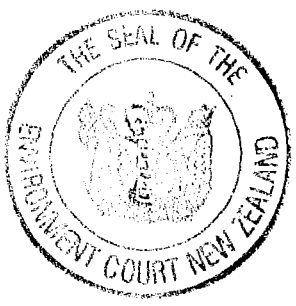
BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA
AUCKLAND

Decision No. [2018] NZEnvC 108

IN THE MATTER	of the Public Works Act 1981 (the Act)
AND	of an appeal under ss 23 and 24 of the Act
BETWEEN	S & D DROMGOOL
	(ENV-2017-AKL101)
	AD & J POULTON
	(ENV-2017-AKL102)
	NEWMAN FARMS LIMITED
	(ENV-2017-AKL-103)
	Objectors
AND	MINISTER FOR LAND INFORMATION
	Respondent

Court:	Judge JA Smith Commissioner ACE Leijnen Commissioner IM Buchanan
Hearing:	At Auckland 11-15 June 2018
Appearances:	D Salmon and A McDonald for S & D Dromgool, AD & JC Poulton and Newman Farms Ltd (jointly referred to as the Objectors) AN Isac and MC McCarthy for the Minister of Land Information (or the Minister)
Date of Decision:	11 July 2018
Date of Issue:	11 July 2018

REPORT TO THE MINISTER ON OBJECTIONS AND FINDINGS OF THE ENVIRONMENT COURT



A: The objectives of the Minister and Top Energy Limited[1] are:

(a) To construct a single circuit high voltage transmission line with a nominal operating voltage of up to 110kV, and other electrical and communication works together with all associated works from Kaikohe to Kaitaia. An easement is required over each of the Objectors' properties to allow this installation. (The Project).

(b) the project is designed to:

(i) improve the capacity, security and reliability of the electricity distribution network in the Far North region to meet growth and increasing demand for electricity in the region; and

(ii) to remedy underlying network weakness to provide more secure supply for the region.

B: That adequate consideration has been given to alternative sites, routes and methods to achieve these objectives.

C: In all of the circumstances of this case, it is fair, sound and reasonably necessary to provide for the easements to be taken to achieve the objectives identified, subject to the easements being modified to be more directly applicable to the objectives and the individual properties.

D: The easements should be reviewed and subject to further negotiation or submission to more exactly reflect the Objectives, following the guidelines in Annexure **f.** The parties are to consider the resolution of the easement wording, preferably through further negotiation. In the event that negotiation does not resolve the matter within 30 working days, the Minister is to:

(a) provide its proposed easement wording to the objectors within 40 working days;

(b) the objectors are to provide their response to the proposed text of the easement within a further 20 working days;

(c) thereafter, within a further 10 working days, the Minister is to file its proposed wording, identifying any areas of difference with the objectors, and the parties' position on each difference.

[1] TEL or the Requiring Authority.

E: The Court will then conclude whether it can proceed with the consideration of the final wording of the easement on the papers, or whether a further hearing is required.

F: Costs are reserved, though we encourage the parties to settle these by agreement.

REPORT AND REASONS FOR FINDINGS

Introduction

[1] By a decision dated 16 August 2016 the Minister for Land Information agreed to an application by Top Energy Limited (**TEL** or the **Requiring Authority**), to acquire easements to enable construction of the Kaikohe to Kaitaia single circuit, up to 110kV transmission line project.

[2] Following the decision by the Minister of Land Information to acquire the land, a Notice of Desire was issued and subsequently a Notice of Intention to Take in respect of each property on or about 8 June 2017. By way of example, we attach as Annexure **A**, the Notice of Intention to Take issued against Mr and Mrs Dromgool.

[3] As no negotiated agreement was completed, the Minister then issued a notice under s 23 of the Act, subsequent to complying with s 23(1) of the Public Works Act 1981 (**the Act**). The objection process was commenced, leading to a hearing before the Environment Court under s 24(7) of the Act.

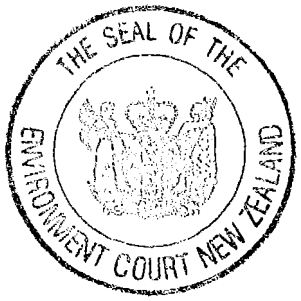
Objections

[4] Objections filed were made by Mr and Mrs Dromgool and Poulton and for Newman Farms Limited (**the objectors**), who are all within an area of the proposed route noted as the Maungakaretu section. For the purposes of this hearing, given that there are various alternatives discussed, we shall describe this as the **Objection Route**.

The role of this Court

[5] Section 24(7) of the Act states:

> **24 Objection to be heard by Environment Court**
> ...
> (7) The Environment Court shall –
> (a) ascertain the objectives of the Minister or local authority, as the case may require:
> (b) enquire 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 light of any directions given by the court:
(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 court's findings:
(f) submit its report and findings to the Minister or local authority, as the case may require.

[6] In order to understand the matters before this Court, it is necessary to traverse both the factual background and, subsequently, the background to this appeal process.

Factual Background

[7] In 2012 TEL acquired the 110V transmission line between Kaikohe and Kaitaia, known as the GXP route, (supplied from the Kaikohe GXP to the Kaitaia GXP substation at Pamupuria). It is 56km long and the only electricity transportation asset with sufficient capacity to deliver electricity to the 11,313 customers supplied from this substation. The TEL CEO, Mr Shaw, indicates:

(a) the line requires maintenance as it is around 60 years old, and requires replacement within the foreseeable future (around 2030);

(b) maintenance works on poles and repairs of breakages have been an ongoing and significant requirement since the takeover. In particular, around 6km of the line runs through the Mangamuku Gorge and is vulnerable to major events;

(c) between 2013 and 2017 there were some nine outages of 47.7 hours to substantial parts of the network. Measured in terms of the economic impact of those outages, the cost to the Far North economy is estimated to be $13,368,956;

(d) the Juken timber mill in Kaitaia is a major employer, and particularly susceptible to outages. An unplanned outage can mean a cost to the production line through a restart of some $150,000 each time

(e) The historic pattern of demand has changed from the urban centres of Kaikohe and Kaitaia, with increasing population on the eastern seaboard area (Kerikeri Peninsula and the Bay of Islands);

(f) it was considered that an alternative route to the eastern seaboard would increase supply through the 11kV local network lines, and permit some upgrading to 33kV (for example in Kaeo and Wiroa). Examples were given by

Mr Shaw, including Mt Pokaka having to supply their own power for a timber mill employing 100 people, and an 800 unit accommodation in Karikari Peninsula having no secure supply of power;

(g) the existing GXP 110kW single circuit was on a route involving the Mangaweka Gorge, and is susceptible to failure through natural events. Significant resilience would be achieved by creating a second circuit to Kaitaia.

[8] Having reached this position, TEL then instructed Boffa Miskell to investigate a potential route to the eastern side of the region involving termination points in Kaikohe and Kaitaia, where it could be joined into the same substations as the existing GXP route. Boffa Miskell reported back and TEL developed a proposed ring circuit, annexed hereto as **B.** This shows Stage III as a single line within the proposed and existing network. As well as this, TEL intended to create further substations at Wiroa and Kaeo and Peria enabling strengthening of the network as a whole.

[9] Mr Baker, TEL property manager, advised the Court that there were some 96 properties currently identified as comprising this route. This number may have varied slightly in the past, but the majority of easements over these properties have been secured through Agreements to Grant Easement (**AGE**), registered under the Public Works Act, s19. Sufficient access easements were secured to enable Stage I and Stage II for the double circuit Kaikohe to Wiroa section to be built (shown in Annexure **B**), and TEL has also constructed the Kaeo substation on property for which it had existing rights. Stage III in Annexure **B** shows the portion yet to be constructed. The Maungakaretu section is part of the section between Wiroa and Kaeo.

[10] In the Rural Environment zone of the operative Far North District Plan, *above ground utility services for supply of electricity lines, structures, and support structures for the transformation, transmission or distribution of electricity* are permitted activities. The exception applies to certain land identified as Outstanding Landscapes, Outstanding Landscape Features or Outstanding Natural Features. Also, Conservation zoned land, for instance, would require a resource consent for these activities. While in some instances resource consents might be triggered, TEL was confident these would be able to be obtained. This issue was not covered specifically in evidence, and it was not suggested that the proposed portion of the line under scrutiny here was in jeopardy of not obtaining consent if one might be required.

[11] We were also told that utility activities are permitted within a legal road corridor. We accept that there may be some practicality about their placement within a road reserve, and that issue raised some concern that we address later.

[12] Initial evaluation by Boffa Miskell identified a route in the Maungakaretu section between Koropewa Farms Limited and Greenacres involving the Office of Treaty Settlements (**OTS**) land known as the **OTS Route**. We annex hereto marked **C** a copy of a route plan showing the various routes identified in the course of this hearing. The preferred transmission route was identified as being through the OTS land, and from Koropewa Farms Limited traversed the Taylor property, the Poulton property, the OTS land to Greenacres.

Progress after the identification of the OTS route

[13] From this period in 2012 to late 2014, it is clear that TEL pursued the OTS route as its preferred route. It did enter into an AGE with the Poultons and Greenacres, but was unable to get agreement from the Taylors or OTS. We will go into the circumstances surrounding the treaty settlement lands in due course. Suffice to say that by October 2014 it was clear that agreement from OTS and the Taylors would not be forthcoming.

[14] Around March 2014, TEL instructed Boffa Miskell to once again look at alternatives, which included a further three possible routes, as shown on Annexure **C**. These are described as:

(a) the **FGT/Sutcliffe Route**, slightly to the west of the original route and travelling through the length of the FGT and Sutcliffe properties, relying on the AGE with Poulton and the agreement of Greenacres eventually obtained. This route, of course, still involved crossing the Taylor property, who had already indicated they would not consent, and also further crossing of the FGT Farms Limited, Sutcliffe and Cornelius properties;

(b) a further route was identified, being the **Objection Route**, travelling through a different portion of the Poulton farm (for which there was no AGE), Newman Farms, Dromgool (the Objectors), Sutcliffe, Kearney and Cornelius properties. This utilised a section of public road between Newman Farms and the Jones property for around 1.5km. We will discuss the particular elements of that route in due course; and

(c) there was a route to the far west (**Far Western Route**), skirting the North Star Dairies Ltd land (on Crown land) and then utilising public road to travel from the west to join up at the Greenacres property. It appears that route was discounted not only for length but impact very early, and no party before us suggested that this was a reasonable alternative.

[15] Even after these three routes were identified, TEL continued to pursue the OTS route, but it became clear by early 2015 that this was not possible. Arguably, the meeting with the OTS and iwi in October had finalised this issue, but it appears it was still being pursued by the CEO of TEL after this date. It appears the CEO was pursuing possible variations of the alignment within the OTS land and compensation.

The Objection Route and the FGT/Sutcliffe Route

[16] There appears to have been a period of further discussion with the various owners starting in around March 2014 and continuing into 2015. Further consideration was given by TEL to various alignments between those shown on annexure **C**, between the Landcorp alignment in the far west and another, beyond the OTS Route shown to the east. Three options involved OTS land. The **FGT/Sutcliffe** and the **Objection Route** (with minor variations) were being considered by October 2014.

[17] Although Mr Salmon suggested that the FGT/Sutcliffe Route was not progressed in this period, the evidence suggests that this cannot be correct. An AGE was executed for part of the Objection Route over the Sutcliffe property, and meetings must have occurred relating to this over the 2014-15 period.

[18] The **Objection Route** and variations were discussed with landowners including the objectors, and also the Bedfords and Jones, who had land adjacent to the road section. Mr Poulton refers to various discussions from 2012 until around July 2015. Mr Bedford refers to discussions in April 2015. Mrs Dromgool refers to discussions from September 2014 until early 2016. Mr Baker told us the current alignment over the Dromgool property and over the Sutcliffe property was suggested by the Dromgools. Mrs Dromgool disputes this, and says the alignment they suggested avoided their property and went further east (to the west of the Sutcliffe home and east of the Newman home). We note that the Dromgool property is included in the **Objection Route**.

[19] In the end, little progress was made beyond refinement of the line and monopoles to the current position. There were refusals of access for valuation, and various requests and discussions by letter, phone and in person with TEL officers until early 2016. Neither the Jones or Bedfords supported easements that avoided use of the road, and thus the road was adopted over an area of a length of some 1.5 km. We will come back to the position of the Bedfords in reference to an additional easement offered to them to facilitate some recognition of potential loss of amenity with a route in the road.

[20] By early 2016, the AGE with Sutcliffe appears to have been agreed on the Objection Route alignment, and the FGT/Sutcliffe Route was no longer being pursued. Mr Salmon suggested this was inappropriate as no proper reasons were given.

The s 186 application

[21] Application was made to the Minister in May 2016 under s 186 of the RMA. Section 186(1) provides:

> **186 Compulsory acquisition powers**
> (1) A network utility operator that is a requiring authority may apply to the Minister of Lands to have land required for a project or work acquired or taken under Part 2 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, that land may be taken or acquired.

[22] From this the following is clear:

(a) it is the Minister who makes the decision;

(b) if the Minister agrees, it essentially becomes the agent for the requiring authority and acquires the land on their behalf;

(c) if that decision is made, the entire taking is subject to Part 2 of the Public Works Act (**PWA**).

[23] We have concluded that, from that point, the process under the PWA is the same as that under s 16 PWA, and simply gives an alternative method for acquisition of land by requiring authorities as opposed to the Minister or local authorities. We note that in *Seaton v Minister of Land Information*,[2] it is clear that these processes are seen as parallel, and both involve the application of the Public Works Act (**the Act**) ss 17-24

[2] [2013] NZSC 42.

provisions. Elias CJ noted:[3]

> Whether the land is taken under 16(1) (of the Public Works Act for a government work) or whether it is taken under s 186 of the Resource Management Act for a project or a work of a network utility operator, the procedures are those contained in Part 2 of the Public Works Act. In both cases the acquisition is conducted by the Minister of Lands either himself or for the network utility operator as the case may be.

[24] In this case there is no argument that the s 186 procedure was appropriate as confirmed by the Supreme Court in *Seaton.*

The scheme of Part 2 of the Public Works Act

[25] We have concluded that Part 2 of the PWA has the clear intent to provide a mechanism for acquisition of land for projects. In the first instance, it is possible to acquire the land by direct negotiation between the parties without any reliance on the Act. Further, it is possible, and was the common course of action in this case, for TEL to acquire the land by negotiation and enter into an AGE to provide a mechanism for compensation.

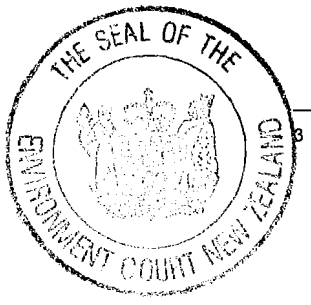
[26] Section 18 provides that the first formal step to acquire the land compulsorily requires a formal notice of desire to acquire. This is supported by the notice being registered against the title. It sets a three-month period for owner response before further action can be taken to acquire.

[27] If an agreement is reached, s 19(1) enables a compensation certificate to be registered against the title:

> **19 Compensation certificate may be registered to protect agreement**
>
> (1) The Minister or any local authority has entered into an agreement under section 17 or entered into an agreement for the payment of compensation under this or any other Act for damaging or injuriously affecting any land, or for the temporary occupation of any land, or for any condition or restriction to be applied in respect of any land, the Minister or local authority may forward a compensation certificate in accordance with this section to the District Land Registrar, who shall, without fee, register it against the title of the land to all land affected by it.

[28] There are further powers under s 20 for declaration in relation to any agreement entered into, and this can be enforced by s 21, the Minister, upon being satisfied:

(a) that the owner of the land has agreed to his land being required; and



[3] At paragraph [5].

(b) that no private injury will be done by the acquisition or that compensation is provided by this Act for any private injury that will be done by the acquisition.

may issue a declaration in writing that, an agreement to the effect having been entered into, the land is thereby acquired for the purpose for which it is authorised to be acquired. It would seem inconsistent if this requirement on the Minister under s 20 was subsumed within necessity to consider s 24(7) at the time of deciding to proceed to acquire.

[29] Section 22, dealing with land for essential works has been repealed, leading us to sections 23 and 24. It is clear under s 23 that only private land can be acquired, and s 23(1) requires:

(a) a survey to be undertaken;

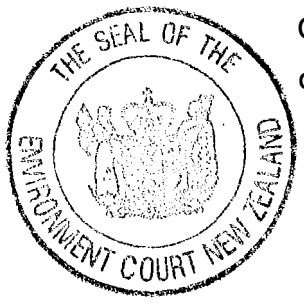
(b) a notice to be published in the Gazette; and

(c) a notice to be served on the owner.

[30] Compulsory acquisition is, therefore, seen as a last resort and is addressed through ss 23 and 24 of the PWA. We are in no doubt, from the construction of this part of the Act, that these requirements are only necessary where the parties have not been able to reach an agreement in the previous sections. If, at that point, the Minister still wishes to acquire the land on behalf of the requiring authority, the process requires notice to be given under s 23.

[31] We also consider it is notable that, at that time, there is no requirement for the Minister to be satisfied of the matters under s 24(7) PWA. The notice of intention under s 23 PWA clearly, in its form, is intended to be a step along a process towards acquisition. It clearly contemplates that the parties may enter into further negotiation. It notes, in particular at s 24(4), that the notice will expire if not acted upon within one year by either the landowner filing an objection or the Minister proceeding with a proclamation.

[32] Where an objection is filed under s 23(3) PWA, it is important to note that s 24 refers the matter to the Environment Court. Although a copy is sent to the Minister (and of course the requiring authority), the obligation under s 24(3) PWA is on the Environment Court to inquire into the objection and the intended taking, and for that purpose shall conduct a hearing at such time and place as it may appoint.



When s 24(7) must be met

[33] A key jurisdictional point raised by Mr Salmon in relation to this hearing is whether the Minister, in agreeing to an application from a network utility operator, must consider s 24(7) before giving agreement. We note, firstly, that s 24(7) requires the Environment Court to undertake the hearing and report on the objection, and there is no mention of any duties upon the Minister.

[34] Nevertheless, Mr Salmon submitted that s 24(7) is not conclusive, and that the clear intent is that the decision to acquire the land under s 186 of the RMA must pass the threshold in s 24(7) PWA. In order to understand the Intention to Take process, it is necessary to look at Part 2 of the Public Works Act as a whole.

[35] We find that the wording of the Act is clear, both in its express wording under s 24(7), and in the terms of the schema of both the Public Works Act and s 186 RMA. The time for an obligation to consider s 24(7) requirements is with the Environment Court at the hearing convened under s 24(3). The express words at the commencement of s 24(7) remove any doubt: "The Environment Court shall…"

[36] To suggest that these obligations are imposed upon the requiring authority when they seek the Minister's permission to commence the public works process would, in our view, subvert the entire process envisaged in terms of both the Resource Management Act and the Public Works Act. We are confirmed in our view by reference to the discussion of the process in the *Supreme Court v Seaton*,[4] which decision is clearly binding upon us.

What is the obligation on the Minister in making a s 186 RMA decision?

[37] It is clear from the wording of s 186 that there is no explicit requirement on the Minister to take into account any particular matters. This appears to recognise the policy considerations that may be at play, and the recognition that negotiation and the notice of desire (s 18 PWA) and intention (s 23 PWA) processes may resolve differences without a formal hearing. We note in particular, that there is no particular obligation for identification by the Minister beyond the land being required for the project or work.

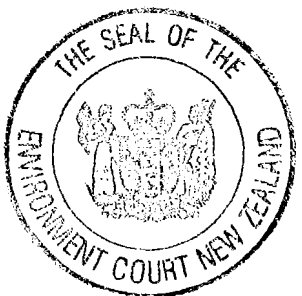
[4] [2013] NZSC 42.

[38] Guidelines have been developed by the Ministry for Lands for consideration of s 186 applications. These were produced to the Court in the current version, being Standard for Acquisition of Land under the Public Works Act 1981, 2 June 2017. The Standard requires applicants to set out their projects, objectives and actions in a report. 3.6 of the Standard indicates a utility operator (Requiring Authority) must provide information in accordance with Schedule A. Although Schedule A requires an overview of the requirement for the land, and "details" of consideration of alternative sites, risks and methods, including public consultation and consideration of alternative site notes and methods, this is for the information of the Minister rather than a requirement on the Minister.

[39] As Mr Sun for the Ministry of Lands stated, and we conclude, the standard is simply a guide to assist applicants in putting information in a cohesive form before the Minister to enable consideration. Similarly, the check form provided to the Minister by the staff is simply to ensure that the various aspects of the application, and matters that may be of importance to the Minister, are formally noted. As Mr Sun noted, the Ministry staff are not party to, nor aware of, the basis upon which the decision of the Minister is made.

[40] We have concluded that the decision of the Minister under s 186 RMA (and under s 16 PWA) is fully discretionary. No question has been raised in the evidence before this Court suggesting that the decision of the Minister was unreasonable in the *Wednesbury sense*.

[41] As Mr Salmon noted, the High Court in *Dannevirke Borough Council v Governor-General*,[5] noted it was an improper use of Ministerial discretion to decline the compulsory requisition of land for public work on the basis of political policy not to allow the compulsory acquisition of Māori land. There it was found that the acquisition was founded upon irrelevant considerations. Given the scope of both the RMA and the PWA, it can be seen that there is little, if anything, to fetter the discretion of the Minister in making a decision as to acquisition. There is no evidence to satisfy us that the Minister took into account irrelevant matters, even if some were included in the application.



[5] [1981] NZLR 129.

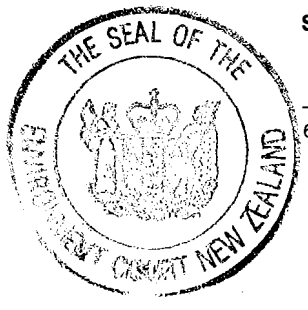
[42] Rather, Mr Salmon suggested that the Minister should have considered an alternative route and then should have chosen between these routes. Mr Sun noted that no alternatives were ever before the Minister. The Ministry of Land Information deals with the application made by the requiring authority. Although the report by the requiring authority does indicate some background information on how the route selection was made, we agree that this cannot bind the Minister at the s 186 decision stage.

[43] The adequacy of the consideration of alternatives process is a matter to be examined as part of the s 24(7) procedure, if an objection is maintained to the Environment Court. Thus the actions or failures of a requiring authority are likely to be relevant to the report and findings of the Environment Court under s 24(7), but not at the s 186 agreement stage. For the sake of completeness, we conclude also that it is not for TEL itself to comply with s 24(7) of the Act, although at the time of the hearing before this Court it would need to establish that each of the grounds had been covered.

[44] So, while it is helpful for both the Minister and the requiring authority to keep in mind the requirements under s 24(7) in case an objection is mounted to the Minister, we have concluded that there is no obligation upon either the Minister or the requiring authority to comply with s 24(7) at the time that it advances its project or in applying for or agreeing to take land under s 186 (or s 16 PWA for that matter). We conclude this is entirely consistent with the Iterative Approach anticipated under both Acts.

[45] The wording of the relevant sections of parts of s 186 RMA and Part 2 of Public Works Act have been the subject of discussion by the Supreme Court in the decision. *Seaton v Minister of Land Information*[6] involved the taking of easements for electricity lines and supporting towers over land owned by Mrs Seaton. The easements sought by the Minister were under the Public Works Act 1981, but were to be transferred when obtained to Orion New Zealand Limited, a network utility operator. The easements proposed provided use for telecommunication purposes as well as the conveyance of electricity, and for elaborate access rights and interest in land for the utility provider.

[46] To that extent, this case is very similar to that in *Seaton*. However, there the Minister, at the instigation of NZTA, gave notice of intention under s 16 of the PWA rather than s 186 of the RMA. The Supreme Court concluded, by a majority, that the rights should have been exercised by the requiring authority under s 186 RMA rather than by



[6] [2013] NZSC 42 at.

the Minister directly under s 16 PWA. At paragraph [7], the issue is stated this way:

> Mrs Seaton maintains that the easements sought by Orion cannot be acquired under s 16 of the Public Works Act by the Minister of Lands because they are not "required for the government [roading] work" identified in the notice. They are required for the work proposed by the utility operator, and are intended to be passed by the Minister to Orion following their vesting in the Crown.

[47] That point was resolved in favour of Mrs Seaton, including that the Minister should have acted on behalf of the network operator, under s 186 of the Resource Management Act. Accordingly, this application clearly complies with that decision in that the application was made to the Minister and a decision made under s 186 of the Act. It also follows that the decision of the Minister is the equivalent of a decision under s 16 of the Act empowering acquisition of the land.

[48] It is clear that this does not mean that the Minister can proceed directly to proclamation, but is required to follow the procedure set out in Part 2 of the Act. As the Supreme Court noted at paragraph [15]:

> ... The scheme of the legislation is that the Minister controls the process of taking, whether the power he is using is under s 16(1) of the Public Works Act or s 186 of the Resource Management Act. Nor was it essential for him to obtain the agreement of the utility providers.

[49] The Chief Justice went on to note:

> "It is true that under Part 2 of the Public Works Act, which applies whichever of the two statutory powers is invoked, the Environment Court is required by s 24(7) to consider, among other things, "the adequacy of the consideration given to alternative sites, routes or methods of achieving [the Minister's] objectives, and whether the taking of the land would be "fair, sound and reasonably necessary for achieving the objectives of the Minister." (Consideration which, in the present case, would seem to enable questioning of the extent in terms of the easement sought.) But the consideration to be given is against the objectives of the Minister, not in respect of the project or work proposed by the Network Utility Operator, but of the Minister in respect of the government work or road construction. What is more, the assessment of "alternative sites, routes or methods of achieving those objectives" is concerned with the adequacy of the consideration that has been given to such alternatives.
>
> In other words, it is a check on proper process where road widening is the objective.

[50] At paragraph [24] the Chief Justice goes on to state:

> Under s 186 of the Resource Management Act, the Minister acts in effect as agent for the utility, and at its eventual cost. But whether the land is reasonably required for the purpose of the utility provider's conveyance of electricity will be the subject of direct assessment following an objection by the Environment Court, and does not follow on inevitably from the displacement of the towers for roading purposes. The existence of a taking mechanism in s 186 tailored to the needs of the utility companies is a reason, had the matter of interpretation been more doubtful, to construe s 16 as confined strictly to what is reasonably necessary for a government work. But indeed, that is its clear meaning.

Chambers and Glazebrook JJ, together with the Chief Justice forming the majority, agreed that in this case the procedure under s 186 should have been used rather than s 16.

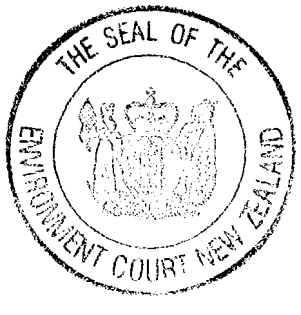
[51] Nevertheless, their Honours Chambers and Glazebrook JJ discussed the compulsory acquisition powers under s 186, commencing at paragraph [59]. It notes that s 186 ss (1)-(3), (5) and (6) set out the relevant regime (the compulsory acquisition regime). The Court notes:

> [61] ...It incorporates relevant provisions of the Public Works Act "as if the [utilities] project work were a government works". (That is, it is not a government work, but it can be treated administratively as if it were but with necessary modifications.) In context, it is clear Parliament has conferred the compulsory acquisition powers only with respect to land not held by the Crown or a local authority. Land held by the Crown, or a local authority, may be taken for projects or works of utilities, but only "with the consent of the Crown or that authority and on such terms and conditions (including price) as may be agreed".[7] We call this the "Crown land regime", ss (7) and (8) are applicable to both regimes.
>
> [65] We accept that, had the utilities made an application for acquisition of the easements to the Minister under s 186(1), he probably would have agreed to utilise the compulsory acquisition regime in this case. Mrs Seaton might well have been forced to grant easements in the utilities' favour. ...

[52] We conclude, from our understanding of the Supreme Court decision (part of which we have cited), that to the extent it is relevant, it is clear that under either regime (directly by the Minister or by virtue of s 186) any acquisition is subject to Part 2 of the PWA, including s 24 of the Act, and in particular s 24(7). On all occasions, the Supreme Court discussed the obligation of the Environment Court to review the actions under s 24(7) PWA if an objection is maintained to hearing.

[53] Notwithstanding the repeated submissions of Mr Salmon as to the necessity for the Minister to comply with s 24(7) when a decision under s 186 is made, we can find no reference in this or any other case to such a requirement. Mr Salmon's own submissions, at paragraph [38], noted that references to the Minister in s 186 and s 24(7) (a) and (d) must be read as reference to Top Energy, relying on *Seaton*, paragraph [83]. We agree. Thus, it is difficult to read into s 186 a requirement that the Minister, at the time they agree to proceed with Part 2 of the Public Works Act, has an obligation to ensure that the taking complies with s 24(7) of the Act.

[54] We add here a contention by Mr Salmon that the identification of the Objection Route in its s 186 application as "the only practical and economic route in the area", and later adding "effective route", affected the Minister's decision. It is not understood why this statement was made by TEL in the May 2016 report, as it is not necessary to establish that the Objection Route is better at the Ministerial stage, nor even before this Court under s 24(7).



[7] See subsection (4).

[55] As a matter of fact, the Objection Route was not the only "practical and economic route". However, that statement was not only otiose any statutory requirement, it was irrelevant to the Minister and irrelevant to the examination under s 24(7)(b). It gives another basis for objectors' concern, but on examination it cannot be shown to have influenced the Minister's decision, nor can it be seen as relevant to this Court's decision. Given our view as to the scope of the Minister's discretion under s 186, we cannot see the statements in the TEL s 186 application were necessary, or determinative of the Minister's agreement.

The task for this Court

[56] We have concluded that we must proceed to consider each of the matters in s 24(7) and report on these to the Minister for Land Information. In the event that we cannot identify appropriate objectives under s 24(7)(a), or that adequate consideration of alternate sites, routes or methods to achieve those objectives has been undertaken, we have a discretion to revert the matter to the Minister for further consideration.

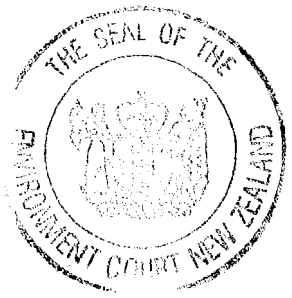
[57] Given the placement of s 24(7)(d) as to the fair, sound and reasonable necessity of the works after ss (c), it is not clear whether this is intended to be a separate process. In this case aspects of adequacy of consideration of alternatives, fairness, soundness and reasonable necessity do have some degree of overlap. We have thus concluded that the discretion to this Court is one given in light of all of the evidence available and its findings as a result. In our view, the discretion to refer the matter back is a power that can be contained within the report and findings to the Minister under s 24(7)(f).

[58] We now examine the Maungakaretu section alignments in more detail before assessing the various aspects of s 24(7).

The Maungakaretu Alignment

[59] Annexure **D** shows the Objection Route. Those in blue have consented, those in yellow have not consented. Annexure **C** shows the alternative routes considered by the requiring authority in relation to the lands in question.[8]

[60] Importantly, the preferred route originally identified by Top Energy Limited



[8] Mr Baker, evidence-in-chief, Appendix 1.

(a) mandate – there were and are continuing issues as to the mandate to speak for the various iwi and hapu throughout Northland, and there was a real concern by the representatives of the Office of Treaty Settlement to commit given the levels of dissension and uncertainty;

(b) there are clear issues well beyond confiscation of the land relating to the basis of the Crown treatment of not only the OTS land but the surrounding land, including that belonging to two of the objectors. In short, the OTS block was part of some 4,000ha, the taking of which was disputed by Te Whiu over many years since 1868. It was the subject of the re-vesting of some 2,000 acres in the Te Whiu around 1921. The area retained and transferred in 1921 is shown on Annexure **C**. Subsequently it was subject to logging by the Crown illegally (without the permission of the owners) and then subdivision of half of it after being transferred to Maori Affairs in 1956. Ostensibly this was for the purpose of providing for hapu members for farming, but appears to have been originally leased by the Maori Affairs Department and subsequently sold off in ballots. Mr and Mrs Dromgool were original ballotees, and had been leaseholders prior. Although there was intended to be control over subsequent owners, it appears to have been sold as general freehold land;

(c) the OTS remnant land constitutes part of the original Turangawaewae for Te Whiu, and apparently has not only the Toi pa, but also urupa situated on it. It has been repeatedly identified as of significant cultural value to Te Whiu;

(d) it is the sole remnant of land available to Te Whiu of their original ancestral lands (the original 4,000 acres) as far as Ms Hickey was aware. This increases its importance as settlement cultural redress.

[66] Overall, it is not our place to review the decision of the Minister for Treaty Settlements. However, there was a reasonable basis for that Minister to refuse to allow an easement, given the objections of Te Whiu and the history as cited to us by the witness for the Office of Treaty Settlements.

[67] The objectors argue that there remains a prospect of agreement with iwi given time. Mr Salmon submits that TEL has time by virtue of alternative diesel generator units. We cannot see the practical sense in this argument. Quite apart from the disputed position regarding the use of diesel alternatives as a long term practical option for

(indicated on Annexure **C** in green) utilised two main properties in this area, one belonging to the Office of Treaty Settlements, the other the length of the Greenacres property. There were also lengths required over Koropewa Farms, Mr Taylor, and through the Poulton property, for which, as we have said, an AGE was signed by the Poultons. This is the OTS Route we have already identified.

[61] We accept the evidence of Mr Baker that there were difficulties in obtaining Mr Taylor's approval in relation to the line crossing his land, but agreements were concluded with Mr & Mrs Poulton to cross the northern part of their land.

[62] There was no clear evidence as to the position of FGT or Greenacres in relation to the OTS Route, and we are unable to reach any view as to their position. Nevertheless, from June 2012 to at least March 2014 and potentially early 2015, TEL continued in negotiations with OTS and the local iwi/hapu concerning access over the OTS land.

[63] We find that, by October 2014, it became clear that Te Whiu would not consent to the route over the OTS property, and that OTS and the Minister of Treaty Settlements was not going to grant permission. This situation led TEL to adopt the option 5 route (Objection Route) the subject of these proceedings.

The position in respect of Crown Land

[64] Although the position of the objectors is that TEL should have acquired the land from the Crown, it is clear that the Public Works Act does not permit a taking against the Crown. Accordingly, there is no method, short of the agreement of the Minister, to obtain access to the OTS property or an easement over it. Notwithstanding the difficulties that TEL faced, it is clear that they attempted to pursue this issue as far as possible, meeting with the iwi representatives directly to offer a settlement package.

The Treaty position

[65] We do not wish to go into the details in relation to the Treaty position at this stage, given we had no evidence before us from Te Whiu. Nevertheless, we accept, based upon the evidence of Ms Hickey from the Office of Treaty Settlements, that there was a sound basis for Te Whiu to refuse access over this land. We also find that the Ministry of Treaty Settlements had a reasonable basis for refusal of the easement. We could summarise this as follows:

distribution of power, which we accept is not practical given evidence Mr Shaw provided in re-examination, the treaty negotiations are a separate matter well beyond the reach of TEL or the Minister responsible in this case. They need to be left to run their course, and there is still no certainty of the outcome at present. The matters are still before the Waitangi Tribunal.

Subsequent actions

[68] In addition to the OTS difficulties, TEL advise that they were not able to progress an AGE with Mr Taylor at that stage. Given the unavailability of the OTS land (it could not be taken) and the unwillingness of Mr Taylor to enter into an AGE, TEL began to consider alternatives. In 2014, Mr Baker provided a view of the alternatives to Mr Shaw, the CEO, for consideration. This contained some relatively frank assessments of difficulties with the various routes, and were the subject to a significant amount of cross-examination by Mr Salmon for the objectors. We will discuss this later, but for current purposes it is clear that, as a result of that, Mr Shaw still considered that the OTS option was the best route, and hoped to convince the iwi and OTS into an agreement. When that failed, it is clear that the other routes that Mr Baker had developed had to be considered in more detail.

[69] Of the five options, two were on OTS land. There were three other alternative routes. The FGT/Sutcliffe route still required the agreement of Mr Taylor and would likely require acquisition, but retained the AGE signed with Mr Poulton. It ran through the middle of the FGT and Sutcliffe farms, and then deviated across the conservation area, through the top of the Cornelius land towards the Greenacres line.

[70] The alternative route further to the west involved a longer length through the centre of the Poulton property (just under 1.2km), and crossed a QEII area on the Poulton property. Thereafter, however, it involved relatively shorter lengths through various properties, including the Newman property (well away from their household), a public road, a portion of the north-eastern corner of the Dromgool property, the eastern side of the Sutcliffe property, across the conservation area, through the Kearney property, and then through the Cornelius property to join up at the southern end of the Greenacres site.

[71] The final route avoided the Poulton property entirely by moving towards the far west, going through the Landcorp Farming Limited property, to the west of the Jones' property, avoided the Dromgool property, and then used the road to connect from the west to the Greenacres property.

[72] The far western route was nearly immediately discounted because of its length, its complexity, and the fact that the road portion would involve the lines relatively close to a number of properties. The other two routes appear to have been explored in more detail. It was clear that the FGT/Sutcliffe route would encounter strong opposition from both of those parties and Taylor, who had already refused to enter into an AGE for the OTS route. The subject route avoided some properties and less length of easement by using the road, but had implications for the Bedford home, which was situated on a small block close to the road. It involved a longer section through the centre of the Poulton property, and a crossing of the QEII area. At this point we are satisfied that TEL sought permission from the Jones' to move the line onto their property to give a greater separation to the Bedford home, and/or enter into an agreement with the Bedfords to take an easement over a very small strip of their land so as to ensure that they would obtain compensation under the Public Works Act.

[73] On the basis of these further findings, we move to s 24(7).

The objectives of the requiring authority

[74] The first requirement for the Environment Court is to reach a finding as to the objectives of TEL/now the Minister of Lands (by virtue of the agency). The use of these words would indicate that the Court is not bound by any statement of objectives that are given or not given to the parties, but we are in essence to undertake a fact finding issue.

[75] The word "ascertain" in our view does not requires us to evaluate, but rather to identify. In this case the notices of intention did contain some general statements together with some reasons for taking the easement. We annex as an example (marked **A**) the Dromgool notice of intention to take. From this we find:

(a) that there was an intention to take an easement only (although the terms of that were relatively broad);

(b) that the easement was to support a Kaikohe-Kaitaia single circuit 110kV transmission line project, with the easement being vested in Top Energy Limited, the network utility operator.

[76] Under paragraph [6] of the Notice of Interest, further reasons why the Minister for Land Information considers it reasonably necessary to take the interest are noted, as:

(a) the project will allow Top Energy Limited to construct a single circuit, high voltage transmission line, with a nominal operating voltage of up to 110kV, and other electrical and communication works, together with all associated works, installed or constructed from Kaikohe to Kaitaia; and

(b) the project is required to improve the capacity, security and reliability of the electricity distribution network in the Far North region to meet growth and increasing demand for electricity in the region and to remedy underlying network weakness, which will provide a more secure supply for the region.

[77] From this, the following is clear:

(a) the objective is to provide for an electricity distribution lines system (network);

(b) its objective is to improve the capacity, security and reliability of the existing network;

(c) that it is to enable further growth and provide for demand in the region; and

(d) to remedy underlying network weakness, which will provide a more secure supply.

[78] Evidence given in support and identified already in this decision, indicates that the current 110kV system, known as the Kaikohe to Kaitaia GXP as demonstrated in annexure **B**, took a relatively direct, central route between Kaikohe and Kaitaia. There is a concern as to security of supply due to two major factors:

(a) unanticipated outages due to breakage in the Kaikohe to Kaitaia GXP. The evidence was that the line was of significant antiquity, and would require replacement. Although much work has been undertaken to improve the poles and other structures, the re-conducturing of the line has been identified as an ongoing need into the future, at least by 2030;

(b) planned outages – these would be not only to improve the Kaikohe GXP and allow for re-conducturing, but also for other important works upon the line, including substation improvement and replacement and the like.

[79] We are also satisfied that the populations of Kerikeri and Kaeo and on the eastern seaboard have been increasing, requiring reliance on the 33kV and 11kW circuits from Kaikohe. This includes Ngawha Prison. Power to Kaitaia relies entirely on the single 110Kv line, with Juken Limited, a major employer, relying on that (noted in the map as NPL). As we have already noted, the Stage 1, and 2 sections from Kaikohe to Wiroa (including the substation) has been built. This has provided a dual 110kV system significantly increasing the security and reliability of that section of the grid. This enables power to be circulated not only to Mt Pokaku, Kawakawa and Moerewa, as well as Ngawha, but also up towards Waipapa and Kerikeri through a lower voltage system.

[80] Clearly the construction of the line between Wiroa and Peria would also enable the completion of a new circuit to Kaeo, which has already had a substation constructed. That will ensure there are two lines providing power to Kaeo and Waipapa, thus significantly increasing the reliability of power in this eastern section around Kaeo. From Peria it is intended that there be a double circuit to Taipa, which would then connect through the 110kV system back towards Kaitaia. The connection from Peria to Kaitaia would enable the double connection to the Kaitaia GXP and thus mean there were two 110kV lines of supply to Kaitaia, or alternatively that the Kaikohe to Kaitaia GXP could be utilised only for outages. We are in no doubt that this would increase the reliability of supply to Juken (NPL), Taipa and Kaeo areas, and the eastern seaboard around these areas.

Embedded diesel supply

[81] We emphasise that the evidence before us was clear that the objective of these works was to duplicate the line distribution system between Kaikohe and Kaitaia, and in part improve distribution to the eastern areas and improve resilience. We did not understand any of the witnesses for the objectors to dispute these objectives.

[82] Nevertheless, Mr Salmon submitted that recent reports obtained by TEL showed that embedded diesel generation was a possibility to avoid the construction of these lines.

[83] Our obligation is to identify the objectives. The objective of these works relates to the construction of a lines network distribution system, not to the production of power. Although an embedded generation system might increase resilience and lower outages, it does not construct a single circuit high voltage transmission line. It does not improve the capacity, security and reliability of the electricity distribution network.

[84] The evidence before us satisfies us that the purpose of the investigations was to consider reduction in outages pending the construction of the new line on the Kaikohe to Kaitaia GXP. Whilst Diesel generation might improve the reliability of electricity to consumers, in our view it does not improve the reliability of the electrical distribution system itself. Thus, arguments by Mr Salmon that lines distribution may not be necessary by 2030 are not matters that are relevant to our conclusion as to the objectives of the Minister.

[85] Mr Salmon may be suggesting that this later report may displace the objectives of the project itself. Mr Shaw explained, in re-examination by Mr Isac, a number of matters that focus us clearly on the complexities TEL must consider relative to this project enabled by the land take. These include:[9]

(a) given the delay in securing the land rights, TEL assessed whether diesel generation is an alternative method to mitigate the outages;

(b) TEL has security of supply obligations. Mr Shaw explained that up to a third of the acquired network was uneconomic and TEL will not make a return on that to cover the cost of building and maintaining it. These assets were initially maintained by central government through a rural electrification fund to install those assets. That obligation went in 2013, and now the consumers effectively cross-subsidise each other for this purpose;

(c) There is a business case for the maintenance or introduction of new lines, transmission lines, and capital routes on the one hand, and, on the other hand, there is an independent obligation to ensure capital is spent to maintain the supply irrespective of the business case. Mr Shaw advised that there are many cases where TEL have to replace existing assets that have never been economic and will never be economic;

(d) TEL have to maintain supplies to existing customers, and then the Commerce Commission (who is responsible for setting the pricing) allows a return on a weighted average cost of capital of the total assets, so this spreads the uneconomic cost over the economic parts of the network and those consumers pay more;

[9] Transcript begins page 60

(e) Mr Shaw advised that, in terms of network resilience and security of supply, TEL has a quality path, which is the second part of the price quality path, that defines the number of interruptions and duration of interruptions that the average customer can have. There is a target, a "cap and collar", and financial incentives around the cap and collar. If TEL fails to make those targets two out of three years, the Commerce Commission can take control of the company;

(f) in terms of Kaitaia in the far north, the total amount of load demand that's required for that area varies summer/winter, peak and the evening to the morning, but peak demand is approximately 25 megawatts. Of this, Juken consumes 10 and AFFCO at Moerewa consumes approximately 6 megawatts. Diesel generation capacity is 15 megawatts;

(g) reconductoring of the existing line depends on the condition of the conductor, so in any work that TEL is forecasting they look at 10, 12 years of what that condition might be, but in this case the lines are old, and TEL is expecting failures to occur from 2030, so it has to be done prior to 2030;

(h) with the diesel generation, as long as TEL is able to reach agreement with Juken, they can (and this is considered a very inefficient way to conduct) run the diesel generators and do reconductoring, but it will take five years;

(i) Mr Shaw indicated he had not undertaken a detailed calculation, but the best way to do a shutdown to undertake reconductoring is take the line out and run a long section of line (we assume a bypass), which Mr Shaw advised cannot be undertaken on backup supply;

(j) capital expenditure is organised in a five-year block and is approved by the Commerce Commission. Budgets are submitted to them in terms of planned operating capital expenditure and then that determines the allowable revenue that TEL can have over that period;

(k) if the budgeted work within that five year period doesn't actually occur or isn't carried out, the consequence for TEL is that it is penalised in terms of price and, where that has happened, the regulation results in not as much money made available in the future. Thus, the ability to generate revenue to fund the capital in the future could be put at risk if works are not

completed within the five-year plan;

(l) looking to when this project will be built, a key component is the substation at Kaeo which has already been built. Mr Shaw indicated that he could not see an energy future that does not require lines. Given predicted growth of 44% by 2030, doubling by 2050, Mr Shaw indicated that the network in this area will require two lines, being the project facilitated by these land acquisitions.

[86] In addition, an application to the Electricity Authority to permit this diesel embedded power generation was later withdrawn. TEL can only have 50MW of embedded generation before requiring approval from the Authority. They currently hold consent for some 65mW of geothermal and major rearrangement would be required or further consent to embed 25MW of diesel generation. Thus, further embedded generation would require Electricity Authority consent and may not proceed even if feasible.

[87] Quite simply, the requiring authority is empowered to seek a lines distribution consent from the Minister under s 186 (and to undertake works to that effect). That it may have powers to undertake further works of a different nature is not a matter relevant to the ascertaining of the objectives of this work.

[88] We conclude this Court is constrained to consider the objectives for these works rather than the more general powers of the requiring authority. The reason we reach this conclusion is in part reference to s 24(7)(b). We are required to inquire into the adequacy of consideration of alternative routes, sites and methods of achieving those objectives. If the objective was simply the general objective of the requiring authority, the creation and distribution of power, this would be of little help to a landowner in seeking to understand the reason for the imposition of take across their private property.

[89] Further, the diesel generation was for planned and unplanned outages rather than base load. Distribution lines would still be required.

[90] We have concluded that the objective in question is the objective relative to the particular works undertaken on the land. Although stated at a degree of generality above that specific to the objector's individual properties, nevertheless, they must justify the works as a whole.

[91] Mr Salmon also submitted that there was a requirement for the objectives themselves to relate to the specific property in question, ie the Poulton land, the Dromgool land and the Newman Farms land. For linear projects such as this, where there are some 96 properties, we are unable to agree that an objective should be stated in such a specific fashion. It may be that the words in s 24(7)(a), as the case may require, do introduce the question of proportionality.

[92] We conclude that the intent is that the objectives will relate to the project as a whole, but give sufficient detail for a landowner to understand why their property may be involved. It cannot be that the objectives must be specified to such a degree as to identify why a particular route or particular piece of land is selected. We have concluded that that is the role of s 24(7)(b), given the specific wording in that subsection.

Finding

[93] We conclude the objectives of the Requiring Authority and now the Minister are:

(a) to construct a single circuit high voltage transmission line with a nominal operating voltage of up to 110Kv, and other electrical and communication works together with all associated works from Kaikohe to Kaitaia. An easement is required over each of the Objectors' properties to allow this installation. (The Project)

(b) the project is designed to:

(i) improve the capacity, security and reliability of the electricity distribution network in the Far North region to meet growth and increasing demand for electricity in the region; and

(ii) to remedy underlying network weakness to provide more secure supply for the region.

Consideration of alternative sites, routes and methods to achieve the objectives

[94] Given the nearly 68km of line involved in this project between Wiroa or Kaikohe, Kaeo, and Kaitaia, the question of adequate consideration of alternatives is a significant matter of relevance.

[95] As we have already concluded, there is no requirement at the time the Minister decides to agree under s 186 that the Minister considers in detail the impact upon the particular landowners. The Act clearly contemplates that, as a result of negotiations or

re-design by the Requiring Authority/Minister, the intent under s 16 of the PWA or s 186 of the RMA may not require a party to move to the formal step of a compulsory land take.

[96] As we understand it, the requiring authority may still enter into, or achieve, settlement of easements (in this case) without necessity to proceed to a formal notice of intention to take. In this case, it is clear that the requiring authority was already relatively well advanced in its consideration of the route and alternatives when it approached the Minister with the requisite application under s 186.

[97] We have concluded that the PWA anticipates that this may be the case, but nevertheless requires the Minister to ensure compliance with the Public Works Act by invoking the provisions from s 17 to s 23. In this case it is acknowledged that the Minister (for TEL) issued a notice of desire under s 18 PWA, and subsequently a notice of intention to take under s 23 PWA. In exercising the notice of intention to take, the necessary survey plans under s 23(1)(a) were prepared, as was the notice in the Gazette. Furthermore, a copy of the notice was served on the registered interests. At this time, the objections were taken and this invoked the s 24 procedure.

[98] We are satisfied from the evidence we have heard that most of the work in relation to this design, and the consideration of alternative sites, routes and methods, had occurred prior to the TEL approaching the Minister to acquire. Nevertheless, it is also clear that the Minister and TEL both sought to engage further with the parties in advancing the acquisition of this land, with little success. The relevant witnesses for each party, in evidence to this Court, confirmed that they were not interested in acquisition of the land by TEL/the Minister.

[99] It is clear from the notice of objection that, at the time of filing the original notices, the objectors considered that the OTS route was the preferred route, and that the Minister should proceed with that. During the course of this hearing, it became clear that in light of the further information received, the parties now consider that the FGT/Sutcliffe route had been dismissed without appropriate consideration.

The failure to provide information and adequate consideration

[100] One of the core concerns of the Court in this hearing has been the delay (and possible reluctance) on the part of the Minister to provide information. At the first Court procedural telephone conference, the issue of production of information was raised, with

an indication that a formal application for discovery may be necessary. After discussion with the parties the Court was satisfied that the Crown acknowledged its obligation to make full discovery, and would do so.

[101] At the following conference, it appeared that much of the information had been supplied, but Mr Salmon remained concerned that not all relevant documents had been supplied in relation to the matter. The Court made the point that, if the Minister sought to rely on documents not produced, or it came to light that other relevant documents had not been discovered, this would be a matter that would be dealt with as part of the hearing.

[102] It is, therefore, disappointing that at the commencement of the hearing, the Minister advised that there was a series of documents which they had produced on the Saturday prior to the commencement of the hearing, which they recognised were properly discoverable. Those documents were admitted by consent, and were contained within Court Exhibit B1. These included reports as to the potential for diesel generation in the Far North, and were matters that were potentially relevant to the matter before the Court and should have been discovered.

[103] Furthermore, during the cross-examination of the first witness, Mr Shaw, it appeared that further documents could be relevant to this hearing. Mr Shaw, TEL CEO, indicated that that he formed the view that there were other documents discoverable as Exhibits B1 and B2, after his meeting with the Minister's solicitor. No explanation was given as to why these were not discovered at an earlier date. Furthermore, the discoverable documents mentioned in cross-examination appeared to include matters that were available on the company website, which had not formally been disclosed, and other internal documents, including calculations of price justification and further background information in relation to the Diesel alternative supply issue.

[104] These papers were made available to Mr Salmon overnight, who then indicated that he did not wish them to be produced as they could be prejudicial to his client, and had not been disclosed earlier. Mr Isac for the Minister then sought the discovery of these documents.

[105] The Court made a separate decision, which it has not published, declining to allow production of those documents on the basis of their late production, and the fact that the Objectors did not wish to cross-examine on them or have them produced.

[106] It is clear to us from the objector's evidence and submissions by Mr Salmon that the objectors considered that there was more information available, which was not being supplied by TEL. Mr Salmon says the documents that have been supplied in B1 support their suspicions that evidence was being suppressed in relation to this hearing. However, Mr Salmon expressly declined an adjournment.

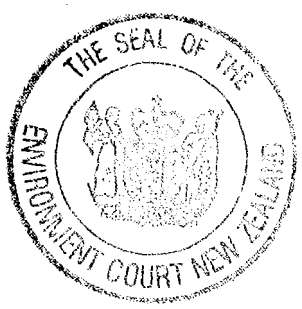
[107] We have concluded that these documents should properly have been disclosed, as they are relevant to the issue as to both the objective and alternatives. However, for the reasons given they do not bear greatly upon our decision, because we do not consider that they relate to the improvement of the electrical **distribution** network in Northland. Nevertheless, we acknowledge that many of Mr Salmon's questions and the concerns of relevance, related to what they saw as suppressed information in relation to their objection. This is particularly reflected in objectors' views that TEL had improper motives in choosing the Objection Route rather than the FGT/Sutcliffe Route.

[108] In documents produced by Mr Baker and also in file notes maintained by TEL, it appears a conversation had taken place with Mr Sutcliffe indicating his relationship to the then ruling Government party, and that he had a fighting fund available to argue the acquisition of his property in Court. It is clear to us that the objectors considered that they had been treated unfairly, and that the FGT/Sutcliffe route had been discounted for these reasons, rather than any proper reasoning related to the objectives. The late discovery documents do not further elucidate this issue.

Consideration of alternatives

[109] We have concluded that there has been extensive consideration of alternatives, not only in the route selection by Boffa Miskell on several occasions, but also by TEL. We are in no doubt that TEL would have preferred the OTS route even if this had meant acquiring land from Mr Taylor. However, as we have noted, with the refusal of the Minister of Treaty Settlements to provide an easement over the land after extensive attempts, there is no power for compulsory acquisition of Crown land.

[110] In March 2014 the FGT/Sutcliffe Route was identified as a Western Deviation. The Objection Route was not identified at this time, but was identified by Boffa Miskell later in 2014 as "Option 5". This general route is identified first in documents dated 25 August 2014. The alignment is approximate only, and does not follow the road or enter the Sutcliffe property.



[111] As matters were delayed and Boffa Miskell was instructed to re-look at routes, by late 2014 TEL considered practical routes to be that through FGT/Sutcliffe, the current Objection Route, and also considered a route to the far west, avoiding the majority of acquisitions within this group. No party before us seriously suggested that the far western route was an appropriate route, but it appears to have been considered nevertheless.

[112] Although Mr Salmon pursued a number of witnesses on the basis of the lack of consideration of the FGT/Sutcliffe route, we have concluded that the evidence satisfies us that this route was considered. It appears that the same difficulties arose with Mr Taylor in relation to the FGT/Sutcliffe as for OTS, and that this would require a property acquisition. It was also identified that the line route would have a significant impact, not only on the amenity of both the FGT and Sutcliffe landowners and their homes, but also through having an easement through the middle of the land, dividing the land and limiting activities upon it.

[113] Although the objectors relied upon Mr Sutcliffe's threats to Top Energy Limited, it is clear that Mr Sutcliffe has signed an AGE in respect of his property, albeit for a route to the southeast of his home, and over a significantly shorter distance. It cannot therefore be argued that TEL was unwilling to deal with Mr Sutcliffe, given that they were eventually able to enter into an AGE in respect of a route through his property. Rather, what this demonstrates is the robust nature of discussions in relation to the route, and the need to take a responsive approach to concerns, to see if these can be addressed and agreement reached.

[114] We have looked at the proposed alignment through the FGT/Sutcliffe land, and consider that this would have had a significant impact on both these property owners. Although there is an increase in impact upon the Poultons (who had signed an AGE for an alternative route) the impact of the Objection Route upon their home (400m away) is significantly less than would have been the case upon the Sutcliffe and FGT properties. As the TEL witnesses noted, the Objection Route involves a balanced impact upon the various landowners in the area. Overall, we are satisfied that the Objection Route is a reiteration and refinement of a western deviation from the preferred OTS Route.

[115] Although it represents an increased impact over the AGE signed by the Poultons, the major impact is the crossing of the QEII reserve, which would have been avoided under the earlier AGE. The response of TEL has been to adapt the monopole design to avoid any direct impact upon the reserve area. The monopoles are outside the QEII

area, and it is intended that the lines themselves would be placed by helicopter. We also understand it to be the intent that the lines would avoid the existing bush and give adequate room for growth in the QEII area below without impacting upon the lines.

[116] Nevertheless, the exact details of that were not able to be given to us due to the refusal of the Poultons to allow TEL to enter on their property and undertake a more specific survey. TEL has instead had to rely upon drone information at a relatively high altitude. Although Mr Salmon suggested to TEL officers that they could have entered the QEII area from a neighbouring property, we do not agree with this proposition. In our view, the QEII covenant area still remains within the property of the Poultons, and any order of exclusion would apply within the QEII area as well.

[117] We note that, in particular, TEL sought to rely upon QEII providing a report in respect of the area to ensure its design was appropriate, yet from the information seen by us no such information has been provided by QEII to TEL. We note that QEII were originally objectors, but withdrew their objection just prior to the hearing. There were no issues as to costs.

[118] At the hearing, Mr Poulton produced some photographs showing a well-established area involving a drop from two streams to form the Kerikeri river and a large pond/lake area close to the area of the crossing. He indicated that the lines would be seen in views looking towards this area, and would detract from the amenity and beauty. Nevertheless, Mr Poulton indicated that the QEII covenant, to his knowledge, did not enable public access. He did indicate that he did allow access to neighbours for swimming and the like, but there was no indication that he allowed general public access to this area.

[119] To the south of the Poulton land, the lines crossed the Newman property. This is a relatively short crossing, well away from the Newman home. The crossing then meets up with an unnamed road that travels at right angles to Maungakaretu Road, between the Jones and Newman Farms properties. On the corner of Maungakaretu Road and the unnamed road, the Bedfords have a small lot (around 5,000m^2) on which their house is situated. The electricity line would be less than 40m from the Bedford home. The line works would be within the bounds of the road and is accordingly a permitted activity. No take or notice by the Minister is required for this, and none has been given.

[120] The lines then cross Mangakeretu Road and enter into the northeastern corner of the Dromgool property, angling across a paddock towards the boundary with the Sutcliffe property. After leaving the Dromgool property TEL has AGEs with the relevant landowners in place. Mrs Dromgool acknowledged that neither the lines, nor the poles, would be visible from their home, which appears to be well removed from the area in question.

[121] Mrs Dromgool did express concern as to the impact of the poles and lines on the Bedford property. However, there was no suggestion to us in the evidence that the pole or lines on the Dromgool property itself would affect the Bedfords. It was rather the lines travelling along the unnamed road from Mangakeretu Road to the north. As we noted, TEL sought to obtain the Jones' approval to move the line onto their property, away from the Bedford property, or alternatively to take a small easement over the Bedford property (without moving the lines) to enable the Bedfords to access compensation. Neither approach was deemed acceptable by those landowners.

[122] Mr Salmon suggests that the effect of the take on the Bedfords is a matter we should properly take into account. If it related to the take on the Dromgool property, it may have some limited relevance to the matters under s 24(7). Given that the effect of the lines on the Bedford property is from the unnamed road, which is not the subject of any notice to take, we conclude that consideration has been given to this issue. This includes use of the road, which avoids the taking of private land. Given line construction activity on the public road is permitted, the effects are anticipated in the area and seen as acceptable. How such effects could be relevant under s 24(7) of the Act (when there is no Take involved) was not explained or supported by case law.

[123] For completeness, we note that a variation on the FGT/Sutcliffe route (suggested by the Dromgools in their evidence) involved going some 80-100m behind the Sutcliffe house and cutting across on the FGT land close to the Newman home. Impacts on landowners subject to the easement would be greater than the Objection Route.

[124] At the time the Poulton application was made to the Minister, only the Poultons had reached the stage where no further negotiation could advance matters. Nevertheless, before the Minister considered the matter, both the Dromgool and Newman Farms properties had also reached the same stage.

Finding as to consideration of Alternative Routes and Sites

[125] We are satisfied that, at the time of the Minister's agreement under s 186, three takes were required on the Objection route and three takes (Taylor, FGT and Sutcliffe) would have been involved in the FGT/Sutcliffe route.

[126] We are in no doubt that consideration had been given by TEL to the FGT/Sutcliffe route, and that this is demonstrated not only by the Sutcliffe's agreement to an alternative route but by a consideration of the impact upon the other route upon the Sutcliffe and FGT properties. It is likely that the impact upon the Taylor properties was considered by TEL to be acceptable, but concerns had been identified as to the impact on the FGT and Sutcliffe properties.

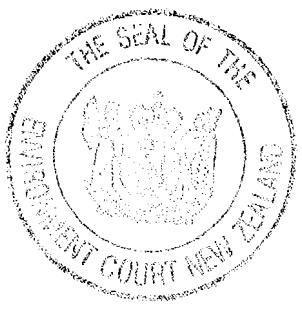
[127] We are satisfied that the Western Deviation of the Maungakaretu Alignment was developed in an iterative process, including consultation with landowners. It is not for this Court to reach a conclusion as to which is the best route alternative. We are satisfied that alternatives have been considered on a reasonable basis, and that the choice of route is reasonable in the Wednesbury sense. Our finding is that there has been an adequate consideration of sites and routes to achieve the objectives.

Alternative methods

[128] In relation to methods, we conclude that, to the extent possible, TEL has sought to utilise a method to minimise impact, including the careful placement of the monopole structures, adjusting pole and line height to avoid conflict, and utilising sensible access methods to minimise disruption to farming. We consider that the easements still require further refinement to reflect some of the matters agreed. However, we conclude that this is a matter that can be addressed through finalisation of the wording rather than an adequacy of consideration generally. We acknowledge that effects on the Bedfords have not been addressed as:

(a) the Bedfords and Jones refused to enable an easement to ameliorate effects or access PWA compensation;

(b) the activity and its effects are permitted on the Public Road.



Overall finding as to adequacy of consideration of alternatives

[129] Given the nature of our duty under s 24(7)(b) is to inquire into adequacy, we find that adequate consideration has been given to alternative sites, routes and other methods. We recognise that there could be improvement to the wording of the easement to more directly reflect the arrangements in prospect, but consider this is a matter that can be the subject of further report by this Court rather than send the matter for further consideration to the Minister at this stage. Accordingly, we conclude that the matter can be the subject of an interim report to the Minister under s 27(7)(f), with a further report in due course on the easements if necessary.

Sound, fair and reasonably necessary

[130] The matters for decision of the Court under s 24(7)(d) require us to decide whether, in our opinion, it is fair, sound and reasonably necessary for achieving those objectives for the land of the objector to be taken.

[131] We have concluded that we should break this down into several steps. The question of reasonable necessity has been considered, as has the question of adequate consideration, in a series of Notice of Requirement decisions. We have concluded that although the overall exercise may be subject to different tests, the elements relating to adequate consideration, and reasonable necessity, are the same for both notices of requirement and Public Works Act takes.

[132] This approach is unsurprising given the similarity of the activity involved. A notice of requirement requires a wider consideration of relevant policies and objectives and effects. A Public Works Act taking of the land does not authorise the works, but simply acknowledges the status of the requiring authority and the necessity for the land to be involved.

[133] In this case, neither a notice of requirement nor a resource consent is required, and to that extent the tests for adequate consideration, and for reasonable necessity, can be regarded as similar. Certainly, neither of the counsel disputed that the test as to the reasonable necessity involved a test between expedient and essential.

Reasonable necessity

[134] In this regard, Mr Salmon was particularly concerned that the Crown had it in its

own power to grant an alternative route. Accordingly, it was not reasonably necessary to take the objectors' land. To the contrary, we accept the evidence of Ms Hickey for OTS that they are essentially holding this land as trustee, pending the resolution of the Treaty Claim relating to Te Whiu and others. The Office of Treaty Settlements clearly considers that this land is appropriate as cultural redress, and it has been identified – not only by the tribe, but by OTS – for that purpose.

[135] To that end, we have already acknowledged that the Minister of Treaty Settlements may consider it unwise to utilise this land for public works against the objections of Te Whiu, who have clearly indicated that they do not agree to it. Furthermore, we are satisfied that TEL undertook exhaustive attempts to reach agreement with Te Whiu and the Minister, and that for practical purposes this land is not available. Accordingly, a route not involving OTS land is reasonably necessary to complete the objective.

[136] We have already discussed there are limited distinctions between the two alternative routes (FGT/Sutcliffe and the Objection route). We conclude that one of those two routes is reasonably necessary to achieve the objectives. The Objection Route may be a further iteration of the Western Route (now described as the FGT/Sutcliffe Route). Given we have concluded that there was adequate consideration of alternatives, then the route chosen is reasonably necessary to achieve that objective, given that TEL has not pursued the alternative route.

[137] We keep in mind that the taking, in this case, is of an easement to allow the construction of monopoles and lines over the subject land. As we have already noted, the easement itself is worded more broadly and is unlimited as to whether in fact the works themselves are undertaken. We considered very carefully whether or not this affected the reasonable necessity of the taking of the Objectors' land itself to achieve the works. We have concluded that this concern can be addressed by having a "sunset clause" within the easement that would require it to be utilised within a reasonable period of time.

[138] Having heard the evidence of TEL and other witnesses, in particular Mr Beale, we would consider that the works, in relation to the easement, should have commenced by 2030. This is when the replacement of the existing GXP line from Kaikohe to Kaitaia needs to take place. From the evidence of Mr Shaw we suspect that, if consents are in place, the works on the Objection Route are likely to take place sooner, as TEL has

already constructed the Kaeo substation and wishes to utilise that section for its 33kV line route.

[139] On the other hand, Mr Salmon's argument was that TEL may never construct the line, and that alternative technology may replace the need for it. As we have already identified, the objective in question is one within the requiring authority's scope, and the project itself is intended to achieve that objective. We consider that the issue of the non-construction of the line is a matter that can be addressed through a provision within the easement which would lead to its termination in the event that construction is not commenced by 2030.

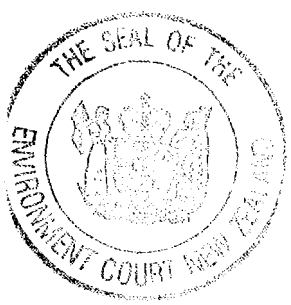
[140] Accordingly, in terms of reasonable necessity, we consider that questions of planning blight (an easement which is never utilised by the requiring authority) can be addressed by such a sunset clause provision. The reasonable necessity of the taking of the easement is established, subject to such a clause being finalised.

Fair and sound

[141] Equivalent words are not found within the RMA, and these words in our conclusion introduce questions of equity and proper conduct of the parties, and questions of effectiveness and good practice. As was noted in *Waitakere City Council v Brunel*[10] and confirmed in *Oliver Trustee Limited v Minister for Land Information*,[11] the concepts fair, sound and reasonably necessary are overlapping, and a conjunctive judgement needs to be exercised. We will do so shortly.

[142] Nevertheless, in *Brunel* the Court noted questions of irregularity, and in *Dean v Attorney General*[12] the concept of fit and right in the circumstances as judged by an informed observer. It also incorporates issues of good faith and acting reasonably.

[143] In this regard, we consider that the actions of TEL, and/or the Minister, have been fair as judged in this sense. In particular, we note that there is a sense of equity and balance to the takings involved. The takes on the Newmans and Dromgool properties are short and well away from their homes.



[10] [200] NZRMA 235; HC, at [48].
[11] [2014] NZHC 1566 at [27].
[12] [1997] 2NZLR 181, HC, at [191].

[144] While we recognise that Mr Poulton's land would have a greater imposition than the AGE originally proposed, it still seeks to avoid impact upon the QEII area and upon the existing housing on the Poulton land. Mr Poulton now suggests that a better alignment might have been chosen, yet he refused to allow TEL onto the land to undertake a more detailed survey. It may be that if this easement is otherwise confirmed, Mr Poulton may be prepared to then discuss an alignment and enter into an AGE in respect of a better alignment to minimise impacts.

[145] Nevertheless, overall we conclude that TEL has been fair in its dealings with the parties, and has attempted as far as it is possible to avoid impacts upon the QEII area by placing the monopoles outside the area itself and using extra height to gain clearance over the bush area, and agreeing to line placement by helicopter.

[146] It also appears the Objection Route alignment was chosen to allow proper use of the balance of the site, given the need for the alignment to reach the public road. In using the public road, we conclude that TEL and the Minister have been fair in seeking to minimise the taking of land by way of easement. It has proffered to the Joneses and Mr Bedford an easement to assist them, and further minimise impacts. The Joneses have not wanted an easement on their land, and the Bedfords have not been prepared to consider an easement to support the Public Works Act claim. Given the impact is permitted under the Plan, and there is no Take involved, we conclude TEL have been fair in their approach.

[147] We note here that it is disappointing that the TEL offer made to Mr Bedford may be lost as a result of these proceedings, and we see no reason that such an offer might not be re-kindled so that TEL, as good neighbours, might establish a positive relationship with the Bedfords into the future. Although we cannot impose such an offer on TEL, we encourage it to be re-kindled and hope that it can be agreed upon.

[148] We have not traversed the evidence that was solicited through cross-examination concerning the constraints the placement of the poles and lines might have on the road. We were satisfied that the distances from pole to boundary can be designed and accommodated appropriately and within relevant safety guidelines. From the evidence, we are confident the road (a standard 20m wide reservation) is capable of accommodating the required infrastructure and carriageway to serve the relevant properties.

[149] We are unable to see anything in the actions of TEL or the Minister that can be described as bad faith. We conclude the Objection route chosen is a reasonable and sensible alignment, making use of the public road to minimise the taking of easements. Furthermore, we conclude that TEL has acted fairly in:

(a) attempting to use the OTS land, even when the circumstances of that would suggest that that may be subject to criticism on the basis of it being fair to the treaty partners Te Whiu;

(b) TEL continuing to negotiate with Sutcliffe in light of his original objections, and securing an AGE over his property, albeit on a different alignment;

(c) the offer to move the alignment onto the Jones' property if agreed, or take an easement from the Bedfords by agreement, to enable a claim under the PWA.

[150] We have formed the strong view that the entire intent of the Public Works Act provisions from s 16-24 are to encourage Requiring Authorities, Ministers and Local Authorities, to undertake an iterative process with landowners to attempt to reach an agreed and sensible conclusion. Even after approval by the Minister under s 186, the Minister is required to issue a notice of desire and then a notice of intention. We conclude the only proper purpose of this is to again ensure that any opportunity for resolution by agreement has been considered.

Sound

[151] Although "sound" has occasionally been described as equivalent to reasonable, we have concluded that the meaning in the context of the Public Works Act s 24(7) is that they are both technically workable, and represent appropriate action by the requiring authority to fulfil the objective.

[152] In this case, we are satisfied that the objective and the works themselves are a sound, sensible step for the lines authority to undertake. Given the confirmation of the majority of the route, the selection process to complete the connection in this area has led to limited choices. Given that the two practical choices were between the FGT/Sutcliffe Route and the Objection Route, it can be seen that the distinctions are relatively minor. The major difference is in amenity impacts and the use of a public road. We note the use of a public road may be preferable, as it reduces the easement length required compared to the FGT/Sutcliffe Route.

[153] In this regard, both alignments would have to be regarded as sound in technical terms. However, the use of the public road is sensible, given it is a permitted activity and does not require easements. It also means ready access for construction. The road enables the overall distance of land taken as easement to be reduced. We have concluded that this is a sound approach by the requiring authority and the Minister.

[154] We add here some commentary on Mr Salmon's submission as to the relevance of comparative costings. Mr Smithies, a registered valuer, was called to give evidence on this issue. Mr Smithies adopted the TEL calculation to show the Objection Route was the most expensive and the OTS Route was the least expensive. Mr Salmon criticised the same per kilometre rate for construction on each route being used by TEL. He says the OTS Route would be less expensive to construct, with fewer Dipoles.

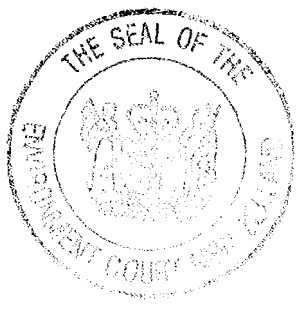
[155] There are several issues with this approach. Mr Salmon included the road length in the construction costs for the Objection Route, notwithstanding it was not subject to any take. More importantly, the costings made assumptions as to impact values. Those for OTS were unrealistic.

[156] Mr Smithies was told to ignore the Cultural Value of the OTS land, which he acknowledged was relevant to its value for compensation.

[157] He also acknowledged the impact on the Sutcliffe and FGT homes and amenity may not result in compensation outcomes as were originally included in the costings.

[158] We conclude that the difference between the FGT/Sutcliffe Route and the Objection Route is some $260,000 included the road section (around $1M) and a very conservative assumption for impact on the Taylor, FGT and Sutcliffe compensation. We attach (Volume 4 Tab 276) as Annexure **F**, the updated option sheet, where Option 3 – FGT/Sutcliffe Route – is $5,080,778 and option 5 – Objection Route – is $5,261,928.

[159] We see the overall situation as broadly comparable, depending on the actual compensation paid to the owners of easement land. The extra length includes nearly 1.5km of lines within the public road. Given that, we find that the selection of the Objection Route was sound based on a lesser length of easement required.



Fair, sound and reasonable

[160] In order to avoid any question that the separation of this phrase has not allowed a holistic approach, we now consider whether or not the taking of this easement (in a way modified as we have discussed) is *fair, sound and reasonably necessary*. At heart, the original complaint of the objectors was that the requiring authority should have utilised Crown land in the ownership of the Office of Treaty Settlements. We have already concluded that TEL went to exhaustive lengths to attempt to reach accommodation with both Te Whiu and the Minister.

[161] We have already noted that, as a matter of law, Crown land is not available for taking under the Public Works Act. We have gone further, and considered that the refusal of the Minister of Treaty Settlements in those circumstances probably has a reasonable basis in light of the government's obligations under the treaty, and the position of Te Whiu as indicated to both the Minister and the requiring authority.

[162] Having reached that conclusion, the next available public land that could be utilised without significant deviation was the public road between the Jones, Newman and Bedford properties. This does not require a take, as the lines can be built as of right within the legal road.

[163] Having reached this position, we conclude that it is fair, sound and reasonable for the requiring authority to then create connections to the north at Koropewa Farms and to the south at Greenacres, by a route that avoided significant amenity impact on the owners of the land Taken.

[164] In relation to the Poulton property, we recognise that there might have been, and could still be, improvements to that alignment to reduce impact on the QEII area. However, the refusal of the Poultons to allow access to the property did not enable the requiring authority to go beyond a technical alignment assisted to some extent by a drone and topographical maps. Particular accommodations have been made in terms of the design for the placement of the poles, the use of monopole construction and using height and span to avoid significant impact on the QEII areas, conservation areas and the like.

Findings on fair, sound and reasonably necessary (s 27(7)(d))

[165] We have concluded, by a strong margin, that the actions of the requiring authority and the Minister (including those attributed to him as agent for TEL) accordingly are fair,

sound and reasonably necessary to achieve the objective. Accordingly, we find that taking the easements is fair, sound and reasonable, and reasonably necessary to achieve that outcome. A modified easement directly related to the activity contemplated with an appropriate sunset clause at 2030 would meet an appropriate balance between the parties.

[166] We make particular note in respect of the easement presented as part of the notice of intention to take. This seems to be in a standard form (in fact the same referred to in *Seaton* from what we were able to ascertain from that decision). As was made clear by Mr Baker, this easement is the one generally presented at the starting point of discussions and is often modified by agreement between the parties or special arrangements made.

[167] If it is suggested by the objectors that the terms of the easement vitiate the process, we cannot accept that as being fair. In our view, the modification of the easement is an appropriate methodology not affecting the objective or the works, but simply recognising the need to tailor the easement to the particular circumstances.

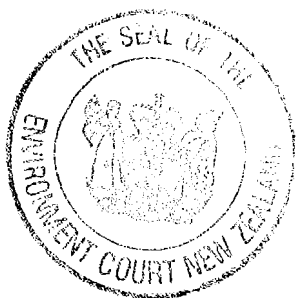
[168] If the objectors had been prepared to enter into discussions, we are in no doubt that appropriate amendments could have been made to the easement that made the easement itself fair, sound and reasonable.

[169] Accordingly, we have concluded that the taking of an easement is a minimal intrusion to achieve the objectives and is in the circumstances a fair, sound and reasonably necessary method to achieve the outcome required.

Overall findings

[170] In conclusion, we are satisfied that the taking of easements over the identified properties is appropriate in the circumstances, and that the Minister can proceed with the taking by proclamation in relation to the land, if necessary.

[171] We also conclude that the terms of the easement should be modified to accept the individual circumstances of the parties, ie such as the QEII area on the Poulton property, the recognition of biosecurity and other issues. However, those are matters that either can be reasonably settled by the Minister or if necessary can be the subject of a further report to this Court in accordance with our task under s 24(7). The parties



acknowledged that the Court would have residual power to provide a further report on the terms of the easement if necessary.

[172] We consider that the mechanism for a further report should be to allow the parties to have further discussions to see if they are able to resolve the terms of the easement. It may be that as a result of this decision the parties are able to enter into suitable AGEs in respect of each property.

Findings

[173] We conclude, under s 24(7), the objectives of the Minister and Top Energy Limited are:

(a) To construct a single circuit high voltage transmission line with a nominal operating voltage of up to 110kV, and other electrical and communication works together with all associated works from Kaikohe to Kaitaia. An easement is required over each of the Objectors' properties to allow this installation. (The Project).

(b) The project is designed to:

(i) improve the capacity, security and reliability of the electricity distribution network in the Far North region to meet growth and increasing demand for electricity in the region; and

(ii) to remedy underlying network weakness to provide more secure supply for the region.

[174] That adequate consideration has been given to alternative sites, routes and methods to achieve these objectives.

[175] In all of the circumstances of this case, it is fair, sound and reasonably necessary to provide for the easements to achieve the objectives identified, subject to the easement being modified to be more directly applicable to the objectives and the individual properties.

[176] The easements should be reviewed and subject to further negotiation or submission to more exactly reflect the Objectives, following the guidelines in Annexure F. The parties are to consider the resolution of the easement wording, preferably through further negotiation. In the event that negotiation does not

resolve the matter within 30 working days, the Minister is to:

(a) provide its proposed easement wording to the objectors within 40 working days;

(b) the objectors are to provide their response to the proposed text of the easement within a further 20 working days;

(c) thereafter, within a further 10 working days, the Minister is to file its proposed wording, identifying any areas of difference with the objectors, and the parties' position on each difference.

[177] The Court will then conclude whether it can proceed with the consideration of the final wording of the easement on the papers, or whether a further hearing is required.

[178] Costs are reserved, although we encourage parties to settle these by agreement.

JA Smith
Environment Court Judge

A

Notice of Desire to Acquire an Easement in Gross Including Invitation to Sell and Advice of Valuation

To: Shane Richard George Dromgool & Dorothy Felicia Dromgool
705 Mangakaretu Road
RD 2 Kerikeri
KERIKERI 0295

Notice is hereby given pursuant to Section 18(1)(a) of the Public Works Act 1981 that the Minister for Land Information desires to acquire an Electricity, Telecommunications and Computer Media Easement in Gross ("Easement") over that part of your land described below ("Land") for the Wiroa-Kaitaia Transmission Line Project ("Project") on the terms and conditions set out in the attached schedule.

Pursuant to section 186(1) of the Resource Management Act 1991, the Minister for Land Information has agreed to have the Easement acquired under Part 2 of the Public Works Act 1981.

By virtue of section 186(2) of the Resource Management Act 1991, the effect of any Proclamation taking the Easement for the purposes of section 186(1) shall be to vest the Easement in Top Energy Limited, being the network utility operator responsible for the Project instead of the Crown.

Land at 705 Mangakaretu Road, Northland

The Easement is required for the Project over:

0.8920 ha (subject to survey) being Part Section 41 Block XVI Kaeo Survey District, (Computer Freehold Register NA109A/794); outlined blue on the attached Top Energy Site Easement and Construction Plan SECAP ID 802 version 2.

Pursuant to Section 18(1) (c) of the Public Works Act 1981, I invite you to sell the Easement to the Minister for Land Information. A registered valuer has carried out a valuation and the estimated amount of compensation to which you would be entitled is $25,000 plus GST (if any).

A Notice of Desire to Acquire the Easement over the Land is being registered against the above Computer Freehold Register.

If you require further information, please contact Wendy O'Neill, Opus International Consultants Limited, Level 3, 100 Beaumont Street, Westhaven, Auckland 1010 (PO Box 5848, Auckland 1041). Telephone (09) 377 5717.

Please note that the Minister for Land Information may commence to acquire the Easement compulsorily if agreement cannot be reached within three months of the date of service of this notice.

As this notice affects your property rights, I recommend that you seek legal advice if you have any doubts as to its effect.

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

Hon Louise Upston
Minister for Land Information

09/11/2016

Schedule:

Electricity, Telecommunications and Computer Media Easement in Gross

Purpose for Which Electricity, Telecommunications and Computer Media Easement in Gross is required:

The Electricity Easement in Gross is required to allow Top Energy Limited to construct a single circuit high voltage transmission line with a nominal operating voltage of up to 110kV and other electrical and communications works together with all associated works installed or constructed from Wiroa to Kaitaia, to improve the capacity, security and reliability of the electricity distribution network in the Far North region to meet growth and increasing demand for electricity in the region; and to remedy underlying network weakness which will provide a more secure supply for the region.

Terms of Electricity, Telecommunications and Computer Media Easement in Gross

1. Definitions

1.1 In this Easement unless the context requires otherwise:

1.1.1 "Construct" means to build, construct, erect, install or lay the Works, access tracks, roads, gates and/or fences contemplated by this Easement and includes anything that is reasonably necessary to give full effect to this Easement including removing soil and water from the Easement Area subject always to the provisions of clause 3.7 of this Easement;

1.1.2 "Easement Area" means that part of the Land shown edged Blue on the Top Energy Site, Easement, Construction, Access Plan ID 802 Version 2 (subject to survey).

1.1.3 "Emergency Situation" means, a situation in which there is a probable danger to life or property or immediate risk to the continuity or safety of supply or distribution of electricity;

1.1.4 "Entry Notice" means the notice to be given pursuant to clause 6.1 of this Easement;

1.1.5 "Equipment" means cables, lines, wires, cranes, drilling rigs, Vehicles, plant, tools and machinery and all material and items required for the purpose of exercising any of the rights under this Easement;

1.1.6 "Grantee" means Top Energy Limited, its successors and permitted transferees, assigns, lessees, sublessees and licensees together with the Grantee's servants, agents, employees, workers, invitees, licensees and contractors with or without vehicles, machinery or equipment.

1.1.7 "Grantor" means the registered proprietor(s) for the time being of the Land.

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1.1.8 "Land" means the Servient Tenement, which is the land being Part of Section 41 Block XVI Kaeo Survey District comprised in Computer Freehold Register NA109A/794, North Auckland Land Registry;

1.1.9 "Temporary Period" or "Temporary Periods" means such period or periods of time as are reasonable for the sole purpose or purposes of the Grantee occupying such part or parts of the Land as it requires for the purposes set out in clauses 2.1.1 through 2.1.9 and as detailed in the Entry Notice;

1.1.10 "Vehicles" means four-wheel drives, motorbikes, cars and trucks, tractors, trailers, graders, pile drivers, drilling rigs, cranes, helicopters, aircraft, excavation and earthmoving equipment, whether wheeled or tracked;

1.1.11 "Working Day" means any day of the week other than:

(a) Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, and Labour Day; and

(b) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and

(c) A day in the period commencing on the 24th day of December in any year and ending on the 15th day of January in the following year, both days inclusive.

1.1.12 "Works" means electrical and telecommunications works and computer media and includes all or any part of any cables (including fibre optic cables), wires, earthwires, conductors, poles, pole structures, insulators, foundations, tunnels, buildings, repeaters, pipes, bridges, ground stays, supports, casings, devices, appliances, antennae, metering devices and other apparatus, structures, fixtures and equipment as are reasonably necessary to give effect to the Grantee's rights under this Easement to install and operate an electricity transmission network.

2. Grantee's Rights and Powers

2.1 The Grantee shall have the following rights and powers:

2.1.1 to Construct the Works and to remove, inspect, use, operate, repair, maintain, renew, alter, replace, upgrade, add to and modify the Works or any part of the Works on the Easement Area;

2.1.2 to convey, conduct, send, distribute, pass, convert, transport, transmit and receive electricity and telecommunications signals and computer media by means of the Works;

2.1.3 to undertake all tests, inspections, investigations and surveys that are reasonably necessary for the Grantee to exercise its rights under this Easement and in so doing the Grantee may:

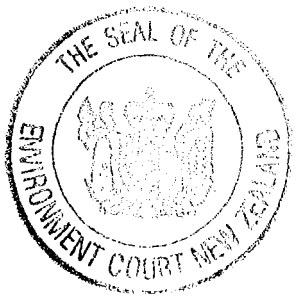
(a) drill for core samples and dig test pits;

(b) install and maintain testing and monitoring equipment;

(c) take away samples from the Easement Area for analysis;

2.1.4 to enter and remain on the Easement Area and such other part of the Land as is reasonably necessary in the circumstances with or without Vehicles, machinery and/or Equipment and with such personnel (including its employees, agents, contractors and/or consultants) for the purposes of exercising the Grantee's rights under this Easement;

2.1.5 to Construct, inspect, use, repair, maintain, renew, alter, remove and modify roads and access tracks on the Land, to modify adjacent fences (including boundary fences) on the Land and to remove or trim vegetation on the access tracks at the cost of the Grantee to the extent that is reasonably necessary for



the Grantee to exercise its rights under this Easement with these rights to be exercised on the following terms:

2.1.5.1 where any new roads and/or access tracks on the Land are to be constructed such will be constructed by the Grantee as far as is practicably possible to enhance the land use operations on the Land by the Grantor;

2.1.5.2 if during the course of the construction of the Works on the Land the Grantee uses any existing roads and/or access tracks on the Land then these will be repaired and/or maintained as is necessary by the Grantee so that at the conclusion of the construction of the Works such roads and/or access tracks are left in as nearly as possible the same condition as they were in at the time of first entry onto the Land by the Grantee;

2.1.5.3 if the Grantee in the exercise of access to the Easement Area for the purposes of inspection, use, repair, maintenance, renewal, alteration, replacement, upgrading, addition to or modification of the Works uses roads and/or access tracks on the Land it shall at the conclusion of such period of access repair and/or maintain those roads and/or access tracks to ensure that the same are left in as nearly as possible the same condition as they were in at the time of the commencement of the exercise of the Grantee's rights hereunder.

2.1.6 to Construct gates within fences (including boundary fences) located on the Land and to inspect, use, repair, maintain, renew, alter, remove and modify those gates at the cost of the Grantee to the extent that is reasonably necessary for the Grantee to exercise its rights under this Easement;

2.1.7 to clear and keep the Easement Area clear of trees, shrubs, vegetation, structures (including fences), earth, gravel and stone, and to clear and keep such other part of the Land as is reasonably necessary in the circumstances clear of any trees, shrubs, vegetation, structures (including fences), soil, earth, gravel and stone which is or is likely to be or become, in the reasonable opinion of the Grantee, a danger or hazard to the safety or operation of the Works, will impede the Grantee's access to the Works or will otherwise interfere with the Grantee's rights under this Easement;

2.1.8 to open up the soil of the Easement Area and excavate or remove timber, vegetation, soil, earth, gravel and stone from the Easement Area to the extent necessary for the Grantee to exercise its rights under this Easement; and

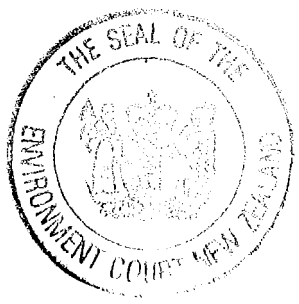
2.1.9 to temporarily occupy any part of the Land that is reasonably necessary in the circumstances in order for the Grantee to exercise any of its rights under this Easement including the right to Construct the Works and in doing so the Grantee may fence off such part or parts of the occupied area as is reasonably necessary for a Temporary Period or Temporary Periods for health and safety purposes (subject to clause 3.1 of this Easement).

2.2 In undertaking any one or more of the rights and powers taken the Grantee:

2.2.1 May use its nominated employees, agents, consultants or contractors to perform the Works;

2.2.2 Will meet the full costs of the Works it undertakes;

2.2.3 For the avoidance of doubt the Grantee may enter on to the Land and undertake the Works on any day of the year including days which are not Working Days subject to the provisions of the Entry Notice given by the Grantee under clauses 6.1 and 6.2 of this Easement.



3. Grantee's obligations

3.1 The Grantee will use its reasonable efforts to cause as little interference as practical to the Grantor, any crops or livestock and any farming activities on the Land. The Grantee shall at its expense in all things make good and reinstate the Land as and when same shall require reinstatement to ensure that the Land is left in as nearly as possible the same condition as it was at the time of the commencement of the Grantee's rights herein. In particular, but without limitation, when exercising its rights under this Easement, the Grantee shall ensure that it leaves all gates as it finds them and reinstates all fences which are taken down so that the Grantee does not negatively affect the stock proofing of the Land.

3.2 Where any disturbance, damage or loss is incurred or suffered by:

(a) the Grantor; or

(b) any occupier of the Land undertaking, with the Grantee's knowledge and in compliance with the terms of this Easement, normal farming operations on the Land, in particular share milking or forestry,

during any entry onto the Land by the Grantee to construct, repair, maintain, modify, replace, renew or remove the Works or any part of the Works, which is not remedied by the Grantee under clause 3.1, for example but without limitation, a business loss in respect of a business located on the Land, the Grantee shall compensate the Grantor or the occupier, as the case may be, for such disturbance, damage or loss.

3.3 The Grantee will bear the costs of managing vegetation on the Easement Area (excluding pasture land) including removing trees and other vegetation but will not be responsible for the cost of controlling weeds or removing any vegetation which is planted by the Grantor in breach of this Easement.

3.4 The Grantee will bear the whole cost of maintaining the Works apart from any Works which the Grantor and Grantee have agreed are to become the property of the Grantor and any additional costs resulting from the Grantor's breach of this Easement for which the Grantee can recover the costs under this Easement.

3.5 The Grantee will provide to the Grantor copies of the Grantee's plans indicating the proposed access routes over the Land used by the Grantee in accessing the Works.

3.6 The Grantee has no obligation to construct the Works or to convey electrical energy and power or telecommunications through them, after construction, continuously or at all provided that this clause 3.6 shall not derogate from any obligation of the Grantee to surrender the Easement if the Easement is no longer required for a public work under the Public Works Act 1981.

3.7 In the event that the Grantee shall clear the Easement Area and/or any other part of the Land or opens up the soil of same as contemplated by clauses 2.1.7 and/or 2.1.8 hereof, the resulting material shall be removed by the Grantee from the Land and deposited off-site at the expense in all things of the Grantee unless the Grantor and the Grantee shall otherwise agree.

4. Grantor's Rights

4.1 Subject to the restrictions set out in this Easement the Grantor may use, occupy and enjoy, for normal farming operations including grazing, cropping and horticulture to a maximum height of 2.5 metres, that part of the surface of the Easement Area which is not occupied by the Works.

5. Grantor's obligations

5.1 The Grantor must not, without the prior written consent of the Grantee (which will not be unreasonably withheld or delayed), do, procure, assist or allow the following to be done:

5.1.1 alter or disturb the present grades and contours of the surface of the Easement Area except in the course of normal farming and grazing operations (but subject to the restrictions set out in this Easement);

5.1.2 erect any building or other structure (including fences) on the Easement Area;

5.1.3 plant any vegetation on the Easement Area (excluding pasture, crops and horticulture to a maximum height of 2.5 metres);

5.1.4 operate any Equipment or Vehicles on the Easement Area within a minimum clearance distance of 4 metres from any electricity transmission line conductor;

5.1.5 excavate or deposit material on the Easement Area;

5.1.6 impede the Grantee's access over the Easement Area and any access routes over the Land or damage the surface of the access routes;

5.1.7 knowingly cause or permit flooding of the Easement Area except where such flooding occurs naturally and is beyond the control of the Grantor;

5.1.8 light any fires or burn off vegetation within the Easement Area;

5.1.9 do any other thing on the Land which may cause damage to the Works or endanger the continuity or safety of the supply and distribution of electricity or otherwise impede, interfere with or prejudice any right of the Grantee set out in clause 2.1.

6. Access

6.1 Where the Grantee together with or through its engineers, consultants, employees, contractors, workmen and anyone else authorised by the Grantee intends to enter upon the Land to exercise and give effect to the rights of the Grantee as listed in clauses 2.1.1 through 2.1.9 of this Easement the Grantee must give at least 10 Working Days' notice ("the Entry Notice") to the Grantor except in an Emergency Situation, when prior notice is not required and the provisions of clause 6.6 of this Easement apply.

6.2 An Entry Notice is to identify the Works the Grantee intends to carry out, with the Entry Notice to specify:

6.2.1 the location of the proposed entry;

6.2.2 the area on which the Works will be undertaken by the Grantee;

6.2.3 the nature of the Works to be undertaken;

6.2.4 the date and time of initial entry;

6.2.5 the length of time that the Grantee expects to be on the Land; and

6.2.6 the nature of all other works that are to be undertaken on the Land in accordance with the rights taken pursuant to clause 2.1.

6.3 Upon receipt of an Entry Notice from the Grantee of its intention to exercise the right of entry provided for in clause 6.1 the Grantor may set reasonable conditions relating to the timing of entry and the access route but those conditions may not:

6.3.1 Delay the exercise of entry by the Grantee by more than 15 Working Days; or

6.3.2 Require monetary or other consideration; or

6.3.3 Otherwise defeat the ability of the Grantee to exercise effectively the rights taken under this Easement.

6.4 Any dispute between the Grantor and the Grantee in relation to the terms of the Entry Notice or of the conditions set by the Grantor pursuant to this clause shall constitute a dispute which is to be resolved using the dispute resolution procedure set out in clause 9 of this Easement.

6.5 The Grantee, in entering the Land, will take all reasonable steps to minimise inconvenience to the Grantor, including (but without limitation);

6.5.1 The time of entry (unless this is not possible due to an Emergency Situation);
6.5.2 Leaving gates as they are found;
6.5.3 Driving in a safe manner and taking reasonable steps not to disturb stock; and
6.5.4 Avoiding access through any specific areas within the Land which have been identified by the Grantor to the Grantee unless necessary to access the Works,

but without limiting the rights of the Grantor to claim under clause 3.2 of this Easement.

6.6 Where entry is effected by the Grantee due to an Emergency Situation the Grantee shall as soon thereafter as is reasonable give an Entry Notice to the Grantor. Such Entry Notice to be in terms of clause 6.2 of this Easement.

7. Ownership

7.1 The Works and Vehicles or any other property of the Grantee will not, for any reason, become the property of the Grantor and will at all times remain the property of the Grantee, except in relation to any Works which the Grantee and the Grantor agree are to become the property of the Grantor.

7.2 The Grantee may transfer, assign, sublet, lease or licence all, but not part, of its rights created by this Easement provided that the assignee, sublessee, transferee, lessee or licensee is financially solvent and has the financial resources to meet the Grantee's commitments under this Easement.

8. No power to terminate

8.1 There is no power in this Easement for the Grantor to terminate any of the Grantee's rights due to the Grantee breaching any term of this Easement or for any reason.

9. Dispute resolution

9.1 If any dispute arises between the Grantor and the Grantee concerning the rights and obligations contained within this Easement, the parties will enter into negotiations in good faith to resolve the dispute themselves or through any informal dispute process they agree upon.

9.2 If the dispute is not resolved within 10 Working Days then any party may at any time serve a mediation notice on the other party requiring the dispute be referred to mediation. The mediation notice shall set out the nature of the dispute. The parties shall in good faith endeavour to agree upon a mediator within five Working Days of the date of service of the mediation notice. If the parties cannot agree on the mediator, the President for the time being of the New Zealand Law Society (or any successor organisation) or the President's nominee, will appoint an independent mediator. The mediator's costs are to be borne equally by the parties.

9.3 If the dispute is not resolved within 20 Working Days of the date on which the mediation notice is served, the parties will submit to the arbitration of an independent arbitrator appointed jointly by the parties. If the parties cannot agree on the arbitrator within a further 10 Working Days the President for the time being of the New Zealand Law Society (or any successor organisation) or the President's nominee, will appoint an independent arbitrator.

9.4 Any arbitration proceedings will be conducted in accordance with the Arbitration Act 1996 and the substantive law of New Zealand.

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10. Severability

10.1 If any part of this Easement is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this Easement.

11. No Waiver

11.1 A waiver of any provision of this Easement shall not be effective unless given in writing and then it shall be effective only to the extent that it is expressly stated to be given.

11.2 A failure, delay or indulgence by any party in exercising any power or right shall not operate as a waiver of that power or right. A single exercise or partial exercise of any power or right shall not preclude further exercises of that power or right or the exercise of any other power or right.

12. Implied Rights and Powers

12.1 The rights and powers implied in specified classes of easements prescribed in the Fourth Schedule to the Land Transfer Regulations 2002 and the Fifth Schedule of the Property Law Act 2007 are negatived and the rights and powers contained herein shall apply in substitution.

13. Interpretation

13.1 In this Easement, unless inconsistent with the context:

13.1.1 singular includes plural and vice versa;

13.1.2 references to "persons" includes references to companies, corporations, partnerships, joint ventures, associations, trusts, government departments or agencies and territorial local authorities;

13.1.3 references to the Grantor and Grantee include their subsidiary or related companies, their permitted assigns and, where appropriate, their employees, contractors, surveyors, invitees and inspectors;

13.1.4 references to any statute, regulation or other statutory instrument or bylaw shall be deemed to be references to the statute, regulation or instrument or bylaw as from time to time amended and includes substitution provisions that substantially correspond to those to which reference is made;

13.1.5 the headings and subheadings appear as a matter of convenience and shall not affect the interpretation of this Easement.

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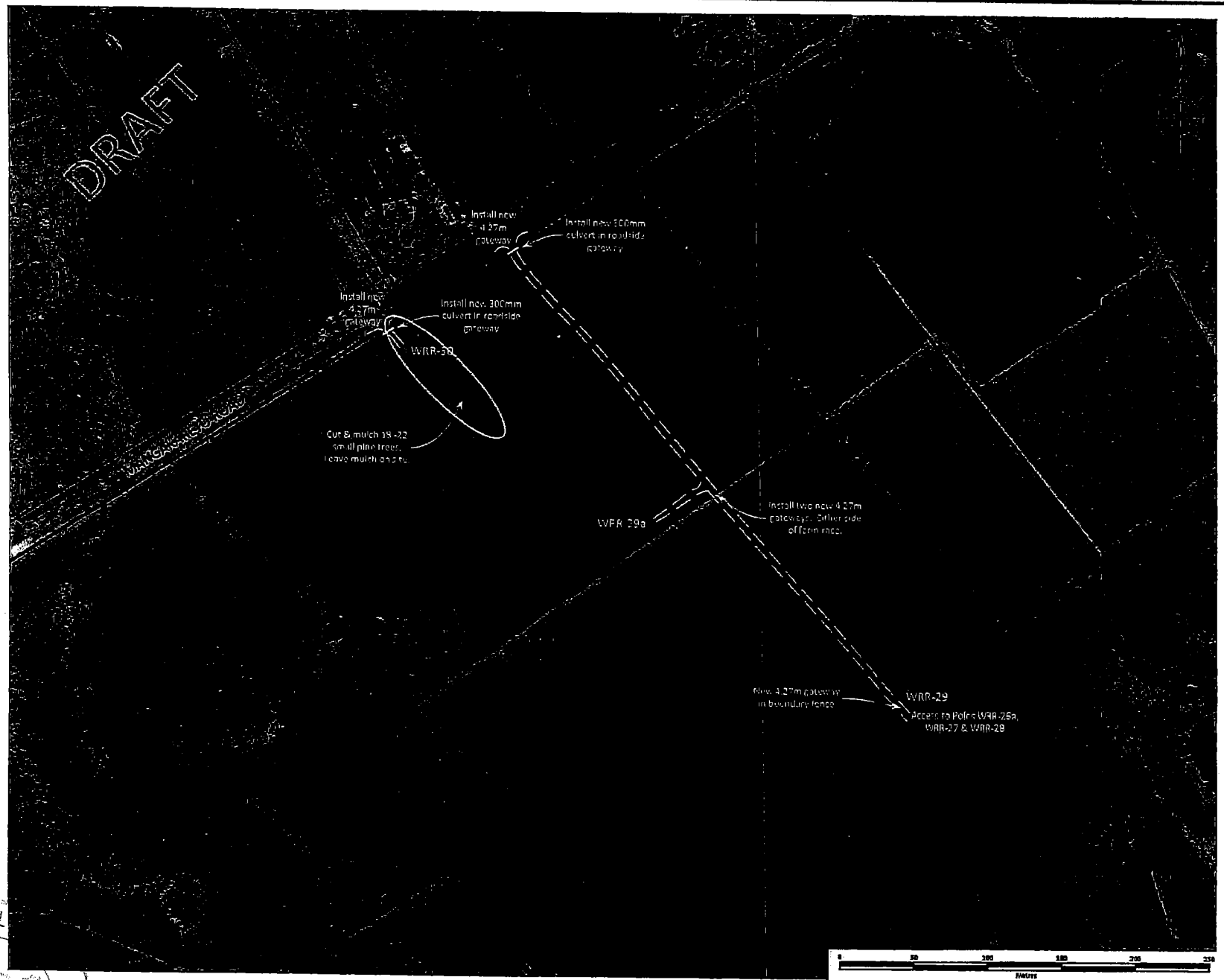


Legend:

- Easement 20m Wide - 8920m²
- Pole Structures - WRR-29 - WRR-30
- Access Route

NOTES:

Position of the Easement is Approximate Only, final Easement position to be determind by survey.

Route Alignment - 18 June 2015

Route Centreline Length - 440.0m

Legal Description: Section 42 Block XVI Kaeo SD

Certificate of Title: NA109A/794

Registered Owner: Shane Richard George Dromgool
Dorothy Felicia Dromgool

Amendments:

1	Original	26 June 2015	KAY
2	Added Construction Detail	22 October 2015	KAY

Drawing Created: 26 June 2015

Designed:

Drawn: K Yelavich 26 June 2015

Checked: A Taylor 4 November 2015

Approved: R Baker 5 November 2015

References:

Wiroa - Pamapuria 110kV
D.F. Dromgool
S.R.G. Dromgool

Site, Easement, Construction, Access Plan (SECAP)

Workpack: 110-TE2020-DES-2013

Scale: A3 1:2500

Sheet: 1 of: 1 Sheets | Version: 2

File Name: SECAP - Dromgool, Shane - 10 802 - V2

TOP ENERGY
Te Pnna Kihikihi
PO Box 43
Kerikeri 0245
Ph: 09 401 5440
Fax: 09 407 0611
www.topenergy.co.nz

CB0819

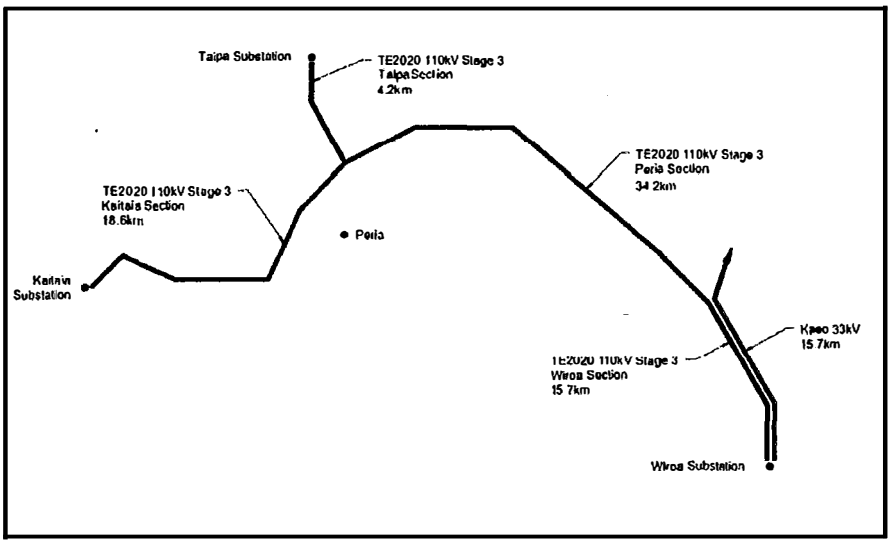


Figure 1: Single Line Representation of TE 2020 Stage 3

An 110kV circuit from Wiroa to Kaitaia will complete an 110kV ring circuit incorporating TE 2020 Stages 1 and 2, the yet to be built Stage3, as well as the existing 110kV line from Kaikohe to Kaitaia, all shown by the green lines in Figure 2 below.

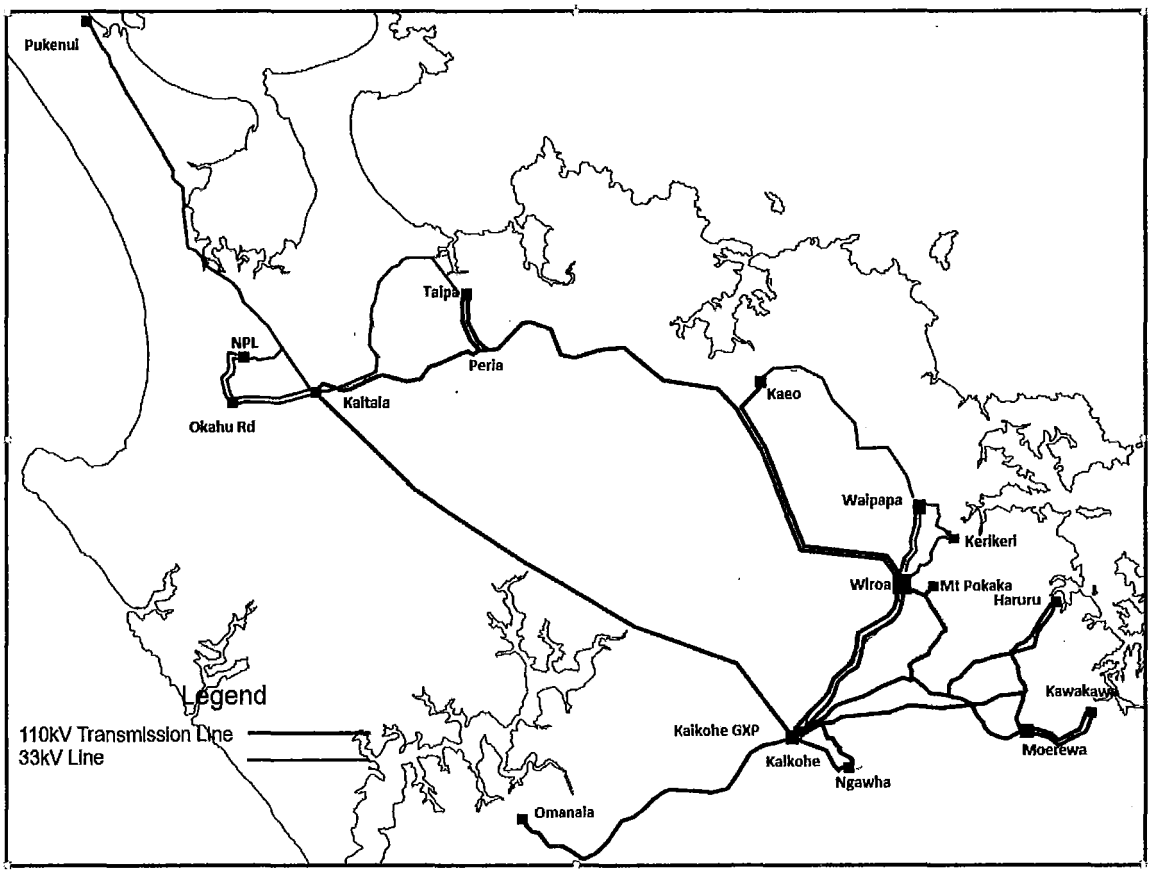


Figure 2: 110kV Network Ring Circuit; KOE-KTA-TPA-WRR-KOE

Koropewa Farm Ltd

Taylor

Poulton

North Star Dairies Ltd

OTS

Newman Farms Limited

F G T Farms Ltd

Puketotara (2196 acres) returned 1921

OTS

Puketotara (2448 acres) not returned 1921

Jones

Bedford

Sutcliffe

Dromgool

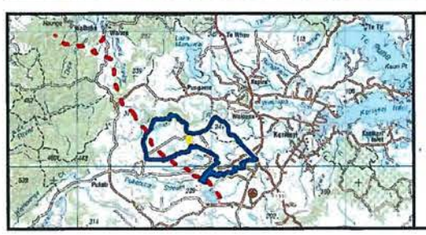
Cornelius

Kearney

Greenacres

Cornelius

Kearney



Legend

- Mangakaretu alignment and Current PTR
- OTS alignment
- FGT/Sutcliffe alignment
- Puketotara Block
- Puketotara 1921 subdivision – western portion subsequently transferred back to the Crown in 1956 to develop for settlement of Māori farmers.

Top Energy 110kv Route Options in Relation to Puketotara Block

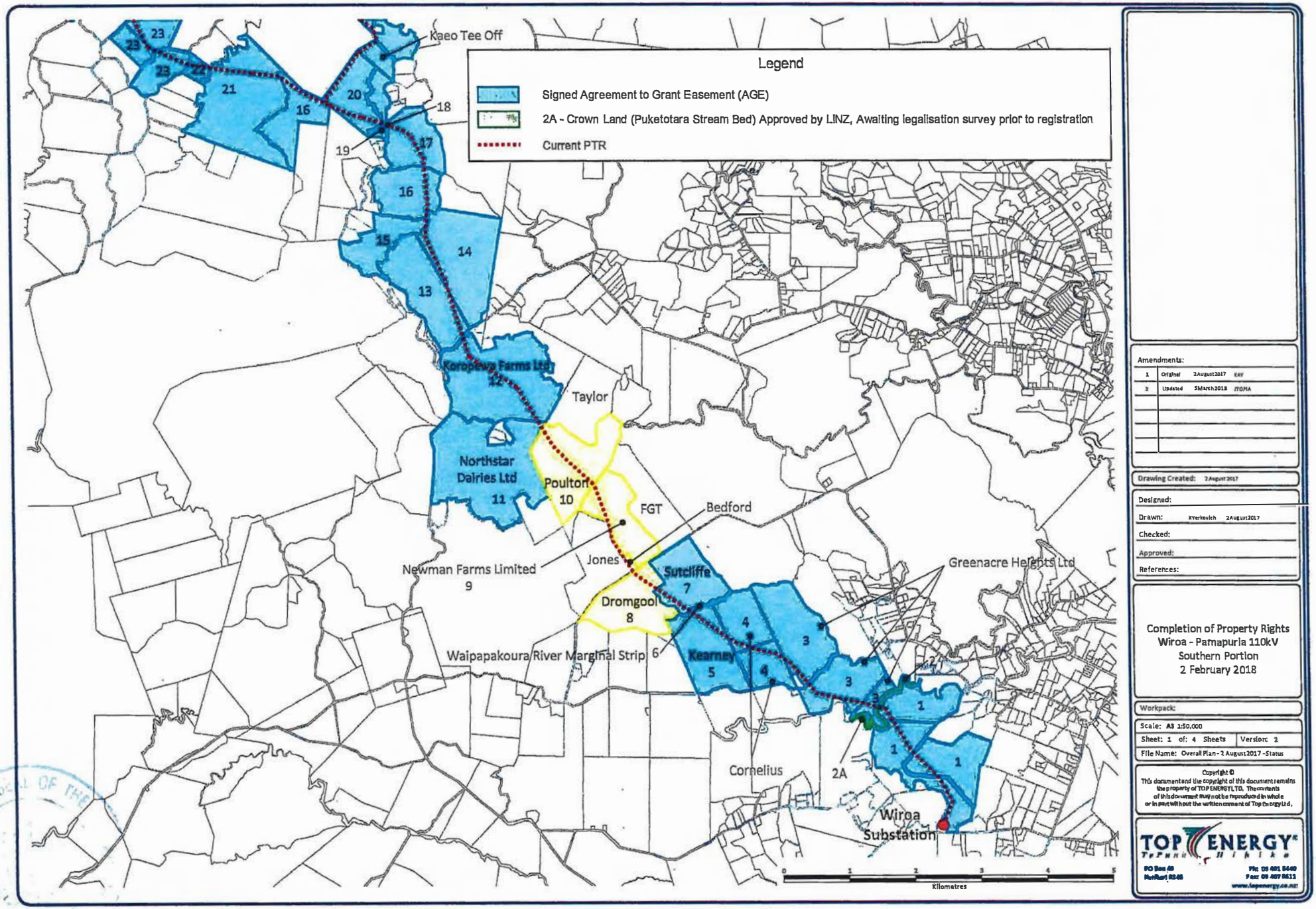
Indicative Plan Only

Office of Treaty Settlements
Te Tari Whakatau Take e Pāhara nei Te Tira Whakatū
PART OF THE MINISTRY OF JUSTICE

0 400 800 Metres

APPENDIX 1

Annexure D A1



Summary of Costs

Option No.		1	2	3	4	5	
Option		OTS Preferred Transmission Route (5594.84m)	OTS Mid Western Option (5860.54m)	OTS Western Option (5625.04m)	OTSWestern Boundary (Following CEO Meeting) (5765.36m)	OTS Full Deviation (6081.59m)	
Construction Cost(Poles WRR 22 to WRR 46)							
Total Construction Cost		$ 3,972,336	$ 4,160,983	$ 3,993,778	$ 4,093,405	$ 4,317,928	← Calculated adopting $710,000/km not $720,000/km.
Property Costs							
Compensation:							
Greenacres		$ 140,000	$ 140,000	$ 140,000	140000	$ 140,000	Note:AGE executed - same cost all options
OTS		$ 70,000	$ 75,000		$ 75,000	$ -	
FGT Farms Ltd		$ 35,000	$ 35,000	$ 150,000	$ -	$ -	
Poulton		$ 13,000	$ 13,000	$ 13,000	$ 13,000	$ 70,000	estimated Note:AGE executed for PTR
Taylor		$ 80,000	$ 80,000	$ 80,000	$ 80,000		estimated Potential for compulsory acquisition
Cornelius				$ 25,000	$ -	$ 30,000	
Crown Land				$ 1,000	$ -	$ 1,000	
Sutcliff				$ 90,000	$ -	$ -	
Kearney						$ 58,000	estimated
Drongool						$ 55,000	estimated
Jones						$ 110,000	estimated
Newman Farms Ltd						$ 50,000	estimated Potential for compulsory acquisition
Northstar Dairies Ltd						$ 10,000	estimated
Koropewa		$ 140,000	$ 140,000	$ 140,000	$ 140,000	$ 140,000	Note: same cost for all options
Total Compensation		$ 478,000	$ 483,000	$ 639,000	$ 448,000	$ 664,000	
Other Property Costs:							
Legal ($3,000 x 2 per property)		$ 36,000	$ 36,000	$ 48,000	$ 30,000	$ 60,000	
Survey ($5,000 per property)		$ 30,000	$ 30,000	$ 40,000	$ 25,000	$ 50,000	
Valuation ($3,500x 2 per property)		$ 42,000	$ 42,000	$ 56,000	$ 35,000	$ 70,000	
Negotiator / Consultant ($10,000 per property)		$ 60,000	$ 60,000	$ 80,000	$ 50,000	$ 100,000	
Total Other Property Costs		$ 168,000	$ 168,000	$ 224,000	$ 140,000	$ 280,000	
Total Estimated Cost		$ ~~4,786,336~~	$ ~~4,979,983~~	$ 5,080,778	$ 4,681,405	$ 5,261,928	
		4,618,336	4811,983	4856778			
Option Delta							
Options 1 & 2			$ 193,647				
Options 1 & 3				$238,442 ~~204,442~~			
Option 1 & 4					$ 63,069 ~~104,931~~		
Option 1& 5						$643592 ~~475,592~~	

True Comparison						
Total Estimated Cost					$4,681,405	$ 5,261,928
Plus payment to Iwi					$ 200,000	
					$4,881,405	
Delta - Option 4 & 5						$ 380,523
Comments on Options		Discounted by Iwi	Discounted by Iwi	Discounted by TEL	Only option for Iwi for route through OTS land	Preferred by TE Property

Notes

Network Advice Note:- Construction Costs are on a linear rate of $720,000/km +/- 20% (The costs adopted are at $720,000/km) This rate covers line construction, access, vegetation clearance, management, interest charges etc.

Property Advice Notes ← RATE ADOPTED WAS $710,000/km

The initial landowner responses for the Full Western Deviation (Option 5) follow:

Greenacres	Executed AGE - will require variation but owner is positive.
Cornelius	Positive
Kearney	Positive
Drongool	Positive with minor line deviation
Jones	Has issues with line conflictingwith possible building sites - option to move line into adjacent road. Should be able to resolve issues.
Newman	Negative - opposed Note: Taylor on the PTR route is opposed
Poulton	AGE executed for PTR. Not happy with full western deviation as could affect old air strip. Property should be able to resolve issues
North Star	Positive
Koropewa	Positive

F

Annexure F

Guidelines for review of easement to more exactly reflect objectives

Schedule:

Electricity, Telecommunications and Computer Media Easement in Gross

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1.1 In this Easement unless the context requires otherwise:

1.1.1 "Construct" means to build, construct, erect, install or lay the Works, access tracks, roads, gates and/or fences contemplated by this Easement and includes anything that is reasonably necessary to give full effect to this Easement including removing soil and water from the Easement Area subject always to the provisions of clause 3.7 of this Easement;

1.1.2 "Easement Area" means that part of the Land shown edged Blue on the Top Energy Site, Easement, Construction, Access Plan ID 802 Version 2 (subject to survey).

1.1.3 "Emergency Situation" means, a situation in which there is a probable danger to life or property or immediate risk to the continuity or safety of supply or distribution of electricity;

1.1.4 "Entry Notice" means the notice to be given pursuant to clause 6.1 of this Easement;

1.1.5 "Equipment" means cables, lines, wires, cranes, drilling rigs, Vehicles, plant, tools and machinery and all material and items required for the purpose of exercising any of the rights under this Easement;

1.1.6 "Grantee" means Top Energy Limited, its successors and permitted transferees, assigns, lessees, sublessees and licensees together with the Grantee's servants, agents, employees, workers, invitees, licensees and contractors with or without vehicles, machinery or equipment.

1.1.7 "Grantor" means the registered proprietor(s) for the time being of the Land.

1.1.8 "Land" means the Servient Tenement, which is the land being Part of Section 41 Block XVI Kaeo Survey District comprised in Computer Freehold Register NA109A/794, North Auckland Land Registry;

1.1.9 "Temporary Period" or "Temporary Periods" means such period or periods of time as are reasonable for the sole purpose or purposes of the Grantee occupying such part or parts of the Land as it requires for the purposes set out in clauses 2.1.1 through 2.1.9 and as detailed in the Entry Notice;

1.1.10 "Vehicles" means four-wheel drives, motorbikes, cars and trucks, tractors, trailers, graders, pile drivers, drilling rigs, cranes, helicopters, aircraft, excavation and earthmoving equipment, whether wheeled or tracked;

1.1.11 "Working Day" means any day of the week other than:

(a) Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, and Labour Day; and

(b) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and

(c) A day in the period commencing on the 24th day of December in any year and ending on the 15th day of January in the following year, both days inclusive.

1.1.12 "Works" means electrical and telecommunications works and computer media and includes all or any part of any cables (including fibre optic cables), wires, earthwires, conductors, poles, pole structures, insulators, foundations, tunnels, buildings, repeaters, pipes, bridges, ground stays, supports, casings, devices, appliances, antennae, metering devices and other apparatus, structures, fixtures and equipment as are reasonably necessary to give effect to the Grantee's rights under this Easement to install and operate an electricity transmission network.

Relevance of Fibre optic cable, tunnels, bridges and structures as set out as a general term?

2. Grantee's Rights and Powers

2.1 The Grantee shall have the following rights and powers:

2.1.1 to Construct the Works and to remove, inspect, use, operate, repair, maintain, renew, alter, replace, upgrade, add to and modify the Works or any part of the Works on the Easement Area;

2.1.2 to convey, conduct, send, distribute, pass, convert, transport, transmit and receive electricity and telecommunications signals and computer media by means of the Works;

2.1.3 to undertake all tests, inspections, investigations and surveys that are reasonably necessary for the Grantee to exercise its rights under this Easement and in so doing the Grantee may:

(a) drill for core samples and dig test pits;

(b) install and maintain testing and monitoring equipment;

(c) take away samples from the Easement Area for analysis;

2.1.4 to enter and remain on the Easement Area and such other part of the Land as is reasonably necessary in the circumstances with or without Vehicles, machinery and/or Equipment and with such personnel (including its employees, agents, contractors and/or consultants) for the purposes of exercising the Grantee's rights under this Easement;

2.1.5 to Construct, inspect, use, repair, maintain, renew, alter, remove and modify roads and access tracks on the Land, to modify adjacent fences (including boundary fences) on the Land and to remove or trim vegetation on the access tracks at the cost of the Grantee to the extent that is reasonably necessary for

the Grantee to exercise its rights under this Easement with these rights to be exercised on the following terms:

2.1.5.1 where any new roads and/or access tracks on the Land are to be constructed such will be constructed by the Grantee as far as is practicably possible to enhance the land use operations on the Land by the Grantor;

2.1.5.2 if during the course of the construction of the Works on the Land the Grantee uses any existing roads and/or access tracks on the Land then these will be repaired and/or maintained as is necessary by the Grantee so that at the conclusion of the construction of the Works such roads and/or access tracks are left in as nearly as possible the same condition as they were in at the time of first entry onto the Land by the Grantee;

2.1.5.3 if the Grantee in the exercise of access to the Easement Area for the purposes of inspection, use, repair, maintenance, renewal, alteration, replacement, upgrading, addition to or modification of the Works uses roads and/or access tracks on the Land it shall at the conclusion of such period of access repair and/or maintain those roads and/or access tracks to ensure that the same are left in as nearly as possible the same condition as they were in at the time of the commencement of the exercise of the Grantee's rights hereunder.

2.1.6 to Construct gates within fences (including boundary fences) located on the Land and to inspect, use, repair, maintain, renew, alter, remove and modify those gates at the cost of the Grantee to the extent that is reasonably necessary for the Grantee to exercise its rights under this Easement;

2.1.7 to clear and keep the Easement Area clear of trees, shrubs, vegetation, structures (including fences), earth, gravel and stone, and to clear and keep such other part of the Land as is reasonably necessary in the circumstances clear of any trees, shrubs, vegetation, structures (including fences), soil, earth, gravel and stone which is or is likely to be or become, in the reasonable opinion of the Grantee, a danger or hazard to the safety or operation of the Works, will impede the Grantee's access to the Works or will otherwise interfere with the Grantee's rights under this Easement;

2.1.8 to open up the soil of the Easement Area and excavate or remove timber, vegetation, soil, earth, gravel and stone from the Easement Area to the extent necessary for the Grantee to exercise its rights under this Easement; and

2.1.9 to temporarily occupy any part of the Land that is reasonably necessary in the circumstances in order for the Grantee to exercise any of its rights under this Easement including the right to Construct the Works and in doing so the Grantee may fence off such part or parts of the occupied area as is reasonably necessary for a Temporary Period or Temporary Periods for health and safety purposes (subject to clause 3.1 of this Easement).

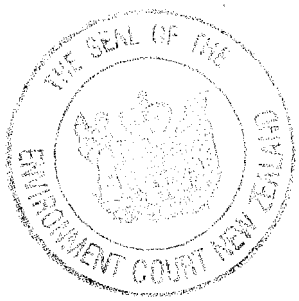
Comments relevant at 3.5 here. More clarity needed about these works and changes to vegetation which may affect amenity for the land owner and farm/business management operations. A process for agreement perhaps as these may be fluid requirements and certainty is required

2.2 In undertaking any one or more of the rights and powers taken the Grantee:

2.2.1 May use its nominated employees, agents, consultants or contractors to perform the Works;

2.2.2 Will meet the full costs of the Works it undertakes;

2.2.3 For the avoidance of doubt the Grantee may enter on to the Land and undertake the Works on any day of the year including days which are not Working Days subject to the provisions of the Entry Notice given by the Grantee under clauses 6.1 and 6.2 of this Easement.



3. Grantee's obligations

3.1 The Grantee will use its reasonable efforts to cause as little interference as practical to the Grantor, any crops or livestock and any farming activities on the Land. The Grantee shall at its expense in all things make good and reinstate the Land as and when same shall require reinstatement to ensure that the Land is left in as nearly as possible the same condition as it was at the time of the commencement of the Grantee's rights herein. In particular, but without limitation, when exercising its rights under this Easement, the Grantee shall ensure that it leaves all gates as it finds them and reinstates all fences which are taken down so that the Grantee does not negatively affect the stock proofing of the Land.

Insert here obligation in respect of health and safety and biosecurity

3.2 Where any disturbance, damage or loss is incurred or suffered by:

(a) the Grantor; or

(b) any occupier of the Land undertaking, with the Grantee's knowledge and in compliance with the terms of this Easement, normal farming operations on the Land, in particular share milking or forestry,

during any entry onto the Land by the Grantee to construct, repair, maintain, modify, replace, renew or remove the Works or any part of the Works, which is not remedied by the Grantee under clause 3.1, for example but without limitation, a business loss in respect of a business located on the Land, the Grantee shall compensate the Grantor or the occupier, as the case may be, for such disturbance, damage or loss.

3.3 The Grantee will bear the costs of managing vegetation on the Easement Area (excluding pasture land) including removing trees and other vegetation but will not be responsible for the cost of controlling weeds or removing any vegetation which is planted by the Grantor in breach of this Easement.

3.4 The Grantee will bear the whole cost of maintaining the Works apart from any Works which the Grantor and Grantee have agreed are to become the property of the Grantor and any additional costs resulting from the Grantor's breach of this Easement for which the Grantee can recover the costs under this Easement.

3.5 The Grantee will provide to the Grantor copies of the Grantee's plans indicating the proposed access routes over the Land used by the Grantee in accessing the Works.

3.5: the easement seems to provide very broadly for access to, use and works in other parts of the property than that covered by the easement. (eg: 2.1.4,2.1.5, 2.1.6). This plan provides a mechanism for agreeing these terms including any storage areas etc required for the works. This should be able to be agreed and attached to the lease. This will facilitate clear understanding between contractors and the land owner occupier and assist farm management decision making.

3.6: Sunset clause required dated 2030 with clear provision as to what constitutes giving effect to the purpose of the easement so that its redundancy is clearly defined

3.6 The Grantee has no obligation to construct the Works or to convey electrical energy and power or telecommunications through them, after construction, continuously or at all provided that this clause 3.6 shall not derogate from any obligation of the Grantee to surrender the Easement if the Easement is no longer required for a public work under the Public Works Act 1981.

3.7 In the event that the Grantee shall clear the Easement Area and/or any other part of the Land or opens up the soil of same as contemplated by clauses 2.1.7 and/or 2.1.8 hereof, the resulting material shall be removed by the Grantee from the Land and deposited off-site at the expense in all things of the Grantee unless the Grantor and the Grantee shall otherwise agree.

4. Grantor's Rights

4.1 Subject to the restrictions set out in this Easement the Grantor may use, occupy and enjoy, for normal farming operations including grazing, cropping and horticulture to a maximum height of 2.5 metres, that part of the surface of the Easement Area which is not occupied by the Works.

5. Grantor's obligations

5.1 The Grantor must not, without the prior written consent of the Grantee (which will not be unreasonably withheld or delayed), do, procure, assist or allow the following to be done:

5.1.1 alter or disturb the present grades and contours of the surface of the Easement Area except in the course of normal farming and grazing operations (but subject to the restrictions set out in this Easement);

5.1.2 erect any building or other structure (including fences) on the Easement Area;

5.1.3 plant any vegetation on the Easement Area (excluding pasture, crops and horticulture to a maximum height of 2.5 metres);

5.1.4 operate any Equipment or Vehicles on the Easement Area within a minimum clearance distance of 4 metres from any electricity transmission line conductor;

5.1.5 excavate or deposit material on the Easement Area;

5.1.6 impede the Grantee's access over the Easement Area and any access routes over the Land or damage the surface of the access routes;

5.1.7 knowingly cause or permit flooding of the Easement Area except where such flooding occurs naturally and is beyond the control of the Grantor;

5.1.8 light any fires or burn off vegetation within the Easement Area;

5.1.9 do any other thing on the Land which may cause damage to the Works or endanger the continuity or safety of the supply and distribution of electricity or otherwise impede, interfere with or prejudice any right of the Grantee set out in clause 2.1.

6. Access

6.1 Where the Grantee together with or through its engineers, consultants, employees, contractors, workmen and anyone else authorised by the Grantee intends to enter upon the Land to exercise and give effect to the rights of the Grantee as listed in clauses 2.1.1 through 2.1.9 of this Easement the Grantee must give at least 10 Working Days' notice ("the Entry Notice") to the Grantor except in an Emergency Situation, when prior notice is not required and the provisions of clause 6.6 of this Easement apply.

6.2 An Entry Notice is to identify the Works the Grantee intends to carry out, with the Entry Notice to specify:

6.2.1 the location of the proposed entry;

6.2.2 the area on which the Works will be undertaken by the Grantee;

6.2.3 the nature of the Works to be undertaken;

6.2.4 the date and time of initial entry;

6.2.5 the length of time that the Grantee expects to be on the Land; and

6.2.6 the nature of all other works that are to be undertaken on the Land in accordance with the rights taken pursuant to clause 2.1.

6.3 Upon receipt of an Entry Notice from the Grantee of its intention to exercise the right of entry provided for in clause 6.1 the Grantor may set reasonable conditions relating to the timing of entry and the access route but those conditions may not:

6.3.1 Delay the exercise of entry by the Grantee by more than 15 Working Days; or

6.3.2 Require monetary or other consideration; or

6.3.3 Otherwise defeat the ability of the Grantee to exercise effectively the rights taken under this Easement.

6.4 Any dispute between the Grantor and the Grantee in relation to the terms of the Entry Notice or of the conditions set by the Grantor pursuant to this clause shall constitute a dispute which is to be resolved using the dispute resolution procedure set out in clause 9 of this Easement.

6.5 The Grantee, in entering the Land, will take all reasonable steps to minimise inconvenience to the Grantor, including (but without limitation);

6.5.1 The time of entry (unless this is not possible due to an Emergency Situation);
6.5.2 Leaving gates as they are found;
6.5.3 Driving in a safe manner and taking reasonable steps not to disturb stock; and
6.5.4 Avoiding access through any specific areas within the Land which have been identified by the Grantor to the Grantee unless necessary to access the Works,

but without limiting the rights of the Grantor to claim under clause 3.2 of this Easement.

6.6 Where entry is effected by the Grantee due to an Emergency Situation the Grantee shall as soon thereafter as is reasonable give an Entry Notice to the Grantor. Such Entry Notice to be in terms of clause 6.2 of this Easement.

7. Ownership

7.1 The Works and Vehicles or any other property of the Grantee will not, for any reason, become the property of the Grantor and will at all times remain the property of the Grantee, except in relation to any Works which the Grantee and the Grantor agree are to become the property of the Grantor.

7.2 The Grantee may transfer, assign, sublet, lease or licence all, but not part, of its rights created by this Easement provided that the assignee, sublessee, transferee, lessee or licensee is financially solvent and has the financial resources to meet the Grantee's commitments under this Easement.

8. No power to terminate

8.1 There is no power in this Easement for the Grantor to terminate any of the Grantee's rights due to the Grantee breaching any term of this Easement or for any reason.

9. Dispute resolution

9.1 If any dispute arises between the Grantor and the Grantee concerning the rights and obligations contained within this Easement, the parties will enter into negotiations in good faith to resolve the dispute themselves or through any informal dispute process they agree upon.

9.2 If the dispute is not resolved within 10 Working Days then any party may at any time serve a mediation notice on the other party requiring the dispute be referred to mediation. The mediation notice shall set out the nature of the dispute. The parties shall in good faith endeavour to agree upon a mediator within five Working Days of the date of service of the mediation notice. If the parties cannot agree on the mediator, the President for the time being of the New Zealand Law Society (or any successor organisation) or the President's nominee, will appoint an independent mediator. The mediator's costs are to be borne equally by the parties.

9.3 If the dispute is not resolved within 20 Working Days of the date on which the mediation notice is served, the parties will submit to the arbitration of an independent arbitrator appointed jointly by the parties. If the parties cannot agree on the arbitrator within a further 10 Working Days the President for the time being of the New Zealand Law Society (or any successor organisation) or the President's nominee, will appoint an independent arbitrator.

9.4 Any arbitration proceedings will be conducted in accordance with the Arbitration Act 1996 and the substantive law of New Zealand.

10. Severability

10.1 If any part of this Easement is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this Easement.

11. No Waiver

11.1 A waiver of any provision of this Easement shall not be effective unless given in writing and then it shall be effective only to the extent that it is expressly stated to be given.

11.2 A failure, delay or indulgence by any party in exercising any power or right shall not operate as a waiver of that power or right. A single exercise or partial exercise of any power or right shall not preclude further exercises of that power or right or the exercise of any other power or right.

12. Implied Rights and Powers

12.1 The rights and powers implied in specified classes of easements prescribed in the Fourth Schedule to the Land Transfer Regulations 2002 and the Fifth Schedule of the Property Law Act 2007 are negatived and the rights and powers contained herein shall apply in substitution.

13. Interpretation

13.1 In this Easement, unless inconsistent with the context:

13.1.1 singular includes plural and vice versa;

13.1.2 references to "persons" includes references to companies, corporations, partnerships, joint ventures, associations, trusts, government departments or agencies and territorial local authorities;

13.1.3 references to the Grantor and Grantee include their subsidiary or related companies, their permitted assigns and, where appropriate, their employees, contractors, surveyors, invitees and inspectors;

13.1.4 references to any statute, regulation or other statutory instrument or bylaw shall be deemed to be references to the statute, regulation or instrument or bylaw as from time to time amended and includes substitution provisions that substantially correspond to those to which reference is made;

13.1.5 the headings and subheadings appear as a matter of convenience and shall not affect the interpretation of this Easement.