

Wind farm investigation licence

With the development of wind farms in New Zealand, it is increasingly common for farmers and rural landowners (Landowners) to be approached by wind farm developers (Developers) to enter into negotiations concerning the possibility of a wind farm on their property (Property)

There are a number of stages in this process, with the first being the Developer seeking the right to investigate the feasibility of a wind farm on the Landowner's Property. This typically culminates in the Landowner entering into a wind farm investigation license (**Licence**).

While there is no doubt that a wind farm can represent a significant opportunity for the Landowner in terms of passive income and adding value to the Property, care needs to be taken even with the initial License documentation in relation to the level of commitment going forward. It should also be noted that the form of the License can vary considerably between different Developers. The purpose of this article is to summarise key terms that the Landowner should consider, together with some of the commercial aspects.

What is a wind farm investigation License?

Typically, the License grants the Developer an exclusive right to enter upon the Land and investigate the feasibility of a wind farm on the Property. This usually involves locating wind monitoring equipment on the Property to allow the Developers to collect data and determine the feasibility of a wind farm on the Property.

Term

The term of license is usually two years, granting an exclusive right during that term. The Landowner is locked in during that time without a right of termination. It may be appropriate for the Landowner to have the right to terminate in certain circumstances such as a material breach by the Developer.

License fee

The license fee paid by Developers can vary and is negotiable. The range is considerable, depending on the size of the land and opportunity for the Developer. Typically, the fee can range from a few thousand dollars to as high as \$50,000. If the wind farm proceeds then there will be significant ongoing royalty payments.

Farming operations

The License should contain obligations on the Developer to minimise the impact on farming operations and to provide for compensation if farming operations are disrupted causing loss. In addition, there should be an obligation to reinstate the Property at the end of the term of the License.

Typically, reinstatement might include removal of the Developer's infrastructure and reinstating any damaged pasture or fences.

Location of wind monitoring equipment

Ideally, the wind monitoring equipment's location should be subject to agreement between the parties. The degree of Developer discretion in this regard varies from Licence to Licence and is a point that needs to be checked carefully.

Option

Typically, the License will refer to the next agreement being an option on the part of the Developer to take an easement over the Property to construct a wind farm and operate it on the Property for up to 50 years. The degree of commitment to enter into and negotiate this

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option varies from Licence to Licence, and the Landowner needs to take care not to commit to entering into a document that the Landowner has not seen or does not enable reasonable scope or negotiation. Ideally, from the Landowner's point of view, it should be a general good faith obligation allowing the Landowner to avoid the option agreement if he or she is not happy with the terms of the option agreement. The option should have a finite term.

Reporting

It is also worthwhile considering whether the Licence should include quarterly or six-monthly reporting on the wind feasibility (with data sharing with the Landowner) and progress of the development activities. Even if the development does not proceed (which it may not for a variety of reasons) it is useful for the Landowner to be aware whether a wind farm is feasible on the Property, or not.

Other issues to consider

Other issues the Landowner may wish to consider in the general commercial sense are the wind farm's likely impact on:

- visual and amenity value of the Property;
- noise and impact on staff and stock; and
- ongoing disruption to farming operations through the installation and ongoing maintenance of the wind turbines.

Legal advice and cost

It will be important to obtain legal advice from a practitioner who understands Licences. Typically, a Licence will allow for the Landowner to obtain legal advice and the Developer to pay those costs up to an agreed limit.

While the Licence is a preliminary document, it should not be treated lightly for the reasons noted above.

It will be important to get proper legal and accounting advice in relation to the form of the License and also in relation to understanding pros and cons of the wind farm on the land.

Want to know more?

If you have any questions about wind farm licences, please contact David Goodman or Robert Huse from our specialist [Agri Business Team](#).