



Australian Government

Australian Energy Infrastructure Commissioner

28 December 2022

Jeff Rigby
Project Executive Sponsor
Western Renewables Link Project
AusNet Services Limited
Via email to: jeff.rigby@ausnetservices.com.au

Dear Mr Rigby

RE: Recent correspondence for AusNet to Landowners regarding Land Access

As discussed last week, I have become aware of correspondence issued by AusNet Services Limited (Ausnet) to a large number of landholders along the proposed Western Renewables Link (WRL) transmission line route. A number of landholders have raised concerns with me about the correspondence and accompanying documents.

There is no requirement for AusNet to consult with my Office on correspondence you may decide to issue to stakeholders. However, given the nature of the correspondence AusNet has issued and its potential relevance to the proposed Option for Easement Agreement correspondence and documentation (in which you have consulted with my Office on a limited basis), I am surprised and disappointed that AusNet chose not to consult with me or even make me aware that such correspondence was about to be issued.

Had AusNet provided us with an opportunity to review and provide comments on the correspondence and accompanying documents, we would have identified the following issues.

The Letter

1. The purpose of the letter is unclear. The letter is entitled “**Western Renewables Link – Property specific information and upcoming activities**”, yet the letter itself is seeking for the landowner to review the “Landholder Consultation Plan”, complete the “Property Specific Details Form” and complete (and presumably execute) the “Land Access Consent agreement”.

In paragraph three, the letter also makes reference to the “Option for Easement” (which, unlike the other documents, is undefined in the letter) and an offer by AusNet to arrange a meeting with the appointed project valuer, Preston Rowe Paterson.

The letter continues to discuss the “Option for Easement” proposal on page 2 and goes on to discuss the Environment Effects Statement and conditions whereby the Option may expire and what payments may be retained by the landholder.

There is virtually no discussion in the letter about the Land Access Consent agreement, which is perhaps the most significant document presented to landholders by this letter and presumably what AusNet are seeking to have reviewed, completed and executed by the landholder. In the dot points of paragraph two, the document is

described as a “Land Access Consent Template – *which is used to consent to field survey activities on your property and outline arrangements and protocols to be followed by us*”.

No other information is provided about the Consent in the body of the letter, except in reference to the Landholder Participation Fee. There is no discussion in the letter about when access may be required and what the access is for.

2. In paragraph three, the letter asks the landholder to review the Landholder Consultation Plan prior to a meeting with AusNet to discuss the Property Specific Details Form for the landholder’s property. The letter does not specify what the landholder should be reviewing with regard to the Landholder Consultation Plan, when the Plan needs to be reviewed by or what the landholder is required to do with any comments/questions arising from the “review”.

At the conclusion of the letter, there is no reiteration or summary of the Plan review request. Instead, it simply says that an AusNet Land Liaison Officer will be in touch to discuss “this information” in more detail, although it is unclear what information is being referred to.

We note that the Landholder Consultation Plan is dated 9 September 2022, which begs the question as to why it has taken more than three months to provide these plans to landholders for their review.

3. At the end of paragraph three, AusNet offers to pay the landholder a Landholder Participation Fee of \$10,000 (excluding GST) upon completion of the Property Specific Details Form and the Land Access Consent agreement. The letter is unclear as to whether the fee is \$10,000 per person (i.e. an individual holding land along the proposed route), or per title, or per entity, or per contiguous title etc. This is a rather important detail to have clarity on before approaching landholders.

The letter is also silent of situations where the landholder is not the landowner.

Overall, I find the letter is confusing, poorly constructed, is unclear in its objectives, does not clearly or consistently state what is required of the landholder at this time, in the future, or forward timeframes or deadlines.

The Land Access Consent document (Consent agreement)

4. We understand that the Consent agreement has been provided to landholders in PDF format, which makes it difficult to complete and insert information that is requested or required.
5. Clause 1 of the Consent agreement lists the types of surveys and investigations governed by this agreement for the purposes of the Project. There is no mention in Clause 1 about valuation activities or assessments being undertaken under this agreement.
6. Clause 1 appears to provide flexibility on the agreed start date of the “two year” access period, but does not provide flexibility on the two year period itself.



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7. Clause 2(b) does not articulate what happens in the event that the landholder does not complete the Property Specific Details form within the 20 business days deadline (20 days from the date of the consent) or if the detail provided by the landholder is not to Ausnet's reasonable satisfaction.
8. Further to Item 7) above, it is unclear as to why the agreement (which, according to the Letter, is to facilitate land access for surveys and investigations) is also being used to collect information from the Property Specific Details Form from the landholder? See Clause 3. Clause 1 is quite clear about the scope of the agreement and only refers to the Access Protocol, which forms part of the agreement document (see Clause 6). Interestingly, there is no requirement or obligation on the landholder to complete to Access Protocol. This perhaps could be simplified by combining the Access Protocol and the Property Specific Details into one document.
9. Clause 4(b) does not describe the consequences if AusNet fails to pay the Landholder Participation Fee within 20 business days. See also the issues raised in Item 3) above.
10. Clause 5 does not provide any opportunity for the landholder to remedy any alleged non-performance of its obligations. Further, the agreement does not appear to have any form of a dispute resolution process nor does it refer to one.
11. Clause 7(a)(ii) would be better placed in Clause 4. "Promptly" is not defined. There may be delays caused by AusNet that could affect the landholder's ability to issue an invoice to Ausnet. The agreement is silent on where, within AusNet, invoices should be sent to.
12. Clause 7(b) may require the landholder to obtain professional accounting advice, especially has AusNet is asking the landholder to warrant 7(b)(iii) & (iv).
13. The agreement's signature block does not provide for execution by a corporation.
14. The AusNet signature block may not be compliant with the Corporations Act (Cth) and should be checked. At a minimum, the signature needs to be from an authorised person.
15. Schedule A and Annexure A have been provided in PDF format, making them difficult to fill out electronically. AusNet could also have pre-populated the two forms to make it easier for the landholder. Some of the information is repetitive across the two forms. Many landholders will receive multiple sets of agreements and forms as a consequence of multiple titles and/or ownership structures.
16. The "Additional Information" document makes mention of reimbursement of independent legal advice – up to \$1,000.00 plus GST. However, there is no

provision for this payment in the Consent agreement or any process for how such costs will be approved and reimbursed by AusNet.

17. There are a range of other comments in the “Additional Information” document that could lead to confusion for landholders – e.g. “option fee” versus “participation fee”; legal fee reimbursements for consent agreements vs option agreements – etc. This document should be reviewed once the letter and agreement documents have been revised.

Next Steps

There appears to be a material set of issues with the correspondence and documents issued to landholders. Further, the timing of issuing this correspondence, just prior to the festive season, was not well received by many.

As discussed, my suggestion as a way forward is to review the letter and documents, taking into account the findings of my review, and then reissue them to all recipients in the new year. You would need to advise landholders of this course of action as soon as possible.

I would be happy to review a final, revised set of documents prior to AusNet issuing them.

I trust this review is helpful.

Sincerely

A handwritten signature in black ink, appearing to read 'Andrew Dyer', with a stylized, cursive script.

Andrew Dyer
Australian Energy Infrastructure Commissioner