

A close-up photograph of a person's hand holding a light-colored pen, writing on a document. The document is resting on a wooden desk. The background is blurred, showing other people in a professional setting. A white rectangular box is overlaid on the upper part of the image, containing the text 'LANDHOLDER AGREEMENTS' in bold, white, uppercase letters.

LANDHOLDER AGREEMENTS

LANDHOLDER AGREEMENTS

There are a number of agreements that a developer may use throughout the process to provide them certainty as they undertake their investigation and then develop and operate the site.

The progress of agreements is generally aligned with key milestones in the development process.

This section outlines the different agreements that a developer may use throughout the process to provide them certainty as they undertake their investigation and then develop and operate the site.

There are a lot of different types of agreements used by developers at the stages of project development.

They generally fall in to three categories:

1. Initial Agreement
2. Option to Lease (or to Purchase)
3. Lease (or Purchase)

Figure 3:
Progress of
Agreements

1 Initial Agreement

2 Option to Lease

3 Lease

The developer may be able to share copies of all agreements with you early in the discussions.

Initial Agreement

1 Initial Agreement

An initial agreement will typically take the form of an Access Agreement, Licence Agreement or Exclusivity Agreement.

The purpose of this initial agreement is to:

- a) Provide for exclusivity over the land to ensure other developers can't run parallel investigations.
- b) Allow for consultants and contractors to access the land to conduct investigations and studies required to gain more certainty for the site.
- c) Secure your site with exclusivity provisions that prevent you from entering into a similar arrangement with another company.

The initial agreement period may provide the time to assess whether you would like to have a development on your property over the long term and to do the necessary preparation and planning for the next stage of discussions and negotiations.

Initial agreements may often include confidentiality provisions to protect the developer's interest in the site. You should ensure that that these provisions do not prevent you from taking advice about the project as required. For example, you may wish to discuss the project with neighbours, financial advisors, family members and your local Council.

The developer may have a staged approach to discussions with neighbours and the community so discuss the communications process with them. The confidentiality provisions may restrict who you can share the actual agreement with.



Initial Agreements

Generally, these initial agreements provide the developer with rights over the landowner's property for a defined period of time while they conduct investigations.

They will vary according to the developer: Some will be relatively simple to allow site access; and others may be more complex with confidentiality and obligations to consider subsequent agreements.

What should be included in the Initial Agreement? Refer to [Checklist #2: What should be included in the Initial Agreement?](#)

“
Agreements are complicated and you need to get your head around it.

”
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MacIntyre Wind Farm. Image Courtesy: ACCIONA Energía

Option to Lease and Lease

2 Option to Lease

3 Lease

Once the development process has progressed to a point where the developer is satisfied that there is a good prospect of a project, they will move to sign long-term agreements with the landholder.

This generally takes the form of an Option to Lease, or Option. The option secures the site for a longer period of time and commits both parties to enter into a Lease once the pre-conditions of the Option are reached. In some cases, the developer will want to purchase the land and may also propose to lease back the land that is not used for the project to the seller for a token amount (for example, grazing may help weed control around the project).

In most cases the final **Lease** will be attached to the **Option to Lease**. This is because the Developer will need to be able to exercise the option once all the preconditions are met, such as reaching Financial Close.

As a result, the lease terms and condition will all be agreed at the time the Option agreement is signed other than allowance for some variations that may occur during the later stages of the development process such as micro-siting of the project and access roads.

Where the developer is owned by foreign entities or individuals not residing in Australia, the option to lease (or to purchase) may include a foreign investment approval as a condition to the final lease or purchase contract being executed.

It is unlikely that any new matters can be incorporated into the Lease once the Option is executed so it is essential that all relevant matters are included in the Lease at this early stage. It is therefore important to ensure that the landholder is comfortable with all aspects of the lease at the time the option is signed.

The checklist includes detail and considerations for each stage of the development.

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Understand the information available at the moment of signing off the agreement – acknowledge that not all information is available so need to consider that before signing off.”

“Need to consider tax impacts on your land.

”

LEGAL ADVISOR

“

Don't sign anything until you get competent legal advice. You need a documented process to go through if you don't agree.

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LANDHOLDER

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Make sure whoever is providing your legal advice actually has experience in renewable energy contracts.

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For more information, refer to the [“Considerations for Landholders before entering into Commercial Agreements”](#) by the Australian Energy Infrastructure Commissioner (AEIC).

What should be included in the Agreements?

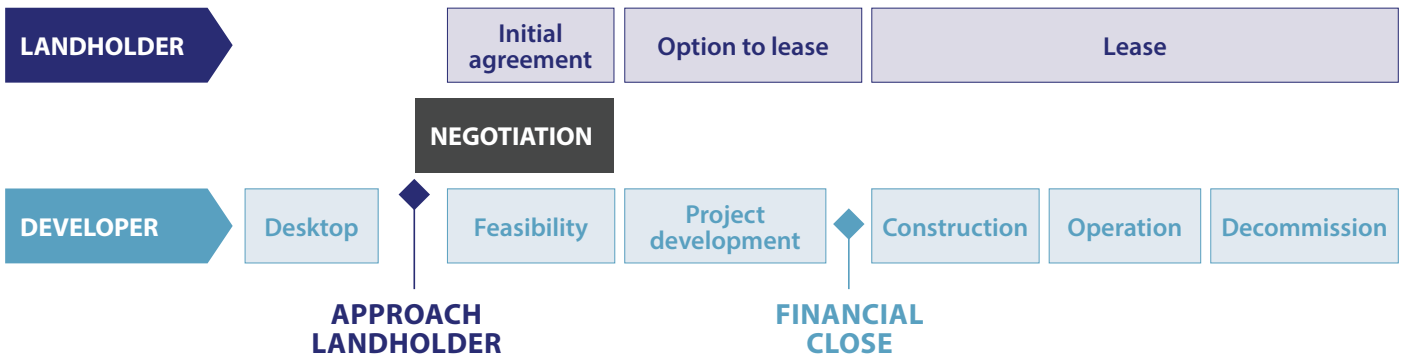
Refer to [Checklist #4: What should be included in the Agreements?](#)

The negotiation phase

Any discussions you have with the developer about a project form part of the negotiations. This phase has been defined separately as it is during this time that the main discussions and negotiations are held about the project.

Negotiations commence with initial discussions and are largely held until the Option agreement is signed. There is little to negotiate after the option is signed.

The negotiations held during this relatively short period of time determine the contractual matters that will be in place for the life of the project so it is important to discuss all important matters during this time.



“

You have more control and negotiating power at the time the option agreement is being negotiated, so have a prospectus available as early as possible. You should do the financial modelling on the future value of the farmland to compare to what you might earn if you continued farming, so you can evaluate the potential renewable energy lease income.

”

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There will generally only be the ability to negotiate minor changes once the Option is signed, which will relate to amendments that might be made during the Feasibility process (such as slight change to position of turbines or roads).

The key components during this period are to:



Ensure that you seek out expert legal, financial and taxation advice.



Discuss any issues or questions with the developer and keep written notes about conversations.



Incorporate all your requirements and any commitments from the developer into the agreements.



Consider working together if it is a large project with multiple landholders.



Obtaining legal and financial advice

It is important to obtain expert legal and financial advice to understand the implications of the project and how it will fit with your existing farm legal arrangements. It is important that your legal advisor has experience in reviewing and negotiating renewable energy land contracts.

“
Be aware that any agreements provided by the developer, have been prepared for the developer.
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CONSULTEE



Legal advice

You will need to seek legal advice to assist with the discussions and negotiations and will need a legal advisor that has relevant experience in dealing with these negotiations and agreements.

Some considerations will include:

- Is it the right type of agreement(s)?
- Has the agreement been specifically prepared for your site and the particular project?
- Even though the Initial Agreement may be less detailed, it should be checked for inclusions and exclusions.
- Are your mortgages, insurance policies, superannuation, etc. impacted?
- How does this impact any other rights or interests over your land such as easements or resource interests?
- Have you had all aspects of the agreements explained to you so that you understand and accept or agree with all of them?
- Do you understand what rights other parties will have over the property once the agreements are signed?
- Check whether the arrangement makes you a commercial landlord and whether the agreements create contractual obligations. You may need to consider that once you add a lease income to your primary production income, you may be renting it on a commercial basis.
- The obligations of both the landholder landlord and the energy company tenant should be clearly set out. Consider whether you need insurance, indemnification against liability or any special conditions.



Financial and taxation advice

Before signing agreements and a lease, it's important to make sure that the deal will be economic for you as the landholder. The amount paid should allow for any change to the tax status of the property and any associated entities so that you are not adversely affected.

What are the taxation and financial implications of the income from a renewable energy project including but not limited to:

- capital gains tax
- primary production income
- rates and rateable Value
- land tax
- company tax.

In Queensland, land tax does not normally apply to farming land that is owned by an Australian citizen, but it may apply to land used for energy production.

Understanding the potential impacts for landholders

It is important that you understand the impact of renewable energy projects on your property and ensure that suitable measures are in place to manage these. You may wish to visit an established site if you have never been to one before, and particularly during the construction phase.

You may also wish to ask the developer to provide plans and photos of similar projects to show the impact of the development during each of the stages.

It is also important to understand what potential impacts there might be for nearby landholders and the community that may not benefit directly from the project, but may consider that they are impacted by it.

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Landowners should negotiate what they consider to be when 'construction commences' – whether first machine on site or when meaningful earthworks.

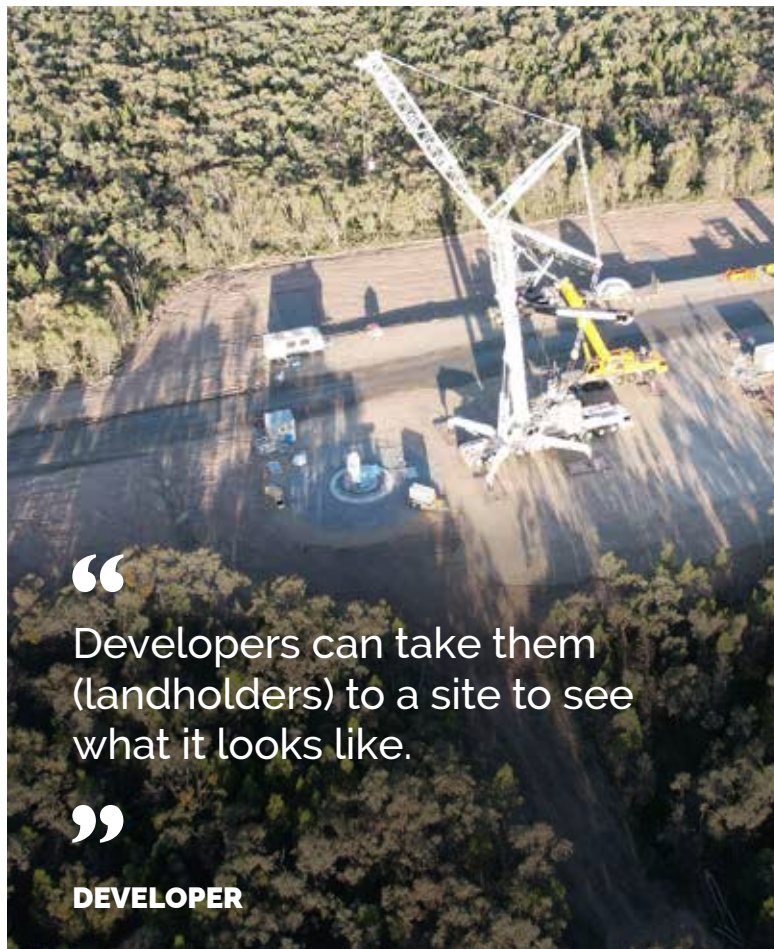
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DEVELOPER

Payment to host landholders

The fees paid to landholders are a key part of the agreements and need to be carefully considered by both parties. It is a commercial negotiation between the parties and there are no guidelines available to assist.

Fees are paid to the landholders in a number of forms to compensate for the space utilised by renewable energy projects and potentially the installed capacity or yield. The amounts tend to vary depending on the project and technology and depend on the stage of the agreement.



MacIntyre Wind Farm. Image Courtesy: ACCIONA Energía

Initial Agreements:

There is some variation in the payment amounts offered by developers for initial agreements. There are sometimes one-off payments or annual fees. The landholder should consider:

- How valuable the land is as a renewable energy site?
- The frequency of payments – are annual payments proposed?
- What are the plans for the land; and will those plans need to be placed on hold during the initial agreement period?
- What restrictions will be in place on you during the agreement period and what is that worth?
- What works and visits will occur on the site during the agreement period, and will that cost the enterprise any additional funds such as management, maintenance, supervision?

Considering any obligations and restrictions that are required during the initial agreement period may assist in determining a suitable value.

Review [Checklist #3](#)
[What should I consider during negotiations?](#)

Longer-term Agreements

There will be a distinction for fees payable for the duration of the Option agreement and for the ongoing Lease.

Landholders may wish to negotiate for the payment of fees during the development phase in consideration for the option to use the land that is granted to the proponent by the landholder.

As with the initial agreements, the landholder should consider the extent of activity that is likely to occur on site while the Option agreement is in place and the potential impacts on the value and operations of the property. The option may also be in place for many years while the project is planned and delivered.

Considering any obligations and restrictions that are required during the initial agreement period may assist in determining a suitable value.

What should be included in the Agreements?

Checklist 4: What should be included in the Agreements

There are a lot of factors that go into calculating a suitable lease payment that the landholder should consider:

- o What use does the land have now and what revenue or profit does it generate?
- o How could that revenue or profit change over the life of the agreement?
- o What are the future plans for the site and their potential value?

For wind energy projects, the fee paid to the landowner could be either:

1. a flat annual fee per turbine, which may be related to the size or capacity,
2. a fee based on the generating capacity or the annual yield of the turbine.

Solar farm host landholders could be compensated on a fixed annual amount per hectare leased to the proponent over a similar long-term leasing arrangement.

Review the Landholder Checklists about matters to consider and whether the proposed fee suitably covers any costs and represents fair value.

New advances in wind turbine and solar panel technologies provide advantages to project developers to include new, larger scale and more efficient turbines and consequently requiring fewer turbines or panels to achieve the same energy output. There may therefore be less wind turbines, but they might be taller, with larger construction footprints.

The Australian Energy Infrastructure Commissioner (AEIC) advises that landholders should check their existing agreements and ensure any new agreements have provision to adjust the fees in the event that a developer later opts to re-power the site by increasing the capacity of the project – such as where larger generators can be retrofitted to wind turbines, or higher-capacity solar panels installed.

Landholders should be aware that during the operational phase, developers may wish to extend the life of the project and extend the lease accordingly.

The duration of the payment of fees during option and lease should also be discussed including whether payments:

- **commence** at the start of project construction;
- will be **renegotiated** if it is proposed to extend the life of the project and lease; and
- **cease** at the completion of decommissioning and restoration at the landholder's property.

Fee agreements should also include provisions to increase with the Consumer Price Index (CPI).

Neighbour payments

Some developers have introduced the concept of "neighbour payments". These agreements can provide a commercial arrangement between the project and neighbour, that recognises the potential impacts of the project on the neighbour and to gain the neighbour's support.

Neighbours may experience a number of impacts but not have the benefits associated with the development such as income.

Neighbours should consider the impact that the development may have on their property and operations in determining the fair value of any neighbour payments. Consider the issues raised in the [Landholder checklists](#).

The [Energy Grid Alliance](#) advise that a neighbour agreement may include one or more of the following:

- annual payments to the neighbour for the life of the project
- a one-time payment at the commencement of the agreement
- reimbursement of reasonable legal fees incurred by the neighbour for the review of the agreements
- reimbursement for, or provision of measures that might be required to mitigate any impacts such as visual screening, insulation, double-glazing, air-conditioning, energy efficiency programs, solar panels, electricity consumption
- reimbursement for any increased insurance premiums levied to the neighbour as a result of any increases to the sums insured for public liability due to the presence of the development
- an option for the neighbour to request that the developer acquire the neighbour's property, and ability for a neighbour to terminate an agreement without penalty.



Group negotiation

If there are a number of properties within the footprint of a project, such as in the case of a large solar or wind farm, there may be some benefit in landholders working together as a group to negotiate.

Host landholders negotiating collectively with developers normally occurs with the aim of reaching a collective agreement where the landholders will each host parts of the project on the same or similar terms. Some matters can be left to individual negotiations without compromising the integrity of group negotiations (such as access routes or clauses to acknowledge different tenures).

Where the developer keeps the group informed on the development process and investigations can mitigate the risk of landholders feeling like winners and losers as the development layout changes and landholders gain or lose turbines or solar arrays. The developer can have an open conversation with all landholders to transparently keep them informed of changes.

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Group negotiation could be very powerful.

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LEGAL ADVISOR

What does the group negotiate?

A landholder group could decide the following:

- What will be negotiated - the actual lease agreements or just an overarching agreement on key matters (e.g. revenue) that individual leases will then be separately negotiated under?
- Who will negotiate? Will everyone be at the negotiating table or just a smaller group of representatives? If representatives are to negotiate, what authority do they have and how will they consult with the group?
- How binding will the negotiated agreement be? Can individual landholders opt out of the group negotiation and negotiate separately, or are they obliged to proceed with the negotiated agreement?
- Will the group prepare the first draft of the lease agreement or will this be the developer's responsibility?
- What will happen if the development proposal is changed and the location and/or number of turbines or solar arrays on the different landholders land parcels is changed?
- Is there a minimum number of turbines or solar array area that must be developed for the agreement to be binding?
- How will payment be apportioned between properties. Will there be a flat rate per turbine, or will it vary with different levels of suitability for development such as different wind speeds? Will payment be performance related or will there be a standardised payment regardless of performance?
- What happens when land ownership changes? Does the agreement run with the land? Will additional landholders be allowed to become parties to the agreement once it is finalised with the developer?
- How will costs incurred by the group (not covered by the developer) be apportioned between members of the group?
- If you wish to proceed with landholder group negotiations it is highly recommended that you seek specialised expert legal advice (and determine whether it is to be paid for by developers).

Benefit sharing

The concept of benefit sharing acknowledges that the siting of renewable energy projects results in changes in the local landscape and community. Sharing the financial and other benefits that a renewable energy project offers may enhance the social and economic outcomes for the local community.

Benefit sharing is generally a matter for the developer as it is not regulated and may not be included in an agreement for the project. You may wish to understand how the developer may provide local benefits to the community as part of your discussions.



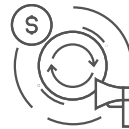
Payments to host landholders and neighbours



Contributions to councils



Community enhancement grants to local groups



Sponsorship of local community organisations



Neighborhood benefit initiatives



Beyond compliance level activities associated with visual amenity



Community energy efficiency programs or similar



Co-investment and co-ownership opportunities



Buy local and build local initiatives



Secure local jobs



Annual electricity offsets



Education or Training scholarships for local students

There are a number of community impacts that arise from the construction and operation of some projects and a cumulative impact where a number of projects are developed in one area. These impacts may include wear and tear on roads due to additional heavy vehicle traffic. The Community and Council may wish to collaborate to agree on priorities for community investment.

The [Regional Energy Transformation Framework](#) has been developed by the Queensland Government and sets out some actions and strategies to:

- ensure communities and people are at the centre of the energy transformation
- enhance energy driven social benefits
- deliver on opportunities for regional Queensland.

There are a number of publications listed in [Useful Resources](#) relating to community consultation, benefit sharing and regional renewable energy.

The [Farm Powered](#) report provides a number of case studies and recommendations including benefit sharing opportunities in regional communities.

Although this publication does not oblige developers to consult or engage with local communities, landholders may wish to (a) understand how the developer will approach these issues, (b) consider this approach in determining which developers to work with and (c) incorporate some of the principles found in these publications into their agreements.

The [Farmers for Climate Action Farm Powered](#) report lays out a plan for farming communities to participate and benefit from the rollout of renewable energy.

It also sets out considerations for farmers who to develop smaller scale renewable energy projects on their land.



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There is a need to capture more wealth for the local communities. A new conversation that needs to be had in communities.

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