

Community and Renewable Energy Scheme Project Development Toolkit Securing a Site Module



Module Structure

The CARES Project Development Toolkit is intended to be used as a reference by CARES clients of all kinds, including community groups, community based businesses and rural businesses. This module is one part of a series of documents forming the CARES Toolkit and is designed to cover all sizes of project, although the scale and complexity of multi MW projects may require more detailed evaluation than smaller projects.

Other modules that may also be of particular interest to those reading this module are as follows.

- establishing a community group
- project finance
- procurement
- planning
- grid connection
- the Feed-in-Tariff
- investment ready process
- community investor
- sources of finance

This module is structured in three parts to act as a guide and reference document for CARES Clients in the development of a renewable energy project in Scotland.

Securing the site – general principles

A brief introduction to the process of identifying and securing a site for your project.

Securing the site process

A more detailed look at each stage of securing the site for your project

Further Information

Appropriate links, definitions and references to other information, collated for quick reference.

Securing the site – general principles

The process of identifying a project location is part of the wider activity to secure the site for your project. This comprises the following steps:

- Identify potential site locations offering the best energy yield.
- Identify any constraints on these sites, such as distance from grid, site access, known site ownership issues, potential planning issues.
- Having used the constraints to produce a potential site shortlist, identify site owners and make an initial approach to confirm their willingness in general terms to make the site available, to give you access and to do so for at least a 25-year period.
- Initiate negotiations on securing the site for your project with the owners. This process will confirm the owners' willingness to let you use their site for your project based on the details of the scheme that you will provide them, what you require by way of access and what payments you are offering to use the site. This will almost certainly be through some kind of lease arrangement with annual payments, although purchase of the site is another option. These payments need to be factored into your [Finance Model](#).
- Use this process to confirm your preferred site and then secure it by taking an 'option' on it. This will require a legally binding agreement and may require payment to secure the option.
- Any funder will require you to enter into a formal lease agreement or buy the site to enable financial close to occur. At this point you are then liable for all agreed payments.

Securing the site process

The process of securing the site involves your group signing legally binding contracts. These will be signed by the group's Special Purpose Vehicle (SPV) that is securing the funding for the project, securing grid access for the project and registering for any subsidies such as the Feed-in Tariff (FIT) or Renewable Heat Incentive (RHI). For these reasons, you may like to consider using the services of a land agent or property consultancy to find your site and secure the lease on it.

The following diagram shows how this process can be incorporated into your [Project Development Plan](#).

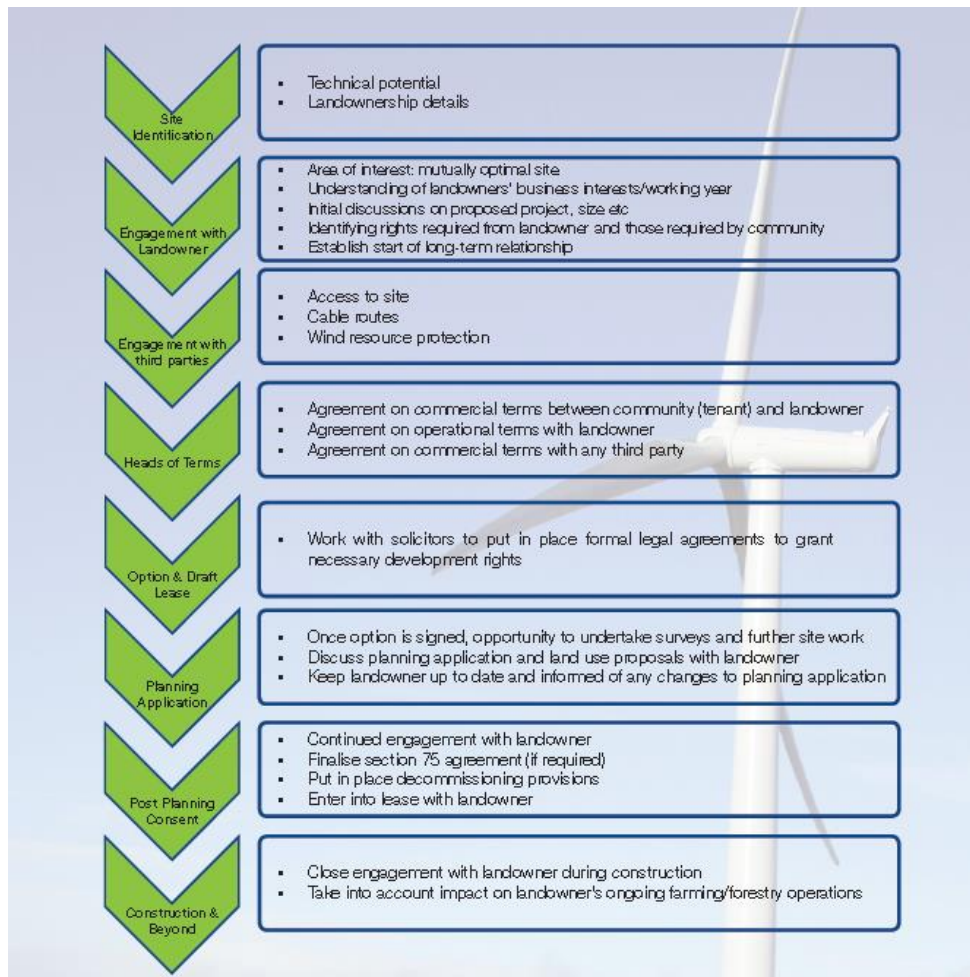


Figure 1: Securing the site: stages to development

(Source: Property Consultants Bidwells (www.bidwells.co.uk))

Site identification

The first phase in any renewable energy development is the identification and selection of a suitable site. The start of this process will generally involve a study of a particular area of search, such as the broad geographical location enclosed by the boundary of a local authority. The purpose of this search is to highlight a site (or preferably a number of sites) that may be suitable for development, dependent on the type of technology envisaged. This process should also define the technology-specific constraints, as outlined in the appropriate technology module, so that only the most appropriate sites are taken forward. The preliminary investigations should take into account information from a number of sources combined:

- technical potential;
- environmental suitability;
- local knowledge;
- landownership details;
- map-based data;
- commercial data.

Technical potential

The initial technical potential can be assessed through largely 'desk-based' analysis to satisfy the criteria which would result in a viable scheme:

- An examination of map contours to identify height above sea level to use in further identification of wind speeds using online databases, or in the identification of suitable head and catchment areas in relation to hydro development.
- Literature research to identify any previous work or studies which could highlight technical potential at a site.
- Examination of local distribution network operators maps of electricity distribution system as well as any maps of heat loads or constrained areas they may have. Scottish Hydro Electric Power Distribution and SP Energy Networks have information you could refer to; details are provided in the Further Information section.

This relatively simple search can highlight the technical and commercial feasibility of obtaining a suitable grid connection and can often provide indicative costs (see the [Grid Connection Module](#) for further details).

- Study of the road network to highlight the access options available to a site and the possible constraints.
- Investigation into the size of an available site, where an economy of scale may be related to the financial viability of the site or to get a site large enough to prevent the development of obstructions at some point in the future, which may compromise your resource.
- Identification of local communities and settlements to identify development boundary constraints or, indeed, to identify local communities that may be potential investors in the scheme.

Environmental suitability

The environmental suitability of a particular location can also be investigated and identified through an initial desk-top study with particular attention paid to:

- Maps and information contained in local authority planning portals to identify national, regional and local planning considerations at a particular site.
- Assessments of visual impacts, such as proximity to sensitive viewpoints and visual receptors.
- Closeness to dwellings and settlements to ascertain effect on amenities caused by noise or shadow flicker (for wind developments).
- Ecological constraints, such as landscape designations for nature and protected species (e.g. Special Sites of Scientific Interest, Special Areas of Conservation or wild land areas). These are highlighted on Scottish National Heritage's website which provides easy access to data and information on key protected areas across Scotland ranging from sites of local natural heritage to designations of national and international importance. Details of Scottish National Heritage's website are provided in the Further Information section.

- Archaeological/historical heritage may influence the acceptability of a particular location. The Royal Commission on the Ancient and Historical Monuments of Scotland provides an online mapping resource to identify areas of importance, and is listed in the Further Information section.

Land ownership details

Land ownership details for a site, if not apparent through local knowledge, can be found by accessing the Registers of Scotland. Registers of Scotland (ROS) is responsible for compiling and maintaining registers relating to property and other legal documents such as The Land Register of Scotland and Register of Sasines. Customer services can provide, for a small fee, details of property ownership, rights and conditions and title plans. Details of the Registers of Scotland website are provided in the Further Information section.

An online register of land ownership is also available from Who Owns Scotland. There is a subscription fee to access full details of land ownership. It can be used, free of charge, to identify the number of landowners that may be impacted by your development. This is particularly useful for identifying the number of owners who would need to be contacted to obtain site access or, for hydro schemes, the number of owners who may be impacted by your development. Details of the Who Owns Scotland website are provided in the Further Information section.

Engagement with landowner and third parties

A renewable energy development will involve dealing with at least one landowner and, in most cases, dealing with several. For a wind development, turbines may be installed across more than one person's land. In the case of a hydro development, the penstock may cross a number of landowners' boundaries. This is in addition to engaging with other potential landowners to negotiate access for construction and maintenance.

Negotiations may be required in relation to 'wayleaves', which are legal agreements relating to the location of electrical cables allowing the connection of the installation to the grid. This may pass over land owned by several parties. Additionally, agreements may be required with landowners, often some distance from the site, to negotiate access where road widening and similar site access modifications may be required.

Each of these landowners will require a legal agreement to be signed and some sort of payment to be made; the majority of this work needs to be done via solicitors. Legal agreements can be expensive and, in many cases, will include the landowner's legal fees. These costs need to be factored into your development costs in your [CARES Project Finance tool](#).

Legal agreements that are likely to be required are:

- exclusivity agreements;
- heads of terms;
- options agreement and draft lease; and
- lease.

Exclusivity agreement

Having an exclusivity agreement means that landowners will allow development of a project on their site and they will only work with a specific group, for a fixed period of time. It is recommended an agreement is in place as early in the project as possible to reduce any risks of lost investment in developing the site. The purpose of an exclusivity agreement is not to secure rights to the land and it does not provide a binding agreement for the development of the project.

It does provide a basic reassurance for groups as far as time and effort is concerned. It can give groups comfort to take forward matters, such as feasibility studies, safe in the knowledge that the landowner will not take the project forward with another party. It provides an opportunity for the group to develop its action plan, arrange for feasibility studies to be completed and to check whether the project is viable before incurring the additional costs associated with entering into an option and lease.

Heads of terms

Once the viability of the project has been established, the basis of an agreement needs to be established with the landowner(s). This is the heads of terms. These are the main commercial terms that are agreed between the parties and enable legal agreements to be drafted and signed.. It is a document that sets out the terms of a commercial transaction agreed, in principle, between parties in the course of negotiations.

Heads of terms evidence serious intent and have moral force. They are drafted specifically for a project. In some cases they may be legally binding. However in others they may not be legally binding. Heads of terms can be drafted such that some elements of the agreement are legally binding and some are not. This is often around confidentiality reasons. What points to be included in the heads of terms can be determined on a case-by-case basis and can be development specific but will generally include:

- option fee;
- option period;
- extent of option site (area to be leased);
- security to back up option;
- rent;
- term of lease; and
- who is paying the costs.

Option agreement and draft lease

Renewables developers typically obtain access to the land in a two-step process – an option phase and a long-term lease phase. If the developer wants to be guaranteed the opportunity to rent (or buy) land during a specified period of time or at some future date, then they will have to enter into an option agreement with the owner. This will allow the group to gain access to the land for testing and to secure the rights to the land if the project goes forward.

To allow sufficient time to test the resource and prepare a planning application, the option period typically lasts three to five years. If testing reveals a good resource and other factors indicate the project is feasible, the developer would normally exercise the option and the long-term lease would be negotiated. If not, the option can expire.

Option agreements are widely used where a group wishes to purchase land only if an event, (usually the granting of planning permission) occurs and to put in place formal legal agreements to grant necessary development rights. The option agreement is the agreement that ensures a lease can be obtained.

The option agreement will generally be between a group's SPV and the landowner, and it is important that the group has the correct legal structure for this before signing the agreement. It is also important to note that an options agreement is a contract between two parties and may not be enforceable on a successor in title (i.e. a third party the land may be sold to).

Important points to consider when developing an option agreement:

- option period and right to extend;
- option fees;
- option site;
- developer's rights (including right to take a lease);
- right to assign;
- planning and planning agreement;
- normal developer obligations;
- landowner reserved rights;
- other normal landowner obligations;
- standard security/personal nature of option; and
- costs.

Further information on the Exclusivity Agreement and Options Agreement for wind farms is available in the Further Information section.

Lease

A well-executed lease is an important part of the project development process. Before reaching financial close, which allows capital elements of the project to be purchased and installed, project investors, financing organisations and power purchasers will want to be sure the lease provides clear, unimpeded rights to use of the land over the expected life of the project.

This will be agreed as a draft at the same time as the option. A standard lease may run for a period of 25 years. It will be necessary to employ a legal professional to facilitate the option and lease agreements.

Keeping records

All information relating to securing the site should be included and updated within a single, secure central repository, such as your [CARES Investment Ready tool](#). A summary of all agreements and progress towards completing all agreements should be noted. Securing a site is a key requirement before lenders will fund a project. Showing progress in securing the site is important in the early stages of engaging with a lender. These records show the progress you have made and highlights your awareness of the steps you need to complete, which will be sufficient to initiate discussions with lenders.

Further information

Securing the site – general principles

Securing the site process

Site identification

Examination of local distribution network operators maps of electricity distribution system as well as any maps of heat loads or constrained areas they may have:

- Scottish Hydro Electric Power Distribution (SHEPD): [Capacity at substations \(see \[http://www.ssepd.co.uk/uploadedFiles/Controls/Lists/Connections/Useful_documents/CapacityAvailableAtPrimarySubstations.pdf\]\(http://www.ssepd.co.uk/uploadedFiles/Controls/Lists/Connections/Useful_documents/CapacityAvailableAtPrimarySubstations.pdf\)\)](http://www.ssepd.co.uk/uploadedFiles/Controls/Lists/Connections/Useful_documents/CapacityAvailableAtPrimarySubstations.pdf); and
- SP Energy Networks: [Map of connection opportunities \(see \[http://www.spenergynetworks.co.uk/connecting_to_our_network/dgis_connection_opportunities.asp?NavID=5&SubNavID=2\]\(http://www.spenergynetworks.co.uk/connecting_to_our_network/dgis_connection_opportunities.asp?NavID=5&SubNavID=2\)\)](http://www.spenergynetworks.co.uk/connecting_to_our_network/dgis_connection_opportunities.asp?NavID=5&SubNavID=2)

Environmental suitability

- Ecological constraints, such as landscape designations for nature and protected species are highlighted on Scottish National Heritage's website (<http://gateway.snh.gov.uk/sitelink/>).
- Archaeological/historical heritage may influence the acceptability of a particular location. The Royal Commission on the Ancient and Historical Monuments of Scotland provides an online mapping resource to identify areas of importance (see <http://canmoremapping.rcahms.gov.uk/>).

Land ownership details

- Land ownership details for a site can be found by accessing the Registers of Scotland (see <http://www.ros.gov.uk/index.html>).
- An online register of land ownership is also available from Who Owns Scotland (see <http://www.whoownsscotland.org.uk/>).
- Your [local development officer](#) may have more detailed knowledge about local land ownership. Contact them to find out more.

Engagement with landowner and third parties

Exclusivity agreement

A draft exclusivity agreement is available to download

<http://www.localenergyscotland.org/contractualtemplates> Expert advice should be sought before entering into an exclusivity agreement.

Heads of terms

An example heads of terms document is available that which covers most of the main terms <http://www.localenergyscotland.org/contractualtemplates>.

Option agreement and draft lease

Further information on the Exclusivity Agreement and Options Agreement for wind farms is available from Burness Paul

http://www.localenergyscotland.org/media/53661/Exclusivity_Option-Agreements-for-Wind-Farms-V1.docx

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