

Land Due Diligence Report

Project Number: 49450-009
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Proposed Grant Nauru: Solar Power Development Project

Prepared by Government of the Republic of Nauru for the Asian Development Bank.

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CURRENCY EQUIVALENTS

(as of 4 July 2019)

Currency unit	–	Australian dollar (A\$)
(A\$)1.00	=	\$.70
\$1.00	=	A\$1.42

ABBREVIATIONS

ADB	–	Asian Development Bank
BESS	–	Battery Energy Storage System
CEO	–	Chief Executive Officer
CIE	–	Commerce, Industry and Environment
DCIE	–	Department of Commerce, Industry and Environment
FC	–	Financial Controller
GMO	–	General Manager of Operations
GRM	–	Grievance Redress Mechanism
HIES	–	Household, Income and Expenditure Survey
MFAT	–	Ministry of Foreign Affairs and Trade
MoF	–	Ministry of Finance
NDC	–	Nationally Determined Contributions
NUC	–	Nauru Utilities Corporation
NZ/EU	–	New Zealand/ European Union
PAD	–	Planning and Aid Division
PPTA	–	Project Preparatory Technical Assistance
PSC	–	Project Supervision Consultants
Ronphos	–	Republic of Nauru Phosphate
RPC	–	Regional Processing Centres
SPS	–	Safeguard Policy Statement
SR	–	Safeguard Requirements

{WEIGHTS AND MEASURES}

ha	–	hectares
kW	–	kilowatt
kWh	–	kilowatt hour
m ²	–	square metre
MWac	–	megawatt alternate current
MW	–	megawatt
MWh	–	megawatt hour

NOTE{S}

- (i) In this report, "\$" refers to US dollars unless otherwise stated.

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I. EXECUTIVE SUMMARY

Introduction. The Government of Nauru requested the support from the Australian Development Bank (ADB) to increase the country's renewable energy generation capacity. A feasibility study has been conducted on a proposed solar power development project featuring 6.0 megawatt grid connected solar power plant and 5.0 megawatt / 2.5 megawatt hour battery energy storage system (BESS). The project will also support the institutional strengthening of the Nauru Utilities Corporation (NUC).

A due diligence process was conducted to examine impacts relating to land acquisition and resettlement, but particularly relating to the land leasing process, in line with ADB Safeguard Policy Statement 2009. The methodology for the due diligence included a desk review, field visits, social screening, informal and formal meetings and interviews with government and key stakeholders, qualitative survey, and consultations and meetings with landowners.

Scope of land requirements. The project will be sited on 5.89 hectares, located on land that was previously mined for phosphate, leaving exposed limestone pinnacles. The area will need to be levelled before the solar panels and associated facilities can be installed. A total land area of roughly 10 hectares is being leased by NUC. The total land area comprises of nine different lots of varying sizes.

Policy framework. The Lands Act 1976 regulates all land matters in Nauru, and prohibits the transfer or sale of land to any person that is not Nauruan. The law states that the government has the right to lease land for public interest. The law requires that at least three-fourths of the share owners of a portion of land (both by number and by interest) must consent to the lease, and the Minister can then sign for the remaining share owners. As the proposed project is being considered for an ADB grant, policies of the bank are also to be followed.

Profile of landowners. There are a total of 779 landowners of the nine land lots leased by NUC, as at April 2019. Roughly 100 of these have shares in more than one of the lots. The size of the lots and share units differ greatly. There are more landowners who have smaller share amounts in terms of size of land, than those that have larger amounts.

Consultation, participation and disclosure. During the feasibility study, more than 50 meetings were held with key government and community stakeholders, two consultation meetings held with landowners (roughly 90 persons in total) and one consultation meeting with community representatives. During the consultation meetings, the project details were presented, including the negative and positive impacts of the project, with attendees given the chance to express their concerns and ask questions.

Key findings. The project does not trigger the ADB Safeguards Policy Statement (2009) with regards to involuntary resettlement as the project will be located on uninhabited land. The land is customary-owned and will not change ownership as a result of the project. There is no provision for compulsory lease arrangements (or acquisition) by a government entity within the law in Nauru. Rental rates are set by Cabinet, and listed within the land lease agreement at the time of gaining consent from the landowners.

There are no indigenous people or ethnic minorities considered as distinct and/or vulnerable as defined in ADB's Safeguard Policy Statement (2009) on the island.

The government lease agreements appear to be satisfactory, in terms of content. The content has been reviewed by the Director of Lands, and contains the signature of the President (or deputy) and are stamped by the Office of the President. Seven out of the nine leases have the required minimum number of landowners consent (75% of signatures), however two of the leases require additional signatures from landowners. The study also found that the risk of

asymmetry of information and bargaining power of the parties, or coercion and intimidation, is minimal.

Rental rates for government leases are set by Cabinet, and were last revised in 2014. NUC is paying the highest fee rate listed in the Lands Order 2014. There is no evidence of an established rental market in Nauru, particularly for land previously mined for phosphate. All such land currently being leased follow the rates set out in the Lands Order 2014.

Rental payments are made in June and December, and it is the responsibility of the landowners to provide their bank account details to NUC. The due diligence study identified that not all landowners promptly provided their bank account details at the commencement of the lease and as a result NUC have been, and continue to be, unable to pay some landowners rent for their shares as they have not been provided bank account details. Once these details are provided NUC makes the payments in arrears. There are no other known legacy issues relating to the land and lease agreements.

Implementation arrangements The Ministry of Finance (MoF) will be the executing agency and NUC will be the implementing agency. A project steering committee will provide oversight for the project and resolve any obstacles or impediments to implementation. A GRM has been developed for the project and will be the responsibility of NUC to implement it throughout the project duration. A Stakeholders Communications Strategy has been prepared for the project. The land lease components, and all other involuntary resettlement related aspects, will be monitored and reported on in semi-annual safeguard monitoring reports. The Project Supervision Consultants (PSC) will provide support to NUC with the recommendations of this report.

Recommended corrective actions. The following corrective actions are recommended for NUC to implement:

- (i) Gather additional consent and signatures, particularly for lots 249 and 265 to meet the minimum number required. This should be done in a manner of transparency and full disclosure.
- (ii) Take additional actions to collect missing bank account details.
- (iii) Conduct an audit on the payments made to date and those that are outstanding, and arrange for payment of unpaid rental fees wherever possible.
- (iv) Set up a separate bank account (such as an escrow account) for unpaid rental fees, to ensure the funds can be paid to the landowners in the future, if feasible.
- (v) Develop a system and set of procedures to track, and have access to evidence of, rental payments, given the large number of landowners.

II. INTRODUCTION

1. The island of Nauru is reliant on diesel power generation for its energy supply. Under the Nauru Energy Road Map 2014 – 2020, the Government of Nauru committed to provide sustainable energy supply to its people by using available renewable resources in the country. In line with this commitment, the Government of Nauru requested support from the Asian Development Bank (ADB) to increase the country's renewable energy generation capacity to meet the target of 50%.
2. ADB commissioned a project preparatory technical assistance (PPTA) consultant firm to develop a solar power expansion plan and project feasibility study for a solar power generation facility in Nauru. The PPTA was implemented with support from the Nauru Utilities Corporation (NUC), in coordination with the Ministry of Finance and Economic Management (MFEM) through the Planning and Aid Division, with the support of Department of Commerce, Industry and Environment (DCIE) through its Energy Unit.
3. The proposed project includes a 6.0 megawatt grid connected solar power plant and 5.0 megawatt / 2.5 megawatt hour battery energy storage system (BESS). This will reduce Nauru's over reliance on diesel for power generation and decrease the cost of generating electricity. The project will also support the institutional strengthening of the Nauru Utilities Corporation (NUC).
4. Land proposed for the location of the project is currently leased by NUC for a 20 year period, with the lease commencing in July 2017. There is an option to renew for another 10 years, resulting in the lease covering the life-span of the project until it is decommissioned in 2047. The project does not trigger the ADB Safeguards Policy Statement (2009) with regards to involuntary resettlement as the project will be located on uninhabited land that is being leased by NUC. The land is customary-owned and will not change ownership during the lease period. There will be no physical and economic displacement due to the project.
5. This Due Diligence Report provides (i) details of the lease agreement and outcomes of consultations with landowners, (iii) an assessment of the lease arrangements and their compliance with local laws, regulations and policies of ADB, and (iv) where required, recommendations for corrective actions, monitoring and evaluation.

III. BACKGROUND

A. Project description

6. The proposed solar PV plant will have a capacity of 6.0 megawatts (AC). The general arrangement features 19,200 solar panels facing east-west (Figure 2). In addition, 240 string inverters will be located alongside or underneath the panels. The proposed battery energy storage system (BESS) will have a capacity of 5 megawatts and 2.5 megawatts per hour. Configured as two separate systems with connecting inverters, the BESS will be located adjacent to substation equipment (switchyard and transformers), which will then connect to nearby transmission lines and the grid. The project also includes associated facilities such as an office, water storage and reticulation and boundary fences. NUC's technology software and hardware will be upgraded for the new solar-diesel hybrid system. The projected annual energy generated will be approximately 12,450 megawatts per year. The institutional capacity of NUC will also be strengthened through a capacity building program. The project will be located adjacent to a one megawatt solar power facility being constructed by NUC, funded by the New Zealand government and European Union.

1. Rationale

7. **Government commitment to renewable energy.** The Government of Nauru is committed to reducing the country's greenhouse gas emissions by replacing diesel power generation with renewable sources such as solar power generation. NUC was tasked to work towards achieving a 50% renewable energy target by 2020, as stated in the policy planning document (Republic of Nauru Energy Road Map, 2014-2020).

8. **Low renewable energy generation.** Nauru is over reliant on diesel for power generation, with about 3% of energy generation being from renewable sources, of which all are solar photovoltaic (PV) installations. This poses a risk to Nauru's generation capacity in the event that diesel supply is interrupted. An increase in renewable energy generation from this project will reduce carbon emissions by 11,155 tons per year (11,155 tCO₂), and contribute towards achieving Nauru's Nationally Determined Contributions (NDC) under the United Nations Convention on Climate Change. Moreover, Nauru currently bears high cost of supply of over A\$ 0.40 per kWh, which is unable to be recovered by the national tariff set by government. Solar power supported by battery storage was found to be the least cost approach for Nauru with cost of supply under A\$ 0.30 per kWh. Although this cost is heavily dependent on the price of diesel. As diesel prices increase, the cost of energy generation also increases. This exposes Nauru to diesel price shocks and rising oil prices which could reduce potential profits of the state-owned utilities company and potentially result in higher tariffs for electricity customers.

9. **Fragile economy.** Nauru is a single isolated island in the Pacific with a land area of only 21 square kilometers and a population of 13,300 (ADB, 2017). The Asian Development Bank (ADB) identifies Nauru as a country in fragile and conflict-affected situation. Nauru's economy is highly volatile. It is narrowly based on activities related to the Regional Processing Center for asylum seekers, revenues from the sale of fishing licenses and phosphate mining. In the 1970s, Nauru had one of the world's highest rates of national income per capita owing to its booming phosphate industry. By the late 1990s, however, the economy had contracted severely. It gradually recovered and the Regional Processing Center for asylum seekers, which reopened in 2012, having first operated during 2001-2007, contributed to local economic activity. Government finances also benefitted from fishing license fee revenue and broad fiscal management reforms. After expanding rapidly at the start of the decade, the economy contracted by an estimated 3% in FY2018 (end June 2018) due to a scaling down of the Regional Processing Center and slower phosphate exports.

10. **Capacity barriers relating to large solar power plants and battery storage systems.** NUC operates a 500kW solar plant funded by the United Arab Emirates, and are managing the contract for installing and commissioning a 1.0 MWac solar plant funded by the New Zealand Ministry of Foreign Affairs and Trade and the European Union. This project will be significantly larger than these projects, and it will be the first time for NUC to operate a BESS to manage stability issues within the grid. The project will provide institutional capacity and strengthening support to NUC in the areas of solar plants and battery storage systems, their integration in the grid, finance and accounting, as well as project implementation assistance.

11. **Lack of funding.** Rapid migration from diesel to renewable energy will require substantial investments in a short period. The ability for the NUC and the Government of Nauru to access public financing is limited. The revenues from existing electricity customers and available government funding is insufficient to meet the initial high capital costs required by renewable energy developments.

12. **Value added by ADB assistance.** The grant will fund a project supervision consultant (PSC) to support NUC during the detailed design, construction, installation and commissioning phases, providing capacity building and training to NUC personnel. In addition between 2011 to 2019, ADB has delivered a number of technical assistance projects with NUC focused on institutional strengthening, tariff and subsidy policy reforms, asset management, corporate strategies, financial and performance management and corporate governance. In 2017, ADB provided grants to support the purchase of two diesel generators to support base-load power, which will continue to be important assets in the efficient supply of electricity in the country.⁷ Overall, ADB's support has assisted the NUC to improve revenues, operations and service reliability, resulting in a high level of implementation readiness for the project. Furthermore, as part of project preparations for this grant, a solar expansion plan was commissioned by ADB to guide NUC in the rollout of solar power generation to achieve the national target of 50% renewable energy integration into the national grid and lower costs of generating electricity.

2. Impact and Outcome

13. The project is aligned with the following impacts: 50% of grid electricity supplied from renewable energy sources (Nauru Energy Road Map 2014-2020) and viable power generating capacity including alternative (renewable) energy sources (Long-term Milestone 2025, National Sustainable Development Strategy 2005-2025). The project will have the following outcome: utilization of renewable energy within the grid is increased and cost of electricity generation is decreased.⁸

3. Outputs

14. **Output 1: Solar power plant installed.** The project will finance the installation of a 6MW ground mounted solar array, substation and transmission linkages, technology systems and associated facilities (including boundary fences, office, water storage and reticulation).

15. **Output 2: Battery energy storage system installed.** The project will finance the installation of a 5MW / 2.5MWh battery energy storage system (BESS) to allow management of intermittency of output from solar generation and storage for load shifting.

16. **Output 3: Institutional capacity of NUC strengthened.** The project will provide institutional capacity and strengthening support to NUC in the areas of solar plants and battery storage systems, their integration in the grid, and finance and accounting, as well as project implementation assistance.

B. Objectives of the Due Diligence Report

17. This Due Diligence Report is prepared for the Nauru Solar Power Development Project and is based on the concept design and feasibility study. A due diligence process was conducted to examine impacts relating to land acquisition and resettlement, in line with ADB SPS 2009. This report describes the findings, particularly as they relate to the land leasing processes. Specifically, the report contains: (i) details of the lease agreement and outcomes of consultations with landowners, (iii) an assessment of the lease arrangements and their compliance with local laws, regulations and policies of ADB, and (iv) where required, recommendations for corrective actions, monitoring and evaluation. It also provides copies of relevant documents.

C. Methodology

18. The preparation of this report comprised the following research methods: desk review, field visits, social screening, informal and formal meetings and interviews with government and key stakeholders, qualitative survey, and consultations and meetings with landowners. The desk review focused on existing project related documents, technical details, ADB's relevant policies and available safeguards documents, policy and legal framework of Nauru and documents obtained from NUC.

19. The PPTA Social Specialist (and Deputy Team Leader) conducted two missions to Nauru to conduct the meetings, interviews, consultations and gather additional documents. During these missions, the specialist screened potential impacts on land acquisition and resettlement as a result of the proposed project, including permanent and temporary impacts on structures, livelihoods or any economic activities. The specialist also conducted due diligence on the existing leases held by NUC for the proposed site for the project.

IV. SCOPE OF LAND REQUIREMENTS

20. Based on the concept design, 5.89 hectares of land will be required for the project. The site is located in Meneng District. The total land area leased by NUC is 10.55 hectares (**Figure 1**). Within the site, NUC is currently constructing a 1.0 megawatt solar power facility, covering 1.76 hectares (marked 'MFAT solar plant'). That leaves an additional 2.53 hectares to be used by NUC at a later point, either to relocate diesel generators or to install additional solar panels (marked 'proposed expansion' area).

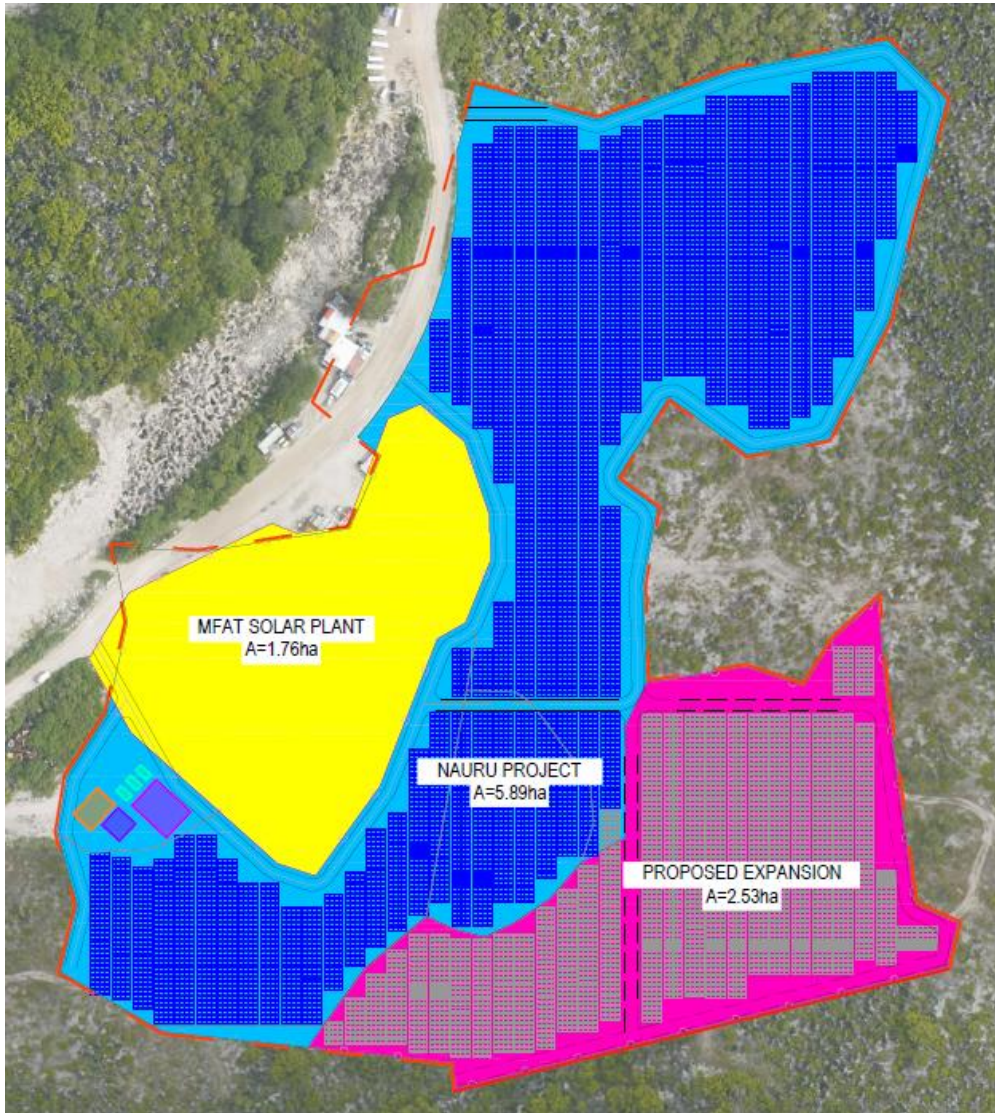


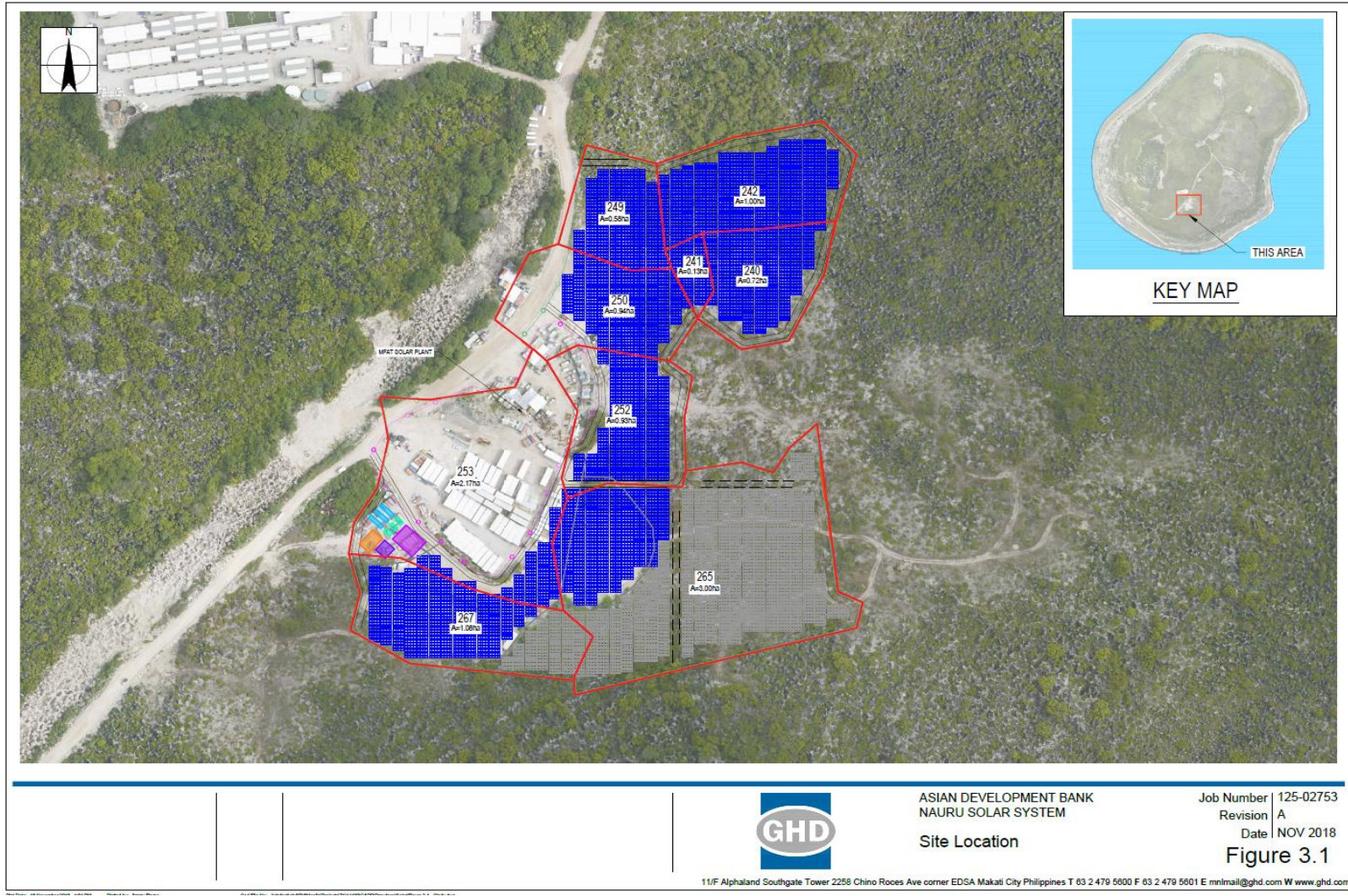
Figure 1: Land use by project

21. The concept design locates the project on nine portions of land, owned by 779 people (as at April 2019). The portion numbers, sizes and number of landowners are detailed in **Table 1** and a map indicating land portions in relation to the project components is in **Figure 2**.

Table 1: Land portions, sizes and number of landowners

Portion number	Size (m²)	Number of landowners (at the time the lease commenced)	Project located on portion	NUC 1 MW located on portion	Anticipated remaining land in the lease
240	7,210	29	Yes		
241	1,300	131	Yes		
242	10,020	156	Yes		
249	5,750	30	Yes		
250	9,380	100	Yes	Yes	
252	9,340	186	Yes	Yes	
253	21,710	28	Yes	Yes	
265	29,970	95	Yes		Yes
267	10,810	99	Yes		
Total	105,490	854*	5.89 ha	1.76 ha	1.76 ha

** Landowners may have shares on more than one portion being leased by NUC. The numbers of landowners has grown since the lease commenced, due to land being inherited.*



Source GHD

Figure 2: Site map with landowner plots identified

A. Alternatives considered

22. During the pre-feasibility stage and preparation of the Solar Power Expansion Plan, four options for the project were considered, including:

- (i) “Canstruct site” in Meneng District (location 1); currently leased by NUC with part of the site previously used as a storage site by construction companies. The site is mostly levelled, with some areas retaining the pinnacles left behind following phosphate mining (selected site).
- (ii) “Prison site” in Meneng District (location 2); an area next to the prison, said to be leased by the government, mostly pinnacles. Leasing status unknown.
- (iii) A vacant lot in Anabar District (location 3); relatively flat, has been cleared of pinnacles, small in size, no existing lease.
- (iv) Rooftop potential solar sites (location 4).

23. The site locations identified above each cover a number of land lots as recognized by the Lands and Survey Department (except for the solar rooftop option). The sites were assessed to determine their suitability for solar development using pre-defined selection criteria, including factors such as ownership/leasing considerations, environmental conditions, ground conditions, site access, size, proximity to the grid, and shading issues. Social impacts were not considered as a criteria, as there are no dwellings or economic activities on any of the three potential ground mounted sites (location 1, 2 and 3) and any installation on rooftops (location 4) will be driven by private investors, social impacts were deemed to be consistent.

24. Location 1 scored highest when using the selection criteria, and was subsequently endorsed as the selected location for the project by NUC and Cabinet Ministers. Further details of the alternatives can be found in Chapter 6 of the Nauru Solar Expansion Plan.

V. POLICY FRAMEWORK

A. National Laws

25. The Lands Act 1976 regulates all land matters in Nauru. The Lands Act prohibits the transfer or sale of land to any person that is not Nauruan. All land sales and leases must obtain the consent of the President. Land is not owned by single individual landowners, but instead ownership is based on clans and families. The island is divided in land portions and for each number or portion there are records of the rightful landowners listed down. Each lot can have many landowners, each with potentially different share sizes. Often Nauruans have shares in many lot portions on the island due to the process of inheritance.

26. Land is considered an important asset to Nauruans. Historically, Nauru was considered a matrilineal society. The tribal structure preferenced women, with land inherited to the eldest daughters or decided by the chiefs. As a result, land was entirely owned by women. During colonization, this was changed and now land is inherited through both matrilineal and patrilineal lineage.

27. The process of inheritance typically involves a meeting convened by the Lands Committee with the family and extended kin, wherein the beneficiaries (typically the children) of a deceased person's shares of land and their estate is determined through group consensus. There are instances where the deceased person has prepared a will, which is given precedence. An announcement of the agreement is made in the government Gazette, which lists the deceased persons' land shares and list of beneficiaries, and provides 21 days for people to raise objections. In the past, the Lands Committee was comprised of elected chiefs and elders from the districts. Now the committee members are chosen by Cabinet.

28. As stated in the Lands Act, the government has the right to lease land for public interest, as well as be granted easement, way leave or other right to the land. As stated in the Lands Act, if not less than three-fourths of the share owners of a portion of land (both by number and by interest) agree to lease it for public purposes, then the Minister may override the refusal of the minority. However, if less than three-fourths agree, there is no provision in the Lands Act for compulsory lease arrangements (or acquisition). The Land Act states that, wherever reasonably possible, every person who is an owner of the land should be notified of the lease agreement.

29. The Lands Act also stipulates that the lessee can remove trees and vegetation from the land being leased, but must provide compensation for coconut, pandanus, breadfruit, paw paw, almond, banana, tomato and lime trees. Similarly, sand removed from the site requires the lessee to pay compensation.

30. **Land Lease Process.** Land Records division provides the list of landowners to the Department of Lands and Survey. The Department of Lands and Survey provides support to the lessee to prepare the land lease and the lessee contacts the landowners to request their consent to the lease terms and conditions. The consent of 75% of all landowners (and consisting of 75% share of the portion of land) is required – at a minimum if the land is to be used for the public interest. While the consent for the lease is on a willing lessor-willing lessee basis, and is unable to be compulsorily enforced (expropriated) by the government, the rental rates are set by the Cabinet. Payment terms are according to those specified in the lease agreement. It is the responsibility of the landowners to provide their bank account details to the lessee in order to receive rental payments.

B. ADB Safeguard Policies

31. ADB safeguard policies seek to avoid, minimize or mitigate adverse social and environmental impacts caused by development projects that are financed by the bank. This includes the protection of rights of affected persons, and covers both physical displacement (relocation, loss of residential land, or loss of shelter) and economic displacement (loss of land, assets, access to assets, income sources, or means of livelihoods).

32. The SPS consists of three operational policies or as they are termed 'Safeguard Requirements (SR)' focused on the environment (SR1), involuntary resettlement (SR2) and Indigenous Peoples (SR3). All three operational policies require a structured process of impact assessment, planning and mitigation measures to address adverse impacts throughout the entire project cycle. The planning and implementation are the responsibility of the client. Specifically, the SPS and operational policies entail that:

- (i) Adverse impacts are identified early in the project development;
- (ii) Plans are developed and implemented to avoid, minimize, mitigate or compensate; and
- (iii) Affected people are informed and consulted during the preparation and implementation of the project.

33. The objective of the involuntary resettlement policy, or SR2, is to (i) avoid involuntary resettlement wherever possible; (ii) to minimize involuntary resettlement by exploring project and design alternatives; (iii) to enhance, or at least restore, the livelihoods of all displaced persons in real terms relative to pre-project levels; and (iv) to improve the standards of living of the displaced poor and other vulnerable groups.

34. SR2 covers physical displacement (relocation, loss of residential land, or loss of shelter) and economic displacement (loss of land, assets, access to assets, income sources, or means of livelihoods) as a result of (i) involuntary acquisition of land, or (ii) involuntary restrictions on land use or on access to legally designated parks and protected areas. It covers this displacement whether losses and involuntary restrictions are full or partial, permanent or temporary. ADB's policy principles are:

- (i) Screen the project early on to identify past, present and future involuntary resettlement impacts and risks. Determine the scope of resettlement planning through a survey and/or census of displaced persons, including a gender analysis, specifically related to resettlement impacts and risks.
- (ii) Carry out meaningful consultations with affected persons, host communities, and concerned nongovernment organizations. Inform all displaced persons of their entitlements and resettlement options. Ensure their participation in planning, implementation, and monitoring and evaluation of resettlement programs. Pay particular attention to the needs of vulnerable groups, especially those below the poverty line, the landless, the elderly, women and children, and Indigenous Peoples, and those without legal title to land, and ensure their participation in consultations.
- (iii) Establish a grievance redress mechanism to receive and facilitate resolution of the affected persons' concerns. Support the social and cultural institutions of displaced persons and their host population. Where involuntary resettlement impacts and risks

are highly complex and sensitive, compensation and resettlement decisions should be preceded by a social preparation phase.

- (iv) Improve, or at least restore, the livelihoods of all displaced persons through (i) land-based resettlement strategies when affected livelihoods are land based where possible or cash compensation at replacement value for land when the loss of land does not undermine livelihoods, (ii) prompt replacement of assets with access to assets of equal or higher value, (iii) prompt compensation at full replacement cost for assets that cannot be restored, and (iv) additional revenues and services through benefit sharing schemes where possible.
- (v) Provide physically and economically displaced persons with needed assistance, including the following: (i) if there is relocation, secured tenure to relocation land, better housing at resettlement sites with comparable access to employment and production opportunities, integration of resettled persons economically and socially into their host communities, and extension of project benefits to host communities; (ii) transitional support and development assistance, such as land development, credit facilities, training, or employment opportunities; and (iii) civic infrastructure and community services, as required.
- (vi) Improve the standards of living of the displaced poor and other vulnerable groups, including women, to at least national minimum standards. In rural areas provide them with legal and affordable access to land and resources, and in urban areas provide them with appropriate income sources and legal and affordable access to adequate housing.
- (vii) Develop procedures in a transparent, consistent, and equitable manner if land acquisition is through negotiated settlement to ensure that those people who enter into negotiated settlements will maintain the same or better income and livelihood status.
- (viii) Ensure that displaced persons without titles to land or any recognizable legal rights to land are eligible for resettlement assistance and compensation for loss of non-land assets.
- (ix) Prepare a resettlement plan elaborating on displaced persons' entitlements, the income and livelihood restoration strategy, institutional arrangements, monitoring and reporting framework, budget, and time-bound implementation schedule.
- (x) Disclose a draft resettlement plan, including documentation of the consultation process in a timely manner, before project appraisal, in an accessible place and a form and language(s) understandable to affected persons and other stakeholders. Disclose the final resettlement plan and its updates to affected persons and other stakeholders.
- (xi) Conceive and execute involuntary resettlement as part of a development project or program. Include the full costs of resettlement in the presentation of project's costs and benefits. For a project with significant involuntary resettlement impacts, consider implementing the involuntary resettlement component of the project as a stand-alone operation.
- (xii) Pay compensation and provide other resettlement entitlements before physical or economic displacement. Implement the resettlement plan under close supervision throughout project implementation.

- (xiii) Monitor and assess resettlement outcomes, their impacts on the standards of living of displaced persons, and whether the objectives of the resettlement plan have been achieved by taking into account the baseline conditions and the results of resettlement monitoring. Disclose monitoring reports.

35. SR2 policies on involuntary resettlement, however, do not apply to negotiated settlements where land is purchased or leased at market rates on a willing-seller willing-buyer or willing-lessee willing-lessor basis. Nonetheless, the SPS principles encourage projects to “develop procedures in a transparent, consistent, and equitable manner if land acquisition is through negotiated settlement to ensure that those people who enter into negotiated settlements will maintain the same or better income and livelihood status”.

36. During negotiated settlements, ADB requires borrowers/clients to:

- (i) Completely avoid expropriation i.e. the failure of negotiations should not result in involuntary resettlement or compulsory acquisition/leasing agreement;
- (ii) Meaningfully consult with affected persons, including those without legal title;
- (iii) Offer adequate and fair price for land and/or other assets;
- (iv) Openly address the risks of asymmetry of information and bargaining power of the parties involved; and
- (v) Exercise a duty of care as a responsible company to manage impoverishment risk.

37. In order to sufficiently show that the risks of asymmetry are addressed, it is recommended in the SPS to engage an independent third-party to document and validate the negotiation and settlement process.

VI. PROFILE OF AFFECTED PERSONS

A. Socioeconomic Situation in Nauru

38. The Household, Income and Expenditure Survey (HIES) completed in 2012-13 found that 24% of the population of Nauru (16.8% of households) were living below the basic needs poverty line, although the incidence of food poverty was zero. At the time, the population comprised 11,660 people living in 1,704 households, with an average of 6.8 people per household. The basic needs poverty line estimated the cost of minimum nutritional dietary intake plus costs for non-food essential basic needs to achieve acceptable standards of living. According to the report, 7.9% of Nauru's population in 2012-13 or 6.2% of households were extremely vulnerable. There has not been another HIES survey conducted since 2012-13, nor a more recent census at the time of writing this document.

39. ADB reports the population to be 13,300 in 2017. The HIES found that 85% of households were wage earners and 7% had their own business. This is partly because farming land is in short supply and subsistence agriculture is restricted, although subsistence fishing provides supplementary protein, as well as catching noddly birds. Most of the employment is with the government or with the regional processing centres (since 2012). Average annual household incomes were A\$25,025, however, the lowest 10% of the population earned an annual income of A\$706 per person. Customary landowners and their extended families received additional income from the government and business land leases.

40. Since the reopening of the regional processing centres in August 2012 there was a shift by some from government to higher-paying jobs. It also led to a change in living patterns as some households moved in with relatives in order to make their homes available for rent by the Government of Australia and associated businesses and contractors. Additionally, there has been an increase in government programs focused on housing, health, education and welfare payments since the conduct of the HIES. Salaries of public servants have also increased. This all indicates that the living standards of the population have improved since the HIES was conducted. Yet the long-term future of the regional processing center remains uncertain.

B. Profile of Landowners

41. The Department of Lands and Records, and NUC, do not collect socioeconomic information about landowners. From the records of NUC, there are a total of 779 landowners among the nine land lots leased by NUC, as at April 2019. Roughly 100 of the 779 landowners have shares in more than one of the nine lots. The leases themselves have a total of 894 land share units, and this number is greater than when the lease commenced in July 2017. This is because the share units have been further divided when they were inherited by children/family members of those that have passed away since the lease commenced (**Table 2**).

Table 2: Lot numbers, landowners and lease agreement and payment details

Portion number	Size (m ²)	Number of landowner units (at July 2017)	No. of landowner units (April 2019)	No. that have signed the lease (April 2019)**	No. who have provided their bank account details to NUC (April 2019)
240	7,210	29	31	26 (90%)	30
241	1,300	131	144	75 (57%)	103
242	10,020	156	163	98 (63%)	122
249	5,750	30	33	27 (90%)	31
250	9,380	100	100	77 (77%)	94
252	9,340	186	190	163 (88%)	111
253	21,710	28	29	28 (100%)	28
265	29,970	95	105	80 (84%)	87
267	10,810	99	99	93 (94%)	63
Total	105,490	854*	894*	667 (78%)	669

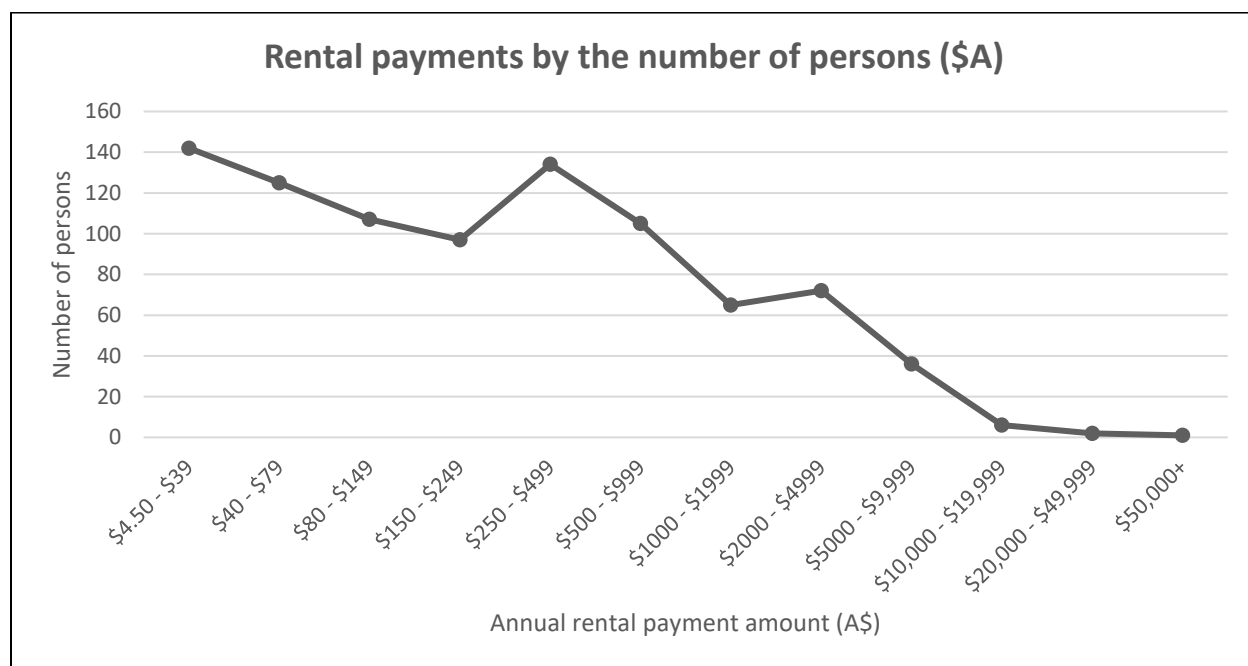
* About 100 landowners have more than one share unit within the nine lots.

** Alternatively, a trustee has signed the lease on behalf of another person. As compared with the original lease numbers and names that are within the lease agreement documents.

42. The size of the lots and share units differ greatly. **Table 3** shows the extremes and averages across all of the nine lots. For instance, one landowner has a share that is a half of the total lot area, amounting to 10,855m². This equals an annual rental payment of A\$92,267.50, the highest among all of the landowners. Conversely, there are nine landowners that each have a share that is 11/27000 of the total land area, roughly 0.53m² each. They each receive A\$4.50 per annum in rental payments. Across all of the nine lots, the average payment received by all 894 owners of share units is \$1002.05 per year for rental payments, although the median yearly rental payment is A\$220.53. This reflects the higher number of landowners who have smaller share values, and is best depicted in **Figure 3**.

Table 3: Example characteristics of the size of lots and share units

	Lot number	Share units in lot (April 2019)	Area of the lot (m ²)	Size of share	Annual rental rate	Annual rent payment
Largest share value (dollars)	253	29	21,710	1/2 (10,855m ²)	A\$8.50 per m ²	A\$92,267.50
Smallest share value (dollars)	241	144	1,300	11/27000 (0.53m ²)	A\$8.50 per m ²	A\$4.50
Average (among all nine lots)	All		Average land area of lot 11,721m ²	Average share size 3/298 (118m ²)	Same rate for all lots	Average annual rental payment \$1002.05

**Figure 3: Graph depicting rental payments by the number of persons within the nine lots, as at April 2019.**

43. If the same practice continues, wherein children inherit their parents' shares, the trend will be for increasingly smaller share units (and subsequent lower rental payments per person) and an increasing number of people who hold shares in the land.

44. A survey conducted with some of the participants of the stakeholder consultation session held on 6 April 2019 provides a snapshot of the basic demographics of the landowners. There were 48 respondents to the survey, 47 of which are landowners of the lots leased by NUC. Of the respondents, 56 percent were female and 44 percent male. The average age of respondents was 47 years (median 45 years old), with the youngest being 26 years old and the oldest being 86 years old. The respondents came from all districts in Nauru, and there were respondents for all of the nine lots of land leased by NUC. There were 15 respondents that hold shares in more than one lot.

VII. CONSULTATION, PARTICIPATION AND DISCLOSURE

45. **Initial consultation meeting.** A consultation and disclosure meeting was held with 12 members of landowning groups on 24 October 2018 during the Feasibility Study stage. In attendance was at least one person from each land lot group, comprising seven females and five males. An outline of the project and preliminary designs were presented, as well as anticipated social and environmental impacts. Following this, an open session allowed landowners to ask questions. Issues and comments raised included:

- (i) The yearly rate of the land lease and whether it could be increased. Abraham Simpson, NUC's Chief executive Officer, clarified that the lease rate is based entirely on Government of Nauru set lease rates and this is the commercial rate of A\$8.50/m² per year.
- (ii) The availability of employment opportunities for landowners during installation and operation of the project. Abraham Simpson advised that the selection of workers will be implemented with fairness, with priority for landowners to be considered.
- (iii) The ownership of the solar facility once in operation. Abraham Simpson explained the different responsibilities of the Government of Nauru, ADB, NUC, and the PPTA consultant firm in terms of funding, designing, tendering, procurement, operations and maintenance of the solar facility project.
- (iv) The ability of the solar plant to provide enough electricity for the whole island. Abraham Simpson explained clearly the purpose and capabilities of grid-tied solar facilities based on percentage of generation.
- (v) The possibilities of increasing the land lease rate when the solar facility is in operation in the future (5 or more years). Abraham Simpson explained that land lease rates are entirely dependent on Cabinet's future declared lease rate amendments; hence NUC has no authority over setting the lease rates. If the Cabinet announces an increase in the set Commercial lease rate, then NUC will pay the landowners the new rate from that time onwards. There is not a need to wait until the end of the lease for the rates to be adjusted.
- (vi) The extent of environmental impact at the site where the batteries, diesel generators and substations will be located. Abraham Simpson said that an environmental assessment was being conducted and it will include an environmental management plan. This will be carefully monitored. The batteries are different to the type commonly used in small appliances, and the chance of leakage of chemicals is low.
- (vii) The amount of land required for the 6 MWac solar facility. Abraham Simpson explained that an estimate of up to 6 hectares of land will be used, however, the remaining land area has been earmarked for future solar expansion projects or the relocation of diesel generators. This matches the purpose of the lease, as defined in the lease agreement.

46. When the landowners were asked about the closure of the old mining road within the land lease area, the group responded that there would not be an issue as the area is only used for noddy bird catching and there are plenty other areas on the island to catch the birds.

47. **Follow-up consultation meeting.** On 6 April 2019, a large consultation and disclosure meeting was held with landowners and community members to present the project, update landowners on the financing arrangements and allow an opportunity to have questions answered, concerns raised and perceptions of the project to be heard. More than 77 landowners and community members attended the meeting, with representatives from all of the nine lots of land leased by NUC, and all districts in Nauru. Ali Mohammad, NUC's General Manager for Operations, delivered a presentation which covered the following topics (Annex 2): (i) Background, (ii) About the Solar Farm, (iii) Proposed design, (iv) Proposed location, (v) Reduction in carbon emissions, (vi) Existing lease arrangements, (vii) Environmental and social impacts, (viii) Implementation schedule, (ix) Update on ADB grant, (x) ADB requirements for consultations, (xi) Grievances and complaints, (xii) Update on NZ/EU funded solar project, (xiii) Update on transmission line extension.

48. Following the presentation, participants were invited to ask questions and make comments. A male landowner commented on the low rental rates and Ali Mohammad explained that this is the rate set by the government and that NUC was paying the highest government rate. There were no other questions or comments raised. During refreshments following the open forum, questions and comments raised to Ali Mohammad were:

- (i) Is there a chance for NUC to hire landowners as security guards or contract the service to the landowners' security businesses? Ali Mohammad commented that this may be possible in the future, but for the NZ funded solar project being installed at the moment this was the responsibility of the contractor.
- (ii) Is there a chance that landowners could become shareholders in the new solar project? Ali Mohammad explained that the NUC will be the managing entity and owner of the solar project – due to the availability of the funds from ADB, as well as the large size of the project, but looked forward to exploring possibilities in the future.

49. In addition, 48 attendees also completed a short survey regarding the project and the land lease (Annex 2). The survey allowed landowners and community members another opportunity to convey their thoughts and perceptions about the project and the land lease, both the benefits and their concerns. The most common response was that the project was good and that they didn't have any concerns. Other benefits stated were related to the opportunities for the electricity costs to be reduced, less disruptions to electricity supply and the environmental benefits. Comments that specifically related to the land included: "The project is good as long as the payment of rent is ok" and "This project is helping the landowners improve their economic situation at home".

50. With regards to specific concerns raised, some were worried about the environmental impact of the project on the land from corrosion of the panels and oil from machinery. They questioned what would happen to the solar panels after the end of their life and whether broken panels would be removed from the land and replaced. One respondent requested that the electricity tariffs should be lowered and another said they would be concerned if they were not paid the rental amount on or before the due date. None of the landowners expressed concern regarding the land lease agreement process, or that they had not received their rental payments.

51. When asked if the respondent had signed the lease, 77 percent said they had signed the lease, 15 percent said they didn't know or were not sure and 9 percent said that they had not signed. When asked why, the common response was that they had not been approached or had not received anything as yet. When asked if they know anyone who is part of the landowning

group that had not signed the lease, 49 percent said they did not know anyone, 36 percent said that they were not sure and 16 percent said that they do know someone who has not signed. The reasons why that person had not signed were that they think the person does not know about the project benefits. A few responses said that they will pass on the information about the project and will encourage the family members to sign the lease.

52. When asked if they are satisfied or unsatisfied with the lease, almost all respondents said that they were either satisfied (53%) or extremely satisfied (44%), with only one person stating that they were extremely dissatisfied, with no explanation given. To gauge whether there may have been any intimidation or coercion involved during the process, respondents were asked if anyone pressured them into signing the lease. Among the respondents, 93 percent answered in the negative, 2 percent said that they were unsure and 5 percent said they had been pressured. When the PPTA social specialist followed up with these latter respondents, they said that they had been pressured by family members to make time to go to NUC to sign the lease, or that they wanted additional time to think about it, but otherwise felt good about the project.

53. Finally, respondents were asked how often they would like to be consulted about the project, with half stating that they would like to be updated twice annually, 41 percent wanting to be consulted quarterly and 9 percent wanting to be updated annually. These results have informed the development of the Stakeholder Communications Strategy for the project. It is recommended that additional consultations are conducted to increase project awareness among landowners.

54. The participants of the stakeholder consultation meeting were given opportunity to raise concerns or issues that they may have about the project during consultations. There was no instance of landowners protesting the project during the meeting or in their responses to the survey questions. The results from the survey indicate that the landowners are interested in the project and would like to be kept up to date about its status and progress.

55. **Other stakeholders.** More than 50 meetings were also held with government officials and key project and community stakeholders, which are detailed in the Consultation Record (Annex 2).

VIII. KEY FINDINGS

A. Impacts of the project

56. **Involuntary Resettlement.** The project does not trigger the ADB Safeguards Policy Statement (2009) with regards to involuntary resettlement as the project will be located on uninhabited land. The land is customary-owned and will not change ownership as a result of the project. There is no provision for compulsory lease arrangements (or acquisition) by a government entity within the law in Nauru. Rental rates are set by Cabinet, and listed within the land lease agreement at the time of gaining consent from the landowners.

57. There will be no physical and economic displacement due to the project. Most of the land was previously used to mine phosphate, leaving limestone pinnacles throughout the area, with a small section (lots 250, 252, 253) subsequently levelled and used as a storage site for construction companies. The site is uninhabited, and there are no existing residential or commercial structures on the land, with the exception of one dilapidated and abandoned structure.

58. There are no agricultural or livelihood activities being conducted on the land, and the landowners are not using the land for any other economic activities. In the past, landowners have not gained income from the site besides from lease payments from government agencies and state-owned enterprises, and royalty payments during the phosphate mining period. Royalty payments may be an option if the land was considered for secondary mining activities, however, a meeting with Ronphos, the state-owned enterprise responsible for phosphate mining activities on the island, confirmed that the site is not on their schedule of secondary mining activities and is unlikely to be for the next 20 years. In this regard, the project is unlikely to hinder economic opportunities for the landowners during the project life-span, especially considering most of the land requires significant site preparation work before it can be used for economic activities.

59. Continued consultations with landowners will be important, especially prior to the land clearing of the pinnacles and site preparation activities involving the Nauru Rehabilitation Corporation (the state-owned-enterprise that will undertake the site preparation work). The rock debris generated by the breaking of the pinnacles will be used to level the site. Where there is excess rock debris, the Nauru Rehabilitation Corporation will have discussions with the landowners regarding their interest to sell the rock debris to the corporation. This will bring additional economic returns to the landowners.

60. It is recommended that the project be considered Category C for Involuntary Resettlement, and a resettlement plan is not required.

61. **Indigenous Peoples.** The population is 94 percent ethnic Nauruan, with the remaining 6 percent originating from a number of countries. There are no indigenous people or ethnic minorities considered as distinct and/or vulnerable as defined in ADB's Safeguard Policy Statement (2009) on the island. Consequently, an Indigenous Peoples plan is not required, and it is recommended that the project be considered Category C for Indigenous Peoples.

B. Lease agreements

62. **History.** Cadastral studies were completed by the Lands and Survey Department in the 1970's. Following the phosphate mining activities, the nine lot portions were previously leased by the Nauru Rehabilitation Corporation from 2004 up until June 2017. NUC decided to take over

the leases for the nine lots in July 2017, and set about to gain the consent from the required number of landowners and Minister (further discussed below).

63. **Lease documents.** The government lease agreements appear to be satisfactory, in terms of content. The agreements have been reviewed by the Director of Lands, Mr Wes Tsitsi, and have the required conditions and terms to meet national laws. The agreements contain the signature of the President (or deputy) and are stamped by the Office of the President. A copy of the government lease agreements for the nine lots are in Annex 1. To summarise, the agreements state:

- (i) The permitted purpose or public purpose of the lease as “the establishment of solar panels installations and associated equipment to produce a stable energy supply and to capture, store and reticulate water. The establishment of diesel power generation to assist in stabilizing the power grid is included in the projects.” Accordingly, NUC can only use the land for this purpose, and all other purposes will require landowners’ prior written consent.
- (ii) The term of the lease is 20 years. The lease can be renewed for an additional 10 years.
- (iii) The payment of rent is semi-annually.
- (iv) Payment is based on the fixed rate specified in the Lands Act 1976, which at the date of the lease agreement was \$8.50 per square meter per annum. If the rates set by the government change, the new rate will be paid after it becomes effective.
- (v) NUC is not able to sub-let the land without prior written consent from the landowners.
- (vi) The landowners consent to the NUC making improvements to the land for the requirements of the permitted purpose.

64. **Consent and signatures.** The Lands Act requires the lessee (NUC) to obtain the consent of not less than three-fourths (75%) of the owners of that land, both by number and by interest in the title. Seven out of the nine leases appear to meet this criteria. The two lease agreements that require additional consent and signatures are:

- (i) Lot 249: Less than 75% in interest.
- (ii) Lot 265: Less than 75% of interest.

65. It is recommended that NUC seek out the additional consent and signatures and provide evidence of this to ADB.

66. With regards to the risk of asymmetry of information and bargaining power of the parties or coercion and intimidation, due diligence activities found that the risk that this occurred is minimal. During stakeholder consultation activities and meetings, and during chance encounters during missions by the social specialist, landowners appeared to be in support of the project, and when given the chance to discuss the process of consent they had not communicated any negative experiences. During the survey, 93 percent of respondents also stated that they had not been pressured into signing the lease, with the remaining 7% providing explanation that were not cause for concern. When NUC seeks the additional signatures required for lots 249 and 265, it should be done in a manner of transparency, full disclosure and allow time for the landowners to consider the project.

C. Rental rates

67. Land is classified into different types and there is a rate set per year per meter squared. Under section 16 of the Lands Act 1976, it is the role of the Cabinet to set the land rental rates. The rental rates for government leases were last amended on 5 June 2014. The most recent amendment, the Lands (Review of Land Rental Rates) Order 2014 (Annex 3), doubled and in some cases tripled the rates previously set (**Table 4**).

Table 4: Government lease rental rates as stated in the Lands Order 2014

Land Classification Type	Rate prior to Lands Order 2014	Current rate as stipulated in Lands Order 2014
Cemetery, coconut land and non-commercial residential sites	A\$1.20/m ²	A\$3.60/m ²
Special public use land (education, hospital, fire, police)	A\$1.20/m ²	A\$4.00/m ²
Special commercial (aerodrome)	A\$2.40/m ²	A\$7.00/m ²
Commercial I land (Phosphate, Land, Ronphos/RPC/NUC/Hotels/Air Terminal/Commercial Residential/Government)	A\$3.60/m ²	A\$8.50/m ²
Special commercial reserve land (PI Permanent Installation Phosphate Land)	A\$3.60/m ²	A\$7.50/m ²
Commercial II land (sports complex, agriculture, commerce)	A\$3.60/m ²	A\$8.00/m ²
Industrial land (fisheries, port authority)	A\$3.60/m ²	A\$8.50/m ²

68. The land proposed for the project is categorised as Commercial I Land, and the rate prescribed to NUC is the highest at \$8.50 m². The amount of fees stipulated in NUC's lease agreements mirror this categorization, with the rate of \$8.50 per m² per year. In addition, the agreements state that if the rates set by the government change, the new rate will be paid by NUC thereafter.

69. The Director of Lands, Mr Wes Tsitsi, advised that the process of rental rate amendments by the Cabinet has, in the past, involved a consultant to conduct a review of market rates and make a recommendation to the government. There is no set schedule for this review nor for amendments to be made to the rental rates. There is no evidence of an established rental market in Nauru, particularly for topside land. There is no register of available data that would enable a comparison of rental rates across the island, apart from Lands Order 2014.

70. Mr Wes Tsitsi and members of the Lands Committee confirm that there may be privately negotiated leases on land near the shoreline (known as coconut land or bottom-side land), and these may offer higher rental rates than those stated in Lands Order 2014 – but this is not the case for topside land (which are areas where phosphate was previously mined). The facilities located on topside land are operated by the Department of Justice (prison), Regional Processing Centres (RPC), Ronphos, and other government departments (telecommunications towers and warehouses). According to Mr Wes Tsitsi, all of these facilities are on government lease agreements and follow the rates stipulated in Lands Order 2014.

D. Lease payments

71. Lease payments are paid directly from NUC to the landowners listed in the lease agreement, as well as the records provided by the Department of Lands and Survey. The onus, however, is on the individual landowners to provide the bank accounts to NUC.

72. Prior to a rent payment, NUC requests for updates on the landowner lists from the Department of Lands and Survey, as shareholders may have passed away, and there may be new beneficiaries. When it has not yet been decided who the beneficiaries are, the payment is given to the Curator within the Department of Justice, who has a government bank account. Once the beneficiaries are official, then the Curator pays the beneficiaries and advises them to provide their bank account details to NUC. If the beneficiary is under 18, they are required to have a nominated trustee who collects the payment on their behalf. After they turn 18 years of age, they can provide their own bank account to NUC.

73. Mrs Semaema Kunarore, NUC's Financial Controller (FC), mentioned that prior to the rental payments, NUC sends a text blast to the landowners reminding them to update their bank account details with NUC and informing them of the timing of the payment. They also put up notices on an information board at the NUC customer service office in Yaren. The accounts team prepare the paperwork for the rental payments, which is reviewed and approved by the Financial Controller, General Manager of Operations (GMO) and Chief Executive Officer (CEO). It is then counter approved by the Minister. The payments team then load the information into the Quicklinks payment software, wherein another round of approvals (FC, GMO and CEO) is sought, which is counter signed by the Treasury Department. The electronic payment system is able to be viewed by all approvers – including the Treasury Department – once it is uploaded.

74. NUC provided evidence of rental payments made from the date the lease agreements commenced on 1 July 2017 until the present. There were payments made in December 2017, June 2018 and December 2018 (Annex 4). The evidence provided indicates that NUC did not pay the total amount to landowners:

- (i) 20 Dec 17 payment: Accounted for 53% of the total amount NUC was to pay landowners.
- (ii) 26 June payment: Accounted for 86% of the total amount NUC was to pay landowners.
- (iii) 20 Dec 18 payment: Accounted for 83% of the total amount NUC was to pay landowners.

75. As of April 2019, this amounted to a sum of A\$342,272.69 of unpaid rent over the three payment cycles (total annual rental payments are A\$896,665.00). The reason for this is due to landowners not providing their bank account details to NUC. Records provided by NUC in April 2019 indicate that there are roughly 110 landowners who have yet to provide their bank account details. There are also instances where landowners may have provided their bank account details but the bank account has since been closed, and the money returns back to NUC. Between April to July 2019, NUC were able to gain the details of more bank accounts of landowners, and have stated that half of the rental arrears have been dispersed. It is recommended that NUC provide evidence on this to ADB.

76. NUC's Acting Accountant, Mrs Migail Tatum, said that when landowners provide their bank account details, then NUC arranges a transfer of the payment for rent that is outstanding. Yet, when prompted, NUC could not easily provide evidence of a recording keeping system to document these ad hoc payments (despite monthly bank statements) nor has an audit been conducted by NUC on whether this has been systematically carried out, now that more bank accounts have been provided since the first payment in December 2017. Furthermore, the unpaid rent sits in a general bank account used to pay other company expenses. It is recommended that NUC undertake the following activities:

- (i) Take additional actions to collect missing bank account details.
- (ii) Conduct an audit on the payments made to date and those that are outstanding, and arrange for payment of unpaid rental fees wherever possible.
- (iii) Set up a separate bank account (such as an escrow account) for unpaid rental fees, to ensure the funds can be paid to the landowners in the future, if feasible (as there are limited banking services on island).
- (iv) Develop a system and set of procedures to track, and have access to evidence of, rental payments, given the large number of landowners. Consultant support within the PSC can support the preparation of this system and procedures.
- (v) An audit of payments of rent be conducted on a semi-annual basis, with oversight from the PSC, and reported in the semi-annual safeguard monitoring reports.
- (vi) Conduct regular consultations with landowners to encourage them to update their contact and bank account details prior to payment dates. NUC should also be encouraged to continue with their text blasts and email announcements.

E. Lease disputes or legacy issues

77. There are no known existing disputes or legacy issues concerning the portions leased by NUC. In the past, it is believed the Rehabilitation Corporation sub-leased the land to a private foreign company (Canstruct). As a result, the landowners are sensitive to the possibility that the government may pay the set government rate according to the law, but sub-lease the land to the private sector at a profit. This is avoided in the NUC leases, which clearly states that there are not to be sub-leases. Construction and installation of the MFAT project solar plant had commenced at the time of preparing this report on lots 250, 252 and 253. As the construction continues, it will be important for NUC to record grievances of landowners that may be a result of lease disputes and legacy issues, and notify ADB.

F. Third Party Verification

78. Given the complexity of the process of gaining consent for the land leases and the payment arrangements, it is prudent for an independent, third party review of the history, present situation and any potential future issues that may arise for the project.

IX. GRIEVANCE REDRESS MECHANISM

79. This Grievance Redress Mechanism (GRM) serves to address complaints or concerns by persons that may be impacted by the project, including landowners. A grievance is an issue, concern, problem or claim (perceived or actual) that an individual or group wants NUC or one of its contractors to address and resolve related to the project. The GRM outlines the procedures in which grievances concerning the performance or behaviour of NUC, its employees or contractors will be accepted, assessed and resolved. The GRM aims to reduce impacts and risks of the project and promote mutually constructive and trust-based relationships with project affected landowners and communities in Nauru.

80. **Background.** The purpose of this GRM is to uphold the project's social and environmental safeguards performance. It must be noted, however, that existing traditional and government grievance mechanisms already exist in Nauru, which should be integrated with processes relating to project-specific grievance claims.

81. **Objective.** The objective of this GRM is to establish guidelines for accepting, assessing, resolving, monitoring and evaluating grievances concerning the projects.

82. **Scope.** This mechanism covers policies and procedures related to the management of grievances. It is intended for NUC employees who will process grievance claims, as well as persons wishing to file grievances.

83. **Principles.** The GRM has been developed in accordance with NUC policies and procedures, as well as international standards for stakeholder engagement. The GRM is designed to work within existing legal and cultural frameworks, providing an opportunity to resolve grievances at the project level. Specifically, the project GRM has been designed to:

- (i) Be understandable, culturally appropriate and accessible to project-affected persons, with its availability communicated.
- (ii) Address a wide range of grievances and concerns – both those based in factual data and those arising from perceptions or misperceptions.
- (iii) Be transparent, and allow persons to submit a grievance at no cost and without retribution to the party that expressed the issue or concern.
- (iv) Protect the identity of the persons raising the grievance.
- (v) Resolve concerns in a timely manner, via consultation with stakeholders, or forward any unresolved cases to the relevant authority.
- (vi) Report back to the community (through the Project Steering Committee) periodically on the types of cases and how they were resolved.
- (vii) Be revised if it is not working effectively.

84. **Confidentiality.** All NUC employees, contractor and subcontractor personnel involved in the resolution of grievances are required to keep confidential the nature of the claim, the claimants and the outcomes of the resolution process. NUC will periodically report back to the Project Steering Committee on the types of issues raised and how they were resolved, but this reporting will not feature the names of the aggrieved person/s or claimants, nor provide specific details of the issue/s.

85. **Procedures.** Implementing the GRM involves five steps, which are described below in further detail.

- (i) **Step 1: Receive grievance claims.** Community grievances, complaints, issues are received by NUC onsite through the Renewable Energy Manager or by calling NUC's hotlines (phone or text): 557 4010 or 557 4072. In some cases, the CEO of NUC also receives complaints by community, particularly when it involves tariff rates and reliability of supply. Because the island of Nauru is small, issues and concerns raised are easily heard, received, and addressed.
- (ii) **Step 2: Record and acknowledge grievance claims.** Any person receiving the grievance claim will notify the Renewable Energy Manager who will log it on the Grievance Claim Log Sheet and assign a reference number or identifier, and complete a Grievance Claim Reporting Form. The Renewable Energy Manager will provide the claimant with information about the process, their assigned reference number and the timeframe in which a response can be expected. The following details will be recorded when receiving grievance claims: (i) date, (ii) manner in which the grievance claim was received (phone, email, letter, in-person etc.), (iii) name of the person who received the grievance claim, (iv) summary of the grievance claim, and (v) name and contact details of the claimant/s. All incoming claims to the Renewable Energy Manager will be acknowledged within three working days, by the quickest method available. If the claim is received by the Renewable Energy Manager in person or verbally over the telephone, it will be acknowledged on the spot. If the claim is in writing, then an email, telephone call or text message will be returned acknowledging that the grievance claim has been received, with details of the process and timeframe in which a response can be expected.
- (iii) **Step 3: Screen and assess grievance claims.** Received grievance claims are then screened, assessed and investigated (if required) by the grievance officer to verify validity. The claimant can choose to be involved in this process. This includes establishing the nature of the grievance to determine the measures needed for review and investigation. The Renewable Energy Manager will either: (i) assign personnel (including themselves) to complete actions to resolve the grievance, or (ii) elevate the claim directly to the Chief Executive Officer / General Manager of Operations to resolve or facilitate the resolution of the grievance. The Project Steering Committee could also be called upon to provide support in the resolution. Grievances which do not apply to the project will be referred to the appropriate entity, and the claimant notified that this has occurred. The Grievance Claim Reporting Form will be kept up-to-date regarding the status of the grievance claim and the actions required and completed.
- (iv) **Step 4: Decide on a response or resolution and monitor issues.** The Renewable Energy Manager will act on the response or resolution of the grievance claim and notify the claimant within 20 working days. The response may be in the form of a written letter/email or verbally through a meeting with the claimant/s or a telephone call. The Grievance Claim Reporting Form will be amended to reflect the closure of the grievance claim and future dates for monitoring. All documentation will be filed according to the reference number assigned and remain confidential. Where an agreement on the resolution cannot be reached or if the claimant is not satisfied with the resolution, the Renewable Energy Manager will provide the claimant with the details of the Minister's office.

- (v) **Step 5: Evaluate the GRM and report periodically.** On a periodic basis, the Renewable Energy Manager is to publish an evaluation report on the types of grievance claims and cases that were received and how they were resolved and submit this to the Project Steering Committee. The evaluation will include a report on the: (i) number and types of grievance claims received, (ii) number of claims that have been resolved/reached agreement, (iii) number of claims that have gone to mediation, (iv) and number of claims unresolved. The report should also include an assessment of the effectiveness of the GRM and NUC in responding to the grievance claims.

86. **Communication of the GRM.** It is the responsibility of NUC to ensure landowners are informed of the GRM. The GRM has been translated and training will be provided to new contractors.

87. **Budget.** Financial resources to cover the operational costs of the GRM are NUC's responsibility.

88. **Other measures available.** ADB's Accountability Mechanism also applies to the project. However, while the project level GRM is the responsibility of NUC, the Accountability Mechanism is the responsibility of ADB. The accountability mechanism provides opportunities for people (2 or more complainants) that are adversely affected by ADB-financed projects to express their grievances, seek solutions, and report alleged violations of ADB's operational policies and procedures, including safeguard policies. ADB's accountability mechanism comprises of (i) consultation led by ADB's special project facilitator to assist people adversely affected by ADB-assisted projects in finding solutions to their concerns and (ii) providing a process through which those affected by projects can file requests for compliance review by ADB's Compliance Review Panel. Details of the Accountability Mechanism can be found at: <https://www.adb.org/documents/accountability-mechanism-policy-2012>.

X. IMPLEMENTATION ARRANGEMENTS

89. The Ministry of Finance (MoF) will be the executing agency and NUC will be the implementing agency. A project steering committee, comprising representatives of line ministries and chaired by the Deputy Secretary, Planning and Aid Division (PAD), MoF, will provide oversight for the project and resolve any obstacles or impediments to implementation. NUC will undertake all implementation activities, supported by project supervision consultant (PSC) when required.

90. NUC's chief executive officer is recruited internationally and will be responsible for the project's supervision and day-to-day implementation, including financial management, monitoring and evaluation – including the recommended actions set out in this report. NUC will maintain separate accounts for the project, which will be audited by an independent auditor. The PSC will include a social and gender specialist who can provide support to the NUC regarding land related matters. The implementation arrangements are summarized in **Table 5** and described in detail in the project administration manual.

Table 5: Implementation Arrangements

Aspects	Arrangements
Implementation period	November 2019–September 2021
Estimated completion date	30 September 2021
Estimated grant closing date	31 March 2022
Management	
(i) Oversight body	Project steering committee Deputy Secretary, Planning and Aid Division (PAD), Ministry of Finance (MoF) (chair) Advisor, Ministry of Finance (member) Chief Executive Officer, Nauru Utilities Corporation (member) Secretary, Department of Commerce, Industry and Environment (CIE) (member) Director, Energy Division, CIE (member) Director, Environment Division, CIE (member) Director, Climate Change Division, CIE (member) Infrastructure Sector Planner, PAD, MoF (member) Representatives, Nauru Community Based Organization (member)
(ii) Executing agency	Ministry of Finance (MoF)
(iii) Key implementing agency	Nauru Utilities Corporation (NUC)
(iv) Implementation unit	Renewable Energy Section of NUC, five staff proposed

XI. COMMUNICATIONS STRATEGY

91. The Stakeholder Communications Strategy that is attached to the Report and Recommendations of the President provides a mechanism whereby NUC, and other relevant government agency staff, PSC, community members, and other stakeholders can exchange their views, ideas and suggestions with regard to project implementation, including monitoring. A fully inclusive participatory process has been shown to engender wider community support, and better relations with stakeholders and community members. The Strategy details the need for continued consultations with landowning groups during the implementation phase. A fully inclusive participatory process has been shown to engender wider support from landowners, and engender better relations. It is recommended that additional consultations be undertaken to strengthen due diligence and project awareness among landowners.

92. The Stakeholder Communications Strategy will ensure compliance with Nauru law, ADB's SPS and Access to Information Policy, NUC's policies, and with local customs. The Stakeholder Communications Strategy activities will provide inputs for the preparation of compliance documents, monitoring and progress reports for circulation to the Project Steering Committee, Executing Agency (Ministry of Finance) and ADB. The strategy will be checked, verified and fully updated by NUC in the beginning of project implementation. The process of updating the Stakeholder Communications Strategy will be the responsibility of NUC and the PSC.

XII. MONITORING AND EVALUATION

93. Implementation of the recommendations in this report, NUC's obligations to the landowners within the law, and compliance to ADB safeguard policies will be monitored by NUC's Renewable Energy Manager, with the support of the PSC Social and Gender Specialist. If there are any significant issues or if any unanticipated impacts are identified, the Social and Gender Specialist, with support from NUC, will advise on safeguard compliance issues and prepare a corrective action plan to address such issues. Such planning document should be approved and disclosed before proceeding for the implementation of the specific project components.

XIII. CONCLUSION AND CORRECTIVE ACTIONS

94. The project will not require land acquisition or the physical displacement of people and structures. There will also be no economic displacement. There are no indigenous people or ethnic minorities considered as distinct and/or vulnerable as defined in ADB's Safeguard Policy Statement (2009) on the island.

95. NUC has entered into government lease agreements with the customary landowners of the land proposed for the project. The lease agreements commenced in July 2017, with payments of rent according to rental rates set by the government. The agreements appear to be satisfactory, in terms of content, however, further actions are required to gain consent from additional landowners to meet the minimum requirements of the Lands Act (lots 249 and 265), as well as bank account details in order to complete rental payments.

96. The numbers of landowners, 779 in total, complicate the process of gaining consent and tracking rental payments. The process of inheritance of land contributes to this difficulty, as the continued division of interest in land increases the number of landowners, and the size of shares become smaller.

97. **Corrective actions.** The following corrective actions are recommended to be completed by NUC:

- (i) Gather additional consent and signatures, particularly for lots 249 and 265 to meet the minimum number required. This should be done in a manner of transparency and full disclosure.
- (ii) Conduct an audit on the payments made to date and those that are outstanding, and arrange for payment of unpaid rental fees wherever possible or set up a separate interest earning bank account (such as an escrow or special account) for unpaid rental fees, to ensure the funds can be paid to the landowners in the future.
- (iii) Develop a system and set of procedures to track, and have access to evidence of, rental payments, given the large number of landowners with support from PSC during project implementation.

98. The corrective actions, except for item (iii), should be completed prior to project effectiveness with NUC providing evidence to ADB that these activities have been conducted. A third party review may be undertaken by ADB regarding the land lease and related documents.

ANNEX 1 LEASE AGREEMENTS

(Available upon request)

ANNEX 2 CONSULTATION RECORD

(Available upon request)

ANNEX 3 LAND ORDER 2014

(Available upon request)

ANNEX 4 PROOF OF LEASE PAYMENTS

(Available upon request)