IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 32/2021
[2021] NZSC 71

BETWEEN		SHANE DROMGOOL AND DOROTHY DROMGOOL First Applicants
		ALAN DARVALL POULTON AND JENNIFER POULTON Second Applicants
		NEWMAN FARMS LIMITED Third Applicant
AND		MINISTER FOR LAND INFORMATION Respondent

Court: William Young, Ellen France and Williams JJ

Counsel: D M Salmon and A W McDonald for Applicants
J M Prebble, E M Jamieson and M C McCarthy for Respondent

Judgment: 24 June 2021

JUDGMENT OF THE COURT

A The application for leave to appeal is granted in part (*Minister for Land Information v Dromgool* [2021] NZCA 44). The approved question is:

Whether the Court of Appeal was correct in its interpretation of the role and obligations of the Minister for Land Information in deciding an application under s 186(1) of the Resource Management Act 1991 and, in particular, whether the Minister must be satisfied that the proposed taking is fair, sound and reasonably necessary for achieving the objectives of the network utility operator or whether it is sufficient that the Minister is satisfied the proposed taking is capable of meeting that test.

B The application for leave to appeal is otherwise dismissed.

REASONS

[1] This application for leave to appeal concerns the acquisition of easements under the Public Works Act 1981 over land in Northland, including that of the applicants, to enable Top Energy Ltd, a network utility operator, to build a transmission line. Under s 186(1) of the Resource Management Act 1991 (RMA), a network utility operator that, like Top Energy, is a requiring authority may apply to the Minister for Land Information to compulsorily acquire, under the Public Works Act, land required for a project or work. Where the Minister agrees to the compulsory acquisition of the land under s 186, there must then be a period of negotiation to try to reach agreement on acquisition. If there is no agreement, the Minister may proceed to take the land under the Public Works Act.[1]

[2] Persons with an estate or interest in the relevant land may object to the proposed taking to the Environment Court which considers the objection in the terms of s 24 of the Public Works Act.[2] Section 24(7) provides that the Environment Court must, amongst other matters, enquire into the adequacy of the consideration given to alternative routes and, ultimately, be satisfied that the proposed taking would be "fair, sound, and reasonably necessary" for achieving the objectives of the Minister for the land of the objector to be taken. The findings of the Environment Court are binding on the Minister.[3]

[3] The Environment Court in the present case concluded the taking met the test in s 24(7) and reported accordingly.[4] The applicants appealed against the report to the High Court.[5] The High Court allowed the appeal in part and the report of the Environment Court was set aside.[6] The Minister appealed, with leave, from the decision of the High Court to the Court of Appeal.[7] The Court of Appeal allowed the appeal, concluding that the obligation on the Minister under s 186 was "to be satisfied

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1 Public Works Act 1981, s 18(2).
2 Section 23(3).
3 Section 24(10).
4 *Dromgool v Minister for Land Information* [2018] NZEnvC108 (Judge Smith and Commissioners Leijnen, and Buchanan) [EC report].
5 Section 299(1) of the Resource Management Act 1991 authorises an appeal against such a report on a question of law.
6 *Dromgool v Minister for Land Information* [2019] NZHC 1563 (Courtney J) [HC judgment].
7 *Minister for Land Information v Dromgool* [2019] NZCA 508.

that the project of the network utility operator is capable of achieving a favourable report from the Environment Court". But, the Court said, the Minister "need not personally assess the merits of, and choose between, alternative means of achieving the objectives of the network utility operator".[8]

[4] The applicants seek leave to appeal to this Court on the question of the correct approach to decision-making under s 186(1) of the RMA, and on three other grounds relating to various aspects of the decision-making processes adopted in this case. The latter grounds are, first, that the Minister must consider the relevant Land Information New Zealand standard (the LINZ Standard)[9] and the s 186 applications. The second of these proposed grounds concerns alleged deficiencies in Top Energy's s 186 applications and in its route selection process. The final proposed ground is that the Environment Court erred in not considering the availability of an alternative route which would have resulted in easements over land owned by the Crown and land-banked for the purposes of Treaty of Waitangi claims.

[5] We are satisfied that the approved question relating to the interpretation of s 186(1) of the RMA, and the interrelationship with s 24(7) of the Public Works Act, raises a matter of general and public importance. We grant leave on that question accordingly.[10] We add that s 186 of the Resource Management Act was discussed by this Court in *Seaton v Minister for Land Information*.[11] The Court in *Seaton* was addressing a different issue but made observations about s 186 which the Court of Appeal in the present case considered supported its approach.[12] The parties' submissions should address whether the Court of Appeal was correct in this respect.

[6] We are not satisfied that the criteria for leave to appeal are met in relation to any other grounds and therefore decline leave on those grounds.[13] The first of those grounds does not add anything to the approved question particularly where the

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8 *Minister for Land Information v Dromgool* [2021] NZCA 44 (Cooper, Clifford and Goddard JJ) [CA judgment] at [8].

9 Land Information New Zealand | Toitū te whenua *Standard for the acquisition of land under the Public Works Act 1981: LINZS15005* (2 June 2017).

10 Senior Courts Act 2016, s 74(2)(a).

11 *Seaton v Minister for Land Information* [2013] NZSC 42, [2013] 3 NZLR 157.

12 CA judgment, above n 8, at [76]–[83].

13 Senior Courts Act, s 74(2)(a) and (b). See *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369.

respondent does not dispute that the s 186 applications, which must be prepared in accordance with the LINZ Standard, are relevant, were before the Minister, and the finding was that the Minister considered them.[14] On the remaining two proposed grounds, we accept the submission for the respondent that they rest largely on findings of fact made by the Courts below and do not have sufficient prospects of success to warrant a grant of leave.[15]

Solicitors:
Lee Salmon Long, Auckland for Applicants
Crown Law Office, Wellington for Respondent

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14 CA judgment, above n 8, at [107].

15 See EC report, above n 4, at [55], [64]–[65], [83]–[89], [108] and [112]–[113]; HC judgment, above n 6, at [68]; and CA judgment, above n 8, at [109]–[110], [112] and [121]–[122].