

Decision No. A 88 /99

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of an objection pursuant to section 23(3) of the Public Works Act 1981

**BETWEEN** **CADE HUBERT DAROUX and**  
**CECILY KAY DAROUX**

(MIS 13/98)

**AND** **TIMOTHY FOX FOWLER**

(MIS 12/98)

**AND** **JOHN VICTOR IMPERATRICE and**  
**PATRICK JOHN HANNAH**

(MIS 10/98)

**AND** **BETTY CROUDIS and STUART**  
**ALEXANDER COMBER**

(MIS 21/98)

**AND** **BETTY CROUDIS, COLIN WILLIAM**  
**CROUDIS and STUART ALEXANDER**  
**COMBER**

(MIS 22/98)

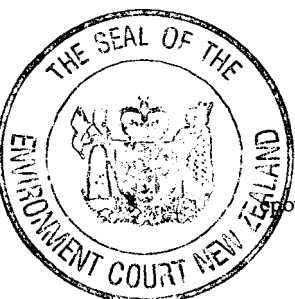
Objectors

**AND** **THE MINISTER OF LANDS**

Respondent

**AND** **COUNTIES POWER LIMITED**

A Section 274 person



To : Minister of Lands  
 And to : The objectors  
 And to : Counties Power Limited

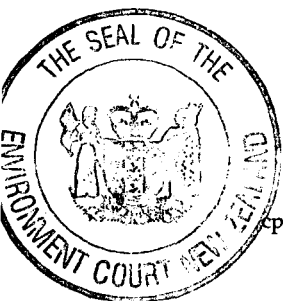
## REPORT AND FINDINGS OF THE ENVIRONMENT COURT

### **BASIS OF PROCEEDINGS**

1. Under section 23 of the Public Works Act 1981 ("the PWA") the four objectors have objected to a notice of intention to take an easement against the titles to the applicants' properties served on them by the Minister of Lands. The notices were dated 10 June 1998.
2. The notices were issued following an application to the Minister by Counties Power Limited ("Counties Power") in December 1996, pursuant to section 186 of the Resource Management Act ("the RMA"). This application requested that the Minister issue a notice taking an easement over the title to each objector's land for the purpose of allowing a 110 kilovolt electricity line and associated poles to run through it.
3. The Minister served the notices pursuant to his power to do so under section 23(1)(c) of the PWA. These proceedings have now been brought by the objectors who object to the Minister's notice under section 23(3) of the PWA. This report is made pursuant to section 24(7) of the PWA.

### **BACKGROUND**

4. Counties Power is a company engaged in the supply of electricity in the Counties' area south of Auckland. Relevant to these proceedings is the supply of electricity to the town of Pukekohe.
5. Counties Power commenced operations on 17 May 1993. The company was formed as a result of the Energy Companies Act 1992 and is the successor to the Franklin Electric Power Board, which provided electrical services in the district from the 1920s. Whereas the Franklin Electric Power Board engaged in both the retail sale of

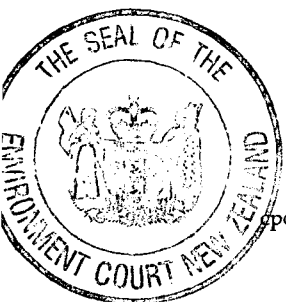


electricity and the construction and maintenance of lines and equipment for the supply of electricity, Counties Power has now disposed of the retail side of the business.

6. All of the shares in Counties Power are held in Trust for the beneficial owners, who are the customers drawing electricity through the company's network. The trustees are elected by the beneficiaries.
7. These proceedings result from the need for the town of Pukekohe to have a secure power supply. The option chosen was to upgrade power lines that supply the town from 33 kilovolts to 110 kilovolts. The existing 33 kilovolt lines transverse a number of properties. Counties Power have negotiated easements over some of those properties. Over a number of the others, although Counties Power has not yet been able to negotiate easements, it has negotiated permission to obtain access to the lines for the upgrading work. The objectors in these actions have not allowed such access.
8. Counties Power is a network utility operator and, is a requiring authority under the RMA. In that capacity, it has asked the Minister of Lands ("the Minister") to acquire an interest in the objectors' lands, namely an easement for the conveyance of electricity, on behalf of Counties Power pursuant to the Minister's powers under the PWA. The Minister has agreed to the taking of the easement and has issued notices of intention to take land under the PWA.
9. The objectors have lodged objections with this Court against the compulsory taking as they are entitled to do under section 23(3) of the PWA.

#### **THE ENVIRONMENT COURT'S JURISDICTION**

10. The Court's jurisdiction with regard to these objections is derived from section 24 of the PWA and in particular from section 24(7). It states that:



- “(7) *The Planning Tribunal (now the Environment Court) shall-*
- (a) *Ascertain the objectives of the Minister or local authority, as the case may require:*
  - (b) *Inquire into the adequacy of the consideration given to alternative sites, routes, or other methods of achieving those objectives:*
  - (c) *In its discretion, send the matter back to the Minister or local authority for further consideration in the right of any directions by the Tribunal:*
  - (d) *Decide whether, in its opinion, it would be fair, sound, and reasonably necessary for achieving the objectives of the Minister or local authority, as the case may require, for the land of the objector to be taken:*
  - (e) *Prepare a written report on the objection and on the Tribunal’s findings:*
  - (f) *Submit its report and findings to the Minister or local authority, as the case may require.”*

11. Having inquired into the objections and intended takings and having concluded its hearing for that purpose, the Environment Court has to ascertain the objectives of the Minister which are of course in reality the objectives of Counties Power; inquire into the adequacy of the consideration given to alternative sites, routes, or other methods of achieving those objectives; and decide whether, in its opinion, it would be fair, sound and reasonably necessary for achieving the objectives of the Minister for the easement to be taken.<sup>1</sup>

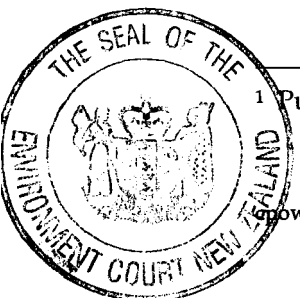
## COUNTIES POWER’S LEGISLATIVE STATUS

12. Counties Power is an electricity distributor as defined by section 2 of the Electricity Act 1992. It is also an electricity operator as defined by the same section, but agreed to sell its retailing operations to Contact Energy on 31 March 1999 under the Electricity Reform Act 1998. Section 2 of the Electricity Act 1992 states:

*“Electricity distributor” means a person who supplies line function services to any other person or persons:*

*“Electricity operator” means -*

<sup>1</sup> Public Works Act 1981, section 24(7)(a), (b) and (d).



- (a) ..
- (b) *Any body or person that, immediately before the 1st day of April 1993, was the holder of a licence issued under section 20 of the Electricity Act 1968 and in force immediately before that date; . . . ”*

13. Section 166(c) of the RMA states:

*“ **“Network utility operator”** means a person who -*

- (c) *Is an electricity operator or electricity distributor as defined in section 2 of the Electricity Act 1992 for the purpose of line function services as defined in that section. ”*

14. The definition of “line function services” within the Electricity Act 1992 is:

- “(a) The provision and maintenance of works for the conveyance of electricity;*
- (b) The operation of such works, including the control of voltage and assumption of responsibility for losses of electricity.”*

15. Counties Power undertake “line function services.”

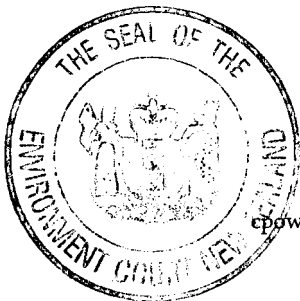
16. Counties Power are therefore a “Network Utility Operator” for the purposes of section 166 of the RMA.

17. By a gazette notice dated 14 December 1993, the Minister for the Environment approved Counties Power Limited as a requiring authority for its network operation of the supply of line function services. Counties Power is therefore a “requiring authority” for the purposes of section 167 of the RMA.

18. Pursuant to section 186 of the Resource Management Act 1991:

*“A network utility operator that is a requiring authority in respect of a project or work may apply to the Minister of Lands to have the land required for the project or work acquired or taken under Part II of the Public Works Act 1981 as if the project or work were a Government work within the meaning of that Act; and, if the Minister of Lands agrees, the land may be so acquired or taken. ”*

19. As Counties Power is both a network utility operator and a requiring authority under the RMA it can apply to the Minister of Lands to exercise his powers under the PWA pursuant to section 186.

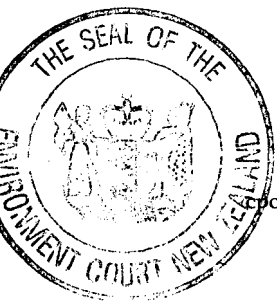


## HEARING

20. Pursuant to section 24(3) of the PWA, the Environment Court has inquired into the intended taking and the objections, and for that purpose it conducted a public hearing at Auckland on the 24, 25, 26 February 1999, 1 and 2 March 1999, 12 and 13 April 1999, 7 and 20 May 1999. The members of the Court who conducted that hearing were Environment Judge RG Whiting (presiding), Environment Commissioner JR Dart and Environment Commissioner F Easdale. At the hearing the Minister was represented by Ms B Arthur; Counties Power, which sought audience under section 274 of the RMA, was represented by Mr A McKenzie, Mr A Hazelton and Ms M Bromley; the objectors, Mr TF Fowler and CH and CK Daroux, were represented by Ms DR Bates QC; and the remaining objectors were represented by Mr RA Houston QC.
21. At the completion of the first 5 days of hearing on 2 March 1999 the proceedings were adjourned part-heard to 12 April 1999. When the Court resumed on 12 April 1999 counsel advised the Court that in the intervening period considerable negotiations had been undertaken between the parties and it appeared that they were close to settlement. They requested further time and most of the allocated hearing time for 12 and 13 April was taken up with the parties being involved in negotiations. Those negotiations resulted in a resolution of all matters apart from the duration of the easements. Consent memoranda were filed with the Court on 15 April 1999 and the consent memoranda are attached hereto and marked A, B, C and D, respectively.
22. Following the filing of those memoranda, the matters were adjourned until the 7 May for a hearing on the one issue remaining, namely, the duration of the easements. The hearing was uncompleted on that day and was adjourned to 20 May. At the hearing on 7 May and 20 May, respectively, Mr Houston QC acted for all of the objectors.

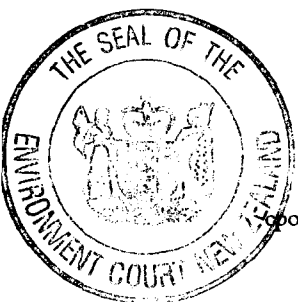
## CONSENT MEMORANDA

23. When the consent memoranda were presented to the Court, we had already heard a considerable amount of evidence. Consequently, the Court was in a position to be able to consider the consent memoranda



in an informed way. As a result, we could see no reason to object to, or question, their detailed provisions.

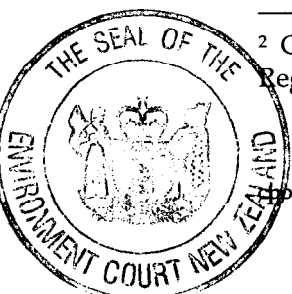
24. In the circumstances, we do not consider it necessary to discuss the evidence in detail. In our view, a brief synopsis will suffice. From the evidence, we find that the following was established:
- Counties Power takes the supply of electricity from the national grid operated by Transpower. Transpower delivers its electricity to Counties Power via two substations located at Bombay and Glenbrook, respectively. These are the only two sources of electricity which are conveniently available to Counties Power.
  - From the Bombay and Glenbrook substations the power is distributed around the Counties Power network via 33 kilovolt lines. The 33 kilovolt lines are terminated at substations and from these substations power is delivered via a local network of lines at 11 kilovolts.
  - Pukekohe is supplied by two 33 kilovolt lines, “the north line” and “the south line”, which come directly from the Transpower substation at Bombay. They were originally constructed in 1956.. The objectors’ lands lie along this route.
  - The purpose of having two lines is to ensure security of supply. In the event that one line is damaged, or is out of action for the purposes of routine maintenance, then the other line should be capable of taking the full load required to be delivered to Pukekohe. Also, having two lines reduces the risk that the entire supply will be interrupted by a simple accident or incident. In this way, security of supply can be assured.
  - There has been an ever-increasing demand for the supply of electricity to the Pukekohe area commensurate with the area’s growth. This increased demand has put considerable strain on the existing 33 kilovolt lines. The risk to security of supply to the Pukekohe area is unacceptable if it continues to be supplied at 33 kilovolts.



- Counties Power conducted a number of investigations over several years to consider the options available to improve the supply to Pukekohe. It reached a decision in 1995 that the most suitable solution to this problem was to upgrade the north and south lines to 110 kilovolts.
- It then commenced a programme of consultation with landowners over whose land the north and south lines ran. Unfortunately, that consultation commenced on a view by Counties Power as to its legal rights which was subsequently held to be in error. Counties Power had received legal advice from its previous lawyers which indicated that it was able to exercise a right of entry to the objecting landowners' properties under section 23 of the Electricity Act 1992. Section 23 allows an electricity company access to existing works for the purpose of inspecting, maintaining or operating those works. It is not necessary for the purpose of this decision to set out section 23 of the Electricity Act in detail.
- In reliance on that advice, Counties Power proceeded to obtain the agreement of those landowners with whom it had been able to reach agreement and, for the majority of landowners' properties, this was not an issue. However, Counties Power, in furtherance of its understanding that consent was not strictly necessary, also proceeded with the work on the land of those landowners who did not agree.
- Some confrontation followed which ultimately resulted in injunctive proceedings in the Pukekohe District Court <sup>2</sup>. That Court found that upgrading the lines to 110 kilovolts could not be classified as "*inspecting, maintaining, or operating the works*" and, accordingly, Counties Power could not obtain the benefit of section 23 of the Electricity Act 1992 for the purpose of performing those works,
- We were left in no doubt that commencing construction of the line over the objectors' properties without their permission caused a great deal of animosity between the parties. On the one hand, Counties Power had been advised that they had statutory authority

---

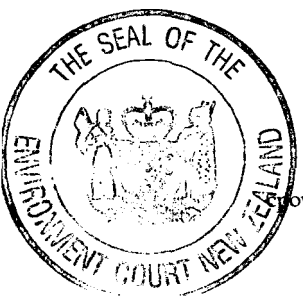
<sup>2</sup> Counties Power Limited v Betty Croudin & Ors District Court NP182/96 Pukekohe Registry, 29 August 1996.





to do this; on the other hand, the objectors saw it as an infringement of their rights.

- Following the case in the District Court, Counties Power were faced with the situation of having to ensure a secure supply to Pukekohe, but were not able to take advantage of the alternative it had selected of upgrading the north and south lines. Further negotiations were, not surprisingly, unsuccessful. Accordingly, Counties Power requested that the Minister of Lands proceed to acquire land, or rather an interest in land, belonging to the objectors under the PWA.
  - On 17 December 1996, Counties Power applied to the Minister of Lands seeking appropriate easements against the properties of each of the objectors. Further negotiations in consideration of alternatives followed.
  - Over a year later, on 23 December 1997, the Minister of Lands issued notices of desire to acquire easements over the properties. There followed further negotiations by the Minister and Counties Power. A settlement was reached with one of the objectors, a Mr Donovan.
  - On 10 June 1998, the Minister issued notices of intention to take an easement under section 23 of the PWA. Subsequently, objections were lodged pursuant to section 23(3) of the PWA. Negotiations (including formal mediation) continued. A settlement was reached with another of the original objectors, a Mr Kearney.
25. The settlements now reached by the present parties and set out in the consent memoranda filed is, in our view, consistent with the evidence we heard. We congratulate the parties on resolving a large number of issues, some of them complex because of their effect on one or more of the parties. The settlement seemed, to us, to be a natural evolution of events as the evidence unfolded. A synthesis of the issues was achieved by the evidence-in-chief, cross-examination and re-examination. This synthesis brought the parties from an apparent arms-length position to one of accord in all matters but one.



## DURATION OF EASEMENT

### The Issue

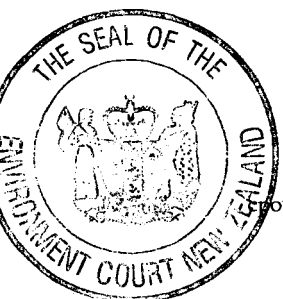
26. The sole issue to be determined by us by way of recommendation is the duration of the easement. The objectors' original contention was that the easements should have a finite life of 50 years, and should come to an end at that time, whether or not the lines are still in use. Counties Power's contention was and still is that no duration for the easements should be specified. The easements are limited as to the type of line, and the capacity of the line. Thus, they will come to an end when a line coming within the terms of the easement ceases to be used for the purpose of supply to Pukekohe. That may be earlier, or later, than 50 years from now. No arbitrary limit should be imposed.

### The Legal Test to be applied

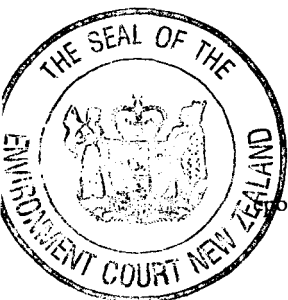
27. The starting point for this Court, in considering the options, is the Minister's notices: they give notice of intention to acquire an easement, without any specified duration. Our task in respect of the duration of the easement, is as set out in section 24(7)(d) of the PWA. "**The Land**" is the land referred to in the notices, i.e., the easement, of unspecified duration. Accordingly, we must consider whether it would be fair, sound and reasonably necessary for achieving the objectives of the Minister for the easements to be unspecified as to duration.

### The Evidence

28. On that issue, we heard evidence from two expert witnesses for Counties Power and two expert witnesses for the objectors. The two who gave evidence for Counties Power were Mr M Hoskins, the planning engineer for Counties Power, and Mr AD Jenkins, a consultant specialising in energy issues, and currently holding a contract to administer the Electricity Network Association. For the objectors, evidence was given by Mr JH Vernon, a consulting electrical engineer, and Mr DR Smyth, a registered valuer. We were able to assess the evidence of these witnesses in the light of the evidence we had heard from the many witnesses who had given evidence previously.



29. Mr Hoskin's concern as a planning engineer for Counties Power, was that a finite term of 50 years for the easement would be inadequate for the likely physical life of the lines. He referred us to various distribution scenarios to cope with increased demand, such as the construction of a third line, the construction of further zone substations and the possibility of local generation. In his view, those different scenarios could extend, indefinitely, the need for the existing sub-transmission system as allowed under the easement.
30. Mr Jenkins also gave evidence on behalf of Counties Power. He has had a long involvement with the electricity industry in New Zealand. He told us that much of New Zealand's distribution infrastructure was built in the 1950s and 1960s using technologies and materials selected for durability. This period of intensive line construction has, in his view, created a need for a renewed cycle of reinvestment, as aging equipment fails or is retired, or as load growth places higher failure risks on lines. As an example of the pressures for such reinvestment, he referred us to the failure of supply to Auckland's CBD in the early part of last year.
31. He was concerned that imposing a fixed approval period on line renewal and expansion programmes at the end of this first major asset life cycle would mean that a similar cycle would be repeated. If the easement was for a finite period of 40 or 50 years, pressure for line renewal will again emerge in 40 or 50 years' time. This would have the inevitable result, he said, of equipment being installed with a comparable expected economic life. Perpetuating such a cycle of standardised lives would not, in his view, be in the best interests of the environment or the economy. He made a parallel with the emerging pressures for renewal of other key infrastructure assets such as water supply, roads and sewerage. He opined that the approval processes are likely to be overwhelmed as a raft of approval renewal applications come in, and simultaneous reinvestment pressures will place stresses on funding and on developers.
32. Mr Jenkins also referred to technological changes which, in his opinion, would easily prolong the life of the lines well beyond 50 years. He said:



*“The last 50 years of power line investment have been characterised by fairly standard technology: while the quality of insulators, transformers and switch gear has improved, essentially, lines on poles built to standard specifications have continued to do much the same job. (emphasis in original)*

*It would be presumptuous to assume that the same core technologies will dominate the lines business in another 40 to 50 years, or even in another 20 years. Just as mainframe computer technologies have been supplanted by PCs, I believe that it is likely we will witness the emergence of a range of technologies that could well have the effect of greatly reducing the pressures to replace lines as load growth continues.*

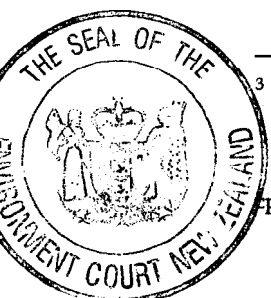
*For example, new demand-side technologies such as solar energy measures, heat pumps, etc, are already available to shift load away from peak times, meaning that the span of years before a new line’s loading reaches to peak capacity levels is likely to become extended. Similarly, new centrifugal storage and local small-scale peaking generation technologies appear to be becoming viable.*

*With this increasingly varied and dynamic suite of technologies it would seem to make sound economic and environmental sense to avoid the rigidities created by finite approval periods, and to rely increasingly on market-driven investment decisions to decide how long lines should exist for .<sup>3</sup>*

33. Mr Jenkins further opined that it will not contribute to sound electricity investment decisions to have uncertainties about the future configuration of the transmission/distribution system created by finite easements. Further, he said that, if a precedent of applying finite approvals is established, investors will face the added risk that what starts as a 50-year approved period for one line may become a 30-year period for another line and so forth. Such a level of increased uncertainty would not make any positive contribution to the electricity industry, an industry where the electricity lines, like sewers, roads and water pipes, make an essential contribution to the nation’s economy and to the quality of life of New Zealanders.
34. For the objectors, evidence was given on the question of the duration of the easement by Mr JH Vernon, an experienced electrical engineer. He worked for the State Hydro-Electric Department for 5 years and for the Wellington Municipal Electricity Department for 34 years, including being its general manager for over 17 years before he retired in December 1989. He has been engaged as a consulting engineer since then by various government and other bodies. Mr Vernon referred to the legislative changes in recent times resulting in the privatisation of

---

<sup>3</sup> Allan Jenkins’ paragraphs 4.1-4.4.



the electrical industry. He told us that in his view the electricity reforms have resulted in:

*Asset creation: The power supply company will have an asset that can be sold and a power line placed in an easement (and), with the added security that brings, is an enhanced asset that will be worth more to the company.*

*Income production: The line plays a pivotal role in producing an income stream for the power supply company. The certainty that this easement brings is invaluable. This has been taken for granted in the past.*

*Term of easement: The longer the term of the easement the more valuable it must be for the company and the worse it is for the landowner. The converse also applies.*

*Contribution: The landowner's co-operation is needed to achieve each of the above. Yet the landowner's neighbours can rejoice that the line is "not in their backyard". The landowner therefore finds that he has contributed substantially to the prosperity of the power company and should expect to be compensated accordingly."<sup>4</sup>*

35. Mr Vernon then criticised the option taken by Counties Power of upgrading the existing line along its present route. He said:

*"It bisects some properties, intrudes into a number of views, limits use of land, and is too close and too prominent in some locations. Such a route, if being chosen today, would not be countenanced."*

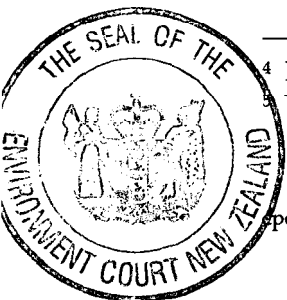
36. He then referred to other options available and then discussed the financial considerations arising out of Counties Power obtaining an easement over the objectors' land. He stressed the value of the 110 kilovolt lines to the company and their financial importance by way of an asset and the return of income that will accrue to the company arising from that asset. He then said:-

*"In engineering terms the components of a power line system will wear out and/or degrade over time and will eventually be unserviceable. There will generally be failures and breakages in a line which will require maintenance from time to time but at some point one or other of the components generally used in the line will require replacement. By replacing all the components as they wear out the engineering life of the line can be extended indefinitely. We have seen that the north line and south line were installed in the 1950s and that major replacement programs were undertaken around 1986 and in the early 1990s."<sup>5</sup>*

37. Mr Vernon then referred to the difficulty of predicting what will happen to the Pukekohe area over the next 25 to 50 years and what the electricity supply system would be like at the end of that time. He

---

<sup>4</sup> Paragraph 8A.  
Vernon, paragraph 58.



opined that Counties Power wanted to make provision for future growth in this area, but that growth will force changes in the land use, which, in turn, can be expected to result in intensified land use and substantial residential development in the areas affected by the lines well within 50 years. He then concluded:

*“The electricity industry has had to accept the concept of allocating all costs correctly. This has caused the industry to examine in minute detail how their various costs originate, and it has now been discovered that easements represent real value to them, and to the landowners. The value that is placed on them, and the term of their lives is a matter for negotiation in each case. I submit that it would be reasonable, in the present case, for the tenure and terms of the easement to be reviewed after 50 years as I have suggested with the future arrangements and their value being determined by negotiation or by an appropriate Court.”<sup>6</sup>*

38. During the course of the cross-examination of him by Mr McKenzie, what Mr Vernon meant by the words “. . . **for tenure in terms of the easement to be reviewed after 50 years** . . .” became clear. He was not advocating a finite period of time for the easement following which the lines would have to be taken down if successful negotiations for the renewal of the easement were not completed, but rather, a review of the various other conditions of the easement at the end of a period such as 50 years.
39. Mr Vernon’s evidence, as clarified during the cross-examination of him by Mr McKenzie, was not in accord with Mr Houston’s contention that the easement should be of a finite term, namely, 50 years. As a consequence, Mr Houston was forced to change his stance slightly by suggesting a “holding over” clause. Thus, the objectors’ position was modified with the following clauses suggested in writing:

**“Term**

*The term of the transmission easement shall be fifty (50) years.*

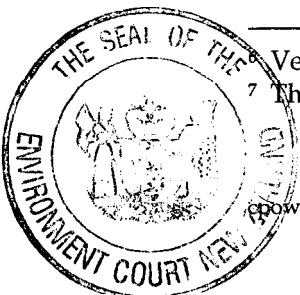
**Holding over**

*Notwithstanding the term above mentioned the grantee shall have the right to continue to use the easement land and transmission easement in the terms of the transfer which shall remain in full force and effect after the expiry of the term until or unless terminated after the period of fifty (50) years<sup>7</sup> by not less than ten (10) years notice in writing by the owner of the land.”*

---

Vernon, paragraph 62.

The words underlined were added verbally by Mr Houston.

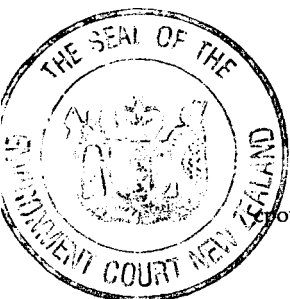


40. Mr DR Smyth, an experienced valuer and a member of the Land Valuation Tribunal, also gave evidence in support of the objectors. Like Mr Vernon, he referred to the legislative changes which brought about the privatisation of the electrical industry. He then discussed the benefits that would accrue to Counties Power as a consequence of a registered easement being obtained over the objectors' land. He opined that, broadly speaking, the benefits that go with the easement can be summarized as, firstly, the right to construct, maintain and operate a transmission line of the size required to service Pukekohe and to profit therefrom; and, secondly, the opportunity to sell, assign, sublet or otherwise dispose of the property right represented by the easement and to gain accordingly. He stressed that the essential difference between the now exhausted statutory authority that Counties Power had for the now redundant 33 kilovolt power lines and the proposed registered easement is that the former was vested in a community-based authority for the community's benefit and the latter is an essential property right for the establishment of a private commercial enterprise. He concluded that, in his view, an appropriate term was between 40 and 50 years as that length of time will give the owners of the power line ample time to recover costs and reap financial reward and to make long-term commercial decisions. As for the owners of the land along the power line route, there would then be the opportunity for each generation to deal with the circumstances of its time. He, too, modified his stance slightly in his supplementary evidence to accord with the evidence of Mr Vernon, when he said:

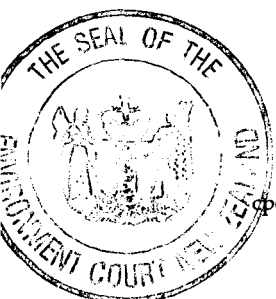
*"It is not expected following from what Mr Vernon said in evidence on 7 May 1999 that the power lines must be pulled down and removed in 2049. What the landowners seek by coming to Court is a mechanism which allows them, or more correctly future generations of landowners, to take part in the decision-making process in 2049 as to the future use of their land."*

## **COUNSELS' SUBMISSIONS**

41 Mr McKenzie, on behalf of Counties Power, addressed the three requirements in section 24(7)(d) of the Act, namely, which of the two options would be fair, sound and reasonably necessary for achieving the objectives of Counties Power.



42. With regard to fairness, he submitted that the 50-year option would impose an arbitrary cut-off with no rational basis and which would have serious implications for Counties Power and the consumers of Pukekohe. He submitted that it would not be fair to impose a limit based upon an assumption as to the likely life of the line, which would be unnecessary to protect the position of one party if the assumption is correct, but severely burdensome on the other party if the assumption is incorrect. A consideration of fairness, he contended, strongly favours the unspecified option rather than one which seeks to impose an arbitrary time limit based on what are, at this stage, uncertain future events.
43. With regard to soundness, he submitted that the test on this element is of the technical soundness of the proposed duration of the easement, which, in turn, involves a consideration of what is “sound” from a technical point of view, namely, whether the term of the easement will provide a sound technical solution to the problem which the easement is intended to address. He submitted that it would not be sound to impose an arbitrary time limit which may mean that a transmission line, which is still being operated in an effective way and which still forms part of a technically sound distribution and supply system, would be rendered inoperable. That would be neither technically nor commercially sound.
44. Mr McKenzie further submitted that the implications of a decision to impose an arbitrary time limit on the easements will extend far beyond this particular case and, if a time limit is imposed for these lines, then it may well become a precedent for other cases. Against that background, time-limited easements, whether by negotiations, or by compulsory acquisition, could be expected to become the industry norm. This would severely damage the ability to make sensible technical and investment decisions in areas which extend far beyond the distribution system itself.
45. He then addressed the third issue, namely, what duration of easement is “reasonably necessary for achieving the objectives of the Minister”. He submitted that, in the light of the settlement of all other matters, the



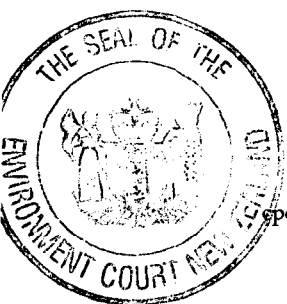


proper approach is upon the basis that achieving those objectives involves:

- (a) *The granting of easements for the lines;*
- (b) *The lines are to conform with the descriptions in the easements; that is, single or double circuit lines of a 110 kilovolts;*
- (c) *The rights under the easements are to construct the lines and to inspect, maintain, repair and operate the lines.*

46. Since the purpose of the lines is to secure adequate supplies of electricity to Pukekohe, he submitted that it is clearly reasonably necessary that the easement should last as long as the lines are achieving that purpose. He emphasised that, on their terms, and, even if their duration was unspecified, the easements are not available to Counties Power in perpetuity to make whatever arrangements it chooses to supply Pukekohe. They apply only to the lines described, and are limited, in practice, to the useful life of those lines. He submitted that, in considering what is reasonably necessary from the perspectives of both the landowners and the company, the appropriate balance to be achieved is: the landowners' position is protected in that they have certainty that the only lines permitted are those described and when those lines cease to be the appropriate means of supply, the rights under the easement will expire; and the company's position is protected to the extent that it can make its planning decisions in the knowledge that it will have the use of the lines so long as they remain useful. He acknowledged that technology may, within the next 50 years, change so radically that the lines will be redundant. If that happens, then, because of their restriction to lines of a particular voltage and capacity, the easements will become redundant, and will be able to be extinguished. He added the cautionary note that it would be most imprudent to predict that such a technological change rendering the lines redundant will happen, or as to its likely timing.

47. Mr McKenzie also submitted that it is appropriate to compare what Parliament considered as appropriate for the protection of existing lines when the statutory right of access for lines in general was removed. He referred to section 23 of the Electricity Act 1992 which preserves a right of access to inspect, maintain and operate existing lines, which are, essentially, the same rights as those conferred by the easements



settled between the parties. Parliament did not see fit to impose an arbitrary time limit on the exercise of those rights.

48. Mr Houston cited *Telecom Auckland Limited v Auckland City Council*<sup>7</sup> and the Court of Appeal's approval of the principle that a statute should not be read to make it do more than is necessary to achieve its purpose. Blanchard J, in delivering the decision of the Court of Appeal cited with approval the English Court of Appeal Judges when they said in *Newcastle-under-Lyme Corporation v Wolstanton Ltd.*<sup>8</sup>

*"In these circumstances and bearing in mind the general rule that no greater right or interest rights or interests should be treated as conferred on the undertakers than are necessary for the fulfilment of the object of the statute ..."*<sup>9</sup>

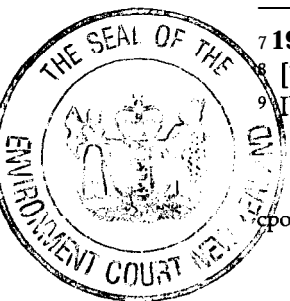
49. He submitted that the Court should not recommend more than is reasonably necessary to fulfill the rights of the utility, an electricity operator, to construct its 110 kilovolt transmission lines and to inspect, maintain, repair and operate those 110 kilovolt lines. He referred to the contents of the Minister's notices and submitted that the Court cannot go outside the notices or expand or enlarge their intent.
50. Mr Houston stressed that Counties Power Limited is a private utility company whose aim is to make a commercial profit. He addressed section 24 of the Act as to what would be fair, sound and reasonably necessary for achieving the objectives of Counties Power. He submitted that it is difficult for Counties Power to assert that an easement in perpetuity is fair, sound and reasonably necessary to enable them to do what they have always claimed is but an "upgrade" of their lines. He also referred to the fact that approximately one quarter of the existing landowners over whose properties the lines traverse, have not yet granted easements.
51. He reminded us that the route runs through some of the most valuable and productive land in the country and where closer settlement is already taking place. He pointed out that the line runs close to large

---

<sup>7</sup> 1999 1 NZLR 426 CA.

<sup>8</sup> [1947] Ch. 92.

<sup>9</sup> Ibid p. 435.



residential dwellings and he cited the following head note from *Dean v Attorney-General*:

*“The power of the Crown to acquire land compulsorily arose from the ancient right of eminent domain and was a draconian, but necessary, power in a complex and collective society. To the extent that the Crown’s powers were a direct interference with individual property rights, those powers must be strictly construed and must be exercised in good faith and even handedly.”*

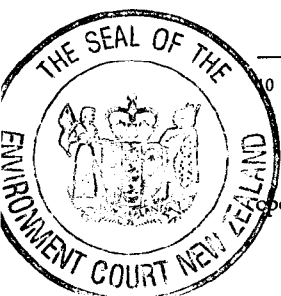
52. He referred to Hammond J’s judgment at page 191 line 27 where the learned Judge said:

*“... including . . . due regard to the interest of the person being dispossessed ... and . . . fairness. ”*

53. Mr Houston submitted that it is reasonable that each generation of citizens should have an opportunity to deal with the circumstances of the day. He contended that we are dealing with competing requirements, wishes and points of view of landowners and an electrical utility company and the needs of the public generally for electricity supply. The landowners are suggesting that, in approximately two generations’ time, that is, 50 years from now, the easements be re-negotiated. Fairness, he says demands that the, then, landowners have their say.

## DETERMINATION

54. In recent times, particularly since 1987, the electricity industry has been progressively restructured. The initial reforms restructured the electricity generation sector of the industry. On 1 April 1987, the Electricity Corporation of New Zealand Limited was established as a state-owned enterprise. It acquired the assets of the electricity division of the Ministry of Energy. Hitherto, the Minister of Energy had held responsibility for the production, transmission and supply of electricity. Regulatory barriers to entry into the electricity industry were removed. On 1 April 1988, Transpower Limited was established as a subsidiary of the Electricity Corporation of New Zealand Limited. On 1 July 1994, Transpower Limited was split from the Electricity Corporation of New Zealand Limited and established as an independent state-owned



1997 2 NZLR 180.

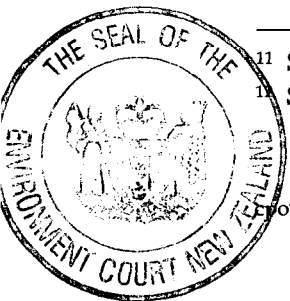
power-minoflands.doc (sp)

enterprise. This split was intended to ensure open and competitive access for all potential suppliers to the transmission line.

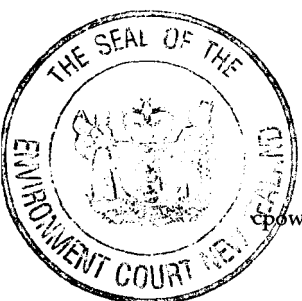
55. In addition to the reforms in the generation sector, there has been restructuring of the electricity supply sector of the industry. The Energy Companies Act 1992 provided for the corporatisation of electricity supply authorities. This has been complemented by the Electricity Act 1992 which deals with the regulation of the electricity sector. Electricity supply companies are now able to compete for customers in each other's geographic areas.
56. The effect of the recent restructuring and progressive reform has been the privatisation of the electricity industry. Power companies have significant and increasing private ownership and the state-owned enterprises are now in a position where they can be sold to the private sector. A competitive or market-related return is expected on all assets employed. This is in sharp contrast to the concept of community benefit, which was part and parcel of the old electricity boards constituted under the Electric Power Boards Act 1925. Section 84 of that Act gave the boards wide powers to enter upon private land for the purposes of constructing, maintaining and repairing power lines. Those wide powers were not transferred to the new entities and, with regard to power lines, the statutory authorities were restricted to maintaining and operating those lines that were in place prior to, or at the time of, the passing of the 1992 Act <sup>11</sup>. It follows that Counties Power now requires registered easements and in common with other new power companies must rely much more on consultation and negotiation with landowners than they have had to in the past. If negotiation fails they may apply to the Minister of Lands to have the land required for the project or work acquired or taken under the Public Works Act 1981 as if the project or work was a government work within the meaning of that Act <sup>12</sup>. The effect of any proclamation taking the land would be to vest the land in the network utility operator instead of in the Crown. Accordingly, any easement would become an asset of the utility operator, in this case Counties Power, and, accordingly, could be assigned, sublet or otherwise disposed of by it.

---

<sup>11</sup> See Part III of the Electricity Act 1992 sections 22,-29.  
Section 186(1) of the Resource Management Act.



57. We are acutely conscious of the effect of the legislative changes which have brought about the privatisation of the electrical industry. We particularly note what Mr Vernon stressed namely, that the essential difference between the now exhausted statutory powers for the redundant 33 kilovolt line and the proposed easement is that the former was vested in a community based authority for the community benefit and the latter is a commercial property right. This significant difference is however only part of the picture. Electricity still remains and will continue to remain in the foreseeable future an important public utility. The shift to privatisation does not in any way diminish the importance of electricity as a commodity necessary for many facets of modern day living across the whole spectrum of human endeavour from domestic to industrial. No doubt it is for this reason that Parliament prescribed the right for a network utility operator to apply to the Minister of Lands to take land under Part II of the PWA. What is required is a proper and fair sense of balance between the two interests.
58. As we have said, the easement opted for by Counties Power is an easement with no duration stated but which would come to an end when a line coming within the terms of the easement, ceased to be used for the purpose of supplying electricity to Pukekohe. We find on the evidence that the life of the line could exceed 50 years. The effect of recommending the option of a finite term as first contended by the objectors would impose an arbitrary cut-off which could have serious implications. A further period of consultation and negotiation would be required and, in the event of this being unsuccessful, some form of compulsory acquisition would again have to be effected depending upon the law at the relevant time. Such a task is not insurmountable even taking in the worse scenario. But if power companies were to be faced with a constant raft of such incidents over a period of time we can see immense difficulties not just for the power companies, but more importantly, for the consumers of electricity. Continuity of electricity supply is not a luxury, it is a necessity. It takes little imagination to recognise the chaos that can be caused to all sectors of the community arising out of an inability to provide an adequate and continuous supply of electricity to a district. As an illustration of that chaos, we were referred in evidence to the consequences of the recent



loss of an adequate supply of electricity to the central business district of Auckland City.

59. The importance of continuance of supply was clearly recognised by Mr Vernon when he said, during the course of Mr McKenzie's cross-examination:

*"Yes, but I haven't heard anyone say that the line has to be pulled down after 40 years or 50 years. Certainly it has been suggested and I support the concept that the easement and the terms of it be reviewed but perhaps it may be necessary to protect the line itself . . . ."*<sup>13</sup>

60. Mr Vernon's evidence was reflected in the amended proposition, including a "holding over" clause, put to the Court by Mr Houston on behalf of the objectors. It is that amended proposition that now needs to be judged, against an unspecified duration limited to the type and capacity of the line.
61. The starting point is the principle enunciated in ***Telecom Auckland Ltd***: that a statute should not be read to make it do more than is necessary to achieve its purpose. The notices of intention to take say:

**"1. Take notice that the Minister of Lands proposes to take under the Public Works Act 1981 an easement over your land described in the schedule to this notice.**

**2. The easement is required for the transmission of electricity and to permit the upgrading of the existing Bombay to Pukekohe transmission lines to 110 kv.**

...

#### **REASONS FOR TAKING LAND**

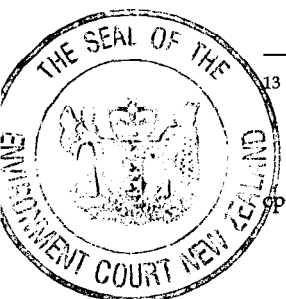
***The reasons why the Minister considers it essential to take an easement over your land are as follows:***

***The existing 33 kv lines are no longer sufficient to meet increasing demand for power and must be upgraded to conduct 110 kv. The easement is necessary because the statutory protection to the existing lines will not extend to an upgrading."***

62. Mr Houston urged us to take a narrow view of the wording of the notices. He submitted that an easement of unspecified duration was not reasonably necessary to achieve an "upgrade" of the lines. It would be artificial to put such a narrow construction on the wording of the

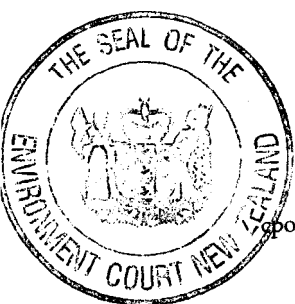
---

<sup>13</sup> Page 16 of transcript.



notices. The purpose of the lines is to secure adequate supplies of electricity to Pukekohe. It follows that once the lines have been upgraded then the lines require to be maintained in a condition that will ensure a continuous supply.

63. It is at least implicit in Mr Houston's submissions that the "holding over" clause will meet the concerns of continuity of supply by giving the power company 10 years (over and above the 50 years) in which to re-negotiate new terms or take alternative action. This brings us to a consideration of what would be fair, sound and reasonably necessary to achieve the objectives of the Minister.
64. The starting point must now be that the lines should not be removed until such time as they are no longer required for the conveyance of electricity within the terms of the contract. That was the clear import of Mr Jenkins' evidence. We found his evidence most helpful and he impressed us with both his expertise and his objectivity. It was also as far as Mr Vernon was prepared to go; he could not envisage the lines having to be arbitrarily removed. What emerged from Mr Vernon's evidence was that, not the "duration", but the "terms" of the easement be reviewed at a fixed period.
65. No suggested wording of an appropriate review clause was put forward. Such a clause would have to provide for a complex disputes resolution procedure in the event of the parties being unable to agree. However, as we understand Mr Houston's submission, the "holding over" clause is in lieu of the review clause and may well extend the duration of the easement.
66. We have already stressed what we consider to be a need for continuity of supply. With regard to the question of fairness, we accept Mr McKenzie's submission to the effect that it would be severely burdensome on the power company to be required to re-negotiate an easement in the event of the lines being needed after the initial period of 50 years. Such a burden would be increased if easements limited in duration became the accepted norm. While the lines and their easements are valuable assets, the commercial benefit to the company should not distract us from the need to ensure continuity of supply to the consumers. We emphasise that the commercial benefit to the



power company and the corresponding detriment to the objectors, are matters to be considered more in the award of compensation and therefore a matter that is subject to a different jurisdiction.

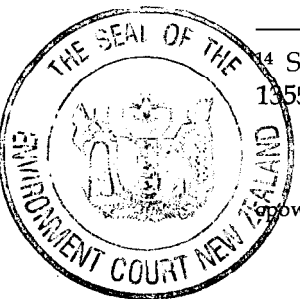
67. Further, we consider it would not be technically sound, when planning for an electricity supply system which must provide for continuity of supply for an undefined period, to impose arbitrary time restrictions on the optimum structure of the network. Such restrictions would severely damage the ability of a power company to make sensible technical decisions.
68. In making those observations, we stress that the easements, on their terms, and even if their duration was unspecified, are not available to Counties Power in perpetuity. They apply only to the lines described and are limited in practice to the useful life of those lines, which may be more, or may be less, than the sought for 50 or 60 years. To that extent the landowners are protected. The company's position is also protected. We therefore find that, in our opinion, it would be fair, sound and reasonably necessary for achieving the objectives of Counties Power for the easement to contain an unspecified term but to apply only to the lines described and limited to the useful life of those lines.

## COSTS

69. The Court can award costs either in favour of or against the objector or the other parties<sup>14</sup>. We recognise that it was Counties Power, through the statutory procedure of applying to the Minister to give notice of intention to take the land, which initiated the issue between the parties. The objectors lodged their objections to protect their interests in their land from a procedure which they opposed. We consider that it would be inappropriate to order them to pay costs. Some of their grounds of objection were resolved by consent. Their objection relating to the life of the easement was not made out, so it would be inappropriate for Counties Power to be ordered to pay the costs of the objectors. Accordingly, we consider that the costs of the proceedings should lie where they have fallen, and we make no order for payment of costs.

---

<sup>14</sup> See for example *Auckland City Council v Man O'War Station* High Court Auckland CP 1355/83; 19 August 1997, Anderson J).





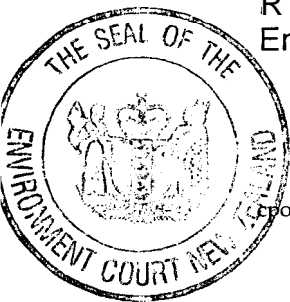
## THE ENVIRONMENT COURT REPORTS

- (a) That it has inquired into the objection by the objectors to the intention of the Minister to take an easement against the titles to the objectors' properties and into the proposed taking of those easements, and for that purpose it conducted a hearing at Auckland on 24, 25 and 26 February 1999; 1 and 2 March 1999; 12 and 13 April; and 7 and 20 May 1999.
- (b) That it has ascertained that the objectives of the Minister at the request of Counties Power is to upgrade the existing lines from 33 kilovolts to 110 kilovolts so as to secure an adequate supply of electricity to Pukekohe.
- (c) That, having considered the adequacy of the consideration given to alternative routes and methods of achieving that objective, it has found that the memoranda of consent filed by the parties are appropriate in the circumstances and that the easements should be for an unspecified term; and
- (d) That, to give effect to the memoranda of consent would, in its opinion, be fair, sound and reasonably necessary for achieving the objectives of the Minister and that it would be fair, sound and reasonably necessary for achieving those objectives for the easements to be for an unspecified term.

DATED at AUCKLAND this *1<sup>st</sup>* day of *September* 1999.

*R. Gordon Whiting*

R Gordon Whiting  
Environment Judge



**IN THE MATTER** of an objection pursuant to  
Section 24 of the Public  
Works Act 1981

**BETWEEN C H & C K DAROUX**

**APPLICANTS**

**AND THE MINISTER OF LANDS**

**RESPONDENT**

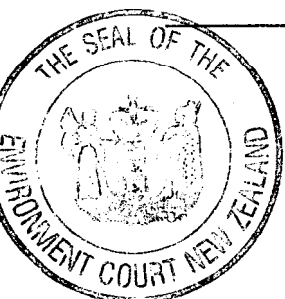
**AND COUNTIES POWER LIMITED**

**(A section 274 Party)**

---

**MEMORANDUM BY CONSENT**

---



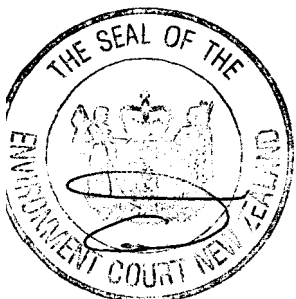
---

**RUDD WATTS & STONE**  
**SOLICITORS**  
**WELLINGTON**  
P O BOX 2793  
TELEPHONE 04-498 5000  
FACSIMILE 04-498 5001  
ATTENTION: A D MacKenzie  
155944:mel

## MEMORANDUM BY CONSENT

### May it please the Court:

1. Since this matter was adjourned in February, Counties Power Limited and the Applicants, C H and C K Daroux, have continued negotiations to attempt to resolve the issues between them. As a result of those negotiations Counties Power Limited and Mr and Mrs Daroux have reached an agreement whereby Counties Power Limited no longer requires the Minister of Lands to exercise his power to compulsorily acquire an easement over Mr and Mrs Daroux's land.
2. The parties have agreed that:
  - (a) Mr and Mrs Daroux will grant to Counties Power Limited an easement across their land to accommodate two 110kV lines, either on a double circuit or on two parallel single circuits, at the option of Counties Power Limited.
  - (b) The route of the lines will be generally along the line pegged by the parties on the 31<sup>st</sup> of March 1999 and described in the Beca Carter Hollings & Ferner Ltd report dated 1 April 1999 entitled "Alternative 110kV Line Route ('Gully' Route)". The route will enter from Mrs Croudiss' property where the peg has been inserted in the boundary hedge between the properties, then run into the gully in the Daroux property which is to the South of the route that the South Line now takes, then follow that gully to the peg inserted in the Goldings' property near the boundary of the Daroux property.
  - (c) The easement will be in the form of the document filed with this Memorandum.



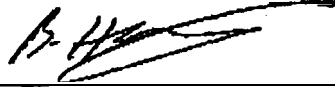
- (d) No compensation will be payable by Counties Power Limited to Mr and Mrs Daroux for the easement, to the extent that the width of the easement does not exceed 25 metres. If Counties Power Limited require a greater width, compensation for that extra width only will be payable and will be as agreed between the parties or fixed by arbitration. The compensation for such extra width only shall be assessed on the basis that the easement is for a new line.
- (e) Counties Power Limited will immediately commission the survey and engineering work that is required prior to preparation of the easements and will use reasonable endeavours to have the necessary survey and engineering work completed before Friday 14 May 1999.
- (f) Counties Power Limited will remove the structures of the present South Line and North Line within a reasonable time after commissioning the new lines created pursuant to this memorandum.
3. The duration of the easement has not been able to be agreed between Mr and Mrs Daroux and Counties Power Limited and the parties wish the duration of the easement to be determined in these proceedings. The parties have agreed to abide by a finding of this Court as to the duration of the easement.
4. The parties request that the Court report to the Minister of Lands in terms reflecting the agreement that has been reached, and further request that the Court's report include a finding on the duration of the easement to be granted.
5. No order as to costs is sought by any party, as costs have been agreed.

DATED this 14<sup>th</sup> day of April 1999.

  
 Denese Bates  
 Counsel for the Applicants, CH & CK Daroux



Document Ref: 155944

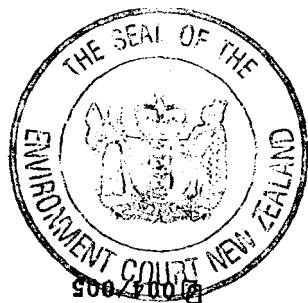


---

**Bronwyn Arthur**  
**Counsel for the Respondent**

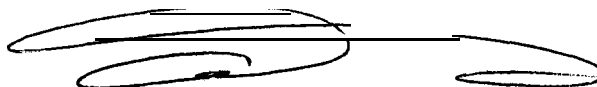
---

**ADMacKenzie**  
**Counsel for Counties Power Limited**



---

Bronwyn Arthur  
Counsel for the Respondent



---

A D MacKenzie  
Counsel for Counties Power Limited



“Easement or Interest or Easement to be created”

an easement in gross [ *for a term to be fixed by the court* ] from the \_\_\_\_\_ day of \_\_\_\_\_ 1999 (hereinafter called “the commencement date”) subject to the following covenants condition and restrictions for the full free right liberty and licence to construct, maintain, repair, renew, replace and operate a transmission line over that part of the land marked \_\_\_\_\_ on Deposited Plan \_\_\_\_\_ (hereinafter called “the servient tenement”) and to include and be on terms conditions covenants and restrictions following:

1. The Transferee, together with its employees, agents and contractors may enter upon the land with such vehicles, machinery equipment and materials as are necessary or convenient for the Transferee to gain access and to exercise its rights and interests granted under this memorandum in respect of the transmission line provided that the Transferee and its employees, agents and contractors when entering upon the land and when exercising any other rights and powers in respect of the transmission line shall do so in a manner which causes the least inconvenience to the Transferor’s use and enjoyment of the land and will follow all reasonable requests and directions of the Transferor as to the means of access to the transmission line and the Transferee shall at all times follow and comply with the attached Code of Practice as if the Transferee was the network operator referred to therein, where that code is not inconsistent with the provisions hereof and except where this transfer conflicts with the terms of the Code. In all instances of conflict the terms of this transfer shall prevail.

2. In this document:

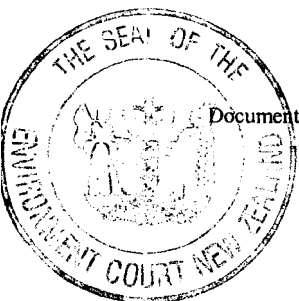
“Transmission line” means an electric line or lines for the transmission of up to but not more than 110 kilovolts of electricity and up to but not more than a capacity of 100 megavolt amperes, per line, being either

(a) two single circuit lines each comprising 3 electricity conductors and an earth wire; or

(b) one double circuit line comprising 6 electricity conductors and an earth wire,

situated above the ground and supported by poles (including associated foundations, stays and supports for the poles) and includes insulators, fastenings, fittings, cross arms, and equipment necessary or convenient for the safe and efficient construction, support operation and protection of or safety of the electric line or any part of it or otherwise necessary or convenient for the transmission of electricity. The transmission line shall not include or use at any point pylons or multi-legged, multi-crossbraced towers.

“Transferor” and “Transferee” shall where the context permits mean and include any assignee, executor, administrator, successor, receiver thereof or subsequent holder

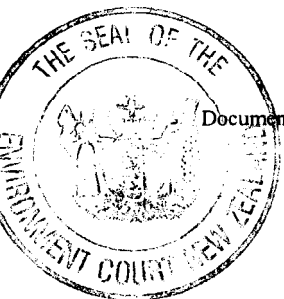


of that party's interest herein respectively.

Where the context permits, the plural shall include the singular and vice versa and words importing one gender shall include the other gender and the neutral gender and vice versa.

The safety clearance zone comprises the airspace within an envelope which is generally depicted as that above lines A, B, C, D on the attached plan with any variations to the geometry required to reflect similar clearances in respect of different structures. The trimming zone comprises the airspace between the safety clearance zone and lines E, F, G, H. The indicated measurements are in metres.

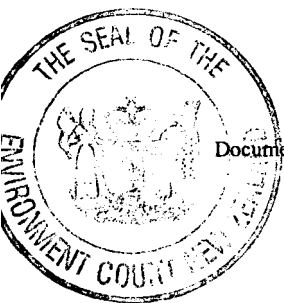
3. Subject to the Transferee's right to construct, maintain, repair, renew, replace and operate the transmission line the Transferee shall promptly restore any part of the land affected by the Transferee exercising any of its rights hereunder, as far as is reasonably practicable, to that existing before the Transferee exercised such rights.
4. The transmission line shall remain the property of the Transferee.
5. The Transferee will construct and operate the transmission line so that the clearance between the ground level of the land and the lowest part of the safety clearance zone immediately overhead is at least 4.5 metres and so that no part of the transmission line and related equipment that is live is less than 7.5 metres from the ground.
6.
  - (a) The Transferee shall at the cost of the Transferee keep trimmed all vegetation which infringes the safety clearance zone at times which are reasonably convenient to the Transferor and cause as little damage to the servient tenement as reasonably possible. When doing such trimming the Transferee shall be careful not to unduly damage the amenity and aesthetic values of the vegetation. The Transferor agrees and acknowledges that the Transferee may maintain a one metre wide trimming zone around the safety clearance zone. The Transferee shall consult the Transferor if any substantial trimming is to be done. The Transferor will not plant or permit to be planted any trees or other vegetation which are likely, over time, to grow into the safety clearance zone.
  - (b) The Transferor shall not construct or permit to be constructed any building or other structures any part of which intrudes into the safety clearance zone.
7.
  - (a) Subject to clause 7(b) hereof the Transferee in all circumstances in accordance with the provisions hereof at its own cost shall keep and maintain the transmission line and all structures it has or has control of on the servient tenement in a good secure and safe condition in compliance with all Acts, regulations, rules and requirements of any Government, Local Authority or other body having powers over or in respect of the transmission line and/or the servient tenement and shall promptly repair all failures, breakages or





damage caused to and/or by the transmission line. The Transferee shall, for the purposes of any rule of law imposing liability upon an owner or occupier of any property, be deemed to be the owner of the transmission line and the occupier of the easement in respect of the transmission line. The Transferee shall indemnify the Transferor against all risks, claims, costs, loss or damage brought against or charged to and/or incurred by reason of the application of any such rule of law otherwise than in accordance with this clause.

8. If from time to time the Transferor shall subdivide the land in the certificate of title for the servient tenement then the Transferor may give notice in writing to the Transferee to move the transmission line and this easement at the reasonable cost of the Transferor to a different position provided that such position is:
  - (a) reasonably feasible from an engineering aspect; and
  - (b) within the servient tenement and connects to the access or electricity easements which the Transferee has on neighbouring properties.
9. [The Transferor's liability to the Transferee for any damage to the Transmission Line or other property of an employee or agent of the Transferee on the Land or any breach of this memorandum due to the negligence of the Transferor or the Transferor's agents or employees is limited to \$10,000 for any one event or series of associated events.] *[This clause will be deleted if not in the Kearney transfer; or will be modified to equal the Kearney provision.]*
10. The transmission line shall be used for the transmission of electricity only.
11. The Transferee shall from time to time repair or pay the Transferor full compensation for any and all loss, injury and damage done to the servient tenement and/or the property or chattels of the Transferor arising from or due to the exercise from time to time by the Transferee of its rights hereunder on the servient tenement. The compensation payable shall be agreed between the parties hereto or failing such agreement determined by arbitration as herein provided.
12. The Transferee shall conduct its activity on the servient tenement in a safe and proper manner and shall ensure that its servants, agents and contractors are adequately trained and equipped to perform their tasks and otherwise enter and be on the servient tenement and shall at all times while on the servient tenement comply with the provisions of the Health and Safety in Employment Act 1992 and any statutory amendment or re-enactment thereof.
13. The Transferee acknowledges that the Transferor shall not be responsible for any loss or damage to the property of the Transferee or its servants, agents or invitees which may arise out of the exercise of the Transferee of its rights hereunder or the presence of the Transferee or any party authorised by the Transferee on the servient tenement and the Transferor shall not be responsible or liable for any chattels or people that the



Transferee places or permits to be on the servient tenement, or any loss or damage thereto. Nothing in this clause shall protect the Transferor from liability for any wilful act or default of the Transferor.

14. If any party thereto shall fail to do or pay his or her or their due proportion of any work to be done or moneys payable by him or her or them under these presents the other parties or any one of them may after written notice to the defaulting party requiring the defaulting party to remedy the default within a reasonable period of time do or pay the same and the defaulting party's proportion of the cost of such work or of such moneys as the case may be shall be recoverable by the other parties or any one of them by action in any Court of competent jurisdiction.
15. Any dispute between the parties hereto and/or their respective successors in title relating to the aforesaid easement shall be referred to arbitration by a sole arbitrator to be appointed by agreement, or, failing agreement, by the Chairman for the time being of the Arbitrators Institute pursuant to the provisions of the Arbitration Act 1996 or any Act passed in amendment thereof or substitution therefor.

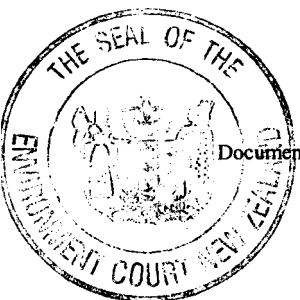
**SIGNED by COUNTIES POWER  
LIMITED** in the presence of:

Signature of Witness:

\_\_\_\_\_  
Witness Name

Occupation:

Address:



Document Ref: 156189:MEL



# CODE OF PRACTICE FOR ENTRY ONTO LAND

## SURVEY CONSTRUCTION MAINTENANCE

### 1.0 ENTRY ON TO LAND

Normally entry and re-entry on to the property should only be between the hours of 7.30 am to 7.00 pm unless prevented by farming operations or by the particular requirements of the occupier.

For maintenance or inspection visits five working days notice should be given on the intention of the Network Operator's employees or contractors to enter upon the land. Alternatively other notice periods may be agreed between the Network Operator and the land owner.

If entry on to the property is required on numerous occasions over a short period of time (for example two weeks) then notice should be given of the initial entry and the intention to re-enter within that specified period.

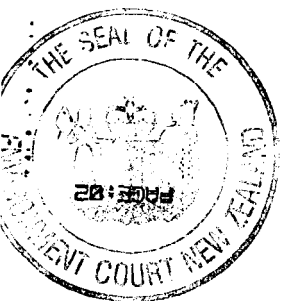
- 1.1 For construction work the Network Operator will give every land owner a minimum of 10 working days written notice of the initial intention to enter the land for construction or such other time period as may be agreed with the land owner. The notice of initial entry may specify a short period of time (for example two weeks) during which the property will be entered and re-entered. Notice for such later entries during that period of time do not require notice.
- 1.3 Notice of entry to the land owner will detail work programmes and the identity of any contractors or sub-contractors. So far as it is practicable, the work is to be carried out in accordance with the notified work programme and the owner shall be advised and kept informed of any changes in the programme.
- 1.4 Should entry be required for emergency maintenance work then notice will be given in accordance with the conditions contained in the easement agreement or the situation existing at the time.

### 2.0 IDENTIFICATION

- 2.1 Employees and agents of the Network Operator will carry evidence of their authority and identification. Vehicles used will carry identifiable logos.

If the land owner is not present at the time of a visit, then, if possible, courtesy or business cards shall be left ~~at the property~~ and time of the visit.

*attached to the front door  
of the main dwelling house  
on the property*



TO: +649353539701

14-APR-99 08:12 FROM: COUNTIES POWER LTD. +64 9 2385120

#### 4. SUPERVISION OF WORK

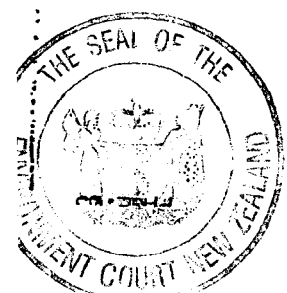
- 3.1 All work is to be under the control of an Engineer appointed by the Network Operator. The Engineer shall appoint sufficient suitably qualified representatives to supervise the execution of the works on his behalf and to maintain contact with the owners and occupiers along the route of the line.

#### 4. NETWORK OPERATOR'S WORKING PRACTICES

- 4.1 The Network Operator will operate and maintain all works in a safe manner and any machinery or plant kept temporarily on the landowner/occupier's land will be left in a safe condition.
- 4.2 The Network Operator may position such survey pegs or markers and dig or bore into the land and remove samples of it as may be required by the line design and construction subject to the requirements of clause 4.7.
- 4.3 The Network Operator will during the process of construction and maintenance of any new or existing lines, endeavour to minimise as far as is possible disturbance to stock and wildlife, and damage to crops, pasture, vegetation, land improvements, water supply and land, and to repair to an extent reasonably practicable any such damage or disturbance or compensate the landowner/occupier where such damage cannot be repaired.
- 4.4 The Network Operator will consult with the land owner regarding information on any notable features of the land such as Queen Elizabeth II Trust covenant, Maori burial site, archaeological sites, stands of native bush etc in order to avoid a conflict between the preservation of these areas and the construction of the line.
- 4.5 The Network Operator undertakes to ensure that no litter or rubbish will be left on the land.
- 4.6 The Network Operator will ensure that no unauthorised personnel, dogs or firearms are brought on to the land. The Network Operator will also ensure that all gates are left as found unless otherwise requested.
- 4.7 Trial investigatory bore holes, where necessary shall be opened only after consultation with the land owner. This method of carrying out borings and the timing of the work will be such as to cause the least practicable disturbance to the landowner/occupier.

#### 5.0 REINSTATEMENT OF LAND

- 5.1 The Network Operator is responsible for restoring all ground within the construction area to a condition equivalent as far as reasonably practicable to that existing before the works. All ~~other~~ loss, injury or damage caused to the owners land shall be compensated for by the Network Operator ~~as provided in the Easement Agreement.~~



relocated.

- 6.2 In the event of a water pipe being severed by the Network Operator or a contractor employed by the Network Operator, then the Network Operator will effect immediate repairs and notify the landowner/occupier.

#### 7.0 LAND DRAINS

- 7.1 All ditches, open drains or watercourses interfered with by the works shall be maintained in effective condition during construction and restored to as good a condition as before the commencement of the works when work is completed. Particular care is to be taken to ensure that the minimum amount of damage or disturbance to land drains is caused. The methods to be employed in repairing damage to the field drain systems shall be agreed between the landowner/occupier and the Network Operator.

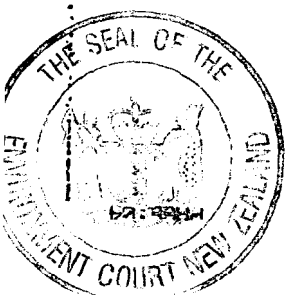
- 7.2 Where it can be established that land belonging to the land owner and outside the construction site has been affected as a result of interference with either natural or artificial drainage during the duration of the works, then compensation shall be paid or the damage rectified by the Network Operator.

#### 8.0 BLASTING

- 8.1 Where blasting is necessary, suitable material will be used to contain the debris. All pieces of blast debris on arable land in excess of 100mm diameter, will be removed before the blasting workmen leave the site.
- 8.2 Only certificated operators are to carry out blasting and must comply with the requirements of Regulations and Codes of Practice issued under the relevant legislation.
- 8.3 The Network Operator will consult with the owner with regard to the time of such blasting so as to reduce to a minimum any interference with the normal activities of the land owner.

#### 9.0 STRAYING STOCK

- 9.1 The Network Operator, after consultation with the landowner/occupier, shall take all necessary precautions to prevent the straying of livestock and will compensate the landowner/occupier of such livestock for all loss, damage or claims arising from the loss of any livestock and pay compensation for injury to or death of the livestock where such straying is clearly due to any act or omission on the part of the Network Operator. In



default of agreement, the compensation payable, if any, shall be determined by arbitration or mediation in the manner provided in the Easement agreement.

## 10. HAZARDS

~~10.1 By virtue of the Memorandum of Transfer (Grant of Easement) the Network Operator has the right to clear the area of the easement of any buildings, structures, fences, or vegetation, if such buildings, structures fences or vegetation, breach any statutory or regulatory requirements or standards, codes of practice or otherwise breach generally accepted engineering standards, as to minimum clearances from the line.~~

10.2 The Network Operator will consult with the owner with regard to the need for removal of buildings, structures, fences or vegetation which currently, or could in the future, breach any requirements or standards as to minimum clearances for line, or impede the Network Operator's access over the strip of land. ~~However, should the Network Operator agree to any such buildings, structures, fences, or vegetation remaining on the strip of land, they shall remain at the owners risk. In the event of breach of any removal subsequently becoming necessary, this shall be at the cost of the owner. Reasonable notice of the removal action will be given, except in an emergency.~~

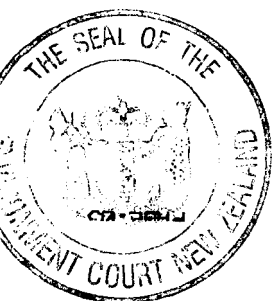
10.3 Hand clearing of vegetation may be undertaken on steep side slopes and on the banks of watercourses within the area of the strip of land. Clearing on the banks of watercourses will comply with the requirements of the Regional Council or other Authority to ensure that erosion problems are kept to a minimum.

10.4 Compensation for the loss of all trees, including shelter belt trees, less any timber retained by the owner, shall be payable by the Network Operator.

## 11.0 GATES

11.1 Steel framed gates, properly hung, <sup>may</sup> will be erected <sup>by the Network Operator</sup> in existing fences along the route of the easement where permanent access is necessary. <sup>^</sup> Gates on boundaries ~~will be secured as agreed between the land owner and the Network Operator.~~ <sup>will be left as found.</sup>

*This concession does not apply to boundary fences.*



**IN THE MATTER** of an objection pursuant to  
Section 24 of the Public  
Works Act 1981

**BETWEEN TIMOTHY FOX FOWLER**

**APPLICANT**

**AND THE MINISTER OF LANDS**

**RESPONDENT**

**AND COUNTIES POWER LIMITED**

**(A section 274 Party)**

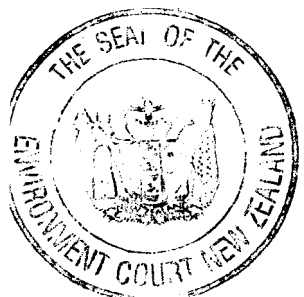
---

**MEMORANDUM BY CONSENT**

---

---

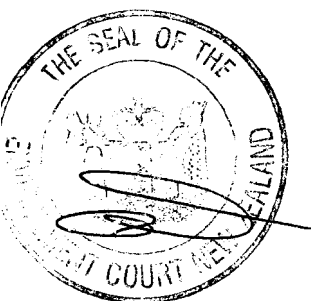
RUDD WATTS & STONE  
SOLICITORS  
WELLINGTON  
P O BOX 2793  
TELEPHONE 04-498 5000  
FACSIMILE 04-498 5001  
ATTENTION: A D MacKenzie  
155654:mel



## MEMORANDUM BY CONSENT

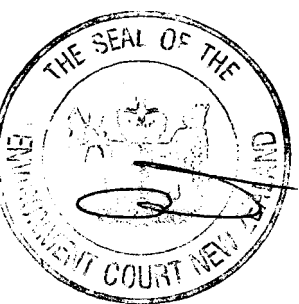
### May it please the Court:

1. Since this matter was adjourned in February, Counties Power Limited and the Applicant, Timothy Fox Fowler, have continued negotiations to attempt to resolve the issues between them. As a result of those negotiations Counties Power Limited and Mr Fowler have reached an agreement whereby Counties Power Limited no longer requires the Minister of Lands to exercise his power to compulsorily acquire an easement over Mr Fowler's land.
2. The parties have agreed that:
  - (a) Mr Fowler will grant to Counties Power Limited easements across his land to accommodate the North and South lines.
  - (b) The route of the South line will be as pegged on Mr Fowler's property and as shown on drawing number 970680 by Brian Foote dated April 1998, a copy of which is tiled with this Memorandum, except that the pole closest to the Western boundary may need to be moved to accommodate one of Mr Fowler's neighbours to the West, Mr Sutherland, and if so the exact location of that pole will be negotiated further between the parties.
  - (c) The route of the North line will be the same as the existing route. A new pole will be erected in approximately the position of the old pole within Mr Fowler's boundary on which the North line conductors are currently supported.
  - (d) The easements will be in the form of the single page document filed with this Memorandum appropriately amended to incorporate the terms of paragraphs (e) and (f) of this memorandum.





- (e) The height of the South line will be raised by the use of 17.5 metre poles of triangular configuration to achieve approximately 11.5 metres minimum ground clearance.
- (f) Counties Power Limited will be responsible for trimming trees and shelter belts near the line when such trimming is required pursuant to the terms of the easement.
- (g) Counties Power Limited will pay to Mr Fowler the sum of \$18,000 as compensation for the easements, which represents \$2,000 per pole for the 9 poles that are on and adjacent to Mr Fowler's property.
- (h) Counties Power Limited will pay to Mr Fowler the sum of \$44,000 for his costs in these proceedings.
- (i) The amounts payable for compensation and costs are GST exclusive. If payable, GST will be added to the compensation and costs payments upon the provision of appropriate GST invoices.
- (j) Payment of the agreed amounts for compensation and costs will be made by Friday 23 April 1999 provided the easements have been signed by all parties that are required to sign by that date. If the easements have not been signed by all necessary parties by that date, payment of the agreed amounts will be made immediately upon such signature of the easements.
- (k) Counties Power Limited will immediately commission the survey work that is required prior to preparation of the easements and will use reasonable endeavours to have the necessary survey work completed before Friday 23 April 1999.
- (l) No construction work will be done on the land until after payment of the agreed amount for compensation and costs.



- (m) Counties Power Limited will remove the structure of the present South Line and the remaining 33kV pole on the North Line upon commissioning the new lines created pursuant to this memorandum.
3. The duration of the easement has not been able to be agreed between Mr Fowler and Counties Power Limited and the parties require the term of the easement to be determined in these proceedings. The parties have agreed to abide by a finding of this Court as to the duration of the easement.
4. The parties request that the Court report to the Minister of Lands in terms reflecting the agreement that has been reached, and further request that the Court's report include a finding on the duration of the easement to be granted.
5. No order as to costs is sought by any party, as costs have been agreed.

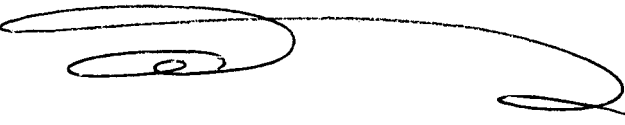
DATED this 14<sup>th</sup> day of April 1999.

---

Denese Bates  
Counsel for the Applicant, Timothy Fox Fowler

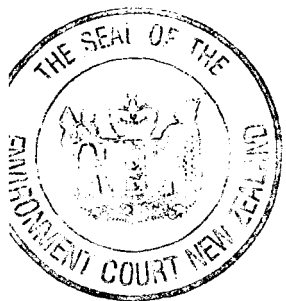
---

Bronwyn Arthur  
Counsel for the Respondent



---

A D MacKenzie  
Counsel for Counties Power Limited

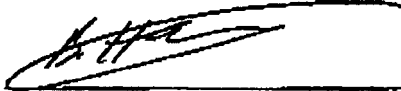


- (m) Counties Power Limited will remove the structure of the present South Line and the remaining 33kV pole on the North Line upon commissioning the new lines created pursuant to this memorandum.
3. The duration of the easement has not been able to be agreed between Mr Fowler and Counties Power Limited and the parties require the term of the easement to be determined in these proceedings. The parties have agreed to abide by a finding of this Court as to the duration of the easement.
4. The parties request that the Court report to the Minister of Lands in terms reflecting the agreement that has been reached, and further request that the Court's report include a finding on the duration of the easement to be granted.
5. No order as to costs is sought by any party, as costs have been agreed.

**DATED** this                      day of April 1999.

---

Denese Bates  
Counsel for the Applicant, Timothy Fox Fowler

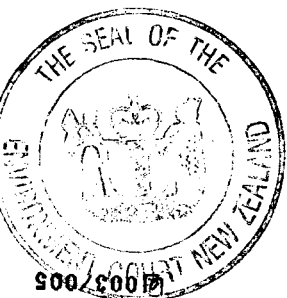


---

Bronwyn Arthur  
Counsel for the Respondent


---

A D MacKenzie  
Counsel for Counties Power Limited

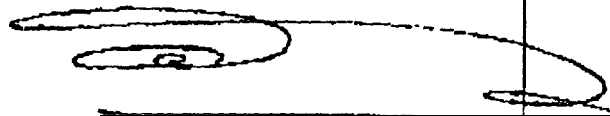


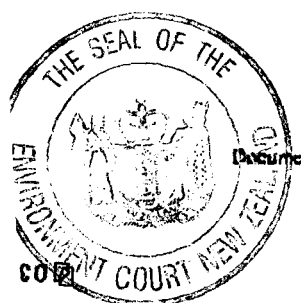
- (m) Counties Power Limited will remove the structure of the present South Line and the remaining 33kV pole on the North Line upon commissioning the new lines created pursuant to this memorandum.
- 3. The duration of the easement has not been able to be agreed between Mr Fowler and Counties Power Limited and the parties require the term of the easement to be determined in these proceedings. The parties have agreed to abide by a finding of this Court as to the duration of the easement.
- 4. The parties request that the Court report to the Minister of Lands in terms reflecting the agreement that has been reached, and further request that the Court's report include a finding on the duration of the easement to be granted.
- 5. No order as to costs is sought by any party, as costs have been agreed.

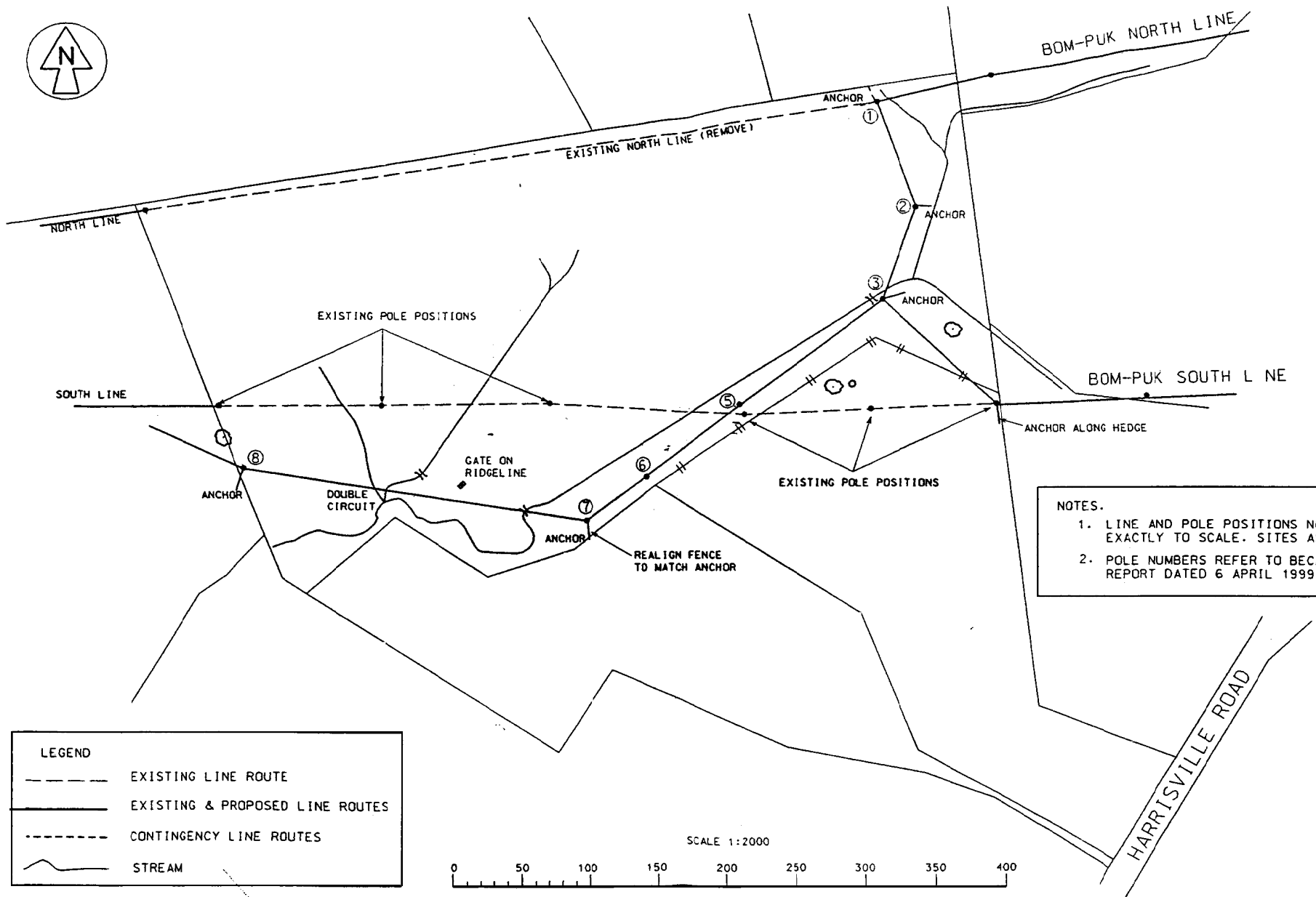
DATED this 14<sup>th</sup> day of April 1999.

  
 \_\_\_\_\_  
 Denise Bates  
 Counsel for the Applicant, Timothy Fox Fowler

\_\_\_\_\_  
 Bronwyn Arthur  
 Counsel for the Respondent

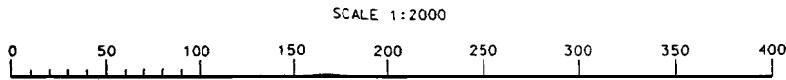
  
 \_\_\_\_\_  
 A D MacKenzie  
 Counsel for Counties Power Limited





NOTES.  
 1. LINE AND POLE POSITIONS NOT EXACTLY TO SCALE. SITES AS PEGGED  
 2. POLE NUMBERS REFER TO BECA CARTER REPORT DATED 6 APRIL 1999

LEGEND	
	EXISTING LINE ROUTE
	EXISTING & PROPOSED LINE ROUTES
	CONTINGENCY LINE ROUTES
	STREAM



AMENDMENT	By	Date	App	DRAWN	C FREEMAN	8/4/99
				CHECKED		
				RECOM'D		
				APPROVED		

**COUNTIES POWER**  
 LIMITED  
 Private Bag 4 PUKEKOHE

SUBTRANSMISSION  
 LINE DEVIATION (CROUDIS)  
 PLAN

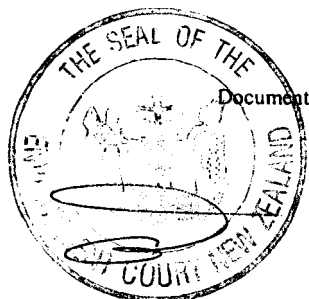
SCALE	FOLDER
1:2000	
A2/1407C	
ISSUE	

## MEMORANDUM OF TRANSFER

**TIMOTHY FOX FOWLER** (the “Grantor”) being the registered proprietor of an estate in fee simple of the land described in certificate of title 43D/506 Auckland Land Registry (the “Land”), for the consideration shown (the receipt of which sum is acknowledged) paid to the Grantor by Counties Power Limited

The Grantor **HEREBY TRANSFERS AND GRANTS TO THE GRANTEE**

1. The right to construct a Single Circuit Transmission Line over that part of the Land marked A on Deposited Plan 86017 and for that purpose the Grantee and its contractors may enter upon the Land with such vehicles, machinery, equipment and materials as is necessary or convenient for the Grantee to gain access to construct the Transmission Line provided that the Grantee and its contractors will cause the least inconvenience to the Grantor’s use and enjoyment of the Land as is reasonably practicable and will follow all reasonable requests and directions of the Grantor regarding such access.
2. The Grantee will promptly restore any part of the Land affected by the Grantee carrying out the construction work.
3. Following the construction of the Transmission Line the Grantee will have the same rights to enter upon the Land and to inspect, maintain, repair and operate the Transmission Line as it would have under the Electricity Act 1992 (the Act) as at the date hereof had the Transmission Line, once constructed, been an “existing works” as defined in the Act and the Transmission Line will be deemed to be an existing works as so defined.
4. The Transmission Line will remain the property of the Grantee.
5. In this memorandum of transfer a “Single Circuit Transmission Line” means an electric line for the transmission of up to 110 kilovolts of electricity and up to and no more than a capacity of 100 megavolt amperes under normal operating conditions, comprising 3 electricity conductors and an earth wire situated above the ground and supported by single poles (including associated foundations, stays and supports for the poles) and includes insulators, fastenings, fittings, cross arms, and equipment necessary or convenient for the safe and efficient construction, support, operation and protection of or safety of the electric line or any part of it.



Document Ref: 155656:MEL

Two handwritten signatures in black ink, one appearing to be "BAM" and the other "GEM".



**IN THE MATTER** of an objection pursuant to  
Section 24 of the Public  
Works Act 1981

**BETWEEN JOHN VICTOR IMPERATRICE  
and PATRICK JOHN HANNA**

**APPLICANTS**

**AND THE MINISTER OF LANDS**

**RESPONDENT**

**AND COUNTIES POWER LIMITED**

**(A section 274 Party)**

---

**MEMORANDUM BY CONSENT SEEKING ORDERS**

---

---

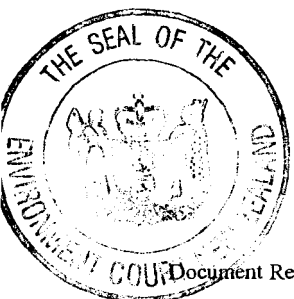
RUDD WATTS & STONE  
SOLICITORS  
WELLINGTON  
P O BOX 2793  
TELEPHONE 04-498 5000  
FACSIMILE 04-498 5001  
ATTENTION: A D MacKenzie  
155661:mel:v2



## MEMORANDUM BY CONSENT SEEKING ORDERS

### May it please the Court:

1. Since this matter was adjourned in February, Counties Power Limited and the Applicants, John Victor Imperatrice and Patrick John Hanna being the Trustees of the McMiken Trust (“the Trustees”), have continued negotiations to attempt to resolve the issues between them. As a result of those negotiations Counties Power Limited and the Trustees have reached an agreement whereby Counties Power Limited no longer requires the Minister of Lands to exercise his power to compulsorily acquire an easement over the Trustees’ land.
2. The parties have agreed that:
  - (a) The Trustees will grant to Counties Power Limited an easement across the Trust land to accommodate the South line.
  - (b) The route of the South line will be moved from its present position across the middle of Lot 1 of the McMiken Trust land and placed parallel to and close to the boundary between the McMiken Trust land and the land of Mr and Mrs Lawrie to the East, and parallel to and close to the boundary between the McMiken Trust land and the land of Mr and Mrs Rundle to the South and also parallel to and close to the boundary between the two Lots of the McMiken Trust land to the South, as shown on the sketch plan prepared by Bob Lack on 8 April 1999, a copy of which is filed with this Memorandum.
  - (c) The gum tree and the poplar tree shown on the plan will be removed if they are on the McMiken Trust land. If either one is not on the McMiken Trust land it will be cut back by Counties Power Limited as necessary to allow the line to be built and operated safely.

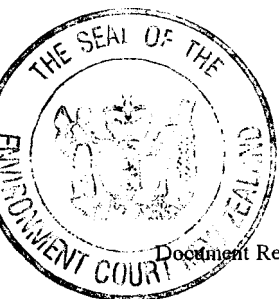


A handwritten signature, possibly "R. A. H.", written in black ink.

A handwritten signature, possibly "R. A. H.", written in black ink.

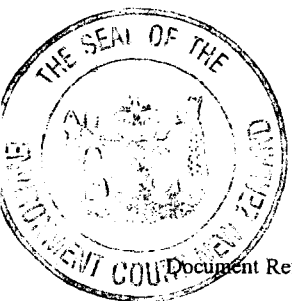


- (d) The poles on the South line will be as close as practicable to the boundaries, but shall not exceed 7.5 metres from the boundaries unless it is necessary to place the poles at a greater distance from the boundaries to comply with any requirements of the Franklin District Council, or to avoid the gum trees or the poplar trees if these cannot be removed.
- (e) The poles used will be the standard 14 metre poles used on the existing North and South lines.
- (f) The line configuration will be the standard triangular configuration except:
- (i) at the angles in the line where vertical configuration may be used ;  
and
  - (ii) in the case of the lines along the boundaries, a vertical configuration with the lines on one side only of the poles will be used where that would minimise the intrusion of the poles into the McMiken Trust property.
- (g) The line route at the South Western corner of the McMiken Trust land will be within the range of the two dashed lines shown on the plan filed with this Memorandum, either across the adjacent land belonging to Mr Singh more or less as at present, or along Harrisville Road to the South of the present line route. The exact route within this range will be determined by Counties Power Limited following negotiations with Mr Singh.
- (h) Stays will be erected at the two right angles. These will be either two stays per pole more or less continuing in the direction of the lines, or one stay per pole bisecting the exterior angle of the lines. Counties Power Limited will determine which stay configuration is required dependent upon engineering advice as to the stresses involved.



A handwritten signature in black ink, appearing to read 'R. A. H.'.


- (i) Depending on the angle at which the South line exits the McMiken Trust land in the South Western corner, a stay or stays may be erected close to the boundary of the McMiken Trust land. The placement of such stays will be negotiated with the Trustees so as to minimise the impact on the McMiken Trust land.
  - (j) The easement will be 15 metres wide, centred on the central wire, except that the easement will be wider where additional width is required to accommodate the stays.
  - (k) The easement will be in the form of the single page document filed with this Memorandum.
  - (l) Counties Power Limited will immediately commission the survey work that is required for the purposes of preparing the easement.
  - (m) The route of the North line will be the same as the existing route.
  - (n) Counties Power Limited will pay to the Trustees the sum of \$34,000 as compensation for the easement.
  - (o) Counties Power Limited will pay to the Trustees the sum of \$40,000 towards the Trustees' costs in these proceedings.
  - (p) The amounts payable for compensation and costs are GST exclusive. If payable, GST will be added to the compensation and costs payments upon the provision of appropriate GST invoices.
3. The duration of the easement has not been able to be agreed between the Trustees and Counties Power Limited and the parties require the term of the easement to be determined in these proceedings. The parties have agreed to abide by a finding of this Court as to the duration of the easement.



 R. A. H.

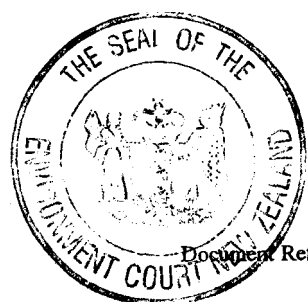
4. The parties request that the Court report to the Minister of Lands in terms reflecting the agreement that has been reached, and further request that the Court's report include a finding on the duration of the easements to be granted.
5. No order as to costs is sought by any party, as costs have been agreed.

DATED this 14<sup>th</sup> day of April 1999.

  
\_\_\_\_\_  
R A Houston  
Counsel for the Applicants

\_\_\_\_\_  
Bronwyn Arthur  
Counsel for the Respondent

  
\_\_\_\_\_  
A D MacKenzie  
Counsel for Counties Power Limited



4. The parties request that the Court report to the Minister of Lands in terms reflecting the agreement that has been reached, and further request that the Court's report include a finding on the duration of the easements to be granted.
5. No order as to costs is sought by any party, as costs have been agreed.

**DATED** this                      day of April 1999.

---

**R A Houston**  
Counsel for the Applicants

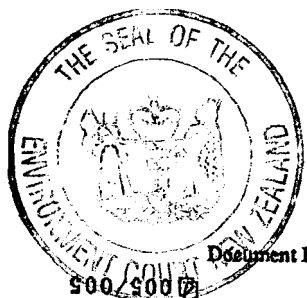


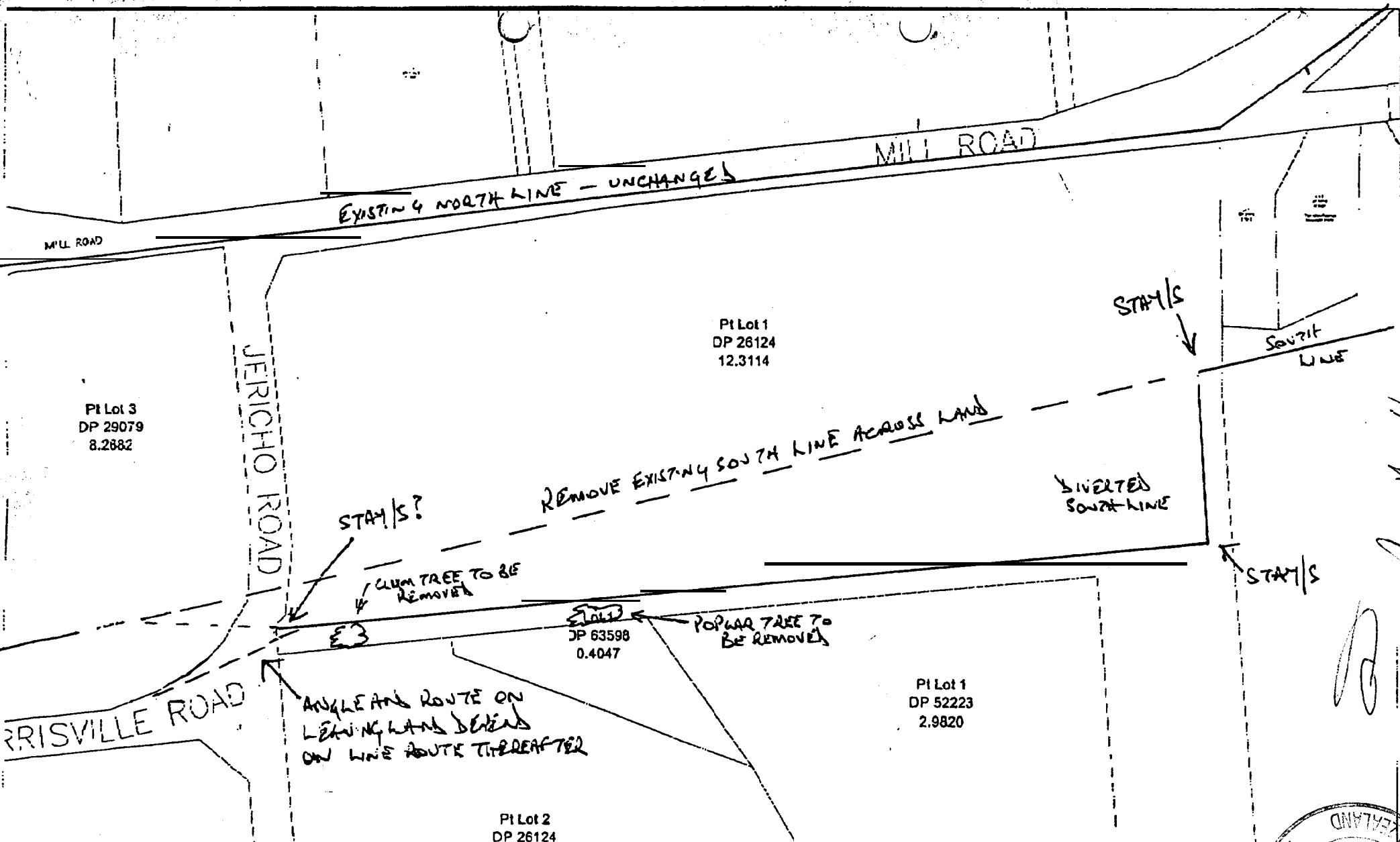
---

**Bronwyn Arthur**  
Counsel for the Respondent

---

**A D MacKenzie**  
Counsel for Counties Power Limited



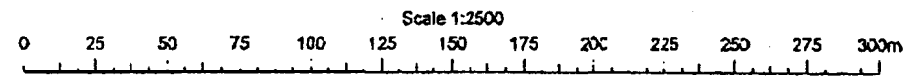


R. A. B.

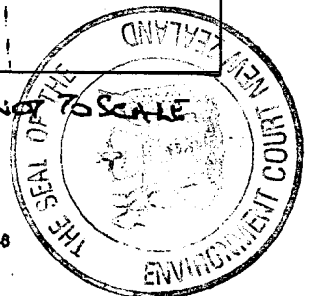
D. A. H.

BHA

Bob Mack 8/4/99



POSITION OF LINES NOT TO SCALE  
- SEE TEXT



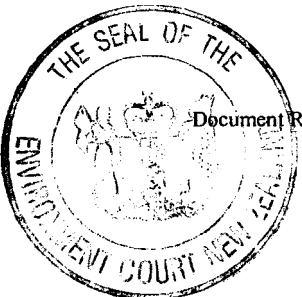
## MEMORANDUM OF TRANSFER

**JOHN VICTOR IMPERATRICE** and **PATRICK JOHN HANNA** (the “Grantor”) being the registered proprietor of an estate in fee simple of the land described in certificate of title 20C/355 Auckland Land Registry (the “Land”), for the consideration shown (the receipt of which sum is acknowledged) paid to the Grantor by Counties Power Limited

The Grantor **HEREBY TRANSFERS AND GRANTS TO THE GRANTEE**

1. The right to construct a Single Circuit Transmission Line over that part of the Land [ ] on Deposited Plan 26124 and for that purpose the Grantee and its contractors may enter upon the Land with such vehicles, machinery, equipment and materials as is necessary or convenient for the Grantee to gain access to construct the Transmission Line provided that the Grantee and its contractors will cause the least inconvenience to the Grantor’s use and enjoyment of the Land as is reasonably practicable and will follow all reasonable requests and directions of the Grantor regarding such access.
2. The Grantee will promptly restore any part of the Land affected by the Grantee carrying out the construction work.
3. Following the construction of the Transmission Line the Grantee will have the same rights to enter upon the Land and to inspect, maintain, repair and operate the Transmission Line as it would have under the Electricity Act 1992 (the Act) as at the date hereof had the Transmission Line, once constructed, been an “existing works” as defined in the Act and the Transmission Line will be deemed to be an existing works as so defined.
4. The Transmission Line will remain the property of the Grantee.
5. In this memorandum of transfer a “Single Circuit Transmission Line” means an electric line for the transmission of up to 110 kilovolts of electricity and up to and no more than a capacity of 100 megavolt amperes under normal operating conditions, comprising 3 electricity conductors and an earth wire situated above the ground and supported by single poles (including associated foundations, stays and supports for the poles) and includes insulators, fastenings, fittings, cross arms, and equipment necessary or convenient for the safe and efficient construction, support, operation and protection of or safety of the electric line or any part of it.

Document Ref: 155670:MEL



*[Handwritten signature]*  
BHA

*[Handwritten signature]*  
R. A. H.

*[Handwritten signature]*  
R. A. H.

*[Handwritten signature]*

IN THE MATTER of an objection pursuant to  
Section 24 of the Public  
Works Act 1981

BETWEEN BETTY CROUDIS and STUART  
ALEXANDER COMBER

AND BETTY CROUDIS and COLIN  
WILLIAM CROUDIS and STUART  
ALEXANDER COMBER

APPLICANTS

AND THE MINISTER OF LANDS

RESPONDENT

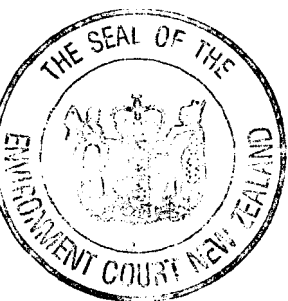
AND COUNTIES POWER LIMITED

A SECTION 274 PARTY

---

MEMORANDUM BY CONSENT

---



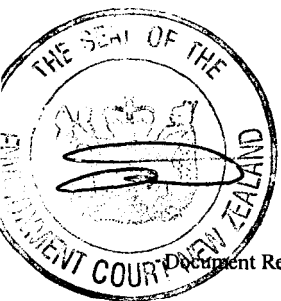
---

RUDD WATTS & STONE  
SOLICITORS  
WELLINGTON  
P O BOX 2793  
TELEPHONE 04-498 5000  
FACSIMILE 04-498 5001  
ATTENTION: A D MacKenzie  
155727agh

## MEMORANDUM BY CONSENT

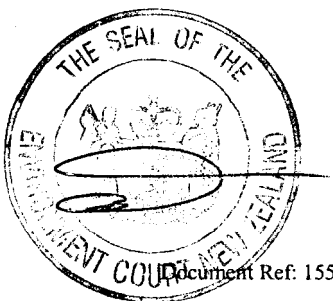
### May it please the Court:

1. Since this matter was adjourned in February, Counties Power Limited and the Applicants in these actions (the Croudís Trust), have continued negotiations to attempt to resolve the issues between them. As a result of those negotiations Counties Power Limited and the Croudís Trust have reached an agreement whereby Counties Power Limited no longer requires the Minister of Lands to exercise his power to compulsorily acquire an easement over the Croudís Trust's land.
2. The parties have agreed that:
  - (a) The Croudís Trust will grant to Counties Power Limited an easement across the Croudís Trust land to accommodate the North and South lines.
  - (b) The route which the North and South lines are to take is the "Valley Floor" route, which is represented on the plan number 1407C and described in a statement prepared by Mr Lack of Counties Power dated 8 April 1998 and in an extract of a report prepared by Mr McIntosh of Beca Carter Hollings & Ferner, annexed as Schedule 1.
  - (c) Counties Power Limited will have the option of erecting either two single circuit lines, or one double circuit carrying both the North and South lines, on the Valley Floor route.
  - (d) If the option of erecting two single circuit lines is exercised by Counties Power Limited, the height of those lines will be the minimum height possible, as assessed by Counties Power Limited on the basis of its engineering advice.

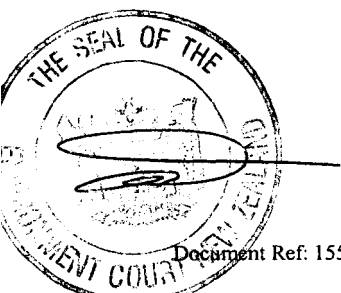




- (e) The poles will require stays to be erected at various places. The placement of such stays will be undertaken by Mr Maurice Hoskins on behalf of Counties Power so as to minimise the impact on the Croudís Trust land.
- (f) Stays are to be fenced by Counties Power and at its expense so as to prevent a hazard to stock to the reasonable satisfaction of the Croudís Trust
- (g) The easement will be 20 metres wide, except that the easement will be wider where additional width is required to accommodate the stays, and will be wider if that is essential in order to accommodate two single circuit lines.
- (h) Where additional width is required in order to accommodate two single circuit lines, compensation for the extra width only will be paid by Counties Power Limited to the Croudís Trust. That compensation will be agreed between the parties or fixed by arbitration. The compensation for such extra width only shall be assessed on the basis that the easement is for a new line.
- (i) The easement will be in the form of the appropriate single page document annexed to this Memorandum as Schedule 2, depending on whether Counties Power has elected to erect single or double circuit lines.
- (j) Counties Power Limited will immediately commission the survey and engineering work that is required for the purposes of preparing the easement and will use reasonable endeavours to have the necessary survey and engineering work completed before Friday 14 May 1999.



- (k) Counties Power Limited will pay to the Croudís Trust the greater of:
    - (i) \$26,000; or
    - (ii) the total sum of \$2,000 per single circuit pole and \$4,000 per double circuit pole (or if the double circuit is to be carried on two poles back to back, \$4,000 for each set of two back to back poles) to be placed on the Croudís Trust property.
  
  - (l) Counties Power Limited will pay to the Croudís Trust the sum of \$54,000 for the Croudís Trust's costs in these proceedings.
  
  - (m) Counties Power Limited will pay to the Croudís Trust the sum of \$7,000 in consideration for the Croudís Trust granting to it the right to choose between erecting the lines on a double circuit system or as two single circuits on the Valley Floor route.
  
  - (n) The amounts payable under paragraphs (k), (l) and (m) are GST exclusive. If payable, GST will be added to those payments upon the provision of appropriate GST invoices.
  
  - (o) Counties Power Limited will remove the structures of the present North Line within a reasonable time after commissioning the new lines created pursuant to this Memorandum.
3. The duration of the easement has not been able to be agreed between the Croudís Trust and Counties Power Limited and the parties require the duration of the easement to be determined in these proceedings. The parties have agreed to abide by a finding of this Court as to the duration of the easement.
4. The parties request that the Court report to the Minister of Lands in terms reflecting the agreement that has been reached, and further request that the Court's report include a finding on the duration of the easement to be granted.



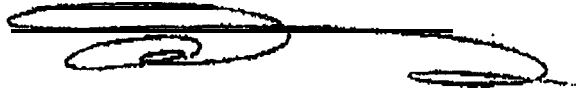
5. No order as to costs is sought by any party, as costs have been agreed.

DATED this 14<sup>th</sup> day of April 1999.

*R. A. Houston J.C.*

R A Houston J.C.  
Counsel for the Applicants

Bronwyn Arthur  
Counsel for the Respondent



A D MacKenzie  
Counsel for Counties Power Limited

*R. A. Houston J.C.*

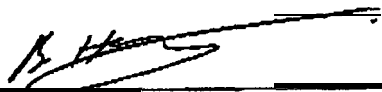


5. No order as to costs is sought by any party, as costs have been agreed.

**DATED** this                      day of April 1999.

---

**R A Houston**  
**Counsel for the Applicants**

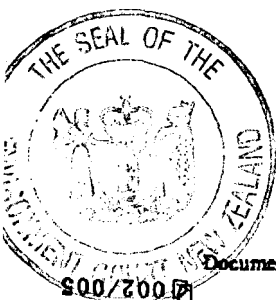


---

**Bronwyn Arthur**  
**Counsel for the Respondent**

---

**A D MacKenzie**  
**Counsel for Counties Power Limited**



5. No order as to costs is sought by any party, as costs have been agreed.

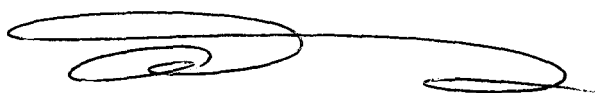
DATED this 14<sup>th</sup> day of April 1999.

---

R A Houston  
Counsel for the Applicants

---

Bronwyn Arthur  
Counsel for the Respondent

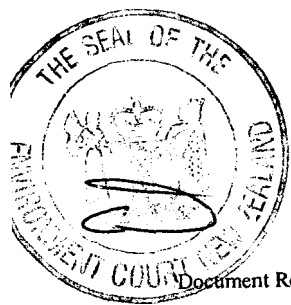


---

A D MacKenzie  
Counsel for Counties Power Limited



**SCHEDULE 1**



**DESCRIPTION OF PROPOSED LINE REROUTING ON LAND OF  
MRS B. CROUDIS**

It is proposed to remove the North Line from its present route and the South Line from most of its present route across the land and to run them together "double circuit" on the route which has been pegged by representatives of the two parties and which is shown approximately on the attached plan.

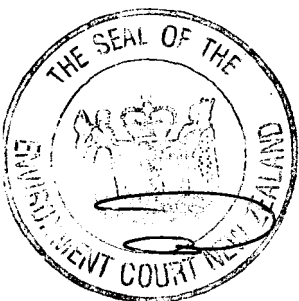
The pole, line and stay configurations will be approximately as described in the attached extract from a report by W. McIntosh of Beca Carter. This includes possible alternatives to the positions of poles 3/4, 5 and 6. These alternatives will only be used by agreement between the parties.

The easement width will generally be 15m for the single circuit sections and 20m for the double circuit sections, however a greater width will be used if necessary to accommodate the side-swing of the lines, particularly between pole positions 7 and 8.

At pole position 8 the double circuit line is proposed to pass to the adjacent Daroux land at a point which has been agreed in principle between the parties and Mr & Mrs Daroux.

---

Bob Lack  
8 April 1999



## 1. COMMISSION

Beca Carter Hollings and Ferner was commissioned in late March 1999, to assist in the appraisal of an alternative route for the Bombay/Pukekohe 110 kV lines. The alternative route resulted from discussions with landowners including Messrs Croudis, Daroux and Golding. The alternative route extends from the eastern part of the Croudis property to Golding Road and with the exception of the connections to the existing single circuit "North" and "South" lines, is to be of double circuit construction, on poles. The appraisal was undertaken on-site, on Wednesday 31 March in company with the landowners or their representative, Counties Power and the engineer for the landowners.

## 2. DESCRIPTION OF THE ALTERNATIVE LINE

The alternative route runs south of the present South line. It follows lower ground than used by the South line and to meet landowner's wishes, has a number of changes in direction. While it was expected that only one route was to be considered during the appraisal on-site, as the appraisal proceeded, a number of options arose.

The route detail is shown in the marked up aerial photographs in Appendix 1.

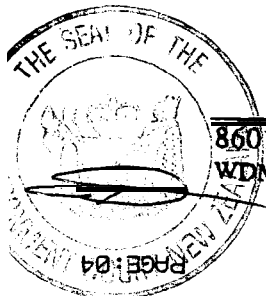
Appendix 2 includes drawings of a number of the structures which would be built.

### 2.1. PRINCIPAL ROUTE

The following description of the route assumes use of normal wire tensions and an earth wire above the power wires. The options which emerged during the on-site appraisal are described later. A general option applying in some sections of the route(s), of having some spans using reduced tensions, or doubling up of poles, may reduce the impact of guying at some sites and is also described later in this report.

**Pole 1:** This pole is a termination pole replacing an existing pole on the North line route and provides the North line connection into the alternative gully route. It will have to be double level guyed against both line directions and would use six sets of strain insulators in vertical configuration.

**Pole 2:** This will be an armless angle configuration using three strain insulator sets. The pole will require double level guying, bisecting the angle. The three wires will be vertically configured. It is not clear if Mrs Croudis appreciates the need for guys at this site.





**Pole 3:** At this pole, there is a further angle in the North circuit, and the South circuit joins the line at this site. The pole will have three crossarms and be fitted with twelve sets of strain insulators. In order to support the differential forces introduced by the various angles at which the circuits meet at this point, double level guying in one direction will be required.

~~**Pole 4:** This pole site is an option to pole site 3 and is not used in the principal route.~~

**Poles 5 and 6:** These poles would be in-line and would use six standoff insulators at three crossarm levels. The poles would be placed to minimise their intrusion into the view from Mrs Croudin's house. It should be noted however, that the visual intrusion is unlikely to be entirely removed and the view from Mrs Croudin's house will be of six wires rather than the three wires presently passing this area. It is also likely that the tops of poles 5 and 6 will remain in the view.



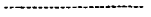


**Pole 7:** This will be an angle pole. It would be configured with twelve sets of strain insulators carried on three crossarms. The pole would have to be guyed to bisect the angle and this guy will necessitate relocation of an adjacent fence and associated gateway. As this guy would have to meet the pole below the lowest wire, pole stiffening may be required and would be accomplished by use of a second "strapped" pole.

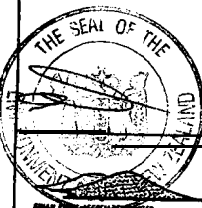
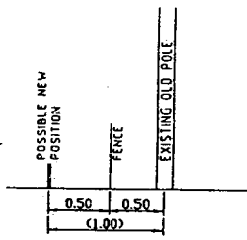
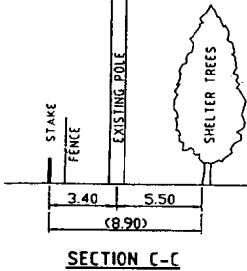
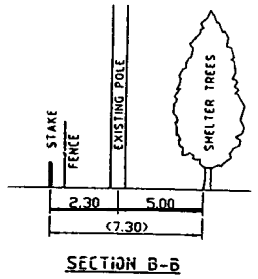
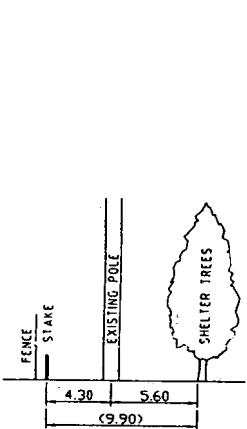
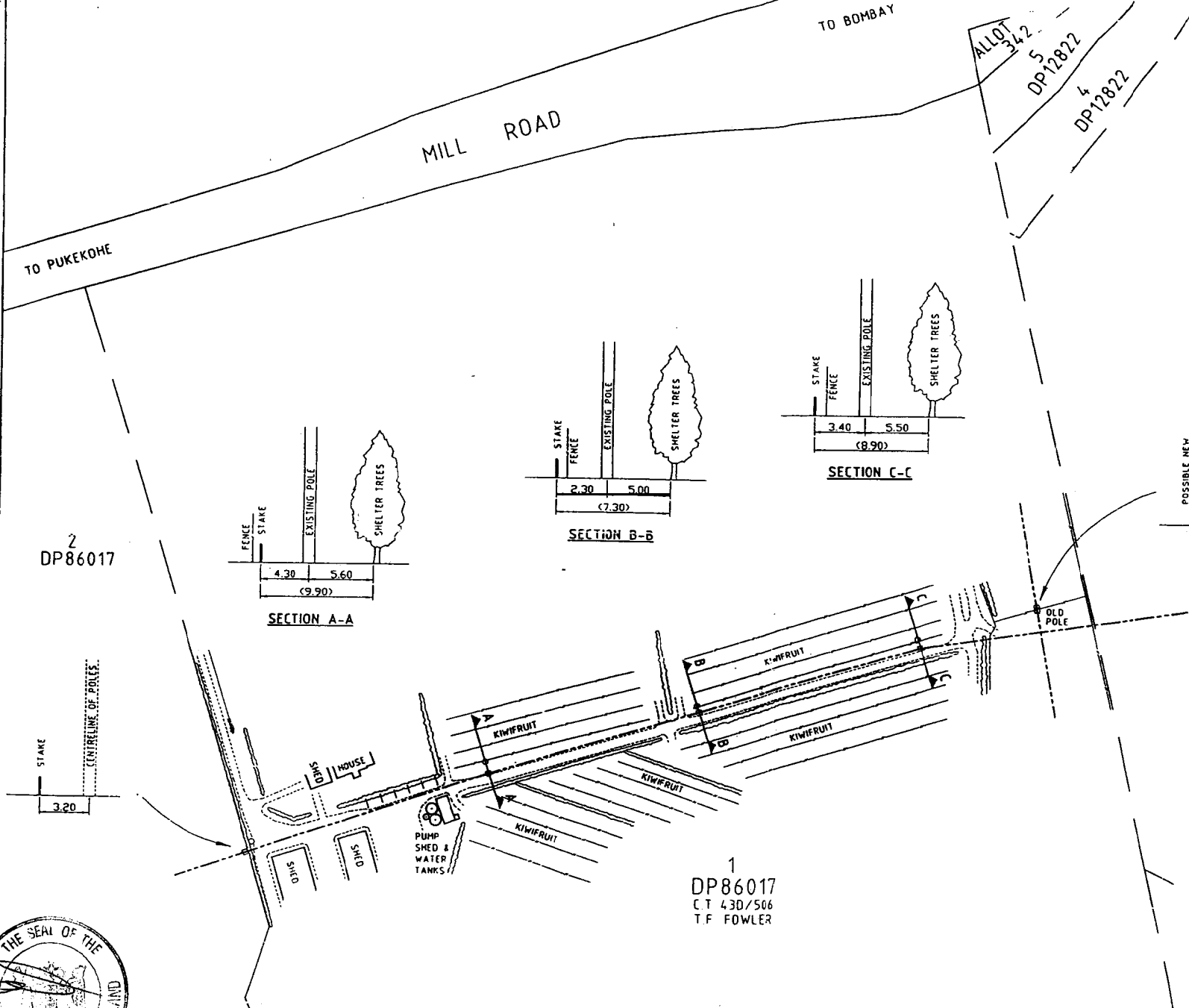
**Pole 8:** This pole will be located on the Croudin/Daroux fence line and will carry an angle in the route. It would be configured with twelve sets of strain insulators carried on three crossarms. The pole would have to be guyed to bisect the angle and this guying will enter the ground within Mr Daroux's property. If detailed design shows that the guying below wire level is inadequate, a second strapped pole may be required.





LEGEND

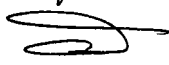
-  PROPOSED NEW POLE POSITION
-  EXISTING CONC POWER POLES & CABLES
-  METAL TRACK
-  SHELTER TREES
-  KIWIFRUIT ROWS & FENCELINES



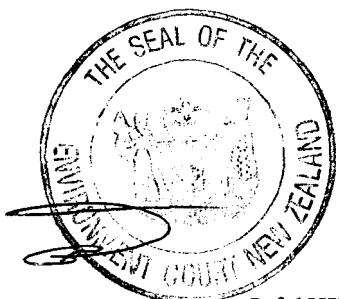
**BRIAN FOOTE**  
 ARCHITECT  
 424 PATE COAST ROAD  
 P.O. BOX 144, PUKERANGI, NEW ZEALAND. PH: 01 739 7777. FAX: 01 739 3029

**COUNTIES POWER LIMITED**  
 SITE PLAN OF T.F. FOWLER PROPERTY  
 MILL ROAD, BOMBAY

DRAWN: MVF		SHEET: 1 SERIES OF 1		ORIGINAL SIZE: A2	
SCALE: 1:1000		DATE: APRIL 1998		DRAWING NO.: 970680	
				SITEPLAN	

*10/4/98*  
  
 1  
 DP85556 BFA

**SCHEDULE 2**



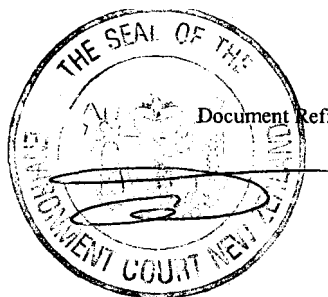
# MEMORANDUM OF TRANSFER

*(Draft Single Circuit)*

[ ] (the “Grantor”) being the registered proprietor of an estate in fee simple of the land described in certificate of title [ ] Auckland Land Registry (the “Land”), for the consideration shown (the receipt of which sum is acknowledged) paid to the Grantor by Counties Power Limited

The Grantor **HEREBY TRANSFERS AND GRANTS TO THE GRANTEE**

1. The right to construct two Single Circuit Transmission Lines over that part of the Land marked A on Deposited Plan [ ] and for that purpose the Grantee and its contractors may enter upon the Land with such vehicles, machinery, equipment and materials as is necessary or convenient for the Grantee to gain access to construct the Transmission Lines provided that the Grantee and its contractors will cause the least inconvenience to the Grantor’s use and enjoyment of the Land as is reasonably practicable and will follow all reasonable requests and directions of the Grantor regarding such access.
2. The Grantee will promptly restore any part of the Land affected by the Grantee carrying out the construction work.
3. Following the construction of the Transmission Lines the Grantee will have the same rights to enter upon the Land and to inspect, maintain, repair and operate the Transmission Lines as it would have under the Electricity Act 1992 (the Act) as at the date hereof had the Transmission Lines, once constructed, been “existing works” as defined in the Act and the Transmission Lines will be deemed to be existing works as so defined.
4. The Transmission Lines will remain the property of the Grantee.
5. In this memorandum of transfer a “Single Circuit Transmission Line” means an electric line for the transmission of up to 110 kilovolts of electricity and up to and no more than a capacity of 100 megavolt amperes under normal operating conditions, comprising 3 electricity conductors and an earth wire situated above the ground and supported by single poles (including associated foundations, stays and supports for the poles) and includes insulators, fastenings, fittings, cross arms, and equipment necessary or convenient for the safe and efficient construction, support, operation and protection of or safety of the electric line or any part of it.



Document Ref: 156108:MEL

# MEMORANDUM OF TRANSFER

(Draft Double Circuit)

[ ] (the “Grantor”) being the registered proprietor of an estate in fee simple of the land described in certificates of title [ ] Auckland Land Registry (the “Land”) for the consideration shown (the receipt of which sum is acknowledged) paid to the Grantor by Counties Power Limited

The Grantor **HEREBY TRANSFERS AND GRANTS TO THE GRANTEE**

6. The right to construct a Double Circuit Transmission Line over that part of the Land marked A on Deposited Plan [ ] and for that purpose the Grantee and its contractors may enter upon the Land with such vehicles, machinery, equipment and materials as is necessary or convenient for the Grantee to gain access to construct the Transmission Line provided that the Grantee and its contractors will cause the least inconvenience to the Grantor’s use and enjoyment of the Land as is reasonably practicable and will follow all reasonable requests and directions of the Grantor regarding such access.
7. The Grantee will promptly restore any part of the Land affected by the Grantee carrying out the construction work.
8. Following the construction of the Transmission Line the Grantee will have the same rights to enter upon the Land and to inspect, maintain, repair and operate the Transmission Line as it would have under the Electricity Act 1992 (the Act) as at the date hereof had the Transmission Line, once constructed, been an “existing works” as defined in the Act and the Transmission Line will be deemed to be an existing works as so defined.
9. The Transmission Line will remain the property of the Grantee.
10. In this memorandum of transfer a “Double Circuit Transmission Line” means an electric line for the transmission of electricity comprising two circuits each of up to 110 kilovolts of electricity and each up to and no more than a capacity of 100 megavolt amperes under normal operating conditions, the two circuits comprising in total 6 electricity conductors and an earth wire situated above the ground and supported either by double or single poles (including associated foundations, stays and supports for the poles) and includes insulators, fastenings, fittings, cross arms, and equipment necessary or convenient for the safe and efficient construction, support, operation and protection of or safety of the electric line or any part of it.

