



ELECTRICITY GENERATION AND SALE LICENCE

**Diapur Wind Farm Pty Ltd
(ACN 604 213 309)**

**Varied on
4 December 2023**

C/23/27760

ELECTRICITY GENERATION AND SALE LICENCE

This Licence is issued pursuant to section 19 of the *Electricity Industry Act 2000* (Vic) and is subject to the terms set out in this Licence.

Date

This Licence is issued on **1 September 2021** and last varied on **4 December 2023**.

Licensee

This Licence is issued to:
Diapur Wind Farm Pty Ltd (ACN 604 213 309) (the Licensee)
Level 3, 26 Brisbane Avenue
Barton ACT 2600

**THE COMMON SEAL of the
ESSENTIAL SERVICES COMMISSION**
was affixed pursuant to the authority
of the Commission on 6 December 2023

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A handwritten signature in blue ink, appearing to be "Kate Symons", written over a dotted line.

Kate Symons
Chairperson

CONTENTS

1.	Definitions	1
2.	Notices	3
3.	Grant of the Licence	4
4.	Status of the requirements in this Part	4
5.	Payment of fees	4
6.	Ongoing technical capacity	4
7.	Compliance with regulatory instruments	5
8.	Compliance with Laws	5
9.	Separate accounts	5
10.	Provision of information	5
11.	Change of Control	6
12.	Revocation	6
13.	Variation	7
14.	Transfer	7
15.	Review	7
16.	Administrator	8
17.	Schedule 1 - Variations to the Licence	8

Part A – Interpretation**1. Definitions**

1.1. Unless the contrary intention appears a term in bold type has the meaning shown opposite it:

Act	the <i>Electricity Industry Act 2000</i> (Vic)
Administrator	an administrator appointed by the Commission under section 34 of the Act
AEMO	the Australian Energy Market Operator Limited (ACN 072 010 327)
Business Day	a day other than a Saturday, Sunday or a public holiday in Victoria
Change of Control	occurs in relation to the Licensee if: <ul style="list-style-type: none"> (a) an Entity that Controls the Licensee ceases to Control the Licensee; or (b) an Entity that does not Control the Licensee starts to Control the Licensee; provided that no Change of Control will be deemed to have occurred where the Ultimate Holding Company that Controls the Licensee remains the same or the Change in Control results from the acquisition or cancellation of, or dealing in, securities which are traded on a recognised financial market.
Commencement Date	1 September 2021
Commission	the Essential Services Commission established under the ESC Act
Control	in respect of an entity has the same meaning given in section 50AA of the Corporations Act
Corporations Act	means the <i>Corporations Act 2001</i> (Cth)
Entity	has the same meaning given in section 50AA of the Corporations Act
ESC Act	the <i>Essential Services Commission Act 2001</i> (Vic)
Guideline	a guideline published by the Commission
Intermediary	has the same meaning as in the National Electricity Rules
Licensed Generation Facility	the Diapur Wind Farm located at Nhill in Victoria
Licensee	Diapur Wind Farm Pty Ltd (ACN 604 213 309)
Minister	the person who is, from time to time, the Minister for the purposes of the Act

National Electricity Law	the National Electricity (Victoria) Law as in force in Victoria under the <i>National Electricity (Victoria) Act 2005</i> (Vic)
National Electricity Rules	means the National Electricity Rules as in force from time to time under the National Electricity Law
Objectives	the objectives of the Commission under section 10 of the Act and section 8 of the ESC Act
Review	a systemic and independent process for obtaining evidence and evaluating it objectively to determine the extent to which particular criteria are fulfilled, this includes, but is not limited to a regulatory audit undertaken in accordance with relevant Guidelines issued by the Commission
Small Generation Aggregator	has the same meaning as in the National Electricity Rules
Subsidiary	has the meaning given in the Corporations Act
Ultimate Holding Company	means, in relation to an entity, an entity that: <ul style="list-style-type: none"> (a) is a Holding Company of the first-mentioned entity; and (b) is itself a Subsidiary of no entity
Wholesale Electricity Market	means the market for wholesale trading in electricity operated by AEMO under the National Electricity Rules

- 1.2. In this Licence, unless the context otherwise requires:
- (a) headings and footnotes are each for convenience only and do not affect the interpretation of this Licence;
 - (b) words importing the singular include the plural and vice versa;
 - (c) words importing a gender include any gender;
 - (d) an expression importing a natural person includes any company, partnership, trust, joint venture, association, corporation or other body corporate and any governmental agency;
 - (e) a reference to a condition, clause, or part is to a condition, clause, or part of this Licence;
 - (f) a reference to any statute including the Act and regulations, proclamation, Order in Council, ordinance or by-law includes all statutes, regulations, proclamations, Orders in Council, ordinances or by-laws varying, consolidating, re-enacting, extending or replacing them and a reference to a statute includes all regulations, proclamations, Orders in Council, ordinances, by-laws and determinations issued under that statute;

- (g) a reference to a document or a provision of a document includes an amendment or supplement to, or replacement or novation of, that document or that provision of that document;
- (h) a reference to a person includes that person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and permitted assigns;
- (i) other parts of speech and grammatical forms of a word or phrase defined in this Licence have a corresponding meaning;
- (j) a period of time:
 - i. which dates from a given day or the day of an act or event is to be calculated exclusive of that day; or
 - ii. which commences on a given day or the day of an act or event is to be calculated inclusive of that day; and
- (k) an event which is required under this Licence to occur on or by a stipulated day which is not a Business Day may occur on or by the next Business Day.

2. Notices

2.1. A notice under this Licence is only effective if it is in writing, and dealt with as follows:

- (a) if given by the Licensee to the Commission – addressed to the Chief Executive Officer of the Commission at the address specified below or as otherwise notified by the Commission:

Essential Services Commission,
Level 8, 570 Bourke St,
Melbourne VIC 3000

licences@esc.vic.gov.au; or

- (b) if given by the Commission to the Licensee – given by the Chief Executive Officer of the Commission and addressed to (and marked for attention of) the Chief Executive Officer of Diapur Wind Farm Pty Ltd (ACN 604 213 309) at the addresses specified below or as otherwise notified by the Licensee:

Diapur Wind Farm Pty Ltd,
Level 3, 26 Brisbane Avenue
Barton ACT 2600

jason.wang@mlwf.com.au

- 2.2. A notice is to be:
- (a) signed by or on behalf of the person giving the notice and delivered by hand; or
 - (b) signed by or on behalf of the person giving the notice and sent by pre-paid post; or
 - (c) transmitted electronically by or on behalf of the person giving the notice by electronic mail.
- 2.3. A notice is deemed to be effected:
- (a) if delivered by hand – upon delivery to the relevant address;
 - (b) if sent by post – upon delivery to the relevant address;
 - (c) if transmitted electronically – in accordance with the method set out in the *Electronic Transactions (Victoria) Act 2000* (Vic) for determining the time of receipt.
- 2.4. A notice received after 5.00 pm, or on a day that is not a Business Day, is deemed to be effected on the next Business Day.

Part B - Licence

3. Grant of the Licence

- 3.1. In exercise of its powers under section 19 of the Act, the Commission grants the Licensee a licence to generate electricity for supply or sale, and to sell electricity, on the terms and conditions set out in this Licence, with effect from the Commencement Date or as varied subsequent to the Commencement Date.
- 3.2. The authorisation granted by this Licence is limited to the generation of electricity at the Licensed Generation Facility, and the sale of the electricity either through the Wholesale Electricity Market or to an *intermediary, Small Generator Aggregator* or other person on-selling that electricity through the Wholesale Electricity Market.

Part C - Conditions of the Licence

4. Status of the requirements in this Part

- 4.1. A failure on the part of the Licensee to meet any of the requirements set out in this Part C is a breach of a civil penalty requirement for the purposes of the ESC Act.

5. Payment of fees

- 5.1. The Licensee must pay a licence fee as determined by the Minister in accordance with the provisions of section 22 of the Act.

6. Ongoing technical capacity

- 6.1. The Licensee must at all times maintain:
- (a) such technical capacity as is:

- (1) required to meet the obligations under this Licence; and
- (2) reasonably required to undertake the activities authorised by this licence.

6.2. In this clause 6, activities undertaken pursuant to this Licence includes any activities undertaken by a contractor, subcontractor, agent or other third party (a third party) engaged by the Licensee for the purpose of enabling the Licensee to undertake the activities authorised by this Licence.

6.3. The Licensee must ensure that any contract, entered into with any third parties for the performance of licensable functions, contains such provisions as are necessary to ensure the third party provides its services in a way that enables the Licensee to comply with the requirements of this Licence and this clause 6.

7. Compliance with regulatory instruments

7.1. Subject to clause 7.2, the Licensee must comply with any procedure or Guideline issued by the Commission from time to time that is expressed as being one with which the Licensee must comply, to the extent they are applicable to activities undertaken by the Licensee pursuant to this Licence.

7.2. The Commission may, from time to time, by written notice grant an exemption in relation to or otherwise modify the application of some of the requirements of the instruments referred to in clause 7.1.

7.3. The Licensee must have in place an adequate system for monitoring compliance with this Licence and the instruments referred to in clause 7.1.

7.4. The Licensee must be registered as a generator with AEMO or exempt from the requirement to be registered as a generator in accordance with the National Electricity Rules.

8. Compliance with Laws

8.1. The Licensee must comply with all applicable laws.

9. Separate accounts

9.1. If the Licensee holds more than one category of licence under Part 2 of the Act, the Licensee must prepare separate accounts for each part of its business in respect of which it has been granted a separate licence.

10. Provision of information

10.1. The Licensee must maintain comprehensive records regarding any activities undertaken pursuant to this Licence for a period of at least 7 years.

10.2. The Licensee must notify the Commission of any breach by it of the conditions of this Licence including any of the instruments referred to in clause 7.1 as soon as reasonably practicable after becoming aware of the breach.

- 10.3. The Licensee must as soon as reasonably practicable provide AEMO with such information, relating to activities undertaken pursuant to this Licence, as AEMO may properly request in connection with the performance of its functions or the exercise of its powers under the Act in the manner and form specified by AEMO.
- 10.4. The Licensee must, as soon as reasonably practicable, provide the Commission with such information, relating to activities undertaken pursuant to this Licence, as the Commission may properly request in connection with the performance of its functions or the exercise of its powers under the Act in the manner and form specified by the Commission.
- 10.5. The Licensee must, as soon as reasonably practicable, provide the Commission with information on its ongoing technical capacity or financial viability to undertake the activities authorised by this Licence as the Commission may properly request in connection with the performance of its functions or the exercise of its powers under the Act and in a manner and form specified by the Commission.
- 10.6. In this clause 10:
- (a) activities undertaken pursuant to this Licence includes any activities of that type undertaken by a contractor, subcontractor, agent or other third party (a third party) engaged by the Licensee for the purpose of enabling the Licensee to undertake the activities authorised by this Licence; and
 - (b) information includes information in the possession, custody or control of any third party.

11. Change of Control

- 11.1. (a) the Licensee must give the Commission a notice if any event occurs, any decision by the Licensee is made, or any other circumstances exists that will effect a Change of Control of the Licensee.
- (b) the notice required under condition 10.7(a) must set out particulars of the relevant event, decision or circumstance as soon as practicable, and in any case not later than 3 Business Days after the Licensee becomes aware of the event or circumstance or makes the decision.

12. Revocation

- 12.1. The Commission may revoke this Licence:
- (a) at any time at the request of, or with the consent of the Licensee; or
 - (b) in accordance with the Act.
- 12.2. Where the Commission proposes to revoke this Licence, the Commission will issue a notice to the Licensee, specifying:
- (a) the basis upon which the Commission proposes to revoke this Licence; and

- (b) the date upon which the revocation is proposed to take effect, such date to be:
 - (1) where in the Commission’s opinion it is appropriate that the Licence be revoked in a shorter time frame having regard to its Objectives and the events or circumstances that gave rise to the notice being issued, no less than 5 Business Days after the date upon which the notice is issued; and
 - (2) in all other cases, no less than 20 Business Days after the date upon which the notice is issued; and
 - (c) that the Licensee has the opportunity to make representations on the matter and the time and date and manner in which those representations must be made.
- 12.3. The Commission must consider any submissions received from the Licensee prior to making a decision to revoke the Licence.
- 12.4. Where the Commission decides to revoke this Licence, the Commission will issue a notice to the Licensee specifying:
- (a) the basis upon which the Commission is revoking the Licence; and
 - (b) the date upon which the revocation takes effect, being no earlier than the date specified in the notice issued pursuant to clause 12.2
- and this Licence will be revoked on the date specified in the notice.

13. Variation

- 13.1. The Commission may vary this Licence in accordance with section 29 of the Act.

14. Transfer

- 14.1. This Licence may be transferred in accordance with section 31 of the Act.

15. Review

- 15.1. Upon direction by the Commission, the Licensee must appoint an independent reviewer to conduct Reviews of:
- (a) the Licensee’s compliance with its obligations under this Licence, a Code of Practice, or the Act; and
 - (b) the reliability and quality of information reported by the Licensee to the Commission and the consistency of that information with the Commission’s specifications; and
 - (c) any other matter relating to the activities conducted pursuant to this Licence, as directed by the Commission.
- 15.2. Following a direction pursuant to clause 15.1, the Licensee must obtain the Commission’s approval of the independent reviewer and the scope, timing and methodology of the Review.

15.3. The Licensee must ensure that the Commission is promptly provided with a copy of any reports produced by the independent reviewer pursuant to this clause.

15.4. The Licensee must comply, and must require the independent reviewer to comply, with any Guidelines issued by the Commission dealing with Reviews.

16. Administrator

16.1. If an Administrator is appointed to the Licensee's business under section 34 of the Act, the Administrator must exercise its functions and powers in such a manner as may be specified by the Commission in the instrument of appointment.

Schedule 1 – Variations to the Licence

Date	Variation
4 December 2023	This licence was varied: <ul style="list-style-type: none"> • at clauses 3.1 and 3.2 to include the sale of electricity generated at the licensed generation facility through the Wholesale Electricity Market; • other updates to the licence including clauses with respect to variation, revocation, change of control, compliance with regulatory instruments and review.