

## Commercial Law > Energy Expertise > The Answer is Blowing in the Wind – is it?

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With oil at record prices, and increasing, and a growing global distaste for traditional forms of energy generation which produce carbon dioxide, the search for renewable energy which really works, is on. Globally, and more recently in New Zealand, one solutions is to harness the wind.

We have recently advised a number of land owners in successfully negotiating long-term arrangements with power companies, in one case with competing power companies bidding for access to and use of the same land.

What is clear is that if a wind farm does prove viable, then the revenue to the land owner, and associated increase in the value of the land, can be substantial.

What is also clear is that there is considerable risk, work, time and uncertainty between granting a power company or prospector a licence to investigate the viability of a wind farm on your land and the time when a fully commissioned wind farm is generating revenue. Land owners should be careful in who they contract with and in what they agree to. A number of the current forms of agreement in use in the market have the potential to lock land owners in for many years, sometimes indefinitely.

Some of the issues that land owners should take account of are:

- Does the operator have sufficient experience and capital to see a wind farm development through to commissioning? One speculator tried to lock land owners into an exclusive long-term licence in order to shut more substantial and genuine operators out.
- Who is going to buy the power produced by the wind farm and on what terms, i.e. does the operator have the necessary relationships and ability to sell the power produced by the wind farm?
- How is the agreement with the land owner and power operator structured and what rights of access to, and use of land, will the operator have? You and your advisors need to “future proof” the agreement and your rights under it as it will potentially last for generations.
- What revenue will the operator pay and when? Are there guaranteed minimum payments and do they meet the market? Will the land owner obtain the benefits of any carbon credits or “green tickets” available to the operator? Is there a regular right to review the pricing? Operators should pay for access to and use of land, not just a royalty.
- How is the relationship between multi-owners governed and maximised?



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- What are the operator's rights and responsibilities to the land owner in respect of access to and use of the land and for damage to the land and livestock?
- What are the land owners' rights and obligations with respect to their own land and the development site of the operator?
- What happens if the agreement is terminated by the operator in terms of notice period and reinstating the property? Land owners may have raised finance on the back of the wind farm revenue and need time to refinance.
- Will you have access to the wind data produced by the operator in relation to the site?

We are well placed to assist land owners in considering, negotiating, structuring and documenting wind farm arrangements.

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Knight Coldcutt is an Associate Member of the  
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