

Fact Sheet: Tenure Requirements

18 October 2022

Purpose

This fact sheet describes the types of underlying land tenure required by Ergon Energy Network and Energex, as Distribution Network Service Providers (DNSP) in situations where a Major Customer intends to, as part of a Major Customer connection, construct certain electricity infrastructure and transfer this infrastructure to the DNSP upon completion of such infrastructure. This fact sheet should be read in conjunction with the Major Customer Connection Manual, which is available on the relevant DNSP's website.

Glossary

Term	Acronym	Definition
Distribution Network Service Provider	DNSP	In this Fact Sheet, refers to either Energex (who owns and operates the Distribution System in South-East Queensland) or Ergon Energy Network (who owns and operates the Distribution System in the remainder of Queensland).
Electricity Easement		<p>An Electricity Easement is an easement (that is, a bundle of rights) that allows an entity (such as Ergon Energy Network or Energex) to carry out certain activities over a specific section of land (defined through surveys) owned by a landholder, where the beneficiary of the easement is a "public utility provider" in accordance with the Land Act or Land Title Act and there are no "benefited lots" (thus rendering the easement a "public utility easement". These activities may include the construction, operation and maintenance of the electricity infrastructure within the easement corridor and the clearing of vegetation.</p> <p>As easements are registered on the land title, a separate easement is required for each parcel of land on which the electricity infrastructure is to be located. The relevant landholder retains its ownership of the land, subject to the grant of the easement rights.</p> <p>Easements can be granted over various types of land ownerships and tenures.</p>
Transferable Connection Assets		Refers to the electricity infrastructure that is to be constructed by the Major Customer and gifted to the DNSP upon completion of the works.

General

Various forms of tenure can apply to the acquisition of rights in land for constructing, operating and maintaining electrical infrastructure, such as:

- easements (which can be used in conjunction with a variety of existing tenure rights);
- licence agreements or wayleave agreements;
- agreements relating to non-freehold land under various legislation (such as the Land Act 1994 (Qld) and Nature Conservation Act 1992 (Qld)), which land can include, among other

things, State Forests, National Parks, Unallocated State Land, Road Reserves (either local government or Main Roads) and railway land; and

- freehold land.

Two Sets of Tenure Required

As part of the negotiations in respect of the Construction Contract, the Major Customer will have to agree with the DNSP upon the location and route of the Transferable Connection Assets (this process will normally take into consideration design, native title, cultural heritage, planning and environmental factors). Therefore, early provision by the Major Customer of relevant information is essential.

During this process, the DNSP will also advise the Major Customer of what type of tenure it requires in respect of its ownership of the Transferable Connection Assets and the specifications for such tenure.

Once the location and type of tenure required by the DNSP is confirmed, the Major Customer will need to obtain, or procure, two sets of tenure, namely:

- sufficient tenure in the Major Customer's name to permit the Major Customer to access the land for construction purposes and to carry out the construction of the Transferable Connection Assets; and
- the desired tenure for the DNSP to operate and maintain the Transferable Connection Assets in the long term.

The Major Customer is then responsible for liaising with the relevant landholders to obtain the tenure permitting it to access the land and carry out the works, and to either obtain, or facilitate the grant to the DNSP of, the desired tenure in respect of the DNSP's ownership of the Transferable Connection Assets.

The Major Customer is also responsible for obtaining or entering into, as relevant, all other authorisations or agreements that are required to carry out the relevant works (such as in relation to planning, the environment, cultural heritage, native title, vegetation and so forth). Some of these authorisations may need to be transferred to the DNSP (at the Major Customer's cost) with the transfer of the relevant assets (where the authorisation is not automatically transferred with the transfer of the asset or relevant tenure rights).

Failure of either party to obtain any necessary authorisation or tenure rights may adversely impact upon the progression of the project.

Note that the DNSP does not usually exercise its compulsory acquisition rights under the *Electricity Act 1994* (Qld) and the *Acquisition of Land Act 1967* (Qld) unless there is no other appropriate avenue available, and will not exercise those rights in respect of Transferable Connection Assets.

Indicative Requirements for Tenure Type

The DNSP considers a number of factors when determining its preferred tenure in respect of the Transferable Connection Assets. These factors include items such as:

- technical parameters, such as line length, route and technical limitations;
- relevant environmental, cultural heritage or native title considerations;
- risks associated with future development or increased vegetation resulting in potential relocation or escalated maintenance costs; and
- the ability to negotiate easements, wayleaves and licence agreements with third parties.

Normally, the DNSP requires:



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- freehold tenure for Transferable Connection Assets such as substations; and
- a registered easement for Transferable Connection Assets such as distribution lines and their supporting infrastructure (whether overhead or underground), for the period from transfer of the Transferable Connection Assets, each in the name of the DNSP.
- Suitable access rights will also need to be provided to enable the DNSP to lawfully access the Transferable Connection Assets once it acquires the ownership in these assets.
- Due to the long-term nature of the DNSP's ownership of the Transferable Connection Assets and the relatively permanent nature of such assets, the DNSP considers that tenure such as licence agreements, mining leases and wayleave agreements are inadequate for the DNSP's purposes.
- However, note that the actual tenure required in each situation will depend upon the particular characteristics of the relevant Transferable Connection Assets.

Major Customer Responsible

The Major Customer is responsible for acquiring all tenure rights required for it to carry out its works and its costs of doing so.

The Major Customer will need to obtain its own independent advice in relation to the necessary tenure from experienced and competent advisors holding appropriate insurances. Such advice should take into consideration matters such as, without limitation:

- the application of the *Mineral Resources Act 1989* (Qld) or the *Petroleum and Gas (Protection and Safety) Act 2004* (Qld);
- the *Sustainable Planning Act 2009* (Qld), State and regional planning policies, local government planning schemes, any required development applications and approvals;
- vegetation clearing requirements including under the *Vegetation Management Act 1999* (Qld);
- the requirements of the *Nature Conservation Act 2002* (Qld);
- environmental requirements and offsets, including under the *Environmental Protection Act 1994* (Qld) and the *Environment Protection and Biodiversity Conservation Act 1999* (Cth), and environmental management plans;
- native title requirements under the *Native Title Act 1993* (Cth) and indigenous land use agreements; and
- cultural heritage requirements under the *Aboriginal Cultural Heritage Act 2003* (Qld), the *Torres Strait Islander Cultural Heritage Act 2003* (Qld) and the *Queensland Heritage Act 1992* (Qld) and cultural heritage management plans.

Other legislation and government departments may be relevant depending upon the geographic location and nature of the works, for example, legislation dealing with marine environments, workplace health and safety, air quality and so forth. Note also that the DNSP has certain requirements in respect of vegetation clearing near its assets, which must be complied with before the DNSP will accept ownership of any Transferable Connection Assets.

Note that under the terms of the Construction Contract, the DNSP will need to be satisfied that the tenure acquired by the Major Customer granted the Major Customer appropriate rights to access and to construct the Transferable Connection Assets, otherwise the DNSP may refuse to accept the transfer of such assets.

As flagged above, the Major Customer is also responsible for procuring all necessary agreements from landholders and interested parties to facilitate the grant to the DNSP of the desired tenures.



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For the purposes of confirming that:

- the tenure rights obtained by the Major Customer gave the Major Customer appropriate rights in relation to the construction of the Transferable Connection Assets; and
- the tenures to be granted to the DNSP will be on terms acceptable to the DNSP,

Energy will require copies of relevant documentation, such as:

- relevant authorisations and associated terms and conditions;
- vegetation offset conditions and obligations, and vegetation clearing permits, and weed surveys;
- cultural heritage assessments and cultural heritage management plans;
- details of native title future act compliance;
- any applicable indigenous land use agreements;
- relevant negotiated agreements;
- construction environmental management plans setting out how the Major Customer intends to ensure compliance with each of the above during the course of construction;
- surveys of protected species carried out under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) or the *Nature Conservation Act 1992* (Qld) and
- reporting and spatial data used and collated for environmental assessments (in a format compatible with the DNSP's GIS (Smallworld)),

including evidence of compliance with any relevant approvals.

Additionally, the DNSP is likely to require a detailed inspection of the easement corridor and any off-easement access areas to confirm that these are suitable for the DNSP's purposes.

Importantly, under the terms of the Construction Contract and relevant transfer provisions, the DNSP may not accept a transfer of Transferable Connection Assets where this involves the assumption by the DNSP of onerous ongoing liabilities or obligations, whether entered into by the Major Customer or not, and increases the DNSP's risk exposure beyond acceptable levels of normal operational risk (as determined by the DNSP).

For these purposes, the Major Customer should submit to the DNSP all relevant documentation surrounding the tenures and development and maintenance before the DNSP agrees to accept the transfer of the Transferable Connection Assets.

Terms of Easements

Where the DNSP has determined that an easement is the relevant tenure for all or part of the Transferable Connection Assets, the DNSP will give the Major Customer information as to the required width of the easement.

Easement widths will vary depending on factors such as the receiving environment, line or cable voltage, number of circuits, circuit layout, structure design, structure height, stay designs, span lengths, conductor swing and clearance requirements, electric and magnetic field considerations, and so forth. Some typical easement widths are as follows:

	Voltage	Easement Width
Overhead Lines	11 kV to 33 kV	10-30 m
	66 kv	20-50 m
	110 kV and 132 kV	30-60 m
Underground Cables		1-10 m



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In respect of such Electricity Easements, the Major Customer is responsible for:

- undertaking negotiations with the property owner/lessee and interested parties (i.e. other easement holders, mortgagees, trustees of reserves and native title holders);
- securing any necessary consents from the interested parties and any relevant government department;
- having the relevant survey plans drawn up in a manner acceptable for registration in the Land Titles Office
- giving the DNSP a copy of the registrable easement survey plan for review prior to lodgement of the plan for registration;
- ensuring that the easement will result in an Electricity Easement;
- having the easement documentation prepared in a manner acceptable for registration in the Land Titles Office and referring to the relevant DNSP's standard easement terms and conditions set out below;
- having the easement survey plan and Queensland Land Registry Form 9: Easement executed by the property owner/lessee and the DNSP;
- lodging the easement documentation with the Land Titles Office; and
- giving the DNSP a copy of the Registration Confirmation Statement from the Land Titles Office in respect of the easement.

The DNSP has standard easement terms and conditions for use for Electricity Easements, which must be incorporated into a specific easement in respect of the Transferable Connection Assets by reference. These terms and conditions are not negotiable. These standard terms are registered with the Land Titles office under the following dealing numbers:

- combined overhead and underground conditions for freehold land: dealing number 710384570; and
- combined overhead and underground conditions for State land, Leases and Reserves: dealing number 711950329.

Note that the Queensland Land Registry Form 9: Easement is normally to be completed using the following details. The DNSP will assist in providing relevant information for the purposes of completing the form:

- Item 5 is to state the DNSP's ABN details (Ergon Energy Network: ERGON ENERGY CORPORATION LIMITED ACN 087 646 062 or Energex: ENERGEX Limited ABN 40 078 849 055), and should refer to the appropriate dealing number for the DNSP's standard terms (set out below):
- For freehold properties privately owned for overhead, underground, padmount transformers and RMUs:
- Item 7 (Purpose of Easement) is to be shown as "Electricity Works"; and
- Item 8 should refer to Memorandum No: 710384570.
- For easements over State-controlled land for both overhead and underground:
- Item 7 (Purpose of Easement) is to be shown as "Electricity Works"; and
- Item 8 should refer to Memorandum No: 711950329.
- For easements over State-controlled land – underground only:
- Item 7 (Purpose of Easement) is to be shown as "Electricity Works"; and
- Item 8 should refer to Memorandum No: 711950324.



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Note that the standard terms apply only to Electricity Easements where the DNSP will be carrying out all of the relevant actions (such as ownership, operation, maintenance etc.). A Major Customer will need to obtain its own advice in respect of any easements that it requires for the purposes of accessing the land for the construction of the Transferable Connection Assets and constructing those assets.

All costs and outlays incurred by the DNSP that are associated with the preparation and lodgement of the easement documentation are to be borne by the Major Customer.

Freehold Requirements

Similarly, where the DNSP has determined that freehold is the relevant tenure for all or part of the Transferable Connection Assets, the Major Customer is responsible for:

- undertaking negotiations with the property owner/lessee and interested parties (i.e. other easement holders, mortgagees, trustees of reserves and native title holders);
- securing any necessary consents from the interested parties and any relevant government department;
- obtaining any development permit required to subdivide the freehold lot;
- having the relevant survey plans drawn up in a manner acceptable for registration in the Land Titles Office;
- carrying out all other steps necessary to provide the DNSP with freehold tenure; and
- paying any registration fees, duty or other costs associated with the provision of freehold tenure.

All costs and outlays incurred by the DNSP that are associated with the Major Customer providing freehold tenure are to be borne by the Major Customer.

Community Engagement

Ergon Energy Network and Energex are committed to best practice community engagement, reflecting the International Association for Public Participation's (IAP2) Core Values and Quality Assurance Standard.

Where a Major Customer is proposing to construct substantial Transferable Connection Assets, it is expected that the Major Customer will assess the potential impacts of these works on the community at large, during planning, design, construction and longer-term. It is crucial that an engagement strategy is developed early to help minimise these impacts. This strategy should complement any negotiations with the property owners/lessees and other interested parties.

Where significant community impacts are identified, to ensure a collaborative approach, an engagement plan should be submitted to the DNSP for review/input. The plan should include the:

- nominated Major Customer community engagement practitioner
- identified community impacts and mitigation measures
- Major Customer/contractor's complaints registration and escalation procedures
- proposed communications/engagement methods and milestones with sample communications collateral. Note: approval is required for any communications referring to the DNSP.

Further Information

Major Customers may contact their Project Sponsor to obtain further specific information.



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