
Template developer deed poll for renewable energy projects' "hold harmless" commitment

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is available online at www.aeic.gov.au

TEMPLATE – DEVELOPER DEED POLL – RELEASE AND HOLD HARMLESS

Date : [insert]

By : [Developer entity] ACN [insert] of [insert] (**Developer**)

1 Background

1.1 The Developer is developing, constructing, operating and maintaining the Project.

1.2. This deed poll is intended to address concerns relating to the cost and availability of liability insurance for landowners hosting or neighbouring energy projects. The deed poll limits the Project Developer's rights of recovery against eligible landholders for loss of or damage to Project Infrastructure and related business interruption.

1.3 The Developer gives this deed poll in favour of Eligible Landholders on the terms set out below.

2 Definitions

In this deed poll:

- **Construction Start Date** means the date on which construction or site works for the Project commence that could reasonably give rise to risk of loss of or damage to Project Infrastructure from acts or omissions occurring on properties of Neighbouring Landowners.
- **Developer Group** means the Developer and each of its related bodies corporate (as defined in the Corporations Act 2001 (Cth)) from time to time, in each case to the extent it is involved in developing, constructing, operating or maintaining the Project.
- **Gross Negligence** means any negligent act or omission involving a serious disregard to an obvious and material risk and which the party knew or ought reasonably to have known would result in substantial loss or damage being suffered or incurred.
- **Host Landholder** means a Landholder whose property hosts or is anticipated to host the Project.
- **Neighbouring Landholder** means a Landholder whose property is located

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[Alternative 1: within [X] km of the Project boundary, or such other distance or criteria as may be adopted by the relevant planning or energy authority for the purposes of defining neighbouring landholders (if any)]

[Alternative 2: in close enough proximity to the Project that act or omission on that Landholder's property does or could cause loss or damage to the Project or the Project Infrastructure].

- In this deed poll, the definition of **Neighbouring Landholders** also encompasses their **Related Parties**, including any tenants, occupiers, property or facility managers, and any contractor, subcontractor, consultant, employee or agent engaged by or acting on behalf of an Neighbouring Landowner.
- **Landholder** means, in relation to any land, the person or entity that:
 - is the registered owner of the freehold or the leasehold title to that land; or
 - holds a lease, licence or other contractual right of occupation or use of that land; or
 - in the case of Crown land, the Crown land manager or other person responsible for managing that land.
- **Excluded Entity** means a landholder that is:
 - a public company (as defined in the Corporations Act 2001 (Cth));
 - a large proprietary company (as defined in the Corporations Act 2001 (Cth));
 - a company registered outside Australia; or
 - a subsidiary of any of the above.
- **Eligible Landholder** means a Host Landholder or Neighbouring Landholder that is not an Excluded Entity.
- **Project** means the *[insert project description]* known as “[*Project name*]”, including any associated private transmission or connection assets that are not part of the declared shared network or declared transmission system (as applicable) and that required to connect that project to the declared shared network or declared transmission system (as applicable).
- **Project Infrastructure** means all physical assets and systems used in connection with the Project, including lines, towers, poles, cables, substations, transformers, civil works, communication systems, monitoring and control systems and ancillary equipment, whether temporary or permanent, but excluding the declared shared network or declared transmission system (as applicable) but excluding the declared shared network or declared transmission system (as applicable) and any other transmission assets that are owned or operated by a licensed transmission network service provider as part of the declared shared network or declared transmission system.
- **Relevant Insurances** means all insurance policies taken out by or for the benefit of the Developer, any project vehicle, any principal or any contractor in relation to the Project that insure loss of or damage to Project Infrastructure, or business interruption resulting from such loss or damage, including contract works, construction all risks, industrial special risks / property damage and business interruption insurance.
- **Loss** includes any loss, damage, cost or expense of any kind.

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3 Beneficiaries and reliance

3.1 This deed poll is given in favour of each person that is an Eligible Landholder from time to time.

3.2 Each Eligible Landholder may rely on and enforce this deed poll in its own right.

3.3 A person ceases to be an Eligible Landholder if it ceases to meet the definition of Eligible Landholder, including because:

- it ceases to be a Host Landholder or Neighbouring Landholder;
- it becomes an Excluded Entity; or
- it ceases to hold the relevant interest in the land.

3.4 Eligibility is to be determined at the time a waiver is first granted, but the waiver is only intended to apply for so long as the person remains an Eligible Landholder.

4 Release and waiver of recovery

4.1 The Developer irrevocably waives and releases all rights it has or may have to claim or recover from an Eligible Landholder any Loss in respect of loss of or damage to Project Infrastructure, or any business interruption resulting from that loss or damage, where the loss or damage is caused or contributed to by any act or omission of that Eligible Landholder in connection with its use or occupation of its property and that emanates from the Eligible Landholder's property to the Project.

4.2 For Neighbouring Landholders, this waiver and release applies only in respect of Loss arising from acts or omissions occurring on or after the Construction Start Date.

4.3 The waiver and release in clause 4.1 also applies to Loss arising from acts or omissions of any person acting with the authority of an Eligible Landholder while lawfully on the Landholder's property, as if those acts or omissions were acts or omissions of the Eligible Landholder.

4.4 The Developer must use commercially reasonable efforts to ensure that each member of the Developer Group does not claim or recover from an Eligible Landholder any Loss of the kind described in clause 4.1.

4.5 This waiver and release is unconditional. In particular:

- the Developer must not require an Eligible Landholder to make a claim on, or first exhaust, any public liability or other insurance held by or for that Eligible Landholder as a precondition to the waiver; and
- the waiver applies irrespective of whether the Eligible Landholder maintains public liability insurance or any other insurance.

4.6 The waiver and release applies whether or not the Eligible Landholder is legally liable for the relevant Loss and whether the act or omission is negligent or otherwise, but is subject to clause 5.

4.7 Nothing in this deed limits the Developer's ability, outside this deed, to agree with an Eligible Landholder that the Eligible Landholder may choose to notify its own insurer.

5 Carve out for serious conduct

5.1 The waiver and release in clause 4 does not apply to any Loss to the extent it arises from:

- the Gross Negligence of the Eligible Landholder; or
- any wilful acts or omissions of the Eligible Landholder, including dishonest, fraudulent, criminal or malicious acts.

5.2 Ordinary negligence, accidents or unintentional conduct by an Eligible Landholder are not excluded by clause 5.1 and remain covered by the waiver in clause 4.

6 Waiver of subrogation – Relevant Insurances

6.1 The Developer must use commercially reasonable efforts to ensure that each Relevant Insurance includes a waiver of subrogation, recourse and similar rights of recovery against all Eligible Landholders for any loss, damage, cost, liability or expense covered by that policy in respect of loss of or damage to Project Infrastructure or resulting business interruption, to the extent the waiver in clause 4 applies.

6.2 Without limiting clause 6.1, the Developer must:

- inform its insurance broker and insurers of the existence and nature of this deed before placing or renewing any Relevant Insurance; and
- request that policy wordings are drafted so that insurers waive rights of subrogation, recourse and recovery against Eligible Landholders on terms consistent with this deed.

6.3 To the extent any of the Relevant Insurances is arranged or held by a contractor or other project participant rather than by the Developer, the Developer must use commercially reasonable efforts to ensure that each of the Relevant Insurances:

- satisfies the requirements for Relevant Insurances under this deed, and
- includes waivers of subrogation, recourse and similar rights of recovery in favour of Eligible Landholders on the basis set out in clause 6.1.

6.4 The Developer is not in breach of this clause 6 if, after using commercially reasonable efforts, an insurer refuses to agree to such a waiver of subrogation, or only offers it on terms that are commercially unacceptable to the Developer acting reasonably.

6.5 Nothing in this deed requires an Eligible Landholder to be named as an insured under any Relevant Insurance.

7 Timing and insurance placement

7.1 This deed is effective from the date it is executed by the Developer, including where Relevant Insurances have not yet been placed or incepted.

7.2 As soon as reasonably practicable after the award of a grid impact authority or REZ scheme authority (or any equivalent approval required for the Project).

7.3 [**Alternative 1** – use where the Alternative 1 definition of Neighbouring Landholder is used, otherwise delete] The Developer must provide written notice of the waiver under this deed to each person it has identified as an Eligible Landholder as soon as reasonably practicable after that time.

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7.3 [**Alternative 2** – use where the Alternative 2 definition of Neighbouring Landholder is used , otherwise delete] The Developer must use reasonable efforts to identify and provide written notice of the waiver under this deed to persons it has identified as Eligible Landholders, but is not required to identify every person who may in fact meet that definition at any given time.

7.4 At each placement or renewal of Relevant Insurances the Developer must use commercially reasonable efforts to ensure the terms of the Relevant Insurances are consistent with the obligations and intent in clauses 4, 5 and 6.

8 Third-party claims

8.1 Nothing in this deed requires the Developer to assume or pay any liability that an Eligible Landholder may have to a third party (other than the Developer or its insurers) arising from any incident, and this deed does not affect any rights or cover under any third-party liability insurance held by or for the Eligible Landholder.

8.2 This deed only relates to Loss arising from loss of or damage to Project Infrastructure (including any resulting business interruption) and does not create any obligation in respect of any other type of loss or liability.

9 Eligibility changes and monitoring

9.1 The Developer may from time to time monitor and verify the eligibility status of Landholders during the life of the Project, including by reference to:

- changes in a Landholder's status (for example becoming a public company or foreign company);
- changes to applicable planning schemes or zoning;
- changes to the Project Boundary; and
- changes in property ownership.

9.2 Where it is reasonably practicable to do so, the Developer must use reasonable efforts to provide written notice of the waiver under this deed to any Landholder it has identified as becoming an Eligible Landholder as soon as reasonably practicable.

9.3 If a Landholder ceases to be an Eligible Landholder under clause 3.3, the waiver in clause 4 ceases to apply from that time, without affecting any rights or protections that have already accrued.

10 Dispute management

10.1 The Developer must:

- establish and maintain a documented process for receiving and managing complaints or disputes from Eligible Landholders about matters arising under this deed;
- on request from an Eligible Landholder, engage in good faith discussions with that Eligible Landholder with a view to resolving any dispute under this deed in a timely and proportionate manner; and
- upon written request from an Eligible Landholder, consider in good faith the use of a low-cost, independent dispute resolution process (for example, mediation through a community, ombudsman or similar body) before commencing any formal court proceedings against that Eligible Landholder in relation to this deed.

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10.2 Nothing in this clause limits the right of an Eligible Landholder to commence proceedings in a court of competent jurisdiction or affects any existing statutory rights they may have.

11 General

11.1 This deed does not create any mortgage, charge or other security interest over any land or property of an Eligible Landholder.

11.2 The Developer must not assign or transfer its obligations under this deed unless the assignee has agreed in writing to assume those obligations for the benefit of Eligible Landowners.

11.3 This deed is governed by the laws of *[jurisdiction]*.

11.4 Nothing in this deed limits the powers of any government authority in the exercise of its statutory functions.

Executed as a deed poll.

[Developer execution block]