



**Australian Government**

**Office of the Australian Energy Infrastructure Commissioner**

# **National Renewables in Agriculture 2021**

**Central-West Orana Renewable Energy Zone  
Landholder seminar**

**30 Sept – 1 Oct 2021**

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[www.aeic.gov.au](http://www.aeic.gov.au)**

# My Role

- In November 2015, commenced as the National Wind Farm Commissioner for an initial three year term
- National, independent role reporting directly to the Federal Minister for Energy and Emissions Reduction
- In October 2018, the Federal Government extended the Commissioner's role and scope to include large-scale solar farms and large-scale energy storage facilities.
- In March 2021, the Federal Minister for Energy and Emissions Reduction announced the expansion of the Commissioner's role to include new major transmission projects. The Minister also announced the change of the role title as the *Australian Energy Infrastructure Commissioner*.
- The Commissioner's updated Terms of Reference are focused on:
  - ✓ Facilitating the handling of complaints from concerned community residents about proposed and operating wind farms, solar farms (5 MW or more), energy storage facilities (1 MW or more) and new major transmission projects;
  - ✓ Identifying and promoting best practices for industry and government in relation to the planning and operation of wind farms, solar farms, energy storage facilities and new major transmission projects; and
  - ✓ Improving information access and transparency about proposed and operating projects.
- In the May 2021 budget, the Federal Government announced the extension of the role for an additional four years from 1 November 2021.

# Matters for consideration when entering into commercial agreements

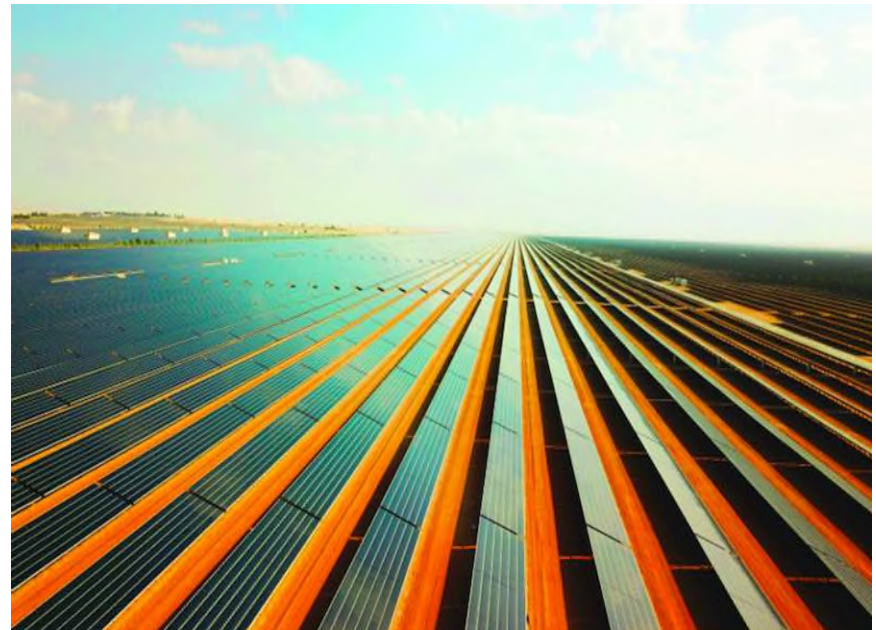
The following pages list various matters landholders may wish to consider before entering into a “licence” agreement, an “option” agreement or the long term “lease” agreement itself.



# Matters for consideration when entering into commercial agreements

The broad areas covered are:

- License and option agreement phases
- Long term lease agreement:
  - Core items
  - Construction related matters
  - Operational related matters
  - Decommissioning



# Licence agreements

A “licence” agreement allows the developer rights to access a landholder’s property for the purposes of surveys and assessments, typically for a specified duration of time. Activities may include the need to access the land to capture wind or solar resources data as well as undertake environmental surveys and investigations, such as geotechnical and cultural heritage.

A licence agreement does not guarantee that a project will proceed.

Matters to consider include:

- Term of the agreement, renewal/extension clauses and ability for landholder to terminate
- Any binding clauses (clauses in the agreement that may require the landholder to enter into subsequent agreements and terms of future agreements)
- Fees payable to the landholder during the agreement including how and when they are paid
- Sale or transfer of the land by the landholder
- Ability of developer to transfer the agreement to another party with or without landowner consent
- Access protocols that the developer must comply with before and during access to the property
- Landholder protection from potential claims and legal action that might arise, along with required insurances to be taken out by the parties to the agreement
- A dispute resolution mechanism.

# Option agreements

An “option” agreement provides the developer with rights to lease some or all of a landholder’s property for the purposes of construction and operation of the project. The agreement should be for a specified duration of time.

An option agreement does not guarantee that a project will proceed or that the developer will enter into lease. Nor does it typically guarantee that the landholder will host the number or capacity of assets that have been discussed. Option agreements may, however, bind the landholder to the lease terms.

Matters to consider include:

- Term of the agreement, renewal/extension clauses and ability for landholder to terminate
- Any binding clauses (clauses in the agreement that may require the landholder to enter into subsequent agreements and terms of such agreements)
- Fees payable to the landholder during the agreement including how and when they are paid
- Sale or transfer of the land by the landholder and ability of developer to transfer the agreement to another party with or without landowner consent
- Mechanisms to apply if the project’s scope materially changes, particularly if the changes result in negative impacts for the landholder, such as a reduced number of turbines or arrays
- Milestones that must be achieved by the developer during the term of the agreement, including considerations if the project’s approval or financing is materially delayed
- A dispute resolution mechanism.

# Lease agreement - core matters

The lease (or “host”) agreement is a complex commercial lease that commits the landholder for a very long time and places significant obligations and responsibilities on the landholder. Matters to consider:

- Fees payable to the landholder during the final development stage (pre-permit approval), financial close stage (post-permit approval), construction, operational and decommissioning stages
- Method of calculating the fee amounts and fee increases over time, and timing of payments
- Variations to fees in the event of changes to turbine or solar array layout, turbine specifications, turbine capacity and number/size of turbines or solar arrays to be hosted
- Easements that may be required, such as for a connecting powerline
- Landowner’s responsibilities in regard to residential tenants and/or property lessees
- Sale or transfer of the land by the landholder or transfer of ownership by the project
- Restrictions on further development on the property
- Provisions in the event of subdivision of the property

## Lease agreement - core matters (cont.)

- Term of the agreement, options for renewal of the agreement and provisions for termination
- Required insurances and responsibility for taking out insurances and payments
- Funding security provisions to protect the landholder in the event of “tenant default”
- Dispute resolution procedure, including key contacts at the developer for the raising and escalation of issues.





# Lease agreement - construction related matters

- Proposed internal road layout – ideally minimises impact on farming operations
- Location of other infrastructure (cabling, construction offices, substations, transmission lines etc.)
- Gate policy and other on-site procedures, such as bio-security compliance requirements
- Use of additional land during construction and major maintenance activities
- Process for making changes to location and routing of project infrastructure on the landholder's property and responsibilities for maintenance of shared use infrastructure
- Removal of construction waste, who is responsible and timeliness of removal
- Access agreements required for accessing easements via a landholder's property
- Arrangements in relation to decommissioning/removal of ancillary infrastructure after construction
- Rehabilitation of disturbed land after the completion of construction works, such as replacement of soils over underground cabling or trenches
- Work place safety responsibilities during construction
- Compliance with permit conditions related to construction
- Provisions and process for handling disputes such as damage to landholder's property/equipment by contractors.

# Lease agreement - operational matters

- Landholder's compliance with the lease and ensuring the tenant's compliance with their obligations under the lease
- Ongoing access requirements for operational and maintenance activities
- Responsibility for Occupational Health & Safety plans and communications
- Compliance with permit conditions and legislation related to operations (e.g. noise emissions)
- Responsibility for fire and emergency plans and communications
- Required insurances to be taken out by the project in respect of the landowner
- Required insurances to be taken out by the landowner in respect of the project
- Responsibility for the costs and payment of:
  - the various ongoing insurances
  - additional council rates levied on the landowner as a result of the project
  - additional land taxes levied on the landowner as a result of the project
  - additional emergency services or other levies as a result of the project
- Payment of outgoings – are they paid directly by the project or is the landholder reimbursed.

# Lease agreement - decommissioning matters

- Scope of the decommissioning activity
- Decommissioning plan by the project and provision of the plan to the Landholder
- Decommissioning responsibilities of the parties, which may be defined in the plan and/or the permit, but need to be reflected in the agreement
- Detailed and verified estimates of the likely decommissioning costs
- Clarify who pays for the decommissioning costs
- Document arrangements to ensure decommissioning funding is set aside and secured, such as:
  - Bank guarantee
  - Bond
  - Trust fund
- Ability to audit funding security arrangements to ensure funding is in place and contributions meet the agreed requirements
- Provisions for dealing with default of the agreement by the project.

# Independent advice

Our Office strongly encourages all landholders considering entering into commercial agreements with developers to obtain independent legal, financial and insurance advice prior to entering into an agreement.

An agreement can always be negotiated before you sign – it is much more difficult thereafter.



# Further information

Further resources include:

**Considerations for landowners before entering into commercial agreements:**

<https://www.aeic.gov.au/publications/considerations-landholders-entering-commercial-agreements>

**National Wind Farm Commissioner – 2019 Annual Report**

<https://www.nwfc.gov.au/publications/2019-annual-report>

**NSW Farmers – Renewable Energy Landowner Guide**

[https://nswfarmers.org.au/NSWFA/Content/IndustryPolicy/Resource/Renewable\\_Energy\\_Landholder\\_Guide](https://nswfarmers.org.au/NSWFA/Content/IndustryPolicy/Resource/Renewable_Energy_Landholder_Guide)

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# Further information (cont.)

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## Website

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<https://www.aeic.gov.au/resources>

<https://www.aeic.gov.au/planning-and-regulation>