for that regulatory year.¹¹⁴ The AER will consider these cost pass throughs on a case-by-case basis.

¹⁰⁹ AEMC, *NER in clause 6A.7.3* (20 April 2022) <<https://energy-rules.aemc.gov.au/ner/379/95897>>.

¹¹⁰ AEMC, *Transmission Planning and Investment Review– Stage 2 Final Report* (27 October 2022) <<https://www.aemc.gov.au/market-reviews-advice/transmission-planning-and-investment-review>>.

¹¹¹ 'Regulatory obligation or requirement' is a defined term under the National Electricity Law. See Section 2A of the *National Electricity (South Australia) Act 1996*, [https://www.legislation.sa.gov.au/_/legislation/lz/c/a/national%20electricity%20\(south%20australia\)%20act%201996/current/1996.44.auth.pdf](https://www.legislation.sa.gov.au/_/legislation/lz/c/a/national%20electricity%20(south%20australia)%20act%201996/current/1996.44.auth.pdf).

¹¹² AEMC, *NER Chapter 10* (14 November 2022) <<https://energy-rules.aemc.gov.au/ner/423>>.

¹¹³ AER, *Expenditure Forecast Assessment Guideline for Electricity Distribution* (November 2013) <<https://www.aer.gov.au/system/files/Expenditure%20Forecast%20Assessment%20Guideline%20-%20Distribution%20-%20FINAL.pdf>>.

¹¹⁴ *Ibid.*

5.3.3 Social license cost pass throughs via a service standard event

According to the NER, a 'service standard event' is a legislative or administrative act or decision that:¹¹⁵

- Has the effect of:
 - substantially varying, during the course of a regulatory control period, the manner in which a TNSP is required to provide a prescribed transmission service
 - imposing, removing or varying the minimum service standards applicable to prescribed transmission services during the regulatory control period
 - altering the nature or scope of the prescribed transmission services provided during the regulatory control period
- Materially increases the costs to the service provider of providing prescribed transmission services (positive change event).¹¹⁶

As these legislative changes are out of a TNSP's direct control, we believe that service standard events constitute one of the few occurrences where a TNSP may be able to recover expenditure for building and maintaining social license. An example of such an event would be state governments implementing minimum compensation amounts for affected landholders in addition to the existing legislative requirements. In these circumstances, this cost pass through would not be subjected to the framework proposed in this report and instead would only be assessed as per the AER Guidelines and Better Resets Handbook.¹¹⁷ Importantly, to be able to claim social license costs under this pass through, the TNSP must meet the materiality threshold defined in the NER as a change of 1% of the MAR for that regulatory year.¹¹⁸

To determine the efficiency of the social license cost pass through, we propose that the AER would not use the framework proposed in this report and instead would only be assessed as per the AER Guidelines and Better Resets Handbook.

5.3.4 Social license cost pass throughs for any other event specified in a transmission determination as a pass through event for the determination

'Event' in the context of clause 6A.7.3 in the NER is defined as an event that has occurred during the regulatory control period which is beyond the reasonable control of the TNSP and the occurrence of which could not have been reasonably foreseen by the provider at the time of making the revenue determination. To nominate this pass through as part of a revenue proposal, a TNSP would need to be able to provide sufficient justification that the event has some probability of proceeding. As noted in section 5.3.2, we cannot see any social license expenditure that could not have been reasonably foreseen by a TNSP outside of legislative changes.

In line with the AEMC's view, costs associated with route alignment changes due to state planning processes do not meet the threshold of 'beyond the reasonable control' of the TNSP.¹¹⁹ These risks should be able to be reasonably identified and managed through earlier or improved engagement with affected communities (which in turn could be potentially considered under the revenue determination or CPA frameworks).¹²⁰ This interpretation is mirrored in a recent AER revenue determination for gas, which rejected using this cost-pass through method to mirror the contingent project process outlined in the NER.¹²¹ As noted by the AER, cost pass throughs should be viewed as a last resort, when:

¹¹⁵ Ibid.

¹¹⁶ According to the Section 10 in the NER, a positive change event for a TNSP is one which entails the TNSP incurring materially higher costs in providing prescribed transmission services than it would have incurred for that event but does not include a contingent project or an associated trigger event.

¹¹⁷ AER, *Expenditure Forecast Assessment Guideline for Electricity Distribution* (November 2013)

<<https://www.aer.gov.au/system/files/Expenditure%20Forecast%20Assessment%20Guideline%20-%20Distribution%20-%20FINAL.pdf>>.

¹¹⁸ AEMC, *NER Chapter 10* (14 November 2022) <<https://energy-rules.aemc.gov.au/ner/423>>.

¹¹⁹ AEMC, *Transmission Planning and Investment Stage 2 Report* (27 October 2022)

<www.aemc.gov.au/sites/default/files/2022-10/stage_2_final_report.pdf>.

¹²⁰ Ibid.

¹²¹ AER, *Attachment 10 – Reference tariff variation mechanism | Final Decision – APA VTS gas access arrangement 2023–27* (December 2022) <<https://www.aer.gov.au/system/files/AER%20-%20Final%20Decision%20-%20APA%20VTS%202023-27%20Access%20Arrangement%20-%20Overview%20-%20December%202022.pdf>>.

Unforeseen exogenous events arise where the Network Service Provider may have limited effect to mitigate the immediate impact. This approach maintains the incentives on service providers to use market-based mechanisms to mitigate the cost impacts.¹²²

As such, we do not think TNSPs should be able to specify general 'social license' cost pass through events in their revenue determinations as triggers for social license cost pass throughs.

¹²² Ibid.

6 AEMC proposed rule changes

Alongside recommending that the AER provide guidance on how it will assess social license expenditure, the AEMC recommended a number of rule changes be made to the NER with specific reference to building and maintaining social license with relevant communities. This section is intended to consider the proposed NER rule changes and thus address the following recommendation from the AEMC:

"The [AEMC] also recommends changes be made to the NER to ensure that the expectations on TNSPs to engage and consult local communities and other affected stakeholders at key points in the planning process are consistent for all transmission projects identified through the ISP."^{123 124}

The changes proposed by the AEMC were intended to ensure that the expectations on TNSPs to engage relevant communities and other affected stakeholders were consistent for all electricity transmission infrastructure projects identified through the ISP. The recommended rule changes and our views are outlined in Table 6.1.

Table 6.1 AEMC proposed rule changes and response

AEMC recommended rule change	Deloitte’s view	Interlinkage with the proposed social license engagement and social license activities framework
Expanding the definition of “preparatory activities” to include engagement and consultation with local councils, local community members and other relevant community stakeholders.	This is consistent with the concept of social license and would ensure TNSPs are explicitly encouraged to consult with relevant community groups early in the process.	<p>According to the NER, ‘preparatory activities’ are undertaken to assist with the design and investigation of actionable future ISP projects and REZ stages (as applicable). We believe the assistance that the TNSP provides as part of these activities form part of a TNSP’s ‘business as usual’ operations and would therefore be unlikely to be recovered under the social license framework.</p> <p>If a TNSP can justify that the expenditure to undertake these activities is over and above its normal operations, it may be able to recover these costs under the proposed social license framework. The expenditure would need to satisfy the proposed scope and cost tests.</p>

¹²³ AEMC, *Transmission Planning and Investment Stage 2 Report* (27 October 2022) <www.aemc.gov.au/sites/default/files/2022-10/stage_2_final_report.pdf>.

¹²⁴ The AEMC has recommended changes to the RIT-T process which may impact each TNSPs engagement obligations. Should these changes be implemented it may impact the extent to which TNSPs can recover costs under this framework. As noted in section 1.3, the RIT-T process is outside the scope of this report.

AEMC recommended rule change	Deloitte’s view	Interlinkage with the proposed social license engagement and social license activities framework
<p>Expanding the definition of “interested party” as it applies to the RIT-T consultation procedures for actionable ISP projects to include local councils, local community members and other relevant community stakeholders.</p>	<p>While outside the scope of this report, our view is that expanding the definition of interested party to require TNSPs to engage further with local communities and other stakeholders is critical to building and maintaining social license and is an improvement on the current NER.</p> <p>Involving relevant communities as early as possible in the project assessment draft report (PADR) and project assessment conclusions report (PACR) process will allow community views to be better captured during the critical planning stage of electricity transmission infrastructure projects.</p>	<p>This report does not seek to provide guidance on the costs associated with social license activities in the RIT-T. This concept will be assessed internally by the AER.</p>
<p>Extending the expectations currently in place on jurisdictional planning bodies¹²⁵ in respect of engagement and consultation for REZs to also apply to engagement and consultation undertaken by TNSPs in respect of future and actionable ISP projects.</p>	<p>As discussed above, increasing the expectations of TNSPs with regard to their level of stakeholder consultation will most likely lead to better outcomes during the transmission planning (and construction) process. Improving the consistency in consultation requirements between jurisdictional planning bodies will assist TNSPs, jurisdictional planning bodies and key stakeholders understand their obligations with regard to building and maintaining social license for electricity transmission infrastructure projects.</p>	<p>This report does not seek to provide additional guidance on the costs associated with social license activities in the RIT-T. This concept will be assessed internally by the AER.</p>

¹²⁵ The entity nominated by the relevant Minister as having transmission system planning responsibility in that participating jurisdiction as per *clause 11.27.1 in the NER*.

7 Alignment to the AER's capabilities and next steps

This section details how the proposed framework aligns to the AER's existing capabilities and provides recommendations for next steps.

7.1 This proposed framework aligns with the AER's existing capabilities

We have developed a framework that requires TNSPs to submit plans that outline the engagement and activities they intend to undertake to build and maintain social license with communities affected by a specific electricity transmission infrastructure project. The proposed framework allows the AER to assess the prudence and efficiency of these plans against explicit principles and puts the onus on TNSPs to justify the expenditure involved in social license undertakings. However, the framework maintains the AER's discretion as to what costs can and cannot be recovered by each TNSP.

We consider this approach to be consistent with the existing skills and capabilities of the AER in its role in assessing revenue proposals submitted by TNSPs as part of the periodic regulatory determination process and assessing CPAs. In line with this process, the framework proposed places the responsibility onto TNSPs to provide evidence to meet the assessment questions outlined in this report. The AER's role is then to assess how well the evidence provided meets the framework's requirements and to exercise its discretion where there is ambiguity (for example, in the absence of benchmarked or market tested costs). This is consistent with the objectives outlined in the AER's Strategic Plan 2020-2025, specifically in delivering efficient regulation of monopoly infrastructure while incentivising TNSPs.¹²⁶

When necessary, the AER may elect to be supported by suitably qualified consultants to provide an independent review of the framework and decisions as part of the framework, or to provide specialist services or subject matter expertise on social license (e.g., advisors on First Nations engagement).

We also consider this framework to be consistent with the skill sets of TNSPs which, where appropriate, can be supported by suitably qualified consultants (e.g., advisors on First Nations engagement).

7.2 Next steps in the development of this framework

This social license assessment framework has not been tested with TNSPs or communities. Given social license is a concept that is based on trust, credibility and legitimacy, it is imperative that feedback is sought to ensure that the framework is fully tested and fit for purpose.

To this end, it is recommended that a guidance note be developed based on this report and socialised with TNSPs and other key stakeholders (e.g., the AEMC). In addition, targeted consultation with community representative groups (e.g., Energy Consumers Australia) should occur to explain the context for the proposed social license framework and the distinction between corporate social responsibility and social license engagement and social license activities defined in this framework.

¹²⁶ AER, *AER Strategic Plan 2020-2025* (14 December 2020) <<https://www.aer.gov.au/communication/aer-strategic-plan-2020-2025-released>>.

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