

**If an investor decides to change the capacity of wind turbines related to planning permissions - does that also mean that the investor is bound by the provisions of planning permission documentation, which specify the power of a wind turbine?**



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## Installing a Larger Turbine?

**W**ind farms' planning permission documentation establishing the conditions of land development often stipulates the specific capacity of wind turbines to be used in the development.

This leads to the question as to whether or not an investor may increase or decrease the power of such turbines without needing to apply for an amendment of the conditions of planning permission. In other words, is the wind turbine capacity specified in the planning permission documentation binding for the investor?

According to Article 59 of the Spatial Planning and Land Development Act as of the 27th of March 2003, planning permission concerns the establishment of land development conditions and refers to land management and development.

Accordingly, it should specify the location of an investment and the intensity of land exploitation, rather than defining the technical parameters of the investment itself.

Any stipulation in the planning permission documentation concerning the precise capacity of wind turbines is not legally binding and is incapable of producing legal effects. Thus, if an investor increases or decreases the power of wind turbines, the initial planning permission remains valid and it is unnecessary to apply for its amendment. This view has been approved in case law. For instance, the Regional Administrative Court (RAC) in Warsaw, in its ruling of 19th January 2012 (file no. II OSK 2075/10), held that the issuance of a planning permission constitutes an initial step in the investment process and, consequently, its provisions should not concern the technical specifications of the investment but rather shall determine, taking into account land management, whether a particular investment may be undertaken in a given area. According to the RAC, the technical conditions of an investment are to be deter-

mined in the building permit, which is required at a later stage in the investment process.

While the provisions of planning permission documentation laying down the technical parameters of wind turbines do not produce legal effects, it must be stressed that other provisions of the planning permission must be complied with in the event that the investor decides to change the capacity of wind turbines.

Moreover, in such cases, the investor is bound by the requirements of the decision governing the investment's environmental conditions. However, provided that the above-mentioned conditions are fulfilled, the investor is not required to apply for an amendment of the planning permission documentation in case of changing the capacity of wind turbines.

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