

# Beyond Juukan Gorge: How First Nations people are taking charge of clean energy projects on their land

October 26 2023, by Lily O'Neill, Brad Riley, Ganur Maynard and Janet Hunt

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Credit: Trygve Finkelsen from Pexels

[Many](#) of the big wind and solar farms planned to help Australia achieve

net zero emissions by 2050 will be built on the lands and waters of First Nations peoples. [More than half](#) of the projects that will extract critical minerals to drive the global clean energy transition overlap with Indigenous-held lands.

Australia's [Pilbara](#) and [Kimberley](#) regions have high rates of Indigenous land tenure, while hosting some of world's best co-located solar and wind [energy](#) resources. Such abundance presents big opportunities for energy exports, green steel and [zero carbon products](#).

[Almost 60% of Australia](#) is subject to some level of First Nations' rights and interests, including exclusive possession rights (akin to freehold) over a quarter of the continent. So the stakes for all players are high.

In 2020, after news Rio Tinto had [legally destroyed](#) the sacred Juukan Gorge rock shelter in order to gain access to more than \$100 million worth of iron ore, we wrote an article questioning how much legal say First Nations people would have over massive new wind and solar farms planned for their Country. We asked whether the move to a zero-carbon economy "would be a just transition for First Nations?"

## **The long but hopeful journey back from Juukan Gorge**

Much has happened in the past three years, and while more needs to be done, some signs are promising.

First, the furor and subsequent parliamentary [inquiry](#) following the Juukan Gorge incident forced the resignation of [Rio Tinto boss](#) Jean-Sebastien Jacques. Companies were put on notice that they can no longer run roughshod over First Nations communities. [Research in progress](#) indicates the clean energy industry [has heard](#) this message.

Second, in 2021 the [First Nations Clean Energy Network](#)—a group of prominent First Nations community organizers, lawyers, engineers and financial experts—was created and began to undertake significant advocacy work with governments and industry.

The network has released several [useful guides](#) on best practice on First Peoples' Country. Again, [research](#) indicates the clean energy industry is paying attention to the work of the network.

Third, there is a question whether the [Native Title Act](#) allows large-scale clean energy developments to go ahead without native title holders' permission. We are increasingly [convinced](#) the only way such developments will [gain approval](#) through the Native Title Act is through an [Indigenous Land Use Agreement](#).

Moreover, [Queensland](#) and [Western Australia](#) have both implemented policies and South Australia is developing [legislation](#) that make it clear these states will require renewable energy developers to negotiate an agreement with First Nations land holders. Because these agreements are voluntary, native title holders can refuse to allow large wind and solar farms on their Country.

As always, these decisions come with caveats. Governments can compulsorily acquire land, and many of the [power imbalances](#) we observed in our earlier article persist. These include the power corporations have—unlike most Indigenous communities—to employ independent legal and technical advice about proposed projects, and to easily access finance when a community would like to develop a [project](#) itself.

## **Promising partnerships on the road to net zero**

Are First Nations peoples refusing to have wind and solar projects on

their land? No, they are not. Many significant proposed projects announced in the last few years show huge promise in terms of First Nations ownership and control.

In Western Australia the [partnership](#) between Yindjibarndi Aboriginal Corporation and renewable energy company ACEN plans to build three gigawatts of solar and wind infrastructure on Yindjibarndi exclusive possession native title. Mirning traditional owners hold equity stakes in one of the largest green energy projects in the world, the massive [Western Green Energy Hub](#) located on their lands in the great Australian Bight.

Further north, Balangarra traditional owners, the MG Corporation and the Kimberley Land Council have together announced a landmark East Kimberley Clean Energy [project](#) aimed at producing green hydrogen and ammonia for export.

Across the border in the Northern Territory, Larrakia Nation and the Jawoyn Association have created Desert Springs Octopus, a majority Indigenous-owned [company](#) backed by Octopus Australia.

Still, much more needs to happen to provide Indigenous communities with proper consent and control. In its 2023 [amendments](#) to allow for renewable energy projects on pastoral leases, the Western Australian government could have given native title holders more control but it chose not to. And much needed reforms to cultural heritage laws in WA were scrapped following [a backlash from farmers](#).

In New South Wales, some clean energy developers seem to be avoiding Aboriginal lands, perhaps because they think it will be easier to negotiate with individual landholders. The result is lost [opportunities for partnership](#), much needed [know-how](#) and [mutual benefit](#).

In the case of critical mineral deposits on or near lands subject to First Nations' title, [not nearly enough](#) has been done to ensure these communities will benefit from their extraction.

## **Why free, prior and informed consent is crucial**

To ensure the net zero transition is just, First Nations must be guaranteed "free, prior and informed consent" to any renewable energy or critical mineral project proposed for their lands and waters, as [the UN Declaration of the Rights of Indigenous Peoples](#) makes clear.

So long as governments can compulsorily acquire native title to expedite a renewable energy project and miners are allowed to mine [critical minerals](#) (or any mineral) without native title holders' consent, the net zero transition will transgress this internationally recognized right.

The Commonwealth government has agreed in principle with the recommendations of the Juukan Gorge inquiry to review native title legislation to address inequalities in the position of First Nations peoples when they are negotiating [access to their lands and waters](#).

The meaningful participation of First Nations rights holders is critical to de-risking clean energy projects. Communities must decide the forms participation takes—full or part ownership, leasing and so on— after they have properly assessed their options. Rapid electrification through wind and solar developments cannot [come](#) at the expense of land clearing and loss of biodiversity.

[Ongoing research](#) highlights that when negotiating land access for these projects, First Nations people are putting protection of the environment first when negotiating the footprint of these developments. That's good news for all Australians.

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