IN THE SUPREME COURT OF NEW ZEALAND SC 44/2012

[2012] NZSC Trans 16

BETWEEN **ANN MARY SEATON**

Appellant

AND **MINISTER FOR LAND INFORMATION**

Respondent

Hearing: 13 November 2012

Court: Elias CJ
McGrath J
William Young J
Chambers J
Glazebrook J

Appearances: S P Rennie and J E Bayley for the Appellant
H S Hancock for the Respondent

CIVIL APPEAL

MR RENNIE:

May it please the Court, we have reduced our submission to one page and I seek leave to hand that up to the Court.

ELIAS CJ:

Yes, thank you, one page is always welcome.

MR RENNIE:

Yes, if it pleases the Court, in our submission, the power in sections 4A and 16 of the Public Works Act 1981 to take structures and land, including easements, is restricted to that required for a Government work. The Minister could compulsorily acquire and remove the towers to enable widening of State Highway 1. Any additional taking, in our submission, is not required, directly or indirectly, it is a consequence but it is not a requirement of the Government work and that, in our submission, should be addressed under section 186 of the Resource Management Act 1991.

In this case the easement drafted in Transpower's name contrary, in our submission, to section 4B of the Act, is for the benefit of the network utility operators and was dictated by Transpower under an agreement with the Crown and NZTA. Such taking, in our submission, is not empowered under the Public Works Act because otherwise the subsequent enactment of section 186 of the Resource Management Act would have been unnecessary. The desired object, an easement transferred from the Crown into the name of the network utility operators, is not a given right under the Public Works Act. The easements and the works to which they pertain cease to be within the control of the Crown upon such transfer and thereby cease to be required for a Government or public work. The transfer cannot occur without the easements being first offered back to the appellant under section 40. The Crown proposes to circumvent this by transferring the easements under section 186 subsection (4) of the Resource Management Act and thus preserving a right of pre-emption under subsection (7). In our submission this merely serves to confirm that the easements are not required for the Government work at all because section 186 of the Resource Management Act concerns are taken as if it were a Government work.

Relocation is undoubtedly desirable. Section 186(1) should have been utilised by Transpower and Orion from the outset. The process need not be cumbersome in practise. Presumably, either service providers are ordinarily accommodated within the taken road footprint. On the contrary, in our

submission, the process would facilitate direct and transparent negotiation with the parties who were, in truth, to obtain the benefit of the easements.

CHAMBERS J:
But how does Transpower get any benefit which it does not already have?

MR RENNIE:
Well –

CHAMBERS J:
Well it has existing use rights. It doesn't particularly care less whether the power pylons are moved?

MR RENNIE:
I'd agree.

CHAMBERS J:
So it's not really a case, is it, under section 186 where it's the power company which wants something it doesn't already have. Isn't it a case that Transpower is simply going along with something that Transit wants?

MR RENNIE:
The need that we say arises because, at some point in a process, Transpower are told, "You have to move your structures because – for the road." It's at that point the need arises.

ELIAS CJ:
You say that the correct approach is that Transpower is required to deliver up the sites of its towers whether, because it agrees to do so or because the land can be acquired itself under the Public Works Act do you?

MR RENNIE:
Precisely.

ELIAS CJ:

So you say it's a jack-up?

MR RENNIE:

I wouldn't use that pejorative phrase.

ELIAS CJ:

No, sorry, probably I shouldn't have either but it's an arrangement that doesn't matter to either of them but it has consequences?

MR RENNIE:

Correct.

WILLIAM YOUNG J:

Just – there's a sort of a photograph and a diagram at 183 of volume 2. So the whole idea is to put the three towers, what, 10 or 15 metres to the west?

MR RENNIE:

Yes.

WILLIAM YOUNG J:

The road has been four-laned there but the towers are right up beside the road?

MR RENNIE:

Yes. One straddles the boundary already, two are actually on the road footprint.

WILLIAM YOUNG J:

Right.

GLAZEBROOK J:

And – well it's just so that I can be absolutely clear on that, the existing rights they have, they don't give them existing rights to veto any project of this kind?

MR RENNIE:

No.

GLAZEBROOK J:

They're just existing rights to the extent they're there so, in fact, when the Crown submits that Transpower – well, I'm not sure whether they were quite submitting this but they imply that Transpower could have vetoed the transfer, that's not actually correct because your position is that they could have had those works compulsorily acquired under the Public Works Act?

MR RENNIE:

Yes, there's no loss of rights in our submission to Transpower.

GLAZEBROOK J:

Well they may have had loss of rights because then they won't have those existing structures anymore but you're saying they don't have to get permission, that they don't have to give permission to loose those existing rights –

MR RENNIE:

Yes exactly, yes, yes.

GLAZEBROOK J:

Is that the submission?

CHAMBERS J:

Well is that right though because, presumably, Transpower's existing use rights by statute permit it to keep its power line, its power pylons exactly where they are unless there is a lawful taking, presumably, under the Public Works Act.

MR RENNIE:

That's true, yes.

CHAMBERS J:

Therefore the whole basis of the statement of claim, which is that the Minister exercised this for an improper purpose because it's really Transpower that wants this, just isn't factually right is it? Transpower doesn't necessarily want any change, it's all the Minister or Transit that wants the change?

MR RENNIE:

It's implicit in the work proposed that the towers must be moved.

CHAMBERS J:

Yes because Transit needs that to widen the road.

MR RENNIE:

Yes and, and you have the knock-on effect of that need or desire, if you like, leading to a need on the part of Transpower.

WILLIAM YOUNG J:

Can I – so presumably at the moment the Transpower towers largely on land already vested in the Crown?

MR RENNIE:

Yes.

WILLIAM YOUNG J:

Pursuant to what, that they're – how will the Crown get rid of them by just taking the easement, which presumably is a statutory easement?

MR RENNIE:

We, well, we –

ELIAS CJ:

There's the existing rights under section whatever it is –

CHAMBERS J:

22 I think.

MR RENNIE:

22.

ELIAS CJ:

22 of the Electricity Act 1992.

WILLIAM YOUNG J:

Yes, but can those rights – say there wasn't an option of just moving the towers 15 metres to the west. How would the Government deal with Transpower and Orion, would it just – would it be entitled to appropriate, under the Public Works Act, their present entitlement to have the towers where they are?

MR RENNIE:

In our submission, yes, but we say, Sir, at a practical level it wouldn't really get to that. Here the record discloses that all the parties got together with a view to putting the road in and moving the towers. They chose to give effect to an underlying agreement about that via the Public Works Act. We say that the, that was the wrong route and that with collaboration between the parties they could have pursued it under the Resource Management Act, that would have been the appropriate way to deal with it and nobody's rights would have been compromised, in our submission, had that occurred.

CHAMBERS J:

But surely Transpower came to this agreement simply because it was being reasonable, it recognised Transit wanted to widen the road and so it said, "Well we won't stand in your way." There's no particular advantage to Transpower from moving these pylons five metres –

MR RENNIE:

That's correct.

CHAMBERS J:

– to the east or the west or whatever it is, is there?

MR RENNIE:

To the east, yes.

CHAMBERS J:

So is the answer to Justice Young's question, which was, "If they hadn't agreed what could Transit have done?" Wouldn't, in that position, wouldn't in that case Transit have had to apply to acquire the existing use rights and thereby to force the movement of the pylons somewhere else or undergrounding of the power or something?

MR RENNIE:

We wouldn't see it as complicated as that Your Honour. We would see it as – they could take the structures under section 4A.

CHAMBERS J:

Correct, correct, but it would be a taking which would give rise to compensation rights.

MR RENNIE:

Exactly.

CHAMBERS J:

Yes.

GLAZEBROOK J:

And given that – so, so they could take it, the current easement rights would have gone but, in fact, you'd be breaking off the power which, in itself, is a public work but you say, under the Resource Management Act not under the Public Works Act, is that –

MR RENNIE:

Yes.

GLAZEBROOK J:

I mean, the trouble probably with the Public Works Act is that it was at a time before you had public works done by people other than –

MR RENNIE:

Yes.

GLAZEBROOK J:

– the local authority or Government and so it hasn't really adapted to deal with that situation because clearly the electricity supply is a public work –

MR RENNIE:

Yes.

GLAZEBROOK J:

– in the more generic sense, because you couldn't just take the pylons and say, well –

MR RENNIE:

There you go.

GLAZEBROOK J:

– we'll turn it off and, you know, you go for it.

ELIAS CJ:

The issue though is not really whether it's a public work, is it, because clearly it is.

MR RENNIE:

That's right, that's right.

ELIAS CJ:

It's whether it's a Government work.

MR RENNIE:

Yes. It is and we say the essence to being a Government work is ownership and control.

ELIAS CJ:

Yes.

MR RENNIE:

And we draw that from three sections, by the definition, by section 4B, that says the contract has to be in the name of the Crown, and most importantly, section 40, that requires land to be held in order for the right of pre-emption to be utilised.

ELIAS CJ:

Just going back to the questions that were being put to you by Justice Chambers and Glazebrook though, in the respondent's submissions it's explained that the utility operators will not consent to relocation of the towers unless replacement easements are provided by the Crown.

MR RENNIE:

Yes.

ELIAS CJ:

So there's a stand-off which this is intended to overcome without recourse to the Public Works Act, which I suppose there's some question of whether the Public Works Act would prevail over the Electricity Act. I don't suppose that has been determined yet has it?

MR RENNIE:

No, no, not that I'm aware of Your Honour, no.

ELIAS CJ:

No.

MR RENNIE:

We, we don't say there's really a stand-off here, there's more of – it's more a consensual arrangement, evidenced by an agreement between the parties.

ELIAS CJ:

Well that's why I said it's a jack-up, it's an agreement that it suits the Crown, or suits Transpower and the roading people, what are they called?

MR RENNIE:

Transit.

WILLIAM YOUNG J:

NZTA –

ELIAS CJ:

NZTA to, to adopt but you say they're going about it the wrong way and that there is specific provision for utility providers under the Resource Management Act and that's the route that should have been followed.

MR RENNIE:

Yes Sir, yes Ma'am.

GLAZEBROOK J:

Can I just check, it seems to me one of the planks of the Crown argument is that section 4 gives them the right to dispose of the land.

MR RENNIE:

Yes.

GLAZEBROOK J:

Now the concern, in terms of that type of disposal power, is that either it's subject to section 4B before you can even dispose of it, that is, if it's going for other than a public work so let's – and that's the argument you were making, so let's just park that for the moment, but would you say that section 4 is always subject to section 40?

ELIAS CJ:

4A.

GLAZEBROOK J:

4A.

MR RENNIE:

4A.

GLAZEBROOK J:

4A(a).

MR RENNIE:

Yes, yes, the power is there, clearly, in 4A but we say it's restrained by section 40.

ELIAS CJ:

That must be right, I would have thought, subject to what the Crown says, I can't imagine that they'd be arguing against that, given the terms of section 40.

GLAZEBROOK J:

Now the concern then here would be that there's a trans – the transfer to Transpower without that section 40 right except is the sec – if it's a transfer pursuant to section 186(4) isn't the – and I realise there's a question, you say, as to whether that can be done, but the section 40 right would be preserved, would it not, by section 186(7) in, if that was the case.

MR RENNIE:

Yes, your Honour. It's a side, side – we call it a sideways transfer.

GLAZEBROOK J:

Yes.

MR RENNIE:

Yes.

GLAZEBROOK J:

And so that would be the, that would be a sensible way of doing it and still preserving the section 40 right except you say that section 186(4) is not apt for this situation?

MR RENNIE:

Exactly your Honour –

GLAZEBROOK J:

Is it – that's the submission?

MR RENNIE:

– Your Honour, because it presupposes it's not a Government work. Well I shouldn't say presupposes, it expressly says so.

GLAZEBROOK J:

It presupposes that the original acquisition was for a Government work and it's been transferred to something that isn't a Government work or –

MR RENNIE:

Yes, yes.

GLAZEBROOK J:

– but isn't that right anyway because it can be – can't it be a public work that Transpower's undertaking as well as being needed for the public work that the Government or NZTA is undertaking?

MR RENNIE:

Yes.

GLAZEBROOK J:

Does it would have to be either or?

MR RENNIE:

No, no, but the – it's not a public work when section 186, the reference is a Government, it's as if it were a Government work. It's the Government work that's the, the operator, we suggest.

GLAZEBROOK J:

Oh, perhaps we need to go to the section because I'm not sure I totally understood that argument before.

ELIAS CJ:

It doesn't emerge very well from, it has to be said, from the submissions, any emphasis on this not being a Government work. Everyone seems to go straight in to the public work point but I would have thought that your strongest point is that this is not work being undertaken under the control of the Crown or a minister, although, I suppose there's some question as to whether under the SOE Act there is some control, I'm not sure, in respect of Transpower but it wouldn't apply to Origin.

WILLIAM YOUNG J:

Orion.

ELIAS CJ:

Orion, sorry, sorry. Think light, I suppose, stars.

CHAMBERS J:

There might be an argument, might there, Mr Rennie, and I'm just testing this, that the whole thing is, in fact, one Government work, widening the road. In order to achieve that various things have to happen, one of which is that the power pylons have to be moved and Transit can only achieve its purpose if it moves the power pylons and it might have to have done a taking for that reason but here it's managed to get the consent of the people whose pylons are going to be moved. Now there might be an argument that that giving of an easement doesn't trigger section 40 because it is just a consequence and a vital part of the actual Government work for widening of the road.

MR RENNIE:

With respect, Your Honour, the problem with that argument, in my submission, is that the Public Works Act contemplates that ownership and control is with the Crown so to be a Government work ownership and control must always remain with the Crown and the point's been made that perhaps what's happened here is that since the Act was enacted these services, formerly carried out by a Government and/or local authorities, are now carried out by other entities.

CHAMBERS J:

Can I just get one thing clarified from you? If you turn to the Crown submissions, because it happens to be the easiest place to find a convenient map, and look at the map right at the end of the Crown's submissions. I just want to find out whether you accept that the Crown, that Transit could have bought that rectangle, HADF, popped the pylons there, actually kept that piece of land. Now that taking would have been permissible under the Public Works Act?

MR RENNIE:

Yes, yes.

CHAMBERS J:

And that was offered to Mrs Seaton wasn't it?

MR RENNIE:

I would need to – I'm not confident of the answer on that on my feet.

ELIAS CJ:

There is one taking that she didn't object to wasn't it?

MR RENNIE:

Yes.

CHAMBERS J:

The splay?

MR RENNIE:

The splay, the 13 square metres –

CHAMBERS J:

That's just the little "h."

MR RENNIE:

"H," yes, little "h."

CHAMBERS J:

It's the little corner triangle. She did – there is a letter which sets out three preferences –

MR RENNIE:

Yes.

CHAMBERS J:

– and the first one I think did involve Transit buying HADF and compensating her for that.

MR RENNIE:

Transit buying?

CHAMBERS J:

Transit buying. I'm sorry I can't give you the page reference immediately but it's in one of the letters that –

MR RENNIE:

My first reaction, I think Your Honour's right. There's certainly a letter from the property group, I think, from memory.

CHAMBERS J:

From the property groups, yes.

MR RENNIE:

Yes, offering three options.

CHAMBERS J:

I'm sorry I can't lay my hands on it but…

ELIAS CJ:

It's in the judgments, set out in one of the judgments, I think.

WILLIAM YOUNG J:

But your position, Mr Rennie, basically is that if it's done by the book the Crown, Transit would acquire what's necessary for the footprint of the road and thus acquire the structures of Transpower and Orion. Transpower and Orion, faced with the possibility that their lines would sag inappropriately would then require the right to move their, their towers a little further to the west, and they could do that under section 186 of the Resource Management Act.

MR RENNIE:

Yes, precisely Sir.

WILLIAM YOUNG J:

And if they did that they would be subject to section 40 of the Public Works Act?

GLAZEBROOK J:

Under 186(7), yes.

MR RENNIE:

(7) under –

WILLIAM YOUNG J:

Under 186(7).

MR RENNIE:

Yes the right, the rights preserved by subsection (7).

GLAZEBROOK J:

Can you just explain to me, at some stage, and I don't want to take you out of order, the 186(4) point because that doesn't refer to Government works at all so your, your argument under the Public – so in fact, just so I understand your argument, is under the Public Works Act, that they can't take it in the first place and then can't transfer it?

MR RENNIE:

Yes.

GLAZEBROOK J:

Because you can imagine a situation where you do need it for both purposes can't you? So say, for instance, you needed the land underneath the power lines for some purpose but you also needed to transfer an easement to Transpower so you can actually have a – dual purposes.

MR RENNIE:

Well, well, well –

GLAZEBROOK J:

It doesn't matter, you probably don't need to –

ELIAS CJ:

Well if it was required by the Crown and taken by the Crown the Crown could grant an easement presumably?

MR RENNIE:

Yes.

ELIAS CJ:

Which is the existing arrangement presumably?

MR RENNIE:

Yes.

GLAZEBROOK J:

Under 186(4) presumably at that stage and then that would preserve the section 40 rights, both in respect of the easement and the –

MR RENNIE:

Yes, that's right.

GLAZEBROOK J:

– and the underlying land.

MR RENNIE:

Land held by the Crown.

GLAZEBROOK J:

Yes.

MR RENNIE:

Yes, 186 presupposes the Crown, at the behest of Transpower, takes the land or under 186, I think, from – yes, I think 186(4), "Any land held by the Crown then set aside,"

GLAZEBROOK J:

Well that, I would have thought, was just any old Crown land can actually be transferred to Transpower for a public utility –

MR RENNIE:

Yes, yes.

GLAZEBROOK J:

When I say, "Any old Crown land," I don't mean that in a pejorative manner but if it was rightly taken under the Public Works Act then the Crown could, under section 186(4) transfer it to a utility company –

MR RENNIE:

Yes.

GLAZEBROOK J:

As long as that was for the proper purposes of that utility company.

WILLIAM YOUNG J:

It certainly presupposes that the land, this is section 186(4), may previously have been acquired under the Public Works Act because section 40 carries, is referred to.

GLAZEBROOK J:

Yes.

MR RENNIE:

Yes.

WILLIAM YOUNG J:

Now, – but does land transferred under section 186(4) does that, would that then displace the operation of section 40 for the future?

GLAZEBROOK J:

No, because section 186 – it just means you can transfer it over without offering it first back and then– because I got confused over that, it's 186(7) preserves the one, the section 40 and 41 rights –

WILLIAM YOUNG J:

Yes.

GLAZEBROOK J:

It just means the Crown doesn't have to offer it back to the person it took it from before it's, before it transfers it over to the public utility.

ELIAS CJ:

But if it's no longer required for a public work then it gets offered back.

GLAZEBROOK J:

Yes.

WILLIAM YOUNG J:

So section, this subsection (7) applies to the land acquired or taken in accordance with this section so –

GLAZEBROOK J:

Which includes under 186(4).

WILLIAM YOUNG J:

This setting aside –

CHAMBERS J:

What is the advantage to Mrs Seaton, as a matter of interest, if it's done under 186 rather than what has happened?

MR RENNIE:

Well Mrs Seaton would – position, firm position since day one, is to negotiate with the person who was receiving the benefit of the easement so she would say that –

ELIAS CJ:

They had more incentive –

MR RENNIE:

Yes.

ELIAS CJ:

– to provide compensation?

MR RENNIE:

Yes.

CHAMBERS J:

I see, she might do.

MR RENNIE:

Better or there might be an alternative arrangement.

McGRATH J:

But would the measure of compensation be any different under the other statute?

MR RENNIE:

No, fair compensation would apply under both but the evidence was that Transpower tends to negotiate beyond that. And it also begs the question, fair compensation for what? That would depend on the negotiation, your Honour, I'm saying, might extend beyond just these easements. It might be the whole land for example.

McGRATH J:

Might be the?

MR RENNIE:

The whole of her land. She might say, "Well, you can buy the whole of my land."

McGRATH J:

That seems to me to be a bit speculative.

MR RENNIE:

It is, it is.

ELIAS CJ:

It's probably speculative –

MR RENNIE:

We stop at negotiation, we don't seek to say what might have occurred. It's just that the right to negotiate is integral to the property right. She should be able to enjoy that before she has to get to the point of saying, well, you're not going to have that because you get fair compensation in any event.

ELIAS CJ:

Can I ask you, because it's not clear to me on the facts, and it probably should jump out from the map, but I'm not very good at maps, effectively what is happening is that the utility providers are being asked to surrender their existing easements in respect of the towers. They, there are existing

easements in respect of the lines across the land. Are those going to have to be realigned? Is there a fresh easement that's required?

MR RENNIE:
Oh, my friend's probably more equipped to answer that question.

ELIAS CJ:
All right, I'll ask him. It's just not clear to me whether –

MR RENNIE:
I don't think there is any realignment.

ELIAS CJ:
Because there's some suggestion, and I read it, when I read it I meant to go back, when I thought about it, that the existing easements – where, there is some mention about new easements being in gross, as they would have to be because the utility providers don't have interests in land to –

MR RENNIE:
Yes.

ELIAS CJ:
– support easements. Are the existing easements not. Are they –

McGRATH J:
Statutory rights at the moment.

ELIAS CJ:
They're just statutory rights. So they're not actually easements as such?

McGRATH J:
No.

WILLIAM YOUNG J:

No.

ELIAS CJ:

All right, thank you.

WILLIAM YOUNG J:

Can I just go back, because I'm still, sort of, toying with section 186(7) and (4). Section 186(7) applies to land acquired or taken, which is the language that's used in section 186(1) whereas the language used in section 186(4) I think is, which I've now lost, is set aside?

GLAZEBROOK J:

Set apart.

WILLIAM YOUNG J:

Set apart. So what's your position? Say the approach that was favoured by the Court of Appeal applies, would you – and so the land that the rights required by Transit are signed or set apart under section 186(4) for the utility operators, would you say that section 186(7) preserves the section 40 rights or whether they've just actually dissipated?

MR RENNIE:

Well, we think subsection (7) preserves. We say – our more fundamental position is that this section is concerned with works that aren't Government works.

ELIAS CJ:

But isn't the point thought that the, that subsection (4) is concerned with land that has been properly acquired by the Crown and indicates what the Crown may do with it. In issue here is the acquisition and that's, you say, something that the land should be – or the interest in land should be acquired under section 186(1) and so really (4), subsection (4) is the next step, that is the path they intend to follow –

MR RENNIE:

Yes.

ELIAS CJ:

– if they use the Public Works Act but your principal point is that the Public Works Act isn't appropriate because it's not a Government work?

MR RENNIE:

Yes.

ELIAS CJ:

They should be using section 186(1)?

MR RENNIE:

Yes it couldn't be held –

ELIAS CJ:

And then you're straight into subsection (7) if there's ever a, a divestment.

MR RENNIE:

Yes.

GLAZEBROOK J:

Can I, can I just check. I thought I understood the submission about Government works but when you said it just then I wasn't sure I did. Why is section 186(4) concerned with words that are Government works?

ELIAS CJ:

It's not.

MR RENNIE:

No it's not.

GLAZEBROOK J:

Oh, okay, so the submission is as I – sorry, that is what I wrote down as what you said and I didn't think it was right.

MR RENNIE:

It's, it's a holding –

GLAZEBROOK J:

What you're saying –

MR RENNIE:

– it's a holding of an asset as if were a Government work.

GLAZEBROOK J:

Well, that's right.

MR RENNIE:

So it hasn't got to –

GLAZEBROOK J:

But 186(4) could acquire – the Crown, under 186(4) could transfer any old land it owns, not necessarily just land that it acquired under the Public Works Act –

ELIAS CJ:

Yes.

GLAZEBROOK J:

– and set it aside under 186(4)?

MR RENNIE:

Yes.

GLAZEBROOK J:

It can also set aside land it acquired under the Public Works Act –

MR RENNIE:

Yes.

GLAZEBROOK J:

– under 186(4). So your argument, in relation to 186(4) is nothing really to do with 186(4) –

MR RENNIE:

It never got –

GLAZEBROOK J:

– it's still –

MR RENNIE:

– it never got to –

GLAZEBROOK J:

– it's just saying –

MR RENNIE:

– it never got to hold, never got to hold under the Public Works Act.

GLAZEBROOK J:

– it never got to hold it properly.

MR RENNIE:

Yes. It was not entitled to hold under the Public Works Act.

GLAZEBROOK J:

Right, thank you, I was just making sure that I understood the submission.

MR RENNIE:

Yes.

WILLIAM YOUNG J:

I mean it did seem to be that as a matter of policy the best argument you have is not that Transpower may be a softer touch for compensation negotiations than the Crown but rather that if the transaction proceeds on the basis proposed then perhaps section 40 rights get lost in the mix.

ELIAS CJ:

Yes that's what I had thought.

WILLIAM YOUNG J:

And do you say that your position, broadly, you say that is what would happen?

MR RENNIE:

Yes.

ELIAS CJ:

Just while we've interrupted you on these statutory provisions, but going back to the Public Works Act provision, I do not understand the emphasis in the lower Court decisions and in submissions on improper purpose, because the issue surely is only whether you're within the statutory authority. It, it's not a –

CHAMBERS J:

That is how it was pleaded.

ELIAS CJ:

That's how it was pleaded –

CHAMBERS J:

Yes.

ELIAS CJ:

– yes. But it's gone off on this improper purpose thing. An improper purpose argument arises only where there is lawful authority that's being exercised but it's being done for a purpose not within the contemplation of the statute but we're not in that sort of ballpark here.

MR RENNIE:

No, no, no.

ELIAS CJ:

If you're right, and it's not a Government work, and that's subject to the Crown, as I see it, principal submission, that because it's caused by a Government work, the roading, it extends onto those flow-on effects.

MR RENNIE:

Yes.

ELIAS CJ:

I mean that's the area, it seems to me –

MR RENNIE:

That's it.

ELIAS CJ:

– of contention. It doesn't seem to me to have anything to do with proper purpose at all.

MR RENNIE:

We categorised that way, for better or worse, but –

ELIAS CJ:

Yes.

MR RENNIE:

– the focus of the argument has been, in both Courts, in my submission, really on, as Your Honour's just put it.

ELIAS CJ:

All right.

McGRATH J:

So it's an ultra vires argument that you're proposing?

MR RENNIE:

Yes, correct, and we categorised it as improper.

McGRATH J:

Well those improper purpose cases are usually like, I think, bar trippers but they're usually concerned with coercive transfers for totally unrelated ends –

MR RENNIE:

Yes.

McGRATH J:

– than the public authority is given and where they've decided they want to help, the local authority wants to help an adjoining landowner subdivide or something of that kind, it does something for that totally private purpose.

MR RENNIE:

Yes.

McGRATH J:

And I agree with the Chief Justice, it doesn't seem to me that it's got any relevance in this particular circumstance.

CHAMBERS J:

If we were with your legal argument, I take it you would say that, well, the pleading doesn't matter too much, that the – all the relevant evidence has come out and so we should treat it as effectively an ultra vires argument should we?

MR RENNIE:

Yes Your Honour and there has, remember this was a case that proceeded on an agreed statement of facts –

CHAMBERS J:

Yes.

MR RENNIE:

– so there's no, there's none of that usual loss of the benefits of a hearing, anything like that. So the record's the record, for better or worse.

CHAMBERS J:

Yes.

GLAZEBROOK J:

Well it does say that the taking of the land was not a Government work within the meaning of the Public Works Act so –

MR RENNIE:

Yes.

GLAZEBROOK J:

– even though it calls it improper purpose, it actually is saying it's outside of the statutory purpose.

MR RENNIE:

Yes the argument throughout has got down to the level without being hung up on the label.

GLAZEBROOK J:

So when it says “improper purpose” it probably just means not for the statutory purpose.

MR RENNIE:

Yes not within the statutory purpose.

GLAZEBROOK J:

Under the plaintiff, it’s page 7.

WILLIAM YOUNG J:

You do plead ultra vires anyway?

ELIAS CJ:

I thought ultra vires was pleaded but…

WILLIAM YOUNG J:

Page 22 of volume 1.

GLAZEBROOK J:

Is that, is that the –

ELIAS CJ:

Although that’s a funny pleading too, ultra vires. I mean, one would have thought –

GLAZEBROOK J:

Oh yes, that’s the updated one.

ELIAS CJ:

– there simply wasn't a statutory power to do what is proposed to be done. Now these labels in administrative law, I think we should avoid them. Yes, sorry, where did you want to –

MR RENNIE:

Oh well, I got to within the last sentence and I think I've covered everything Your Honour so I don't have anything further to add to what I've said in our written submission and now orally. Unless Your Honour has any further questions.

ELIAS CJ:

No, thank you very much Mr Rennie. Mr Hancock, I wonder whether you could just help me with that question of fact first, about whether there have to be different, well, maybe there does have to be, because one's the existing right isn't it and now we do have to have an easement. Is that the –

MR HANCOCK:

We're saying that –

ELIAS CJ:

I'm just thinking about the lines now.

MR HANCOCK:

The power lines –

ELIAS CJ:

Yes.

MR HANCOCK:

– going through the air?

ELIAS CJ:

Yes and they're the subject of existing rights in the nature of easements are they?

MR HANCOCK:

Yes you could loosely call it a statutory easement –

ELIAS CJ:

Easement.

MR HANCOCK:

– but in fact it's not registered on any title as an easement, in the normal sense would be.

ELIAS CJ:

Right. Do we have any statement of what those rights are? Do they appear anywhere?

MR HANCOCK:

They live under the Electricity Act.

ELIAS CJ:

Yes.

MR HANCOCK:

But I don't think we've included the section in the Electricity Act which talks about –

ELIAS CJ:

Well, when you've got these maps with the shadings, which presumably are underneath the, the lines, are they, on the land?

MR HANCOCK:

The way it works, as I understand it, we've got the trespass into space of the actual transmission lines.

ELIAS CJ:

And you require access to those?

MR HANCOCK:

Yes, and secondly we've got the base or footprint upon which the pylons stand, and that composite is at page 183 of the case on appeal. It's set out at page 183 of the case on appeal. It's quite a helpful coloured – and also it's appended to the respondent's submission.

CHAMBERS J:

Yes, the same thing. The coloured things the Chief Justice refer to the areas that would be included in the easements that are –

ELIAS CJ:

Yes, but at the moment, what are they, are they animal, vegetable or mineral?

MR HANCOCK:

A creature of statute, perhaps.

ELIAS CJ:

Yes, but where's the statement of them? You say –

MR HANCOCK:

Section 22.

ELIAS CJ:

But that just simply says that whatever they are, are preserved. How are they ascertained? I mean, do these shadings, do they correspond with the existing statutory rights?

MR HANCOCK:

Yes, yes, they are –

CHAMBERS J:

Well, they don't really, because the existing statutory rights are very spare, aren't they? You have to read into the Act. Because the structure of the Electricity Act – correct me if I'm wrong – was that if you had a power line up

at the time the Act was introduced, because there was so many power lines all over the country that did not have easements, statute gave you existing use rights.

MR HANCOCK:

Yes, and those are preserved in the legislation.

CHAMBERS J:

What's been done here, however, in the coloured map is the proposed easements, and they do have to be properly surveyed out because they're going to be recorded on a certificate of title.

MR HANCOCK:

Yes, I'm sorry, Your Honour, I didn't answer your earlier question clearly and what –

ELIAS CJ:

It was not a very clear question, because I don't quite understand it.

MR HANCOCK:

There is a subtlety and it's this, that the proposed easement is, in terms of the transmission lines, virtually exactly the same trajectory through spaces, what was there before. There is a minor – there could be a minor difference due to the alteration of the footprint of the towers, the wind can move the wires slightly more one way or the other by the movement of the towers, but for most practical purposes, and there was a debate between the legal advisors of the power companies on this very point. Some people felt that because the lines were pretty well exactly going to be in the same places they were before that they mightn't need any further easement at all, but in the end it was decided that there was going to be a sufficient alteration of the pylons and a sufficient alteration of the trajectory of the wires that it would be dangerous to assume there would be no injurious effect or alteration onto the –

ELIAS CJ:

But that's a different interest in land, then.

MR HANCOCK:

The two interests we've got to consider, I believe, are the interest created by a statutory easement, if we can call it that, which is not registered on the land, and that's what's there at the moment, and then what is –

McGRATH J:

Which is protected by s 22?

MR HANCOCK:

It's protected by the Electricity Act, yes.

McGRATH J:

It's misleading to call it an easement.

ELIAS CJ:

Yes.

MR HANCOCK:

It is.

McGRATH J:

It's protection of existing use rights.

MR HANCOCK:

And, Your Honour, what has happened is that phraseology has been in the case from the beginning. I inherited it. It's just a term that's loosely been used, but with respect you're absolutely correct, it's not an easement.

McGRATH J:

It's a section 22 angle, but the new shading of the rest of it will be properly registered easements under the Land Transfer Act.

MR HANCOCK:

Yes.

McGRATH J:

And if you want to know what their content is, you go and look at them?

MR HANCOCK:

Yes.

ELIAS CJ:

And that's a better estate in land. That's a different estate in land that is going to result from these – from this manoeuvring. It's different.

MR HANCOCK:

It's different, but the blunt position is Transpower and Orion are absolutely happy with what they've got.

ELIAS CJ:

Well, they might well be, but I'm just thinking about the land owners and whether this is just a question of degree, because suppose the angle had been quite substantially different. Surely that's a matter on which you'd have to be very particular. It's not a question of practical effect or more or less or – I mean, these are, this is a different estate or a different interest in land that you are ending up with, and perhaps it does require great care in the taking and the definition, which on the approach that you're adopting there's really not going to be an opportunity for, is there?

MR HANCOCK:

The –

ELIAS CJ:

Because you're effectively saying that these existing rights can be passed on by the Crown using its powers under both Acts.

MR HANCOCK:

The position is that the landowner under the Public Works Act, under the taking proposed by the respondent, has –

ELIAS CJ:

Oh, the Environment Court?

MR HANCOCK:

-the right to full compensation under the Public Works Act, and then the position if the power utilities took the easement under the Resource Management Act the position would come down to the Public Works Act Part 2 exactly the same end result, so in terms of your –

CHAMBERS J:

Can they actually challenge the taking under the Public Works Act in the Environment Court?

MR HANCOCK:

It flicks back to Part 2 of the Public Works Act, as I read it, so the utility company has to persuade the Minister that the – we'll say here the easement is required and it's equivalent to a Public Works-type requirement.

CHAMBERS J:

Take away that – mine was a simpler question. I just wanted to know – take out all the complexities. Can someone whose land is threatened with a taking and who has received a notice, on their objection to the Environment Court, can they challenge the actual taking?

MR HANCOCK:

Well, looking at the section 186(1) –

ELIAS CJ:

Is this the Public Works Act?

CHAMBERS J:

No, I'm talking about a Public Works Act one.

MR HANCOCK:

Oh, I see. Under the Public Works Act there's the recourse to the objection procedure. I think it's section 23 or 24.

CHAMBERS J:

And does that permit a challenge to the actual taking?

MR HANCOCK:

Yes. The challenge is on the basis the objector, if it can establish that it's not reasonably necessary or there are other alternatives or if it's unfair or words to that effect, then the Environment Court does a report to the Minister and then the Minister can make a decision either affirming the report or not.

CHAMBERS J:

I thought the Minister was bound by the Environment Court's decision.

MR HANCOCK:

I'll just check the provision of the Public Works Act to see if that is the ...

ELIAS CJ:

What part of the Public Works Act?

MR HANCOCK:

Sections 23 and 24 of the Public Works Act.

CHAMBERS J:

Yes, it is, 24(10).

ELIAS CJ:

Yes, binding, (10).

MR HANCOCK:

Yes. So yes, it's binding on the Minister.

GLAZEBROOK J:

Can I just check, I mean, in this case what you have is the public works is the road itself and then if I can put it this way loosely, there's a separate public work which is the placement of the electricity pylons, et cetera. Now, by doing it the way that it's been done, doesn't that deprive Mrs Seaton – this is really just asking about the negotiation point – to negotiate with the power companies and say, "Well, look, I think it would be better if they were placed here. I think it would be better if it wasn't an easement but you bought the whole thing. I think it would be better." So that they're negotiating directly with the entity that's actually doing the public works rather than indirectly with the entity who's saying, "Well, I really don't care where these go, they just can't go on my road or beside my road." Because that's the Crown's position. The Crown really doesn't care where they go in any sense other than being concerned, because it is the Government, that they go somewhere, and that the power supply isn't interrupted. So the people who are really concerned with where they actually go are the landowner and the power companies, and wouldn't you normally expect the negotiations to take place between those entities, and doesn't this way of doing it deprive that and also possibly deprive the objection rights because it's not really looking – because in terms of where the Crown is, it doesn't care where they go as long as it's not on their road. I mean, they could be moved anywhere.

MR HANCOCK:

Well, if I could answer the question as follows, I wouldn't necessary accept, your Honour, that there's two separate public works. It would be fundamental to this case that the public work includes everything to do with the public work which includes the relocation but putting that point to one side, and that is this is not to be divided – the whole thing is a uniform project, the financing is uniform, it's all one package. But putting that to one side, to answer more directly your Honour's question, the test, if you like, which has to be

undergone by the Minister under s 24 of the Public Works Act in the Environment Court, that's the objection to be heard there, shall we perhaps turn to that section because –

GLAZEBROOK J:

Well, it's really because the taking compulsorily is the last step and so your submission was it was perfectly reasonable for the Crown to negotiate with the power companies rather than taking that compulsory step. Now, one has to agree with that, that effectively if you can negotiate first, so it – so really the objections and the takings are really afterwards because one assumes that you, in the first place, negotiate with the person that's been – who's requiring the Government work, and then of course you will have to deal with Mr Rennie's point as to whether this is Government work because the land taken won't be in the control of the Crown.

MR HANCOCK:

Well, as I understand it, before the final taking proclamation occurs, this objection process has to be gone through, and all the points which your Honour has just mentioned that Mrs Seaton might raise by way of concern or objection, that's to say the placing of the foot or footprint of the power lines or the pylons or any other aspect of the intended easement, the Minister is going to have to answer before the Environment Court objections which Mrs Seaton would have in relation to any of these matters, and at that point the rights which your Honour is concerned about preserving for the landowner, they are given full effect at that point, and I would submit there's really no difference. There's certainly no loss of an opportunity to complain.

ELIAS CJ:

But there's going to be a different focus, isn't there? It seems to me that the objection and the hearing are against the public work or the Government work which is the road, which is quite different than the focus of an objection to the taking of land or interests in land for – simply for the power lines, and secondly – and I'd like a comment on that – and secondly, I'm not so sure that it is the case that the Crown doesn't care, because the Crown's been told that

Transpower and Orion won't agree, so the Crown is in dispute with those utility providers and presumably they'll, if it really gets rough, will be looking to compensation for loss of their existing statutory rights, so –

WILLIAM YOUNG J:
Can't they just give notice under the Government Roads Act or whatever and tell the – the Crown is entitled to tell the network operators to move the towers.

MR HANCOCK:
I think, your Honour, the historic difficulty there is that the structures predate the power that you've just referred to, and if the pylons were initially erected on land which wasn't a road, which is private land, which is the case here, back, say, 40 years ago, then that ability that Your Honour has just referred to for the New Zealand Transport Agency to tell people to move their power poles or their pylons, that doesn't exist.

WILLIAM YOUNG J:
Well, is that absolutely clear, because I mean I – it's not an area of the law I'm familiar with, but I thought the Government Roading Powers Act and indeed the Electricity Act itself says that for instance, section 32 of the Electricity Act, or any works being works to which section 22 applies, can tell the owner to move them?

MR HANCOCK:
If your Honour pleases, at page 11 of the respondent's submission, this legislation is discussed at paragraphs 15 to 52, and perhaps I might just pause for a moment possibly the answer to the point you've just raised is contained in those paragraphs, 50 to 52.

WILLIAM YOUNG J:
It's not clear.

MR HANCOCK:

The point that may not be clear is that the submission at paragraphs 50 to 52 is that this term –

WILLIAM YOUNG J:

Oh, I see, what you say is section 32 may only permit a requirement to move within the land already owned by the controlling authority?

MR HANCOCK:

Yes, so it's moving around within a confined area, whereas here we've got the problem of actually having to clear the pylons off the –

CHAMBERS J:

Why can't they just take the pylons under the Public Works Act?

ELIAS CJ:

Well, they can, but they don't want to.

CHAMBERS J:

Well, but what is the answer to Mr Rennie's essential proposition that Transit could say to the two power companies, "Move your pylons. We want the land. Move your pylons and we will compensate you. You find the solution." And if it's an expensive solution that they have to come to ultimately, well, then, the Crown has to wear that. But what's the – what's wrong with that essential argument?

MR HANCOCK:

Well, if your Honour pleases, *Kett v Minister for Land Information* (HC, Auckland, AP404/151/00, 28 June 2001) is an example of a situation where the solution which, to use your Honour's term, you'd have to wear, it arose very sharply in that case. There was a triangle of land which was going to be landlocked because of the passage of the motorway, and the issue came before the Court: was this required for the public work? And the Court took into consideration the fact that – I'm just plucking some figures out of the

air – but say the triangle of land which was cut off, the access to that underground tunnel or whatever was going to be four or five million dollars and the value of the land was, say, $200,000, the Court said in that situation the taking of that triangle was a public work, a Government work.

ELIAS CJ:
The taking of the whole land was?

MR HANCOCK:
Yeah, the rest of it was fine because that was the path of the motorway, but the problematic part was this triangle and in other words, to answer your Honour's question, you're saying, "Well, just throw the whole mess over to the power companies, it's their problem." That's probably not a responsible thing for the Crown or the Minister or the Public Works Act to be used in aid of, but even if that argument get off the ground, and that is whatever it costs, it's your problem, under the authority of the *Kett* case, which –

CHAMBERS J:
Yes, "Your problem, we will compensate you."

MR HANCOCK:
And the answer to that is that in terms of giving effect to the purpose, a purposive interpretation of the Public Works Act, a solution of no matter what it costs in public funds, doesn't matter, we'll just pay it because we're going to use the Public Works Act to take your pylons and interrupt your business but that doesn't matter, that's your problem, we'll just write out a cheque as big as it needs to be. The Court rejected that approach in *Kett* as contrary to the purpose of the Public Works Act and it's central to the submission of the respondent in this case, that writing out a big cheque to take care of all problems is actually running contrary to the purpose of the Public Works Act, which, obviously contains a public interest purposes. So what we have here, if you like, we've got the interests of the owner, she's entitled to full compensation, which she gets under this taking.

CHAMBERS J:

Well she doesn't actually, does she, because she won't get section 40 rights.

MR HANCOCK:

The way I would interpret that, Your Honour, is that under this taking, under the Public Works Act, section 16 and section 4A, under this taking the whole of the project, that's the relocation and the widening of the motorway, this is one indivisible public work, you can't do one in the end without the other, so that is, put in quotes, the public work or the Government work, and given that is the case once the public work aspect is no longer required, and this is, it can go – it's going to be an easement to the power companies but, at the end of the day, the – if the easement is no longer required – well, I mean, it's a strange situation, if the airspace is no longer required, she gets her air –

CHAMBERS J:

No, but what I'm envisaging is Transpower might convey the easement to –

ELIAS CJ:

Mer –

CHAMBERS J:

– Meridian Lines Company Limited, or whatever it is, for a very large sum because it proves to be in due course in 20 years time an extremely valuable route to, to convey power along, say. Now that transfer could occur without any offer to her couldn't it?

MR HANCOCK:

The, the way the Resource Management Act at section 186(4) works –

GLAZEBROOK J:

Well can we leave out 186(4) because your argument is that a section 4A power to dispose can be done without recourse to section 40 isn't it and I would say that just can't be right because, because what you might have, say, in respect of your triangle that you're talking about in the landlocked case, you

could say well, the easiest way of dealing with that might be to give the person who had that landlocked case a, an easement over the land in some way so that they will always have access to the landlocked land and on your argument you say that's perfectly all right because you can dispose of the easement and yet if that has happened to a third party, without recourse to section 40, then how does section 40 get it back from the person who has the easement? Or say, in this case, rather than an easement, there'd actually been a transfer of land, fee simple land that had been acquired because it's a public work and leaving aside section 186 where does the offer back come in?

MR HANCOCK:
Well –

GLAZEBROOK J:
I can understand the argument on 186 but there is a difficulty with 186, as pointed out in terms of the different terminology between set apart and otherwise but aside from 186, where does the offer back come if your argument as to whatever's the easiest way of dealing with something inconvenient in a public work is a public work itself and then how does that relate to the definition of Government work which assumes it's something under the control of the Government?

MR HANCOCK:
Well there's probably a number of –

GLAZEBROOK J:
There are a number of questions.

MR HANCOCK:
– questions in there and what I'll do, just generally, is to submit that taking of the land for the – yes, taking of the easement under the Public Works Act doesn't extinguish the offer back, right.

GLAZEBROOK J:

Taken by who, because in fact, my understanding is that it's going directly to the, the power companies in this case, but, so, so I would agree with that the taking of the easement by the Crown does not extinguish the Public Works Act, section 40 rights.

MR HANCOCK:

What was then proposed was that once the taking has occurred that the power companies get the benefit of the easement and that would happen under subsection (4) of the Resource –

GLAZEBROOK J:

I've asked you to ignore that because your primary argument is that if it's part of a Government work that's a by-product of a Government work or a consequence of the Government work, then there is a power to dispose, under section 4A, without triggering a section 40 right and that that is still part of a Government work, so forget 186 for the moment, but is that the Crown submission, because I can't see how it would preserve a section 40 right if your argument is right and you can transfer to a third party, just because it's a consequence of the Government work.

MR HANCOCK:

Assuming that the section 4A doesn't, in itself, permit a disposal without the protection of section 40, assuming that position then –

GLAZEBROOK J:

Well is that or is that not the Crown's position, because its submission seem to suggest that a section 4A power can be exercised without recourse to section 40?

MR HANCOCK:

I'd like to put that on hold, as it were, in the sense that –

GLAZEBROOK J:
Your submission's going to depend on it.

MR HANCOCK:
– I've assumed, I've assumed, for the purpose of our discussion that the section 40 right remains after a taking under the Public Works Act section 4A, so assuming that remains –

GLAZEBROOK J:
Right.

MR HANCOCK:
– whilst the use of the easement is a continuation of the public works purpose and I define the public works here in relation to the whole of the works, that's the road and the relocation, and I think the submission does depend on that, seeing the relocation and the road is one and the same, I think it's a point Justice Chambers made earlier on.

ELIAS CJ:
You will have to come back to that but finish your answer here first.

MR HANCOCK:
Yes, so you've got the whole thing together. As long as the two things, that's the relocation plus the roadway, as long as that is a public work, it's been taken for public purpose, doesn't matter that the easement is in the name of Transpower, it doesn't matter in the slightest. What does matter is the public work won't be achieved, it won't happen –

GLAZEBROOK J:
But how do you get it back? Say for instance either they decide that they're going to not have the road anymore or alternatively, more likely, they decide they don't need the power anymore –

MR HANCOCK:

Well under the –

GLAZEBROOK J:

Or else it's going to be somebody, as Justice Chambers, I think, said, decides they'll sell it onto Meridian. Where does Mrs Seaton get her offer back in those circumstances?

MR HANCOCK:

It would be at the point where the public works purpose ceased to exist.

GLAZEBROOK J:

So you have to get rid of the road rather than get rid of the power. I mean an easement, easement is probably silly. Let's assume that in – because your argument doesn't depend on it just being an easement. Say for the – say the most logical way is to actually give the land to the power companies that's beside the road rather than merely have an easement. Because your argument doesn't depend on it being an easement does it? So, so the, so the best way of dealing with this would be to transfer the land, or a portion of the land, to the power companies. When the power companies don't need it for power anymore or when the road goes away, how does Mrs Seaton get that land back?

MR HANCOCK:

It would be offered back to her.

GLAZEBROOK J:

But it belongs to the power companies now because the Crown's transferred it over. Leaving aside 186 for the moment, because your argument is that if it's a consequence of the public work then you can do that because as long as it's needed for the public work you can actually transfer land off to someone else.

MR HANCOCK:

Yes it could be in the situation your Honour has – and if we got to that particular position it could be that the structure of the holding is not an easement in the name of Transpower or Orion, it could be, continue to be held by the Crown –

GLAZEBROOK J:

Well it could be but let –

MR HANCOCK:

– as a, and then a license could be given –

GLAZEBROOK J:

Well it could be.

MR HANCOCK:

– and that would preserve the – and at the moment what we have is, we don't have a completed, taking it all, we have a application, as it were, to acquire the land under the Public Works Act and there's an argument as to the, whether that's within the statutory power or not.

The next step, if that particular hurdle is overcome is well, how is the arrangement then done between Transpower and Orion and the Crown and if your Honour is concerned that there could be some private right lost, such as a section 40 right lost, under the proposal as put forward, then the alternative would be a license and that is that the Crown holds the easement itself as a license, or at least, gives a license to the power operator and that would satisfy Your Honour's con –

McGRATH J:

I think what we need to know is what in the Act would require the Crown –

GLAZEBROOK J:

Yes.

McGRATH J:

– to adopt such a solution, that I think is the – it's not just a matter of the Crown being a good citizen or NZTA being a good citizen and not transferring it and losing the section 40 right. What would actually require retention of ownership so that the section 40 right was protected?

MR HANCOCK:

It could be a judgment of this Court saying it doesn't like the easement going to Transpower Orion, it wants the easement to be held for as long as the public work –

McGRATH J:

A pronouncement of that kind by the Court would have to be –

ELIAS CJ:

Grounded in a statutory provision.

McGRATH J:

– based in an interpretation of statute and we'd have to, there would have to be an interpretation of a statute, it's not – we can't legislate to that effect ourselves so…

MR HANCOCK:

I wasn't thinking of that, of course, your Honours, rather positing the argument that if Justice Glazebrook's concern is that some appreciable property right is lost by the landowner under the course that's currently proposed, then –

GLAZEBROOK J:

Mine was an interpretation question so I actually don't care whether a right is lost or not per se. What I'm saying is that the statutory structure of the Public Works Act is that compensation isn't lost so the compensation right is fundamental to the structure of the Public Works Act and therefore fundamental to the interpretation of the statute. So it was grounded in a, well,

how does her right remain but it was because, in my view, the compensation right is fundamental to the interpretation of the structure and therefore would have to define the powers of the Crown and what one would contemplate is being a Government work or not a Government work. So again, it comes back to that definition of Government work, which does contemplate the ownership by the Crown –

ELIAS CJ:
Control.

GLAZEBROOK J:
– but again, we're, we're not in the business of saying well if you keep the control and ownership and did this, because that's not what's before us as the facts.

ELIAS CJ:
But it's so torturous, when there is a direct route, the whole suggestion that the Crown might devise some sort of mechanism for holding the interest and licensing the utility company seems wholly unnecessary, but I do think it all comes back to, is this a Government work? And the Crown isn't proposing to control the work, the line work, it's only proposing to control the roading isn't it?

MR HANCOCK:
Well the terms in the Government work definition of section 2, control is one word but there are various other words as well, for example, "Construct and undertake an established, managed, operated or maintained," –

ELIAS CJ:
Is that proposed?

MR HANCOCK:

My submission would be that the giving effect to these arrangements, that's the easement, is in fact a management of the achievement of this Government work. There are –

CHAMBERS J:

But you will lose all control of this.

GLAZEBROOK J:

You're actually looking at the land itself, which is the easement. You're not looking at the road, are you, under that?

MR HANCOCK:

Well, when I say I'm looking at the easement, what I'm saying is that to establish the road project, certain things have to be done, relocation of the power lines is a crucial part of that, and we come under the establishing or managing of the land to the extent that we have acquired it and then put it in the hands of the power company to achieve the public work, and so although in one sense we don't retain control in every case, what we have done is items which are very, very similar to that because we've, if you like, controlled the process to the point where we've set up a solution which enables the public work to proceed, so we have –

ELIAS CJ:

But it's just a device, and it's an unnecessary device since the direct route is available for utility providers in the Resource Management Act.

MR HANCOCK:

Well, perhaps if we went to that, your Honour, I'd submit that –

ELIAS CJ:

Sorry, but what is the answer to that? I mean, it isn't – or is that going to be your answer, that it doesn't achieve it?

MR HANCOCK:

Well, the submission for the respondent is that the setting up of this relocation, the various steps it's taken to relocate, that's the easement, is an exercise of control for a public purpose of this land. It has controlled it for the purposes of achieving the public work.

ELIAS CJ:

The public work being the suspension of the lines across the land, is it?

MR HANCOCK:

It's the relocation of the pylons.

GLAZEBROOK J:

Well, the public work can only be the road, can't it, and this is a necessary consequence of the road, because otherwise if the public work is just the pylons, then that is clearly a utility work, isn't it?

MR HANCOCK:

Well, the public work is the whole of the project.

McGRATH J:

Including what is required indirectly –

MR HANCOCK:

Yes.

McGRATH J:

– for it in terms of the definition of public work?

MR HANCOCK:

Yes. It's the whole project, and so my answer to your Honour's point about satisfying the control component of Government work definition in s 2 interpretation, my answer to that is, in fact, it is the very exercise of control through the taking, it's the very exercise of control which has enabled the

public work to be achieved, and to read it differently, I submit, is actually taking an approach which defeats the Public Works Act rather than promotes it, because what you'd be saying in that situation is that it's not possible for something like what happened in the *Kett* case, for example, it's not possible for that to happen because –

GLAZEBROOK J:
Why not, because that land was just taken under the control and it was a necessary consequence of the roading?

MR HANCOCK:
No, you're right, your Honour.

GLAZEBROOK J:
And it was actually used for the road, effectively, because the road isn't just the road in those circumstances, it's also...

MR HANCOCK:
No, you're quite correct, your Honour. I think a better way for the respondent to frame this argument is that the Government work includes everything which is necessary to achieve the Government work at this time in this location, the whole package.

ELIAS CJ:
If the Government work is the road which is as you've argued, why is it necessary to do other than require the utility companies to remove the towers from the Crown land?

MR HANCOCK:
Because the problem is still not solved.

ELIAS CJ:
Well, no, but it can be solved, then, under the Resource Management Act.

MR HANCOCK:

I was about to go there, your Honour.

ELIAS CJ:

Okay, well, perhaps you better go there.

MR HANCOCK:

Going to the Resource Management Act, if one looks at subsection (1), I'd submit, and it's in my –

ELIAS CJ:

Sorry, of 186?

MR HANCOCK:

Sorry, 186 Resource Management Act, and this simply reflects a theme in the written submissions that this is oriented to a project of the utility company.

CHAMBERS J:

Well, you can look at it, though, that this part is a project of the utility company. It's one which the Crown will have to compensate them for, but it has become their project to find a solution to the taking of their interests in land or their statutory rights with respect to the roadway area.

MR HANCOCK:

What would count against that interpretation, Your Honour, is subsection (6) which states, "All costs and expenses incurred by the Minister of Lands in respect of the acquisition or taking of land in accordance with this section, including any compensation payable by the Minister, shall be recoverable from the network utility operator as a debt due to the Crown."

GLAZEBROOK J:

But that can't possibly mean including any compensation payable to the utility operator. What that means is if you – the utility operator is taking Mr Jones' land, then if the Crown has to pay compensation for Mr Jones then the utility

operator provides, you couldn't possibly say that if the Government is taking electricity company land thereby requiring them to take a – to do another project in order to fulfil their functions that subsection (7) would mean they'd have to pay that back to the Crown as well. It must mean – it must be referring back to, because effectively this is creating a fiction, isn't it? Section 186 is creating a fiction because fictionally it's taken under the Public Works Act and fictionally it's taken by the Government, so it can't be talking about other types of land, can it? It must be talking to compensation paid for the lands that the electricity companies are going to use taken from third parties.

MR HANCOCK:
Well, the –

ELIAS CJ:
You weren't arguing against that, though, were you?

GLAZEBROOK J:
I think he was.

MR HANCOCK:
The interpretation I'm endeavouring to support –

GLAZEBROOK J:
You're saying they'd have to pay back whatever they paid under the Public Works Act?

ELIAS CJ:
No, no, I don't think so.

MR HANCOCK:
No, I think we've gone off a little bit to the side here. My principal point is, in answer to Judge Chambers, my proposition is that section 186 is firmly directed to the initiatives or the projects of public utilities. Let's try and look at the scheme and purpose of this section within the legislation. That's – and I'm

reinforced, as was the Court of Appeal in its judgment, reinforced by that interpretation by saying that the person, as they say, who pays the piper calls the tune here.

ELIAS CJ:

But isn't this really quite a powerful argument against yours because it makes it clear that what's envisaged here is that the Minister of Lands acts as agent for the – effectively for the utility providers, and that's really what you're seeking to achieve and what I suggested was a rather tortuous way through the provisions of the Public Works Act, and that's where you ended up talking about, well, you know, they could licence them or they could – it's wholly unnecessary because section 186 envisages that the Minister will act for the utility companies but be paid, reimbursed, for any cost.

MR HANCOCK:

Yes.

ELIAS CJ:

There's your agency.

MR HANCOCK:

Well, in this situation it's the public work that's given rise to the need to relocate the power lines and so this is all at the cost of the Minister. It's the Minister's project and to achieve the public work he's got to relocate the lines one way or the other.

ELIAS CJ:

Yes.

MR HANCOCK:

And he's got an obligation of full compensation if he doesn't achieve that, and when your Honour is concerned about a roundabout way of doing things, I think the route your Honour's going down is extraordinarily circuitous because here under the Public Works Act we have a clean, direct system under which

the land is acquired for the public works, the easement is required under the same process, and that enables the project, instead of having the sewerage people and the gas company and the drainage people and the radio people and the electricity people all going off in different directions and acquiring or negotiating five or six or seven or eight or 10 different interests with Mrs Seaton, the Public Works Act and the purpose of it is much better given effect to if one agency, mainly the agency responsible for the public work and all aspects of it, not forgetting the public work cannot be achieved if the line is not relocated, so this way is a clean and clear way, and a way which has minimal or no impact on landowner's rights.

ELIAS CJ:

That may be right, but does it – is it in accordance with the statutory scheme that's set up by these two pieces of legislation and does it shut out the landowner interest? That's the question, really.

MR HANCOCK:

Well, certainly at the first instance the landowner who's already got this – I won't call it an easement – it's already got the lines going across, so she's stuck with that. The land, if you like, has that blight already. So if you like, that blight exists now. If you're worried about the rights of the landowner, which is obviously an important consideration of this, she's now about to be compensated for something that was already there for most practical purposes. The power lines have been moved or the pylons and the footprint a matter of metres along the shelter belt just on the edge, and now they're going to be moved ever so slightly a few metres, so if we're concerned about the property rights here the wind is very much the other way, and that is, if you like, it's a windfall or an additional benefit that's being achieved in compensation for a situation that quite frankly has existed there for 40 years.

ELIAS CJ:

But won't that all turn on the valuation and whether there really is additional detriment, and whether there are additional benefits being obtained through the creation of easements to protect the interests of the line companies

instead of these rather archaic statutory interests which I have trouble understanding exactly what they are?

MR HANCOCK:

Well, I go to the affidavit of Stephen Cottrell. I think the benefit of perhaps looking at the –

ELIAS CJ:

Whereabouts are we, sorry?

MR HANCOCK:

Now we're at volume 2 and at page 92 and at paragraph 29, which is at page 98, and there he explains the reason why this choice was taken as opposed to other choices that might be available, and he says, "Were a utility operator to take responsibility for the relocation of pylons and power lines in circumstances such as this, the construction of a public work to schedule would be compromised altogether and practice, therefore, where it is necessary for the Crown to extinguish statutory rights held by utility operators. Negotiations are conducted with such utility operators in much the same way as they are with land owners and NZTA retains overall control of the works, the easement can then be set aside to vest in the utility operator pursuant to section 184." If I can just interpolate there for the Chief Justice, the section 184(4) procedure would, as I interpret the Resource Management Act, preserve those section 40 offer back rights.

McGRATH J:

Mr Hancock, that last proposition seems to me to be quite an important one, and I'd like you perhaps after the break to –

ELIAS CJ:

That's section 186(4), isn't it?

MR HANCOCK:

Yes, I'm sorry, section 186(4) of the Resource Management Act.

McGRATH J:

But you're basically linking that to as being available, although the taking is under the Public Works Act.

MR HANCOCK:

Yes.

McGRATH J:

Now, after the break, the Chief Justice has put to you what I think is a very fundamental question in this case. Does your procedure shut out the landowner's rights in any way, or put those rights at risk? Now, if you're saying that you can bring section 186(4) to bear in this to protect the landowner, which under, presumably, section 186(7) I'd like to know that and otherwise I'd like to know exactly how you say there is no question of the landowner's rights being put at risk by a possible transfer by the Government. So I want to know how in the statute that risk is shown not to exist.

COURT ADJOURNS: 11.31 AM

COURT RESUMES: 11.49 AM

MR HANCOCK:

Now Justice McGrath asked the question about whether the landowners rights have been, could be seen as being shut out by the process, which has been adopted in this case and I know the Chief Justice has asked me not to go back to the Resource Management Act section but –

ELIAS CJ:

No, no, no, I'm sorry, I didn't mean to inhibit you from that at all. I just wanted an answer to something else first but, go ahead.

MR HANCOCK:

The link, that's the statutory link which protects the landowner in this situation, is that firstly we've got, under the case which is being put forward by the respondent, what we have is a global public work; that's everything is included. We can't achieve the public work, we can't accomplish it without relocating the pylons so we start off with a public work and if that is a continuous line then what intercepts with that line at any given point would be the section 40 offer back rights. So whilst we're still talking about this total project, irrespective of the fact the easements may be in the name of Orion, but once, or as long as, the Court accepts the submission that this is still part of the Public Works Act project, admittedly, an element has been achieved and that is with the granting of the easement to Orion we've achieved the public work, but it is a public work and remains ancillary for a public work forever, as long as the road's there and the pylons have to be moved. So that's – my first proposition is really a definition of one asking the Court to see this from the start to the finish as a quote, "public work" or quote, "Government work." Pause. The second –

ELIAS CJ:

Sorry, why did you run those two together, public work or Government work?

MR HANCOCK:

Because, your Honour, and this is something I need to develop, if your Honour requires –

ELIAS CJ:

Yes.

MR HANCOCK:

– when I get to my written submissions but the argument for the respondent is it's one and the same, that the public work includes local works and Government works, it's an umbrella term and a Government work is a public work and a public work is a Government work and we say there is nothing, nothing in the dichotomy that the appellant wishes to draw between the use of

the words “direct” and “indirect.” We say that he’s wanting to read into section 16, he’s wanting to read in the word “direct” and exclude the word “indirect.” And what we say is that both indirect and direct are part of Government work and that the legislature could not have intended to do a split between a Government work being only a directed required use of land and to exclude anything which is indirect, because if you do that, if you adopt the appellant’s argument you're actually cutting away much of the purpose, if you like, of the Public Works Act, which is to enable public works to occur. If you don't allow works which are indirectly required to proceed at the behest of the Minister or the Crown, if you exclude that whole realm of “indirect” work then you're actually gutting the Public Works Act and to get right to the point the legislature, or Parliament can't have been presumed to have intended that and the argument that you can only read in “direct” to Government work and you must exclude “indirect” in my submission doesn't –

ELIAS CJ:

My question was directed at the Government work, public work, and you say a public work is a Government work but what do you say about something that’s wholly within section 186? So you have a compulsory acquisition at the behest of a utility provider. Are you saying that is a Government work? So it’s not the same thing is it because I would accept that it is a public work but is it a Government work?

MR HANCOCK:

Well, could I take a couple of steps back before answering the question? It seems to me that the purpose of section 186 is to deal with, I think it was Justice Glazebrook who mentioned we’re in a different era now, in terms of state owned enterprises and the like so we’ve got this, sort of, could I call it a clunky transition, in some cases, between the electricity department and the Ministry of Works doing everything and now we’ve got a different world in which you've got these various entities, SOEs roaming around, across the land, and so the legislature has tried to deal with that and maybe it hasn't covered every situation in every case and they have to come to the Court to assist to make the acts workable, at times, because in this totally changed

environment of infrastructure it may well be there are some gaps and maybe this case is presenting that in a, in a sharp focus but to answer your question Your Honour –

ELIAS CJ:
Well is it a Government, is it a Government work?

MR HANCOCK:
Well, to answer your question –

GLAZEBROOK J:
Can I just –

MR HANCOCK:
– this is deemed as –

GLAZEBROOK J:
– can I just also say that I think Mr Rennie's argument has developed since the submissions and probably since the Courts below in that he's no longer relying on the indirect/direct as far as I can make out. He's saying that this is a consequence, not either an indirect or a direct consequence, so that the triangle of land, I think he would accept now, would be an indirect consequence and could come within Government work but a consequence that's neither indirect or direct is not a Government work so I don't think, or I didn't understand him now to be relying on the lack of direct or indirect in the definition of Government work as against the definition of public work, which seemed to have been such a focus in the Courts below.

MR HANCOCK:
Thank you Your Honour. In terms of the question I was asked –

McGRATH J:
You're coming back to that now.

MR HANCOCK:

I'm coming back to it, we're working our way forward and because we've got a totally different situation from what we used to have, in relation to Government infrastructure, agencies and the like and network utility operators, this, if you like, is almost a deeming situation, saying well, the electricity is obviously a public utility and it needs to be looked after and these things need to be facilitated so –

CHAMBERS J:

But what is the answer to the Chief Justice's question? Are you saying it's a Government work or not?

MR HANCOCK:

Well the wording of the section is, "As if the project or work were a Government work within the meaning of the Public Works Act," and so my answer to the question is what we're talking about here is as if it were a Government work, within the meaning of the Public Works Act and what we're triggering here is part two of the Public Works Act so we're, if you like, it's buying in the Government work concepts and the Public Works Act concepts into the Resource Management Act for this, to deal with this different situation.

ELIAS CJ:

I think we all accept how they sit together though, Mr Hancock, isn't it the case though that the language is totally against that. It does have a different concept of Government work from public works, which is a much wider concept because it's as if it were a Government work.

MR HANCOCK:

Well –

ELIAS CJ:

So it's not a Government work.

MR HANCOCK:

It's a deeming, it's as if it were but it's not, in itself, a Government work –

ELIAS CJ:

Yes.

MR HANCOCK:

– but it's as if it were and it will be treated under the Public Works Act in the same way.

ELIAS CJ:

Well I have a further question because it doesn't seem to me that there is this hole in the legislative scheme that, that you're suggesting and I wanted to ask you, under the old legislative scheme would it have been necessary to go to this global public work based on the roading? Surely there would have been separate takings for roading purposes and under the Electricity Act. What's wrong with dealing with them specifically?

MR HANCOCK:

Well we're positing a situation, are we, where the utilities won't fit into the road corridor and you have to move onto private land and how that would have been dealt with previously when everything was dealt with by the Government. I don't know –

ELIAS CJ:

Yes, I suppose it's –

MR HANCOCK:

– because I – I was about to say I wasn't there then but that would be quite untrue but I don't know the answer.

ELIAS CJ:

But it's only if –

CHAMBERS J:

It may pay to test this, of course, we're all bamboozled by the fact this happens to be a very major power line but let's just suppose it was a simple power pole and a stretch of about five metres of power line which happened to come within the roading corridor, why shouldn't Transit just say to the utility operator, well, sorry, we are going to have to take your existing use rights for that power pole. You'll have to devise your own solution but under the Public Works Act we'll compensate you but you have to devise your own solution as to how you get round this.

MR HANCOCK:

There could be a situation where, as you've just described, where it could be left to the utility operator, but it doesn't mean it's not lawful to adopt the course which the Crown has adopted here, in other words, there could be a number of different ways of dealing with the situation and the situation Your Honour has posited is a less complicated one, it's one power line. Here, we've got pylons which connect many kilometres of power line and are probably quite important to the supply of power to Christchurch so where there are choices and where you're adopting a purpose of approach to the legislation, as we're urging here, I submit the Court should not lightly interfere with the un-argued –

McGRATH J:

What you're really saying, Mr Hancock, is that if the law gives a particular ministry control, effectively, or a particular Minister control, there's no reason why it shouldn't be exercised and the utility fits within that and so it can deal with the utility, it can take charge of the whole project. Now if the law gives it the power to do that it should be entitled to do that, even if there is an alternative route that wouldn't have given the Government as much control?

MR HANCOCK:

Yes, yes that is the position I'm –

CHAMBERS J:

As a matter of interest did Transit give Orion and Transpower easements over the road?

MR HANCOCK:

Can I take instructions on that? No.

CHAMBERS J:

So, so far as the road is concerned, did those two entities both continue just to rely on their section 23 rights, is that how it works?

MR HANCOCK:

Yes, that would be the position.

WILLIAM YOUNG J:

Mr Hancock, can I just ask you a few questions about section 186 here. There's – if Transpower and Orion were required to abandon their section 22 rights, their relocation of the towers would be a project or work under section 186(1), is that right? There's no magic in the expression project or work.

MR HANCOCK:

Yes I believe that argument is open. Could I just add to that, Sir, that the interpolation I'm urging on the Court in relation to section 186(1) is this is really designed for projects which are –

WILLIAM YOUNG J:

Initiated.

MR HANCOCK:

– driven or initiated but subject to that reservation yes, I agree Sir.

WILLIAM YOUNG J:

The – and if Transit had gone down that course it would have managed the compulsory acquisition of land required for all replacement – for the replacement lines for the utilities because section 186 provides for the Minister to act, be the acquiring authority and be the compensation paying authority.

MR HANCOCK:

Yes the Minister would have had to take over the whole project.

WILLIAM YOUNG J:

So there wouldn't be a practical difficulty with requiring that the acquisitions to proceed under section 186 because it wouldn't be fragmented, the whole thing would be under the control of the Minister.

MR HANCOCK:

Well no, because it's the – the concern which Mr Cottrell has, and it's a practical concern, is the man who's responsible for bringing the project to completion within a reasonable time within a reasonable cost.

WILLIAM YOUNG J:

But isn't the Minister, doesn't the Minister have complete control over the section 186 process and it's only later, under section 186(6) that there's the cost unburdening against the utilities which, on my hypothesis, would be offset by the compensation for the seizure of the structures.

MR HANCOCK:

Yes I'm not sure that I agree with that your Honour, because if we read the opening words of subsection (1) it says, "A network utility operator that is a requiring authority may apply," in other words, the initiative is with the utility and the fear that Mr Cottrell, NZTA, and the Minister have in this situation is that you might get a network utility which is cooperative and said, "Look, we'll get along and see the Minister next week, we'll get onto this because we know it's important for you, it's a nuisance to us but we're going to do the right thing,

we're going to be good corporate citizens and help out here and really make an effort." The next person say, "Look, we're happy with the situation, we've got the Electricity Act, we've got our rights forever. Go away, we're busy, we've got other things to do, we'll get onto this at some later stage." And then we say, "Oh if you do that, if you do that, what we're going to do, we'll take your power lines and then see if you like it." So we get into this silly situation where, in fact, you're getting to the point where you're looking after the landowner, who has already been well looked after by being compensated twice, as it were, and also having the minimal extra imposition on the property. You're getting to the stage where the other side of the equation, the people who actually have got to put this project into effect, if they start threatening that, "We're going to seize your pylons and it's your problem, you clean up this mess, we don't care," if they do that well then I think the argument would be that, in terms of fulfilling the statutory purpose in the Public Works Act, that's starting to get close to an excessive or unreasonable use of power. So what we've got here is that the NZTA have tried to use the Public Works Act in a cooperative, creative, efficient fashion and they should be the judges of the efficiency and the cost effectiveness of –

ELIAS CJ:

Creative?

MR HANCOCK:

Well it's creative in the sense that they are actually – that's the wrong word to use, it's rather a cooperative way and that is the getting alongside the utilities and be cooperative. In fact it's not creative because I understand that this sort of thing has been happening for years, so it's not creative at all, that was quite the wrong word, it's a long and standard practise I understand.

ELIAS CJ:

There's something in the materials that I read, I don't know, it might have been in one of the judgments referring to the evidence that the utility providers have some concerns about precedents being set in terms of the granting of easements. Is there anything like that flavouring this?

MR HANCOCK:

I don't think so. I think there is a major concern by the NZTA that if it can't do this legally it's public works programme is going to be, in certain situations, compromised and delayed and subject to uncertainty and that's, I think that can be derived from the evidence of Mr Cottrell, which I've referred you to.

ELIAS CJ:

It was pretty conclusionary evidence, it didn't give us very much, it just – and you've, you've, in fact, expanded on it in the submissions you've made. Is there anything else that we can look at on this topic?

MR HANCOCK:

Well my first point, your Honour, is that it's unchallenged evidence.

ELIAS CJ:

Yes but it doesn't go very far is my point.

MR HANCOCK:

Well what it does, I submit, establish –

ELIAS CJ:

It says it would be easier for us, effectively.

MR HANCOCK:

What he's also referring to, which I think is very important and very apt or apposite to this case –

ELIAS CJ:

Yes.

MR HANCOCK:

– is this ability to control or manage the public work, that's crucial.

WILLIAM YOUNG J:

Can I just go back to that? Is your concern that, or is Transit's concern that without compulsion or without some pressure the utility operators might simply not get around to applying under section 186(1)?

MR HANCOCK:

Yes.

WILLIAM YOUNG J:

And I, I guess I can understand that. But you do, on the current process, you do need their co-operation anyway –

MR HANCOCK:

Yes.

WILLIAM YOUNG J:

– so wouldn't it be a matter of going around and saying, "Well, look, we need you're co-operation, here's a letter applying, just sign it will you? This is the easy way; the hard way is that we'll give you a notice that we're going to take your structure or we're going to rely on an expanded view of the provisions in the Electricity Act"?

MR HANCOCK:

Well, I think what your Honour's inviting me to do is put oneself in the position of the people who are trying to achieve the public work and saying, "Well, it looked like they could do this, they could do that." What they're telling us in the evidence is that they've chosen this way to do it because it avoids certain problems. Your Honour's said, "Oh, could they try this or that?" Well, maybe they could, but maybe we need to defer to some extent to the people who are actually responsible for bringing the projects to accomplishment.

GLAZEBROOK J:

Well, you're asking us to speculate that you're going to have an electricity company that says, "I don't care if the power's cut off and I can't actually meet

my supplying because I'm just going to dig my toes in and say it's your probable." I mean, that's unrealistic, isn't it? I mean, they might delay things by saying, "With a three-way negotiation with the landowner," because they then have to negotiate whether it goes over the lambing paddock or whether it goes over the forestry paddock, which is better for the landowner. But isn't that the whole the scheme of the Act anyway, that you negotiate in respect of the particular public work with the particular landowner, and that there is a three – if there are, if there's a local authority and a Government authority and now a utility operator, that it's not just a cosy little arrangement between the two, the local authority and Government and the utility operator, you do have to involve the landowner, in respect of all of the public works that are involved, including the utility operator's public work – and I'm using that in the most generic sense possible.

MR HANCOCK:
Well –

GLAZEBROOK J:
So if there was a joint project, or, so instead of it being something other than this, say there's a joint project of a utility operator and the Government to put a road to somewhere where there isn't a road at the moment, then who takes priority over whose project it is? Is it the roading project that then says, "Well, we can have a cosy little arrangement with the electricity people and we don't have to involve the landowner and electricity project because it's related to the land," or do you say, "Oh, well, this is a cosy little project of the electricity operator and we don't have to involve people" do you see the difficulty? I mean, here it's a consequence of the public work, but, and our consequence of the public work of putting a road in might be that you also need electricity, because in fact you couldn't construct the road without electricity?

MR HANCOCK:
Well, if I could just reduce your Honour's questions down to perhaps a couple of propositions, and one is that it may be a cosy arrangement which is being intended here, and the other is that it's cutting out the landowner. Now, in

terms of the first one, and the adjective “cosy”, one could use that adjective, or one could say “constructive” or “sensible” or “efficient” –

GLAZEBROOK J:
Well –

MR HANCOCK:
– so those are just adjectives, we could choose any number –

GLAZEBROOK J:
– they are just adjectives, but what we’re looking at is whether it’s within the statutory scheme that you can bundle together what are actually separate public works as one public work and therefore don’t have the negotiation power in respect of the second public work because it has been bundled together. The question is whether it’s within the statutory scheme.

MR HANCOCK:
Yes, I’d submit it’s clearly and obviously within the statutory scheme. To develop that, if we go to the evidence there’s a lot of evidence in Mrs Seaton’s solicitor’s correspondence about negotiations on price. So although the case has been posited, if you like, at a high level, almost perhaps a constitution level of private rights versus the State, et cetera, at another level, in terms of the negotiation, it’s been – and one can follow, I can take the Court to the correspondence but perhaps the summary is enough – and that is that –

ELIAS CJ:
To what end would you take us to it, or indeed even summarise it?

MR HANCOCK:
Well –

ELIAS CJ:
What’s the proposition?

MR HANCOCK:

– it's to answer Justice Glazebrook's point, and that is that the landowner is being somehow cut out of this by a cosy arrangement, and I say to the contrary –

GLAZEBROOK J:

No, no, it's not on the facts of this case. My question was in respect of two public works, being a new road to a new place, accompanied by new power lines to a new place, and the question was, in those circumstances, where it seems to me there are two separate public works quite clearly – I understand that in this case it's slightly more, because you're actually having to move them, but that is a two public work – and just an answer, is it intended therefore that the person building the road could say a necessary consequence of building the road is that we have to have power lines by it, therefore it is my public work, Government work, and not two public works, separate public works being the road and the electricity? So it was taking away from the facts of this case and taking it away from where there had been rights or not accorded –

MR HANCOCK:

Well –

GLAZEBROOK J:

– and just as a statutory interpretation exercise, is there one public work in that circumstances or two? So it's a – but assuming that you can't put a road through without putting electricity through, because it doesn't make sense.

MR HANCOCK:

Well –

GLAZEBROOK J:

And in fact you may even need the electricity to construct the road.

MR HANCOCK:

Well, there is a very simple practical answer, and apparently what happens, your Honour, is that in the sort of situation you've just mentioned you've got the road, which takes extra on each side, and so the services are all accommodated within the one project. So my answer to your question is, yes, it's one project, not two projects, and it's rather artificial to think of it as two projects when in fact the whole motorway and everything associated with it should all be dealt with efficiently rather than piecemeal, and so there's no reason, I would submit, as a matter of statutory interpretation why, since they're going to be widening the road to accommodate the services, that the whole project shouldn't occur at the same time as a single public work, and anything that needs to be taken is all taken at the same time, and in fact that is precisely what happens.

GLAZEBROOK J:

Well, at that stage what would happen with the easements then? You say you take the whole lot to accommodate the services, and then how –

MR HANCOCK:

We don't need easements –

WILLIAM YOUNG J:

You don't need easements, it's just the road.

ELIAS CJ:

Yes, indeed.

GLAZEBROOK J:

Well, so it's slightly different from this project though, isn't it?

ELIAS CJ:

It's slightly – and it's slightly different from the way we distribute by wire mainly in New Zealand, isn't it? Although one can't help thinking that we're really talking about quite obsolete –

GLAZEBROOK J:

Yes.

ELIAS CJ:

– technology in some respects, and it may all get bypassed.

McGRATH J:

Is it that – I think that Justice Glazebrook's line of questioning, indeed, the questioning from all members of the Bench is, if it's got to a pause and you've finished replying on those matters, I think I'm still to get you on what I think will be section 40, in relation to the question –

MR HANCOCK:

I was hoping your Honour would get back to that.

McGRATH J:

If you could come back to that, I think that you – my question essentially being, how is it that Mrs Seaton is not going to be somehow deprived of her offer back rights under section40?

MR HANCOCK:

Yes, I deal with that. I preface it by something which –

McGRATH J:

I don't want it very – I don't need a long answer.

MR HANCOCK:

No, no, it'll be a short one. But firstly, to clear away the matter that the Chief Justice raised in relation to Justice Glazebrook's questions, the relevance of the correspondence about negotiation is simply to establish that there can be no scope for argument here that the landowner has been deprived of an opportunity for full compensation under the Public Works Act because those discussions have gone on for a while, they've not been

conclusive, but there's certainly not been any cosy arrangement of shutting her out of anything. If anything, perhaps one might say that she'd be doing well getting a second lot of compensation for something which is basically already there.

Now, getting back to Justice McGrath's question, so really –

ELIAS CJ:
Sorry, was there – this is probably irrelevant earlier history – but under these existing rights, presumably some of these things went in before – no, they wouldn't have. Did they get compensation in all cases for – just going right back.

MR HANCOCK:
Well, I think these pylons started on private land –

ELIAS CJ:
Yes – oh, don't worry, it's probably totally irrelevant. Pass on.

MR HANCOCK:
Justice McGrath's question about the preservation of section 40 and offer back rights. My first point is I'm relying on the Public Works Act and treating this as an ongoing and permanent public works.

McGRATH J:
Yes.

MR HANCOCK:
That was my first proposition.

McGRATH J:
Yes, that was your first point, yes.

MR HANCOCK:

My second proposition is that also because it's intended here to invoke the Resource Management Act, section 186(4), sorry 186 and then 186(4), that in turn triggers section 7, subsection (7), subsection (7) says, "Section 40 and 41 of the Public Works Act shall apply to land acquired or taken in accordance with this section as if the network utility operator concerned were the Crown, so either way, if it's acquired under the Resource Management Act –

CHAMBERS J:

But isn't the flaw in your argument, Mr Hancock, and you keep jumping over this, 186(4) will never apply because the land, and here we have to read that as the particular interest, the easement, will never be held by the Crown because it is never envisaged this easement will be held by the Crown.

MR HANCOCK:

Well the answer to that would be that the Public Works Act, if it's regarded, if the easement and the – yes, if the acquisition of the easement is regarded as part of the public work or the Government work, if it's regarded as one and the same, the fact that it's held by a public utility still doesn't extinguish the Public Works Act –

CHAMBERS J:

Well public utility, it's not a public utility, they're private companies.

MR HANCOCK:

Well, the fact that it's held as a public work, it's a public work in the sense that it was taken for the purposes of the public work and as long as the public work, that's the road and the, the entire package, which is the road plus the relocation space, as long as that is still public work in the sense it is being used for the purpose it was acquired for, which is to build and relocate –

CHAMBERS J:

Yes. All I wanted to alert you to is, in answering Justice McGrath's question, for myself I have difficulty in accepting your argument if it depends on

section 186(4). If you have an argument to answer Justice McGrath's concern which doesn't involve section 186(4) then is there an argument that you can rely on to answer him that the buyback applies without utilising 186(4)?

MR HANCOCK:

The best I can do is to say that the buyback applies because it remains forever land or an easement or an interest in land which was acquired to achieve a public works. Although the easement is owned by someone else, the reason for the, and purpose for the acquisition of the easement, and that's a subset of the term land, so the reason for it was to create a public work and that as long as the public work remains, that was the road –

GLAZEBROOK J:

How do you make the third party – say the road goes away, how do you make the third parties transfer it back?

MR HANCOCK:

Well, I guess, in this case we've got a problem. What would Your Honour say was being transferred back, is it the airspace is it?

GLAZEBROOK J:

Well, no, you say as long as the public work remains section 40 rights remain. Well, I'm just positing a question where the road disappears and how do you get the easement back.

WILLIAM YOUNG J:

Well the easement is not such a big issue because it would disappear but say land was seized, was taken for the footprint of the towers.

GLAZEBROOK J:

Well the easement mightn't disappear because you might still need the power lines but, I mean, I don't –

WILLIAM YOUNG J:

Oh, I, okay, well that's a – yes, right.

GLAZEBROOK J:

Because the public, if the public work is the road and the road disappears but the power companies still need the power lines.

WILLIAM YOUNG J:

Well you'd say that it's still required for power.

MR HANCOCK:

And I pay in a, Sir, as well, section –

GLAZEBROOK J:

But I don't think that's a public work because it would only be a public work because it was 186.

MR HANCOCK:

Well, just looking at section 40.

GLAZEBROOK J:

But the question is if it is part of a public work, to transfer it to a third party, how do you, under section 40, get it back? Actually, what I'd quite like too, is to know the exact process by which you say it goes under 186(4) because there is a complicated – what is the exact process? It's being created in the names of the power companies directly, that's what I'd thought initially?

MR HANCOCK:

Yes it's the Minister, as I understand it, taken by proclamation, which is how the land was taken, that's the – when I say "the land" I'm referring to the easement. So that's the usual proclamation process but instead of it going into the Minister's hands and then into the power company's hands, it's – the arrangement is that it goes straight to the –

GLAZEBROOK J:

But your argument –

MR HANCOCK:

– power company –

GLAZEBROOK J:

– your argument is that that is effectively the proclamation takes it for the Minister and then under 186 it's transferred but you've just, sort of, left out a step is it, ie, why do you say it's 186(4)? The proclamation takes it, then it becomes Crown land and then it's, effectively, transferred under 186(4) by the easement being signed, if you like, by, on behalf of the power companies, is that – so you would say it does come within 186(4), is that –

MR HANCOCK:

Yes.

GLAZEBROOK J:

Because the proclamation itself takes it?

MR HANCOCK:

Yes.

ELIAS CJ:

But will it take the easement? It seems very odd for the Crown to acquire an easement it's not going to use.

MR HANCOCK:

But it is – it's – we do get into a semantic discourse perhaps, at one stage, because it could be just how you wish to describe a situation, it could be described in more than one way. The way that Crown's describing it here is that the easement's been acquired by the Crown for the benefit of the Crown for the purpose of building its road. It must do it, otherwise it can't build its road so –

ELIAS CJ:

But what are the terms of the easement because you'll have to describe –

CHAMBERS J:

We do have those.

ELIAS CJ:

Yes we do have those, don't we? Where are they?

CHAMBERS J:

They're somewhere in volume 3. I must say I found this index difficult to work.

MR HANCOCK:

Page – my friend says it's at page 390.

GLAZEBROOK J:

Can you perhaps take us through the documents. Are the documents that have a draft proclamation or anything?

CHAMBERS J:

Well you haven't done it. There's no proclamation in this case.

MR HANCOCK:

Yes, we haven't got there yet.

GLAZEBROOK J:

No, I just wondered whether there was a draft anywhere that –

MR HANCOCK:

Your Honour, something which you might find equally relevant and helpful on that is the notice to take because that, if you like, describes the, the estate or the land which NZTA –

GLAZEBROOK J:
So that's the one at 389.

CHAMBERS J:
But I'm right, aren't I, you never intended, in this case, to do a proclamation in terms of section 186(2)?

MR HANCOCK:
No.

CHAMBERS J:
No.

MR HANCOCK:
It's a Public Works Act procedure.

ELIAS CJ:
A Public Works Act taken then holding the land, you say, you can use 186(4), is that right?

MR HANCOCK:
For the transfer to –

ELIAS CJ:
But if you don't then you're fallback position is that you do it under section 4A, is it, of the Public Works Act?

MR HANCOCK:
Yes but your Honour, if we go to section –

ELIAS CJ:
Don't let me deflect you from what you're doing here.

MR HANCOCK:

Well, it's quite relevant to your Honour's question, exactly where your Honour is heading and I think that it's very important now to, to draw attention. It's section 42 –

ELIAS CJ:

Forty?

MR HANCOCK:

Yes, it's the Public Works Act, section 42 –

ELIAS CJ:

Yes.

MR HANCOCK:

But section 40, sorry, subsection (2).

ELIAS CJ:

Yes.

MR HANCOCK:

– and it's possible perhaps we've overstated the section 40 right, because it's not absolutely indefeasible at all, because when one looks at subsection (2) it shows there's some major obstacles in the way of the enjoyment of that right by a landowner in situations which could be quite similar to the one posited by Justice, I think it was Justice Glazebrook when she talked about Orion perhaps transferring to some other utility which was not requiring authority –

GLAZEBROOK J:

That was Justice Chambers, I think.

MR HANCOCK:

Oh, I'm sorry. So here, in subsection (2), we've got, if you like, something which can defeat that off back right in situations where it's considered it would

be impracticable, unreasonable – and I'll just interrupt there – it would be impracticable and unreasonable. If something's been taken for a road, and the road can only be built so long as the existing utility was allowed to exist as well –

ELIAS CJ:

This is really why I think running together the two different public purposes, the utility purpose and the roading purpose, the Government purpose is so dangerous, because of course you could say that it's impracticable or there's been significant change in the character of the land through the public work in respect of the road, but it's almost impossible to think of any less impact on the land or anything that would make it impractical or unreasonable to offer back land no longer used, required for the purposes of the utility function. Which is why, I think, you know, it demonstrates how dangerous it is to regard this as an overall Government work.

WILLIAM YOUNG J:

Section 40, subsection (1) encompasses both, would encompass both public works, I think. The buy back – the offer back only applies, it's not longer required for the public work or any other public work. So I think that must encompass requirement for lines transmission.

ELIAS CJ:

Oh, yes, yes.

GLAZEBROOK J:

It would, it would. But then the – what you have to do then is make sure that you transfer it over in some way. I'm actually still actually having difficulty with this notice of intention, because it seems to bundle everything together and I can't actually –

ELIAS CJ:

What page?

GLAZEBROOK J:

Well, 389 it starts, the notice of intention to take, and then there's a sort of a whole bundling together of everything, without much indication of who's taking what and for what purpose. So where does the electricity stuff come into this –

CHAMBERS J:

It's all at 390, 391, that's clear enough, isn't it? That's the terms of the proposed easement. It's a slight fiction in that the Minister of Land Information seems –

GLAZEBROOK J:

Is this just for the easement?

CHAMBERS J:

– to himself be assuming that he's going to acquire these rights –

ELIAS CJ:

The easements, yes, and its dominant owner.

CHAMBERS J:

– the rights to convey electricity.

WILLIAM YOUNG J:

There's also the land, there's also the display area.

GLAZEBROOK J:

Yes, well that's where I'm having difficulty splitting them out, that's all, but…

ELIAS CJ:

Is this where it ended up? Because I thought there was some suggestion that actually what they do is take an easement in gross.

WILLIAM YOUNG J:

This is an easement in gross.

CHAMBERS J:

This is the easement in gross.

ELIAS CJ:

Is it?

CHAMBERS J:

If you look at page 390 –

ELIAS CJ:

Well, why are they bothering with dominant and servients and…

GLAZEBROOK J:

Well that's what I'm having trouble with.

CHAMBERS J:

– first schedule, (b) and (c) are the two easements in gross. One of them of course presumably is for one of the companies ultimately, and the other easement, Mr Hancock, is for the other, is that right?

MR HANCOCK:

Yes.

WILLIAM YOUNG J:

The dominant – there's a reference to something in the land transfer regulations.

MR HANCOCK:

And in fact –

CHAMBERS J:

Well, the dominant owner is effectively the Minister of Lands here, isn't it?

WILLIAM YOUNG J:

No, it's going to be whoever has – presumably it's whoever wants to have access to the works.

CHAMBERS J:

Yes.

ELIAS CJ:

Oh, really?

MR HANCOCK:

Just as an update. In August 2012 Transpower took over Orion's rights under the Electricity Act, so we're now as of that date, which is a couple of months ago, dealing with Orion, Transpower's faded from the…

GLAZEBROOK J:

And you see it's not just air space, because there's a whole lot of things you can't do on your land. So to say it's just air space is not actually accurate, is it?

MR HANCOCK:

Well –

GLAZEBROOK J:

Well, you can't actually fix up your land for lambing or whatever it happens to be because – I mean, I know that isn't the case in this particular piece of land.

ELIAS CJ:

I'm so pleased your so concerned about lambs.

GLAZEBROOK J:

I don't know, they just seem to – they're around at the moment, I think, that's all it is.

McGRATH J:
But you can't fence and things like that.

GLAZEBROOK J:
Yes, and you can't alter the present grades or contours. I mean, you can't plant any vegetation, you can't deposit material on it. I mean, obviously, you wouldn't want to impede access, because that's the whole point about having an easement there.

MR HANCOCK:
So, I'm sorry, I missed something here, Your Honour. What is the problem at the moment?

GLAZEBROOK J:
Well, I think the proposition has been it's just air space, it's not a big deal. But actually there are quite major restrictions on how you can use the land, as you would expect, because obviously the whole point of having the easement is to enable you to get to it and fix up any difficulties there might be, et cetera.

MR HANCOCK:
But isn't the answer to that concern, your Honour, that in the facts of this case we've got something like a 10-acre flat paddock with grass, and in one corner there's a very small piece of land which will be the easement, so in –

GLAZEBROOK J:
Well, we're really not, don't care about the facts of this particular case, or at least for myself I don't. What we need to know is how it operates in the generality rather than whether Mrs Seaton in this case is being unreasonable or being compensated twice or whatever it happens to be.

MR HANCOCK:

Well, I'm –

ELIAS CJ:

And this buys back into the question I was asking earlier about whether in fact better rights, ie, rights more restrictive of the landowner being obtained under this work than exist under the statutory rights, because I doubt whether they have things about burn-offs and things.

WILLIAM YOUNG J:

But does this just cover, the easement just cover the area, the new area? It doesn't cover the entire line, you know –

MR HANCOCK:

It's just a tiny triangle in the corner of a 10-acre paddock. If you went onto the paddock and you stood at the point, the triangle looked out in front of you, you'd just see a beautiful flat area of nice, newly mown grass –

ELIAS CJ:

But isn't it, so does –

MR HANCOCK:

– and you wouldn't even know that this was behind you –

ELIAS CJ:

– does the easement –

MR HANCOCK:

– so in terms of any fear about the intrusion in this case, it's really over a extremely small area. But second point, getting to the Chief Justice's question, and that is that the landowner here, if one were to regard any of these provisions and the easement as intrusive, is entitled to full compensation, so –

ELIAS CJ:

I understand that. But the easements are over the path of the wires, aren't they?

WILLIAM YOUNG J:

No, just over the block of land, and immediately adjacent to the towers, the new towers.

CHAMBERS J:

No, they're no, no, no.

ELIAS CJ:

So this – no, to convey electricity and telecommunications. That's' interesting too.

CHAMBERS J:

Yes, no, these are strips.

WILLIAM YOUNG J:

But isn't it just – I thought it's just –

CHAMBERS J:

It's where the wires are.

WILLIAM YOUNG J:

I know. But isn't it just where in the vicinity of the tower?

CHAMBERS J:

No, no.

ELIAS CJ:

Where does telecommunications come in?

McGRATH J:

They might have to work on the wires.

CHAMBERS J:

If you look at this plan here, Justice Young, at the back of Mr Hancock's submissions, you will see that it covers the whole area of the wires, it's not just the towers.

ELIAS CJ:

And where does telecommunications –

GLAZEBROOK J:

And that makes sense.

ELIAS CJ:

– come in in terms of the existing rights under the Electricity Act? Are they there?

MR HANCOCK:

I'm not sure. Can they do telecommunications?

GLAZEBROOK J:

They'd usually run under the same.

MR HANCOCK:

Yes, they can do singles of – it runs with the territory

GLAZEBROOK J:

They have different wires though, don't they, or is it the same wire?

MR HANCOCK:

I think the electricity wire and the telecommunications would be different.

GLAZEBROOK J:
That's what I…

ELIAS CJ:
No but this is for the specific purpose of conveyance of telecommunications so it's an easement for that purpose. Are there existing statutory rights to convey telecommunications under the statutory rights under the Electricity Act that apply in this case?

WILLIAM YOUNG J:
Well there would be rights under the Telecommunications Act won't there, that correspond to the Electricity Act rights probably.

ELIAS CJ:
Yes, well, I don't know.

WILLIAM YOUNG J:
But just, looking at the plan attached to your submissions, it does appear, as Justice Chambers says, that the easements extend over the whole, the whole course of the lines and not just the new bit, the area beside the towers. That's right isn't it?

GLAZEBROOK J:
Well they would have to wouldn't they because you couldn't, you'd have to be able to get to a fallen line halfway along.

WILLIAM YOUNG J:
They can under the Electricity Act though.

MR HANCOCK:
Yes you have to be able to go underneath –

WILLIAM YOUNG J:
They can under the Electricity Act.

MR HANCOCK:

– yes, that must be right.

GLAZEBROOK J:

Oh, okay, oh, I see.

CHAMBERS J:

Well it is right because that's the difference between the three options –

ELIAS CJ:

But that's, it's an extension though of the rights –

CHAMBERS J:

– that Transit presented to Mrs Seaton.

ELIAS CJ:

– the existing rights is obtained here.

CHAMBERS J:

The first option was just to take HADF and buy that and rely on existing use rights for the balance of the wires but that wasn't the preferred option and it isn't the one that you've now delineated in the notice to take.

MR HANCOCK:

But does it come back in the end to the fact that the option that is being proposed would be, entitle the landowner to full compensation.

CHAMBERS J:

Correct.

WILLIAM YOUNG J:

And she can challenge it in the, in any event.

MR HANCOCK:

In the Land Valuation Tribunal.

WILLIAM YOUNG J:

So if she says you're taking more than is referable to the widening of the road, for instance, the purple marked area on this plan, then that's a challenge that would be available, presumably in the Environment Court.

MR HANCOCK:

Yes, so that's the Environment Court challenge and then on the valuation front is the Land Valuation Tribunal so what I'm trying to put before the Court is that we've got the balance between the private interest, which are protected. Environment Court and the Land Valuation Tribunal and then you've got the public interest and that is the NZTA tells us that the only way – they've got their six options to deal with the project and the one they've chosen is the one they say is the, the best and the really only sensible way to do it so you've got those two things going.

ELIAS CJ:

All of those tests, all of those opportunities would be available if application had been made under section 186(1).

MR HANCOCK:

And again, at the risk of perhaps going back on old ground, your Honour, I still firmly adhere to the submission that section 186(1) is actually intended for a project in it – and then the Public Works Act is intended for projects which the Minister has control and responsibility for.

McGRATH J:

Mr –, can I just put this to you, let's –

CHAMBERS J:

Mr Hancock.

McGRATH J:

It seems to me that under section 186(7) were there to be no longer any need for the electricity wires to run across this land, say there was some reconfiguration or something of that sort, it seems to me that under section 186(7) the landowner would have a right to the extinguishment of the easement so far as it was restraining use of her land in paragraph 3.

MR HANCOCK:

Yes.

McGRATH J:

Now how is it that she can have that right, other than under section 186, through protection of the application of section 40 on the Minister's taking of the land? Where does it – if section 186 doesn't come to bite on this, come to apply, section 100 – it seems to me that she may be stuck with this easement in such a situation?

MR HANCOCK:

Yes Sir the only avenue I could see is the one that is proposed and I appreciate that's been discussed earlier –

McGRATH J:

Yes.

MR HANCOCK:

– and that would be via section 186(4).

McGRATH J:

Right, that's what I thought you were going to say.

MR HANCOCK:

Yes and that – but, the point, which is also relevant here is that subsection (4) talks about any land held under any enactment or in any other manner by the Crown or a local authority and so you don't need to have a acquisition under

section 186(1) of the Resource Management Act to trigger the application of subsection (4). It's, if you like, a stand alone and I would have thought in this case that that would assist the argument that the landowner's been fully taken care of here.

WILLIAM YOUNG J:
Can I just – section 186(4) is drafted in a way that it can apply to land that's held under the Public Works Act.

MR HANCOCK:
Yes it's drafted widely.

WILLIAM YOUNG J:
So because the new owner is going to use it for a public work, it doesn't – section 40 isn't really engaged anyway, because it's still required for a public work.

MR HANCOCK:
Yes.

WILLIAM YOUNG J:
All right. Now it's probably implicit – I mean, it would be a very odd thing if a setting aside under section 186(4) displaced section 40.

MR HANCOCK:
Yes.

WILLIAM YOUNG J:
So if it is the case that this could be, this easement could be regarded as transferrable or set, able to be set aside under section 186(4) probably section 40 would apply so that it would no longer, if the land were no longer required for electricity transmission section 40 would then be triggered.

MR HANCOCK:

Yes, as I see it, your Honour, under the previous, well, under the previous legislation, if you like, still current Public Works Act sections 50 and 52, it seems to deal with the situation where you've got an ongoing public utility and it's been swapped around, local authority to Government, Government to local authority, that sort of thing, and here we throw in the mix to public utilities, Crown to public utility, and in that whole mix, as long as it keeps being used for this public utility scenario then the offer back is not triggered but as Justice Young has just said, once it ceases then at that point the protection of the offer back comes in and that's a scheme, if you like, one can read into section 186, which is perfectly sensible and coherent and I'd suggest protects the landowners interests.

GLAZEBROOK J:

Can I just check, what you'd say on this is that the relocation of the electricity lines was clearly necessary for the public work to proceed because logically you really do have to have electricity going along with the road and you can't have something, you can't have electricity lines right in the middle of the road but you do have to have electricity so they have to be moved, so you say it's a necessary consequence, or an indirect consequence of the road, that the – and if I understand the submission it would be, well, they could have just acquired the land in order to relocate the power lines because that would have been a necessary consequence of the road so why can't they just acquire an easement and then transfer it under section 186(4).

MR HANCOCK:

Yes.

GLAZEBROOK J:

Because they could have acquired the land and then granted an easement to the power companies.

MR HANCOCK:

Yes.

GLAZEBROOK J:

In the same way that they would do in any public work alongside the road because it's a necessary consequence of a road, that you have utilities going alongside it or under it or, or wherever is the best place for the utilities to be but utilities have to follow a road or there's no point in having a road.

WILLIAM YOUNG J:

Well they don't actually cross it –

GLAZEBROOK J:

And so if they could do that –

WILLIAM YOUNG J:

– of course it crosses the road, it doesn't follow the road here.

GLAZEBROOK J:

No, no, well I understand that but it's really – you have to have the two in combination, whether they're beside them, across them, or whatever it happens to be, therefore you acquire the easement, transfer it – first of all transfer it over under 186(4) and then the section 40 rights are preserved because the Crown accepts that 186(7) applies to land set apart under 186(4), is that –

MR HANCOCK:

Yes.

McGRATH J:

And if necessary an application could be brought by the landowner for an order extinguishing the easement, if the circumstances so arose.

MR HANCOCK:

Yes.

ELIAS CJ:

I may be terribly behind in all of this and we may be going round in circles because it's nearly lunchtime but looking at the effect of section 186 and section 40 together, surely the point of section 186(4) is that the setting aside doesn't trigger section 40. That's the purpose of that –

MR HANCOCK:

Yes.

ELIAS CJ:

So if you've got a public purpose and you're moving it over, you're not going to trigger section 40.

MR HANCOCK:

That's right. Otherwise you'd have a, if you like, a multiple compensationitis situation where –

ELIAS CJ:

Yes, yes, exactly. But you only get compensation under – or you only trigger the section 40 and 41 rights under section 186 if the land was taken or acquired in accordance with section 186. Section 40, as a stand-alone provision, assumes Crown ownership, which is why it's all about the obligations on the Chief Executive of the department, and that is why section 186(7) incorporates section 40 and 41 as if the network utility operator concerned were the Crown. So unless this land is taken under section 186, if it's taken under the Public Works Act, the section 40 rights don't come into being.

MR HANCOCK:

I respectfully disagree, your Honour. I would interpret subsection (4) as any land held under any enactment or in any manner by the Crown or a local authority, et cetera, so that the way in which the land, if you like, gets into the hands of the Crown or the local authority doesn't matter. In other words, it

doesn't need to go via section 186(1), it can come from any side, come from any –

CHAMBERS J:
Yes, I think it may be a rather odd section.

ELIAS CJ:
I think that's absolutely right if you are, you're dealing with the position where the Crown is the owner. But if you're talking about a necessity for the Crown to take, how doesn't it subvert the scheme of section 186 and the ability to eventually trigger sections 40 and 41 when the land is not required for a public work, unless it's taken under section 186 in the case of a network utility operator? Because section 40, in its terms, is not apt.

MR HANCOCK:
I may not have completely understood the question, your Honour, in the sense that what we're arguing here on behalf of the respondent is that the lands come within subsection (4), because that's what the intention is.

ELIAS CJ:
Well, you're going to use the Public works Act to defeat section 186(7).

CHAMBERS J:
No, I don't think so, no, no.

WILLIAM YOUNG J:
No, I don't think that was argument. The argument is that section 186(7) encompasses a property that comes into the utilities' hands under section 186(4).

GLAZEBROOK J:
I think the argument is you take it under the Public Works Act –

ELIAS CJ:

But –

GLAZEBROOK J:

– because it's necessary to take an easement for the purposes of the road. Once the easement has been taken by the Crown for the purposes of the road, ie, a necessary consequence of the roading, you then transfer it under 186(4) to the utility companies, who are then subject to 186(7).

McGRATH J:

Yes.

GLAZEBROOK J:

So in the same way that if you took the land, the freehold part of the land, and then transferred it, because it was necessary for the purposes of the road, and then transferred the freehold bit of the land under section 186(4) to the – this is my understanding –

McGRATH J:

Yes.

GLAZEBROOK J:

– if I'm wrong then please correct me.

McGRATH J:

Instead what's being transferred are the rights to go over the land –

GLAZEBROOK J:

So you transfer it under 186(4) –

McGRATH J:

– the rights of access over the land.

GLAZEBROOK J:

– and that would give you the 186(7). Alternatively, if you took the freehold, the Crown could choose to keep the land, thereby subject to section 40 of the Public Works Act, and grant an easement to the utility companies, presumably on the basis that if they had to offer it back under section 40 then that easement would come to an end. So it would be a choice for the Crown as to how they would deal with whatever was a necessary consequence of the road, I think.

ELIAS CJ:

So the answer is that the answer, in terms of section 186(4), or in terms of section 186(7) is that land may be acquired by network utility operators compulsorily, either under (1) – or it's not compulsorily – or under (4), for the purposes of section 186(7), that's an acquisition of land. It's very odd, but it's under the heading, "Compulsory acquisition paths."

CHAMBERS J:

It is, it's a slightly misleading heading.

ELIAS CJ:

And I'm not sure that I myself am persuaded by the section 186(4) argument. If section 186(4) doesn't apply here, the proposition I put to you is correct, isn't it, that section 40 can't otherwise apply?

WILLIAM YOUNG J:

I think it would apply, wouldn't it, because as soon as it was no longer required for a public work, it would have to be offered back.

MR HANCOCK:

Yes.

ELIAS CJ:

Well, not under section 40, which is only concerned with, which is only about chief executives of departments, unless that's got a wider – and local authorities.

GLAZEBROOK J:

Well, I know the problem is that you have to assume that there's a power to acquire it in the first place, for the public work, and if you don't accept that it's being acquired for a Government work then Mr Hancock I think would probably accept that his argument disappears.

McGRATH J:

Collapses then, yes.

GLAZEBROOK J:

Because it has to be – and, as I understand it, Mr Hancock has been saying, well, it is a public work, because it's a necessary consequence. But if it isn't a necessary consequence then effectively –

ELIAS CJ:

It's a Government work.

GLAZEBROOK J:

Yes.

ELIAS CJ:

Yes.

McGRATH J:

Mr Hancock, sorry, I may be catching up a bit slowly with your argument here, but in section 186(4) it speaks of setting apart for a project. Now, does that – assuming that the Minister will continue to hold the easement?

CHAMBERS J:

No –

McGRATH J:

Right.

CHAMBERS J:

– look at the last sentence of subsection (4).

GLAZEBROOK J:

It's deemed to be owned by the utility.

CHAMBERS J:

"It shall vest in the operator."

McGRATH J:

Thank you.

CHAMBERS J:

So I don't think there's much significant in the use of "setting apart" really.

McGRATH J:

No, fine.

GLAZEBROOK J:

Or they're, unfortunately, in subsection (7) they talk about acquisition under the section, but seeing the utility owner operates it for himself it's either – the utility owner –

McGRATH J:

It's goes up –

GLAZEBROOK J:

– is deemed to own it, I don't have much difficulty in saying that subsection (7) must also apply to subsection (4) because…

McGRATH J:

Yes. No, that's – so while it heads off into the ownership of the utility, nevertheless, on your argument, subsection (7) applies to it protecting –

MR HANCOCK:

Yes.

McGRATH J:

– rights under section 40 of the Public Works Act?

MR HANCOCK:

Yes.

McGRATH J:

As if it hadn't been gone off, yes. Okay, I understand that.

MR HANCOCK:

Now, what I've intended before –

ELIAS CJ:

It's nearly lunchtime. Perhaps you might tell us where you'd like to head after lunch?

MR HANCOCK:

Yes, I will. I'd earlier intended to, like my friend, put up some key points, but going back over matters I find the key points I made in the Court of Appeal don't seem to have changed a lot from here. If your Honours wouldn't mind – I've shown them to my friend, who had to work through them in the Court of Appeal as well – if I could just give you the key point now, and then by focusing on those I think that draws in the main elements of my written

submissions, but it does that in a space of four pages rather than the 20 or so pages. I haven't tampered with what I gave to the Court of Appeal, so it says "appellant" where it should say "respondent", but I don't think that will be a distraction at all, it simply –

ELIAS CJ:

So what are you – I missed what you're handing in.

MR HANCOCK:

What I'm putting up, your Honour, is a synopsis of the respondent's case, which was used in the Court of Appeal.

ELIAS CJ:

And why do we have to see that?

MR HANCOCK:

Because it brings together what is a 20-page submission –

ELIAS CJ:

But we've read your 20-page submission. I'm not sure that we want to have recycled material from the Court of Appeal argument when we've been going a lot of the day.

MR HANCOCK:

Well, could I say, just for what it's worth, the reason it did appeal to me when I re-read it was that –

ELIAS CJ:

You thought it encapsulated things, all right.

MR HANCOCK:

There's a lot of very – to put it very succinctly, Your Honour – there's a lot of very important points in that, very important, but I think they can be covered quite quickly without reinventing the wheel, as it were.

ELIAS CJ:

All right, thank you. All right, we'll take the luncheon adjournment now, thank you.

COURT ADJOURNS: 1.01 PM

COURT RESUMES: 2.21 PM

MR HANCOCK:

Your Honour enquired before the lunch break where I was heading and I think I can say that I can move, really, to a conclusion at this point because the material's been, I think, covered quite well in the discussions this morning but a couple of – I won't read from the summary which I provided to the Court of Appeal but there are simply matters in there which I think are important and I just wanted them before this Court again, at the risk of repetition, in a way which is very easily accessible but I won't read from those and I'm going to move, before I come to a conclusion, to a couple of points that arose this morning. One, I think it was the Chief Justice, in terms of a telecommunications point and I'm instructed that telecommunication signals are used by electricity operators to control electricity, so it's part of the standard operating requirements to cater for the telecommunications at the same time as the electricity is being taken care of. And secondly, that the Electricity Act gives rights to only the poles but it doesn't actually say what you have to do with them. The power companies will get resource consent for the electricity lines but in fact the Act doesn't stipulate it's got to be electricity lines on the poles, so in other words, if they wanted to put telecommunications as well they can.

ELIAS CJ:

But what I'm wondering is whether the easements that are proposed here, in fact, provide the right so that there doesn't have to be any recourse to the landowners for telecommunication reticulation, that's what they have for telecommunication.

MR HANCOCK:

The recourse to the landowners would seem to be that the landowner has the compensation rights so that's one recourse, or one controlling factor, and that is the –

ELIAS CJ:

Well why, why is telecommunication separately provided for in the easement? To make it clear that they do have access for those purposes?

MR HANCOCK:

Yes and as I'm instructed, the telecommunications are used, or that device is used as a standard operating requirement in the control of electricity so it's part and parcel, if you like, of running the electricity side of things to deal with the telecommunications signals.

ELIAS CJ:

Well, does it mean that if you're not, if you're not using these lines for distributing electricity this easement keeps marching on for the purposes of telecommunications. It would seem to? I'm just feeling for whether, in fact, the line – the, what are they called, the utility operators are obtaining something additional through this process.

WILLIAM YOUNG J:

But either way it's appealable, it's challengeable.

ELIAS CJ:

Yes, oh, I understand that.

MR HANCOCK:

That is the second aspect and that is the objection procedure in the Public Works Act and that is that if something is not reasonably necessary for the particular public work or to put it slightly differently, through the landowner's objection rights the landowner can test before the

Environment Court whether the electricity line or the telecommunication line is, in that particular location, is appropriate.

ELIAS CJ:

There are proceedings in front of the Environment Court, there's an objection isn't there?

MR HANCOCK:

Yes there is.

ELIAS CJ:

Is there any document that the respondent has put before the Environment Court to indicate what the public work is? I mean is it being described as road only?

CHAMBERS J:

It's the notice of intention to take –

ELIAS CJ:

That's the one is it?

CHAMBERS J:

– which is the document.

GLAZEBROOK J:

That's at 389, is that right?

CHAMBERS J:

Yes.

GLAZEBROOK J:

Well it says, "The land is required, the easements are required as an indirect requirement for public work to enable relocation of transmission towers."

ELIAS CJ:

So it's simply relocation. Yes, I see.

MR HANCOCK:

And the second matter is, I think it was Justice Glazebrook that was enquiring about the manner in which the easement is taken or set apart from the utility and I wasn't as clear on that as I might have been but I've checked it and my instructions are that the Crown will take the easement in gross to convey electricity in the name of Her Majesty the Queen, so that's the first step. And then, the second step, which we've discussed, and that is under section 186(4), the Crown will then set apart the easement to vest in Orion so –

WILLIAM YOUNG J:

In Transpower.

ELIAS CJ:

No, it's now Orion.

MR HANCOCK:

It's, in fact it's now – Transpower has now sold, as of August 2012, to Orion and Orion's got the three –

WILLIAM YOUNG J:

Oh, I see, I thought it was the other way round.

MR HANCOCK:

No it's the Orion –

GLAZEBROOK J:

So did I.

ELIAS CJ:

Well it was put the other way round but then it was corrected.

WILLIAM YOUNG J:
Right.

GLAZEBROOK J:
I can't have had the second correction.

MR HANCOCK:
Now, unless the – Your Honour indicated that the written submissions are being read and if there are any matters arising out of that, which haven't already been covered, I could answer those questions now otherwise I propose to just very briefly summarise and conclude.

ELIAS CJ:
Well I'm still troubled by the Government work, the – did you want to say anything further about that?

MR HANCOCK:
When I went back over this in the preparation, your Honour, I considered that the judgment of the Court of Appeal, Arnold J, step by step, seemed to go through each of the interpretative points which were relevant and brought them all together in a way which I can't do any better, and I could probably do a lot worse, so I'm –

ELIAS CJ:
Can you just give me that reference in the –

MR HANCOCK:
Yes, it's in the Court of Appeal judgment and His Honour – that's in volume 1 – and His Honour really deals with, in two sections, he first of all just looks at the legislation itself in detail, and he does that at page 65 of volume 1, so he sets out the legislative background, and I've adopted that rather than repeat what is perfectly well set out already in the judgment, and then what I've done is referred in my written submissions to the discussion, and that really –

ELIAS CJ:

But is there – I don't recall discussion about the control dimension.

MR HANCOCK:

No, that is true, there is not detailed discussion on that point, and the Court certainly discussed in detail whether the Government work could include something which was indirectly required, so I take it at this point we can clear that away.

GLAZEBROOK J:

Can I just check, what your argument would be is that the work is the roading work, and that's clearly under the control of the Crown?

MR HANCOCK:

Yes.

GLAZEBROOK J:

And this is just an indirect consequence of the roading work which, although Government work doesn't have indirect in it, public work does, and you say that indirect work is included in Government work, or something that's a necessary consequence of – I'm not sure whether direct or indirect is terribly apt in any event – because you say it's a direct consequence of the Government work and the work is the roading, and that encompasses anything that's necessary for that roading to take place –

MR HANCOCK:

Yes.

GLAZEBROOK J:

– and the shifting of these transmission towers is necessary for the work to take place?

MR HANCOCK:

Yes.

GLAZEBROOK J:

It doesn't mean that it's absolutely required or that the Crown couldn't do it otherwise, "necessary" has a broader meaning of what's necessary to allow the work to take place and the work, being the roading, is clearly under the control of the Crown?

MR HANCOCK:

Yes.

GLAZEBROOK J:

I'm probably –

MR HANCOCK:

Yes, no, that is it precisely, and I'd say it's – although that particular way of putting it isn't exactly a discussion which is in the judgment, and the Chief Justice is quite right to raise that point. But I think what your Honour has just said is the –

GLAZEBROOK J:

It's how you define the work and what's encompassed in the work is what you say, is how you define the Government work and that's what –

MR HANCOCK:

Yes.

ELIAS CJ:

And is that your entire answer?

MR HANCOCK:

Yes, yes, it is, your Honour, because at paragraphs 19 and onwards of the Court of Appeal judgment there's an extremely detailed examination of the

legislation and, just to give one example, there are references in the statute to the Government taking land for public works, so, in other words, there isn't a consistency of the Minister, Government Works Minister, Government Works Minister, Government works, it slides around between Minister, Government works, and then somewhere else. As the Court records in the Court of Appeal judgment, there's a reference to the Minister acquiring land for public works –

ELIAS CJ:

Acquiring? Is there –

MR HANCOCK:

Well –

ELIAS CJ:

I didn't think there was a reference to "acquisition" but, if there is, you say it's in the Court of Appeal judgment?

MR HANCOCK:

Yes, yes, the Court demonstrates that the, if you like, juxtaposition of "Minister" and "public works" and "acquiring land" occurs just as the juxtaposition of 'Minister" and "Government works" occurs, and therefore to try and drive a wedge between Government works and public works on the basis that the Government works can't encompass an indirect work, to try and drive that wedge, is just not justified when you look at the Act as a whole.

GLAZEBROOK J:

Are you really relying on what's said at paragraph 24 of the Court of Appeal's judgment which says effectively that anything that's reasonably necessary is required? So –

MR HANCOCK:

Yes.

GLAZEBROOK J:

– not absolutely necessary but reasonably needed for the public work, and you say they're shifting, and the negotiation with the power companies as to how they are to be shifted and on what basis was reasonably necessary for the roading work?

MR HANCOCK:

Yes.

GLAZEBROOK J:

And therefore is encompassed within the taking power, because anything that's reasonably necessary is encompassed within that taking power?

MR HANCOCK:

Yes, that is the submission. So, as I say, your Honour, when I re-looked at this, it seemed to me that the way that the Court of Appeal had set it out, with respect, was very careful and it looked at the different sections and made contrasts and came up with a conclusion which we adopt and which we can't really do much better, with respect, than has been done already. It might even make it worse or confuse things. Although, in my written submissions, we've tackled the topic as well, but it doesn't add anything really to the Court of Appeal's judgment which, at the risk of repetition, is quite detailed and careful.

Are there any other matters arising out of the written submissions which the Court would like me to deal with?

McGRATH J:

Mr Hancock, why do we need sections 16 and 4A, why do we need both of them in this Act?

MR HANCOCK:

Why we need those –

McGRATH J:

But I know that 16 deals with acquisition of land for public works, but section 4A, a later provision, seems a more general provision.

MR HANCOCK:

Yes, it's 1988 amendment. I'm afraid, Sir, this is not a particularly satisfactory answer, but we have trawled through legislative histories and Hansards and this, that and the next thing, and, although I might stand to be corrected, to the best of my recollection –

McGRATH J:

It's just the way the drafter did it, is that it?

CHAMBERS J:

Well, there must have been something that triggered the need for section 4A.

MR HANCOCK:

It triggered it, yes. Well, if one just takes it on the face of the wording of the text itself, it would be to widen the power of the Minister of Lands, because there are a number of further things that you can do in addition to what section 16 talked about.

ELIAS CJ:

Well, 4A isn't compulsory acquisition, is it?

MR HANCOCK:

No, it's a, if you like, a lead-in to the powers of the Minister and then, as your Honour notes, there is a compulsory acquisition aspect to the Act which I think that's –

McGRATH J:

But that only starts at section 22, I think.

MR HANCOCK:

And before that there's the voluntary, or acquisition by agreement starting, at section 16.

ELIAS CJ:

Ah, yes, yes, I see what you mean.

McGRATH J:

Well, it doesn't matter, just it was if in your researches you'd come across –

MR HANCOCK:

We –

McGRATH J:

– some neat answer.

MR HANCOCK:

We did try and discover what went on before.

McGRATH J:

No, that's fine, that's fine. It's not a problem, no.

GLAZEBROOK J:

I wonder whether it's something to do with the essential work, but they seem to have at the same time got rid of the previous powers of the Minister section, powers of the Minister under – section 7 seems to have been got rid of at the same time, so…

ELIAS CJ:

It may be that section 16 is about acquisition of land required for work and 4A expands it to allow the acquisition of buildings and other things and that's then consistent with acquiring and hiring personal property and so on.

MR HANCOCK:

Yes, I'll just check – yes the definition of land in section (2), oh, that includes any estate or interest in land. Yes, your Honour, it may be that by being explicit in relation to buildings it was intended to make things clearer and the virtue of that interpretation or explanation is that it does appear, on the surface, without a lot of further research into other materials so yes, that does possibly stand out as an explanation.

Are there any other matters which arise out of the written submissions?

ELIAS CJ:

No thank you, thank you Mr Hancock.

MR HANCOCK:

So what I'll do at this point is I've got a very short conclusion which hopefully brings things together and the first point I make, by way of conclusion, is the Minister is empowered to take land directly or indirectly required for any public work, so that's our first, if you like, theory of the case or proposition. And then second proposition is this interpretation best gives effect to the Public Works Act purpose to enable, and I emphasise, not to hinder, the accomplishment of public works whilst providing full compensation to affected owners.

Third proposition. The acquisition of the easements in this case was reasonably necessary to enable the road widening to proceed.

Fourth point. The easements were related to and connected with the road widening project in that it provided the Minister with the benefit, and I emphasise benefit, to the Minister, not benefit to some third party but it provided the Minister with the benefit of achieving the public works in the most efficient and in the safest manner and this meant that the Minister didn't have to go down any of the other six options, which were identified and rejected as impractical and the reference for those six other options which were initially considered is at page 97 of the case on appeal.

Fifthly, NZTA required the easement for its own –

GLAZEBROOK J:
Page, page what?

MR HANCOCK:
It's at page 97. NZTA required the easements for its own Public Works Act purposes, not for the private benefit of the power companies and I interpolate, a lot of the cases which are in the appellant's case book that's the key, is this a benefit for some third party and we emphasise here that the benefit is for the public work and for the agency, which is endeavouring to accomplish that in a safe and efficient manner. In that situation the alternative of using the section 186 acquisition process by the power companies would have been as inefficient, cumbersome and circular as it would have been inapt.

And there's just one last matter which I overlooked when I was going through this list and that is to emphasise, in relation to the reasonably necessary point that –

ELIAS CJ:
Sorry, I'm just looking at your page 97 which, as you say, summarises matters. What is this taken from? Sorry, what is page 97?

MR HANCOCK:
That should be the –

ELIAS CJ:
Is that the statement of claim or…

MR HANCOCK:
It should be the reference in the case on appeal.

ELIAS CJ:

It is but I don't know what the document is. It's page 6 of something.

MR HANCOCK:

Oh, it is a internal –

ELIAS CJ:

Oh, it's the affidavit of Mr Cottrell. But I see that at, I don't know whether you have mentioned this but at paragraph 22 the reason why it's getting these easements is because Transpower made it clear that it considered the relocation would override its existing statutory rights because of the different height and the different movement of the tower would take it through a different airspace, unlikely to be protected by statutory rights. So that answers some of the questions we had earlier.

MR HANCOCK:

Yes. And in relation to what's reasonably necessary, I just want to note that whereas the Land Valuation Tribunal will protect the landowner in respect of valuation issues, the Environment Court protects the landowner's interests in terms of the, whether the work is reasonably necessary or whether there should have been some other alternative considered so that protection for the landowner is built into the system and that's why we say that we've got a balance between the work being achieved in an efficient and a safe manner. That's the public interest on the one hand, and on the other hand the private interest, in terms of the property owner's rights are recognised and given effect to in the legislation through the LVT procedure on valuation and through the Environment Court in terms of the physical aspects of the public work.

Unless the Court has any further matters, that is the case for the respondent.

ELIAS CJ:

Thank you, thank you, Mr Hancock. Yes Mr Rennie, do you want to be heard in reply?

MR RENNIE:

No your Honour, I would only repeat what I've already said about Government work.

ELIAS CJ:

Thank you. All right, thank you counsel for your assistance. We will reserve our decision in this matter.

COURT ADJOURNS: 2.47 PM