IN THE SUPREME COURT OF NEW ZEALAND

SC 44/2012
[2013] NZSC 42

	BETWEEN	ANN MARY SEATON Appellant
	AND	MINISTER FOR LAND INFORMATION Respondent

Hearing: 13 November 2012

Court: Elias CJ, McGrath, William Young, Chambers and Glazebrook JJ

Counsel: S P Rennie and J E Bayley for Appellant
H S Hancock and A A Jacobs for Respondent

Judgment: 29 April 2013

JUDGMENT OF THE COURT

A The appeal is allowed.

B The judgment of the Court of Appeal is set aside.

C The orders made in the High Court are restored.

D The respondent is to pay the appellant, with respect to costs in this Court, the sum of $25,000 together with disbursements to be fixed, if necessary, by the Registrar.

E If the parties cannot agree on costs in the Court of Appeal, the Court of Appeal must fix them.

REASONS

Para No

ELIAS CJ

[1] The appeal concerns the compulsory taking of easements for electricity lines and supporting towers over land owned by the appellant, Mrs Seaton. The easements are sought by the Minister of Lands using his powers under the Public Works Act 1981 but are to be transferred when obtained to Orion New Zealand Ltd, a network utility operator, to be held as part of its electricity distribution network for Christchurch.[1]

[2] Orion has existing lines over Mrs Seaton's land, in respect of which it has existing use rights protected by s 22 of the Electricity Act 1992. The lines are supported by three towers on the margin of Russley Road, in part on Crown land and in part on land owned by Mrs Seaton. Although Orion's existing interests over the Crown land are also protected by s 22 of the Electricity Act, the New Zealand Transport Authority (NZTA) requires Orion to remove the existing towers on the road margin because of the widening of the carriageway, which at that location forms part of State Highway 1.

[3] At the instigation of NZTA, the Minister has given notice of intention (under s 23 of the Public Works Act) to compulsorily acquire easements in gross over Mrs Seaton's land to enable replacement towers to be located on the land and to replace the existing statutory use rights for the lines (although it is not clear that Orion's statutory rights in relation to the lines would be affected by relocation of the

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[1] Originally two network utility operators were interested in the towers and line, Transpower New Zealand Ltd and Orion New Zealand Ltd. But in August 2012 Transpower sold its assets affected by the present proceedings to Orion. I therefore refer only to Orion, although the decisions in the High Court and Court of Appeal refer to both utility providers.

towers[2]). The easements proposed provide for use for telecommunications purposes as well as for the conveyance of electricity. They also provide more elaborate access rights and interests in land for the utility provider than exist under the "anomalous" statutory protection of existing works.[3]

[4] The Minister of Lands has power under s 16(1) of the Public Works Act to acquire any interest in land compulsorily if it is "required for a Government work". A "Government work" is one to be undertaken "by or under the control of the Crown or any Minister of the Crown ... for any public purpose".[4] A network utility operator (which includes a distributor of electricity),[5] if approved as a "requiring authority" under s 167 of the Resource Management Act 1991 (whether in respect of a particular project or work or a particular network utility operation), is separately empowered by s 186(1) of the Resource Management Act to apply to the Minister of Lands to have land required for a project or work to be "taken under Part 2 of the Public Works Act as if the project or work were a government work within the meaning of that Act".

[5] Whether land is to be taken under s 16(1) of the Public Works Act for a Government work or whether it is taken under s 186 of the Resource Management Act for a project or work of a network utility operator, the procedures are those contained in Part 2 of the Public Works Act. In both cases the acquisition is conducted by the Minister of Lands either for himself or for the network utility operator, as the case may be.[6] The consequences of compulsory acquisition are however different according to whether the land is acquired for a Government work

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2 A point made in the High Court by Gendall J: *Seaton v Minister of Land Information* [2011] NZAR 408 (HC) at [47].

3 *Valuer General v Auckland Gas Co Ltd* [1923] NZLR 187 (SC) at 200. In *Newcastle-Under-Lyme Corporation v Wolstanton Ltd* [1947] 1 Ch 427 (CA) and *Commissioner of Main Roads v North Shore Gas Co Ltd* (1967) 120 CLR 118 English and Australian courts respectively held that such rights were not interests in land. The New Zealand Court of Appeal in *Telecom Auckland Ltd v Auckland City Council* [1999] 1 NZLR 426 (CA), however, affirmed the anomalous nature of such rights in the context of similar existing use provisions in the Telecommunications Act 1987.

4 As defined in s 2 of the Public Works Act 1981.

5 As defined in s 166 of the Resource Management Act 1991.

6 Section 16(2) also empowers local authorities to acquire land compulsorily for local works for which they have financial responsibility. They act directly, however, and not through the Minister or under any deeming provision such as that which treats applications on behalf of network utility operators as if their proposed works were Government works.

or for a work of a network utility operator: land taken for a Government work vests in the Crown; land taken for a project or work of a network utility operator vests in that operator.[7] The Minister of Lands must, before proceeding with any compulsory acquisition, first undertake negotiations with the owner in an attempt to reach agreement for acquisition of the land.[8] If negotiations are unsuccessful, the Minister is required to give notice of intention to take the land which, under s 23, must contain "a description of the purpose for which the land is to be used" and "the reasons why the taking of the land is considered reasonably necessary".[9] Any person having an interest in the land may then object against its taking to the Environment Court under s 24.

[6] Negotiations for acquisition of the easements were unsuccessful.[10] On 17 July 2010 the Minister for Lands gave notice under s 23 of the Public Works Act that he proposed to take the land and easements, which were described in a schedule to the notice. As required by s 23, the notice identified the purpose of acquisition, which was described as follows:

> The land is required for road, namely for the State Highway 1 Christchurch Western Corridor Four Laning (Memorial Avenue – Yaldhurst Road) Project. The easements are required as an indirect requirement of the public work to enable relocation of transmission towers.

The notice also identified the reasons for the taking, in accordance with s 23:

> The reasons why the Minister for Land Information considers it essential to take your interest in the land are to cater for increasing traffic volumes and to improve the safety and efficiency of State Highway 1 and the local road network.

[7] Mrs Seaton maintains that the easements sought by Orion cannot be acquired under s 16 of the Public Works Act by the Minister of Lands because they are not "required for the Government [roading] work" identified in the notice. They are

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7 Resource Management Act, s 186(2).
8 Public Works Act, s 18.
9 Section 23(1)(b)(ii) and (iii).
10 A small piece of freehold land belonging to Mrs Seaton was also subject to taking which was not opposed.

required for the work proposed by the utility operator and are intended to be passed by the Minister to Orion following their vesting in the Crown.[11] Mrs Seaton has objected to the notice of intention to take but the hearing of her objection by the Environment Court is awaiting determination of the judicial review proceedings by which she challenges the lawfulness of the Minister's decision to take the land. The present appeal arises in the judicial review proceedings.

[8] The point for determination on the appeal is whether the easements to be taken are required for the Government work of roading and are therefore within the compulsory acquisition powers of the Minister under s 16(1) of the Public Works Act or whether they were required for a project or work of the network utility provider so that any acquisition should be undertaken under s 186 of the Resource Management Act.

The decisions in the High Court and Court of Appeal

[9] Mrs Seaton was successful in the High Court. Gendall J held that the notice of intention to take was invalid because the easements were not required, directly or indirectly, for a Government work but "for the ultimate benefit of the power companies".[12] He considered that any compulsory acquisition should be transparently undertaken under s 186 of the Resource Management Act.

[10] Gendall J found it clear that Transpower (which had the carriage of the negotiations on behalf of Orion also at that stage) had agreed to the relocation of the towers only on the basis that NZTA would secure the easements in replacement:[13]

> What is abundantly clear is that NZTA pursued its path because it considered this best suited that required by Transpower in order to secure its agreement to relocation or removal of the towers. The easements, and their extent, was because of requirement of Transpower (that is, extending to the lines, as well as the towers). NZTA did not need those easements itself; it was not

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11 The basis on which the Crown can divest itself of such land is not clear and was the subject of some controversy at the hearing. I proceed on the basis that there is such power to divest (perhaps under s 186(4) of the Resource Management Act), but do not think it affects the decision on the manner of compulsory acquisition which is dispositive of the present appeal.

12 *Seaton v Minister for Land Information*, above n 2, at [62].

13 At [61].

> compulsorily acquiring the towers, such that it would be required to relocate or replace them. Transpower and Orion could have obtained and negotiated any easements, if such be necessary, with Mrs Seaton privately or through the RMA procedures. As I understand her argument, that is all that Mrs Seaton seeks, namely the ability to negotiate directly with the power companies, or the transparent acquisition of her land under s 189 of the RMA.

[11] The Judge held that the easements in gross were sought to benefit Transpower and Orion, under the agreement reached by NZTA with them: "[t]hey were not for the purpose or use of NZTA but designed and intended for the use and benefit of the power companies".[14] That, he concluded, was not a permissible use of the power vested in the Minister because the easements were "not a requirement of the Government or public works, directly or otherwise".[15] As a result, the notice under s 23 of the Public Works Act was set aside.

[12] The Court of Appeal allowed the Minister's appeal.[16] It took the view that the easements were "required for a Government work", namely the road-widening which required the existing towers to be removed: "the need for relocation had nothing to do with the service providers but resulted from the need to widen S[tate] H[ighway] 1".[17] The Court took the view that other provisions of the Public Works Act, namely ss 4A(a) and 21 (both of which envisage transfer of land acquired by the Minister under the Public Works Act to others), provided some support for the Minister's contention that he was not precluded from using s 16(1) by the circumstance that he intended to transfer the easements to the network utility providers.[18] The Court considered that it would be cumbersome to require recourse to s 186 only following extinguishment of the interest of the network utility companies in the tower sites on the road.[19] It thought that leaving the control of the process with NZTA (for whose benefit the relocation was obtained) was in the public interest because more orderly and likely to be more timely.[20] Whether the easements proposed were indeed "reasonably necessary" to meet the Minister's objectives in

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14 At [66].
15 At [68].
16 *Minister for Land Information v Seaton* [2012] NZCA 234, [2012] 2 NZLR 636.
17 At [47].
18 At [41]–[42].
19 At [42].
20 At [44].

securing removal of the towers was a matter for the Environment Court to decide in the objection hearing.[21]

[13] Mrs Seaton appeals to this Court from the decision of the Court of Appeal.

Does it matter whether the taking is considered under s 16 PWA or s 186 RMA?

[14] Does it matter to Mrs Seaton if the case is considered under one provision or the other? This consideration is not determinative if the easements cannot be considered on the language and structure of the legislation as "required for the Government work" of roading (the matter I consider below). But lack of difference in treatment might support an interpretation that permitted overlap between the provisions if that interpretation were available. And it is a consideration which seems to have weighed with the Court of Appeal which thought that the practical course in cases such as Mrs Seaton's was to leave the Minister to achieve the relocation as part of the road-widening project which necessitated the removal of the existing towers. It considered this approach could avoid delay in the road-widening programme.

[15] I am not persuaded that any advantage to be obtained from control of the whole process of acquisition by the Minister is not equally available if s 186 of the Resource Management Act is used. The scheme of the legislation is that the Minister controls the process of taking whether the power he is using is under s 16(1) of the Public Works Act or s 186 of the Resource Management Act. Nor was it essential for him to obtain the agreement of the utility providers. If necessary, the Minister could have proceeded under s 30 of the Public Works Act to discharge their existing rights under s 22 of the Electricity Act. While the Minister cannot invoke s 186 without application by a network utility operator, it is implausible to suggest that such request would not have been made if the network utility operators had been required to remove the towers, if the lines were still required by them. There is no reason why the two distinct steps should not be synchronised: the discharge of the rights of the utility providers in the existing tower sites could have been set by the Minister,

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[21] At [52].

who had control of both processes, to follow on from the taking of the easements (and presumably any necessary works to set up the new towers and wires).

[16] I do not think this Court is in a position to be confident that it makes no difference whether compulsory acquisition proceeds under s 16 of the Public Works Act or s 186 of the Resource Management Act. It is true that under Part 2 of the Public Works Act, which applies whichever of the two statutory powers is invoked, the Environment Court is required by s 24(7) to consider, among other things, "the adequacy of the consideration given to alternative sites, routes, or other methods of achieving [the Minister's] objectives" and whether the taking of the land would be "fair, sound, and reasonably necessary for achieving the objectives of the Minister" (consideration which in the present case would seem to enable questioning of the extent and terms of the easement sought). But the consideration to be given is against the objectives of the Minister, not in respect of the project or work proposed by the network utility operator, but of the Minister in respect of the Government work of road construction. What is more, the assessment of "alternative sites, routes, or other methods of achieving those objectives" is concerned with the "adequacy of the consideration" that has been given to such alternatives. In other words, it is a check on proper process where road-widening is the objective.

[17] If s 16 and s 186 are construed to permit overlap, the location of the towers and lines will on s 16 application in large part be consequential upon and pre-determined by the road-widening, instead of being the focus of distinct inquiry under s 186 in which alternatives for the conveyance of the electricity will be the subject of the inquiry. The risk of loss of focus seems to me to be augmented in circumstances where co-operation between NZTA and Orion in respect of the landowner may suit both (because NZTA can obtain Orion's agreement to relocation rather than have to resort to compulsory acquisition of its existing interests, and Orion stands to obtain in exchange a more useful and expanded interest[22] than the statutory use rights it presently has).

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[22] Such as seem to be proposed by the changes in height and width of the use rights and the purpose of communications as well as the existing statutory purpose of conveyance of electricity alone.

[18] The objectives entailed in the taking for the easements differ from the objectives entailed in the road-widening. Section 24(7) of the Public Works Act makes it clear that the objectives of the Minister are critical to the function of the Environment Court in assessing objections. I would not therefore be willing to conclude that the different processes provided in the legislation are not significant in the statutory scheme. Without such confidence, the distinct provision of direct application seems to me to be the one the Minister is required by the legislation to use. That would suggest that where the Minister acts at the instigation of a utility provider to secure its interests, he must act under s 186 of the Resource Management Act. More importantly, however, I do not think s 16 is available in its own terms to achieve the taking of the proposed easements, for reasons I now explain.

The easements are not required for the Government work of roading

[19] I consider that the easements specified in the notice of intention to take are outside the authority of the Minister for three linked reasons:

- they are not required to be taken "for a Government work" , which must be controlled by the Crown, but for the work of and under the control of a network utility provider;

- they are not required "for" the roading work specified in the notice but, rather, "for" the work of conveying electricity;

- the separate statutory regime under s 186 of the Resource Management Act is the appropriate authority under which to obtain such easements by compulsion.

[20] Part 2 of the Public Works Act sets out the basis upon which land may be acquired for "public works". Section 16 draws a distinction between acquisition by the Minister of Lands and acquisition by local authorities. That distinction is maintained in the statutory provisions that follow and in the definitions used in the Act. Because they cover both Government works and public works undertaken by local authorities, the definitions of "public work" and "work" cover all works and

uses of land that "the Crown or any local authority is authorised" to undertake under the Public Works Act itself or any other Act. Under the provisions of Part 2 it is clear however that the Minister can act under that Part only in respect of those public works which are "Government works".

[21] A "Government work" is one "that is to be constructed, undertaken, established, managed, operated, or maintained by or under the control of the Crown or any Minister of the Crown for any public purpose".[23] The "work" is not the taking of interests in land (as in a holding in transition to the network utility provider) but the intended work for public purpose. The only two possibilities here are the road and the conveyance of electricity. The second is not a work that is to be undertaken or operated by the Crown or a Minister. It will be undertaken by the utility provider.

[22] The roading work is a Government work, to be undertaken under the control of the Crown, but Mrs Seaton's land is not required for roading purposes because the removal of the towers can be accomplished directly by revoking and discharging the rights of the network utility provider. Any consequential requirements of the utility provider following the discharge of its rights in respect of the towers can be directly addressed on its application to the Minister under s 186 of the Resource Management Act.

[23] I do not doubt that land may be reasonably required for a Government or public purpose directly or indirectly. Indeed, the definition of "work" makes clear that works and uses which justify the taking of land include "anything required directly or indirectly for any such Government work or local work or use".[24] So, for example, where the construction of a road requires land additional to that occupied by the road to take excavated fill, I see no difficulty in regarding that additional land as being required for the Government work of roading. But such indirect requirement of the work itself, to be undertaken under the control of the Crown as part of the Government work, does not mean that any *consequence* of a Government work becomes a Government work in itself, justifying the compulsory acquisition of

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[23] See the definition of "Government work" in the Public Works Act, s 2.
[24] See the definition of "Public work" and "work" in the Public Works Act, s 2.

land. Land "indirectly" required for a Government work must still be land required *for* that work as the language of ss 16 and 23 makes clear. I consider that it strains the meaning of the provisions if any consequential knock-on replacement for someone affected by a taking which results in use of the land for another purpose altogether (which may not even be itself a public purpose) is to be treated as an indirect requirement for the Government work.

[24] Under s 186 of the Resource Management Act, the Minister acts in effect as agent for the utility, and at its eventual cost.[25] But whether the land is reasonably required for the purposes of the utility provider's conveyance of electricity will be the subject of direct assessment following objection by the Environment Court and does not follow on inevitably from the displacement of the towers for roading purposes. The existence of a taking mechanism in s 186 tailored to the needs of utility companies is a reason, had the matter of interpretation been more doubtful, to construe s 16 as confined strictly to what is reasonably necessary for a Government work. But indeed, that is its clear meaning.

[25] The Court of Appeal considered that ss 4A and 21 of the Public Works Act show that the scheme of the Act permits the Minister to acquire land and other assets or to dispose of them. I do not think the largely ancillary powers conferred by s 4A or the specific empowerment under s 21 to purchase and develop land for the purposes of providing compensation for land taken under the Act affect the compulsory acquisition regime of the Act. In particular, I do not think either can be used to justify a compulsory acquisition undertaken by the Minister for the purposes of disposing of the land to someone else. Compulsory acquisition is available to the Minister where the land is required for a Government work, not to enable it to be provided to a network utility operator for its work. The fact that land taken under s 16 vests in the Minister points against its being used in a two-stage process to achieve vesting in another party. The fact that land can be compulsorily acquired for projects and works of a network utility provider and then vests in that provider under

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[25] Section 186(6) of the Resource Management Act provides that all costs and expenses incurred by the Minister in respect of an acquisition or taking of land under s 186 shall be recoverable from the network utility provider.

s 186(2) of the Resource Management Act seems to me to be powerful reason why s 186 is the process through which the end here sought must be achieved.

[26] Section 16 empowers the Minister to initiate the compulsory acquisition of interests in land only for the purposes of a Government work. As the notice to Mrs Seaton under s 23 of the Public Works Act makes clear, the only qualifying work identified was the roading development being undertaken by NZTA. The land was not required for the roading, directly or indirectly. It was required for a work of a network utility provider. Any compulsory acquisition for that purpose could be carried out only under s 186 of the Resource Management Act. I would therefore allow the appeal and reinstate the orders made in the High Court by Gendall J.

CHAMBERS AND GLAZEBROOK JJ

(Given by Chambers J)

Public taking of land

[27] The New Zealand Transport Agency, which is the Crown entity responsible for the improvement and maintenance of the State Highway network, resolved to widen Russley Road in Christchurch. Russley Road is part of State Highway 1. Ann Seaton, the appellant, owns land on the corner of Russley Road and Ryans Road.

[28] The road-widening project is now virtually complete. But there is an unresolved issue which affects Mrs Seaton. Three electricity towers, two owned until recently by Transpower New Zealand Ltd and one by Orion New Zealand Ltd, have stood for decades on Crown land, between the carriageway of SH1 and Mrs Seaton's boundary.[26] The wires these towers hold up cross SH1 and Mrs Seaton's land. NZTA was able to widen SH1 without moving the towers, but they are now hard against the widened carriageway, temporarily protected by crash-barriers. NZTA does not regard this as a satisfactory long-term solution. It wants the towers moved away from the carriageway as a safety measure.

[26] Counsel told us that in August 2012 Transpower sold its towers to Orion.

[29] NZTA's solution, with which the affected utilities agree, is for the towers to be moved across the boundary onto Mrs Seaton's land. Mrs Seaton is not happy about that. When, after months of discussion, negotiations broke down, NZTA resolved to utilise the Public Works Act 1981 to force Mrs Seaton to accept the relocation of the towers onto her land.

[30] The Minister for Land Information, acting on the advice of NZTA, issued a notice under s 23, in effect requiring Mrs Seaton to grant in favour of the utilities easements in gross. The proposed terms of the easements would allow relocation of the towers onto her land and the continued presence of power lines in her airspace. Under the Public Works Act, objections to proposed takings are determined in the Environment Court.[27] Mrs Seaton lodged an objection.

[31] Before that hearing took place, however, Mrs Seaton applied for judicial review in the High Court. She sought declarations that the decision to take the easements was invalid and that the notice was invalid, essentially on the ground that NZTA did not need the easements for the widening of SH1. Rather, it was Transpower and Orion which wanted the easements. It was for Transpower and Orion to apply for the easements under s 186 of the Resource Management Act 1991. That section confers on the utility companies a power to take interests in land compulsorily in certain circumstances.

[32] In the High Court, Gendall J found for Mrs Seaton.[28] He focused on the question whether the easements were *required*, whether directly or indirectly.[29] He held that the Minister had exercised his powers for an improper purpose because the Minister proposed to acquire the easements not for the purposes of NZTA but rather for the purposes of the utilities. The easements were not required for the road-widening.[30] The Judge granted a declaration that the s 23 notice was invalid to the extent that it related to the easements.

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27 Public Works Act 1981, s 24.
28 *Seaton v Minister for Land Information* [2011] NZAR 408 (HC).
29 At [31].
30 At [67]–[68].

[33] The Minister successfully appealed.[31] The Court of Appeal held that the easements were required, being reasonably necessary to enable the road-widening to proceed.[32] The Court held the Minister had not acted for an improper purpose. NZTA had acted in the public interest in attempting to ensure a timely, orderly and comprehensive process for the relocation of affected services generally. It had been NZTA's desire to widen the highway that gave rise to the need for relocation, not any work that the utilities wished to carry out.[33] The Court recognised that the Minister intended to transfer the easements to the utilities. It considered that was a downstream act not presently before the Court, but nonetheless seemed to think such a transfer would be possible under s 4A(a) of the Public Works Act.[34]

[34] From that decision Mrs Seaton has appealed.

Issues on the appeal

[35] Mr Rennie, for Mrs Seaton, submitted the Court of Appeal erred in two main respects. First, he submitted s 16(1) of the Public Works Act empowered the Minister to acquire land (including interests in land) only *directly* required for a Government work and the proposed easements were not directly required. While the Court of Appeal accepted the proposed easements were not directly required, it held the Minister was empowered "to acquire land required directly or indirectly for a Government work".[35] Mr Rennie submitted this was an erroneous interpretation of the Act.

[36] Mr Rennie's second submission was that, even if the Court of Appeal was correct that the Minister had power to acquire land even if only indirectly required for a Government work, taking easements over Mrs Seaton's land was not indirectly required. NZTA had no responsibility (or power) to assist the utilities to relocate their towers. The Court of Appeal had held that the acquisition of the easements "was reasonably necessary to enable the road-widening to proceed" and that

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31 *Minister for Land Information v Seaton* [2012] NZCA 234, [2012] 2 NZLR 636.
32 At [31] and [34].
33 At [42], [44] and [49].
34 At [55]–[57].
35 At [29].

Mrs Seaton's "land was 'required' (albeit indirectly) in the sense intended by the [Public Works Act]".[36] Mr Rennie submitted that finding was wrong.

[37] In his written submissions, Mr Rennie advanced a third line of attack. He submitted the Minister had acted for an improper purpose. The proposed easements were not for the public benefit but really were for the benefit of the utilities. Mrs Seaton was being required to cede an interest in her land for the benefit of other private entities, not the State. The Court of Appeal had rejected a similar submission, holding "the Minister [had not] used his power for an improper purpose when acquiring the easements at issue".[37]

[38] The "improper purpose" argument did not feature in the one page summary of the case Mr Rennie handed in at the hearing. The bench raised with Mr Rennie whether this line of attack really added anything to the two arguments previously outlined. After all, if the Minister could seek to take land even if only indirectly required for a public work and if the proposed easements here are or may be indirectly required, then clearly the Minister has acted properly. If, on the other hand, Mrs Seaton wins on one or other of the first two points on appeal, this point will be irrelevant, as Mrs Seaton would have established that the Minister was acting unlawfully. Mr Rennie accepted in oral argument that, although the case had been argued in terms of "improper purpose" in the Courts below, the case could be more simply analysed in terms of whether the purported taking was within the scope of the Public Works Act. In light of this, we do not need to consider "improper purpose" further.

[39] We also mention one other matter not in issue. Mr Hancock, for the Minister, if he lost on one or other of the issues set out at [35] and [36] above, did not seek to submit that judicial review was premature on the basis that the Environment Court could have dealt with these matters at the s 24 hearing. If the Minister's approach to the easements was beyond his powers, the notice, so far as it advises an intention to take easements, should be declared invalid.

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[36] At [34].
[37] At [54].

[40] We now turn to our discussion of these issues.

Can the Minister acquire land indirectly required for a public work?

[41] The key section for the purposes of this appeal is s 16(1):

> **16 Empowering acquisition of land**
>
> (1) The Minister is hereby empowered to acquire under this Act any land required for a Government work.

[42] Section 4A confers a number of powers on the Minister, one being:

> "to acquire any land … required for any Government work".

[43] Because of the congruence, we can concentrate on s 16(1) but what we say would apply equally to the acquisition power in s 4A.

[44] "Land" is defined in s 2. It "includes any estate or interest in land". Thus an easement is something capable of being acquired under s 16(1).

[45] "Government work" is also defined in s 2. The relevant part of the definition reads as follows:

> **Government work** means a work or an intended work that is to be constructed, undertaken, established, managed, operated, or maintained by or under the control of the Crown or any Minister of the Crown for any public purpose; …

[46] "Work" is also defined:

> **public work** and **work** mean—
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> (a) Every Government work or local work that the Crown or any local authority is authorised to construct, undertake, establish, manage, operate, or maintain, and every use of land for any Government work or local work which the Crown or any local authority is authorised to construct, undertake, establish, manage, operate, or maintain by or under this or any other Act; and include anything required directly or indirectly for any such Government work or local work or use …

[47] Reading the definition of "work" into the definition of "Government work" and then the definition of "Government work" into s 16(1) produces a rather

unwieldy extrapolation. But the sense of the statute is clear: an interest in land can be acquired if *reasonably* required, directly or indirectly, for the specified Government work.

[48] Mr Rennie's submission on this first issue relied on the absence of "required indirectly" from the definition of "Government work". We consider, however, the absence of a specific reference to "required indirectly" in the definition of "Government work" not to be significant in a context where "indirect" requirement is provided for in the incorporated definition of "public work" and "work". The meaning of s 16, "from its text and in light of its purpose",[38] is, we think, tolerably clear: provided the land is reasonably required for the specified Government work, it may be taken. Nothing is to be gained from attempting to distinguish between land "directly required" and land "indirectly required". The fact the land may not be, on one view, "directly required" is not fatal to an application to take that land. On the first issue, therefore, we agree with the Court of Appeal's reasoning.

Did NZTA reasonably require easements over Mrs Seaton's land for the road-widening?

[49] The Court of Appeal held that the easements over Mrs Seaton's land were reasonably necessary for the road-widening. Mr Rennie challenged that conclusion. He submitted NZTA did not require the easements at all; the utilities did. And the utilities could apply themselves for easements (under s 186 of the Resource Management Act) if they decided this was their preferred option for dealing with the problems arising from the road-widening.

[50] This case has proceeded on an agreed basis that the towers have to be moved from their existing location because of the road-widening. The parties have also proceeded on the basis that the utilities' statutory entitlement to keep the towers and wires where they currently are[39] is amenable to a compulsory acquisition under the Public Works Act.

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[38] Interpretation Act 1999, s 5(1).

[39] Pursuant to s 22 of the Electricity Act 1992.

[51] It has not been necessary for NZTA to resort to coercive powers with respect to the utilities. The utilities, however, have sought NZTA's assistance to move the towers elsewhere and, in particular, to move them onto Mrs Seaton's land. The question is whether it is NZTA's business to assist them in that regard – indeed, whether it is within NZTA's powers to provide such relocation assistance and to force another landowner to accept the utilities' relocated towers.

[52] It is by no means uncommon, of course, for businesses to have to close down or move when the land on which they have been operating is required for public works. It is not the responsibility of the Crown to assist in the decision-making of the businesses' owners or in the relocation of the businesses, if that is the owners' decision. The Crown is not empowered to take other land to assist in relocation. Its powers are limited to paying compensation to the person whose business has been affected.

[53] In the present case, the utilities operate their profit-making businesses in part on Crown land. What the Crown wants to do – for the Government purpose of road-widening – means that part of their business must move. The utilities must remove their towers and find another location for them. Where else they can be put is a matter for them. They may have to negotiate with other landowners in the area; they may have to consider utilising powers given to them under s 186 of the Resource Management Act (a provision to which we return shortly). What NZTA cannot do, whether for the purpose of reducing their liability to the utilities or for some other purpose, is force someone else to agree to the relocation of the towers onto their land.

[54] The fact it may be difficult to find other landowners willing to have the towers is irrelevant. The fact the utilities operate important businesses makes no difference to the principle set out. How could one draw the line? In any event, the utilities are in a preferential position compared with other businesses as they can in certain circumstances force landowners to accept their structures under s 186.

[55] The problem with the Court of Appeal's approach is shown by its uncertainty as to how the Minister, having taken the easements, would transfer them to the

utilities. Mr Hancock had suggested to the Court of Appeal that s 4A(a) of the Public Works Act or s 186(4) of the Resource Management Act could be employed. The Court of Appeal accepted the issue of which section applied was problematic, but concluded this was a downstream matter.[40]

[56] We do not consider the issue of transfer to the utilities can be sidestepped in that way. One thing is absolutely clear: the Crown does not need the easements. They are useless to it: it does not want to convey electricity. If it is not possible to transfer the easements to the utilities, that would be a powerful – indeed, an irresistible – argument against the taking in the first place. So does s 4A(a) confer power on the Crown to take the easements and immediately transfer them to the utilities? Section 4A reads as follows:

> **4A Powers of Minister of Lands**
>
> Without limiting the powers conferred on the Minister of Lands by any other Act, the Minister of Lands shall have power to—
>
> (a) acquire any land, building, or structure required for any Government work, to settle the purchase price or compensation therefor, and to administer, develop, improve, transfer, or dispose of any such property:
>
> …

[57] While that paragraph confers a power to "transfer" land that has been acquired, that power must be read in the context of the Act as a whole. It could not be utilised, for instance, to circumvent s 40, which compels the Crown, before selling land taken under the Act and no longer required by the Crown, to offer to sell the land back to the person from whom it was acquired or his or her successor. The Act is premised on an assumption that land required for Government works will come under and remain under "the control of the Crown or any Minister of the Crown for [the] public purpose" for which it has been acquired.[41] Only when it is no longer needed for a public purpose can it be disposed of.

[58] We do not consider s 4A(a) permits the immediate disposal of land acquired under the Act. The fact the Minister is contemplating use of that power demonstrates

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[40] At [55]–[57].

[41] See the definition of "Government work" above at [45].

he does not need the land (easement) at all. Further, if s 4A(a) were available to the Minister and the utilities, then Mrs Seaton and her successors would have the land taken without ever having the opportunity to get it back under s 40. That is because the utilities, when having the land transferred to them under s 4A(a), would not be acquiring it as a "public work". It was because s 4A(a) could not be utilised for the benefit of the utilities that s 186 of the Resource Management Act was needed. The Minister cannot exercise at the same time a power of acquisition and disposal and deprive a landowner of his or her s 40 rights. This Court is unanimous that s 4A cannot be the acquisition-disposal mechanism.

[59] That leaves s 186, to which we turn. It reads as follows:

> **186 Compulsory acquisition powers**
>
> (1) A network utility operator that is a requiring authority may apply to the Minister of Lands to have land required for a project or work acquired or taken under Part 2 of the Public Works Act 1981 as if the project or work were a government work within the meaning of that Act and, if the Minister of Lands agrees, that land may be taken or acquired.
>
> (2) The effect of any Proclamation taking land for the purposes of subsection (1) shall be to vest the land in the network utility operator instead of the Crown.
>
> (3) Land which is subject to a heritage order shall not be taken without the consent of the heritage protection authority.
>
> (4) Any land held under any enactment or in any other manner by the Crown or a local authority may, with the consent of the Crown or that authority and on such terms and conditions (including price) as may be agreed, be set apart for a project or work of a network utility operator in the manner provided in sections 50 and 52 of the Public Works Act 1981 (with the necessary modifications), but the setting apart shall not be subject to sections 40 and 41 of that Act. Any land so set apart shall vest in the network utility operator.
>
> (5) Any claim for compensation under the Public Works Act 1981 in respect of land acquired or taken in accordance with this section shall be made against the Minister of Lands.
>
> (6) 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.

> (7) Sections 40 and 41 of the Public Works Act 1981 shall apply to land acquired or taken in accordance with this section as if the network utility operator concerned were the Crown.
>
> (8) For the purposes of this section, an interest in land, including a leasehold interest, may be acquired or taken as if references to land were references to an interest in land.

[60] The Court of Appeal accepted that "the process contemplated by s 186(4) does not have a ready fit with the present proposal",[42] but put it to one side on the basis that it was "unclear" whether the Minister would attempt to utilise the power.[43] We do not accept the Minister can "utilise" s 186(4) in this case.

[61] Section 186 deals with two different scenarios. The first confers on utilities "compulsory acquisition powers".[44] Subsections (1)–(3), (5) and (6) set out the relevant regime, which we call the "compulsory acquisition regime". It incorporates relevant provisions of the Public Works Act "as if the [utilities'] project were a government work". (That is, it is *not* a government work, but it can be treated administratively as if it were, but with necessary modifications.) In context, it is clear Parliament has conferred the compulsory acquisition powers only with respect to land not held by the Crown or a local authority. Land held by the Crown or a local authority may be taken for projects or works of utilities, but only "with the consent of the Crown or that authority and on such terms and conditions (including price) as may be agreed": see subs (4). We call this the "Crown land regime". Subsections (7) and (8) are applicable to both regimes.

[62] In this case, the utilities could attempt to make use of the compulsory acquisition regime; they could apply to the Minister for easements over Mrs Seaton's land. Mr Rennie accepted that was possible.

[63] The utilities cannot rely, however, on the Crown land regime as, for the reasons already given, the Crown has no right to easements over Mrs Seaton's land. Utilities cannot sidestep the compulsory acquisition regime by using s 186(4) to acquire compulsorily private land. Nor can the Crown use it to assist utilities in

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42 At [56].
43 At [57].
44 See heading to s 186.

avoiding the correct compulsory acquisition procedure. Section 186(4) is concerned only with land the Crown has previously acquired, either by contract or by a lawful taking (where it has needed the land for its own purposes).

[64] Mr Hancock submitted that NZTA's approach was streamlined and that the process Mr Rennie said should be followed was cumbersome. But it need not be. Obviously NZTA, as a responsible Government agency, would co-operate with the utilities so that the towers did not need to be removed until the utilities had their preferred alternative in place.

[65] We accept that, had the utilities made an application for acquisition of the easements to the Minister under s 186(1), he probably would have agreed to utilise the compulsory acquisition regime in this case. Mrs Seaton might well have been forced to grant easements in the utilities' favour. In light of this, it is perhaps tempting to ask: what is the harm in NZTA's shortcut?

[66] We say three things in response. First, had the correct course been followed, Mrs Seaton would have had an opportunity to bargain directly with the utilities seeking the easements. Instead, she has had the opportunity of bargaining only with NZTA. Secondly, in an area as sensitive as the compulsory acquisition of land, we do not think we should require Mrs Seaton to face an application process different from that she might legally be obliged to face. Thirdly, if we permit NZTA's current application under the Public Works Act to continue before the Environment Court, that Court's focus will be subtly different from what its focus would be on a s 186(1) application. At the moment, the Court's focus would be on the extent to which NZTA requires these easements for road-widening purposes. On the Environment Court's review of the utilities' s 186(1) application, on the other hand, the focus would be on the utilities' need for these easements compared with other relocation measures that might be open to them. The difference is subtle, but there is a difference. In short, Mrs Seaton is entitled to insist on the correct procedure being followed.

[67] We therefore hold, contrary to the Court of Appeal but in agreement with Gendall J, that NZTA did not reasonably require easements over Mrs Seaton's land

for the road-widening. Rather, it is the utilities which may require them for reticulation purposes if the removal of their towers goes ahead and they confirm that their preferred option of dealing with that situation is to locate new towers on Mrs Seaton's land.

Remedies

[68] It follows from the above discussion that the appeal must be allowed. As we said earlier,[45] Mr Hancock made no issue of the appropriateness of Gendall J's judgment if one or other of Mr Rennie's arguments found favour. Gendall J's formal judgment was:

> (a) The decision by the respondent to take the easements is declared to be invalid and the Notice of Intention to Take Land dated 17 July 2010 signed by the respondent and served upon the applicant is declared to be invalid in so far as it relates to the taking of the easements.
>
> (b) The Notice is set aside in so far as it relates to the taking of the easements.[46]
>
> (c) The applicant is awarded costs on a 2B basis and disbursements in the total sum of $15,048.27 … .

[69] We, with the Chief Justice concurring, set aside the Court of Appeal's judgment. We restore the orders made in the High Court.

[70] Mrs Seaton, having won in this Court, is entitled to costs in the standard amount for a one day appeal, namely $25,000, plus disbursements. She is also entitled to costs in the Court of Appeal. If the parties cannot agree on costs in the Court of Appeal, the Court of Appeal should fix them.

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45 At [39] above.

46 The setting aside of the notice is restricted to the easements because Mrs Seaton accepts the Crown is entitled to take a $12m^2$ triangle of her land on the corner of Russley Road and Ryans Road. NZTA does need that triangle as part of the road-widening project.

MCGRATH AND WILLIAM YOUNG JJ

(Given by William Young J)

Our approach to the case

[71] The relevant statutory provisions referred to in the reasons of Chambers and Glazebrook JJ can be conflated so as to provide:[47]

> The Minister is empowered to acquire under this Act any land required for a Government work, including anything required directly or indirectly for such Government work.

On this basis, the key question is whether an easement over Mrs Seaton's land is "required ... indirectly" for the road-widening project. If so, the Minister may acquire such an easement. If not, the appeal must be allowed.

[72] The approach favoured by the majority is based on (a) the premise that the easement is required, and will be used, by Orion[48] and not NZTA and (b) the view that the Minister may only acquire something which he (or the Crown agency concerned) will be using for the purposes of the Government work.

[73] We prefer a different approach. The critical statutory language – "including anything required directly or indirectly for such Government work"[49] – is expressed in the passive voice. The road-widening cannot be completed until the existing towers are removed. The removal, without more, would presumably result in inadequate clearance between the lines and the road. To avoid this, replacement towers must be installed on Mrs Seaton's land. This requires an easement permitting such relocation along with the maintenance of the new towers and the lines. Such an easement is therefore required, albeit indirectly, to enable the road-widening project to be completed. While it may be theoretically possible to solve the problem in other ways, for instance by a complete change of the course of the transmission lines, we do not see this as being critical. This is because the concept of what is "required" for

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47 See [41]–[46] above.

48 We propose to discuss the case by reference to Orion given that Transpower is now out of the picture, as explained at [28] in the reasons of Chambers and Glazebrook JJ.

49 Public Works Act 1981, s 2, definition of "public work" and "work".

the purposes of the Act must encompass what is reasonably, and not just absolutely, necessary for the purposes of the Government work.

[74] The objections to this interpretation are along the following lines. The easement will be in favour of Orion which, although owned entirely by the Christchurch City Council and the Selwyn District Council, is a private sector company operating for profit. This means that the Crown proposes to acquire compulsorily an interest in land for the purpose of transferring it to a third party for use in that third party's commercial operations, a process which is outside the scope and purpose of the Public Works Act. For this reason, the power to acquire "anything required directly or indirectly for [a] Government work" should be confined to such things as are required, and will be used by, the Crown agency responsible for the Government work.[50] On this basis, relocation of the towers (and the maintenance of the towers and lines) can only be provided for pursuant to statutory procedures initiated by Orion under s 186 of the Resource Management Act.

[75] In the succeeding sections of these reasons, we will explain why we do not see this objection as determinative by reference to some of the topics discussed in the reasons of the majority. Our broad approach is that the interpretation of the majority is based on a view of the Public Works Act which is unnecessarily narrow, given that the proposed taking is supported by the dual public purposes of road-widening and electricity generation and the absence of tangible prejudice to Mrs Seaton associated with the respondent's preferred acquisition mechanism.[51]

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50 An argument which invokes sentiments expressed in *Bartrum v Manurewa Borough* [1962] NZLR 21 (SC) and *Jacobsen Holdings Ltd v Bay of Islands County Council* (1982) 2 NZCPR 1 (HC) although compare *Parry v Metropolitan Borough of Hammersmith* (1905) 92 LT 161 (Ch), as explained in *Bartrum* at 27. These cases are so different from the present in terms of their facts and the applicable legislation as to make detailed discussion of them inapposite. It is worth noting, however, that arguments similar to that raised here by the majority have not been adopted in a number of decisions in the United States, see Michael Taggart "Expropriation, Public Purpose and the Constitution" in Christopher Forsyth and Ivan Hare (eds) *The Golden Metwand and the Crooked Cord: Essays in Honour of Sir William Wade QC* (Oxford University Press, Oxford, 1998) 91 at 99 and following.

51 In reaching this conclusion we have been influenced by Taggart, above n 50.

Section 186 of the Resource Management Act

[76] When the Public Works Act was enacted in 1981, utilities were generally in public ownership[52] and powers of compulsory acquisition were thus available in relation to them. The corporatisation and privatisation of many utility functions later in that decade significantly reduced the scale of central and local government utility activities and thus the potential scope for compulsory acquisition.

[77] The resulting lacuna is now addressed by s 186 of the Resource Management Act which is relevantly in these terms:

> **186 Compulsory acquisition powers**
>
> (1) A network utility operator that is a requiring authority may apply to the Minister of Lands to have land required for a project or work acquired or taken under Part 2 of the Public Works Act 1981 as if the project or work were a Government work within the meaning of that Act and, if the Minister of Lands agrees, that land may be taken or acquired.
>
> (2) The effect of any Proclamation taking land for the purposes of subsection (1) shall be to vest the land in the network utility operator instead of the Crown.
>
> ...
>
> (4) Any land held under any enactment or in any other manner by the Crown or a local authority may, with the consent of the Crown or that authority and on such terms and conditions (including price) as may be agreed, be set apart for a project or work of a network utility operator in the manner provided in sections 50 and 52 of the Public Works Act 1981 (with the necessary modifications), but the setting apart shall not be subject to sections 40 and 41 of that Act. Any land so set apart shall vest in the network utility operator.
>
> (5) Any claim for compensation under the Public Works Act 1981 in respect of land acquired or taken in accordance with this section shall be made against the Minister of Lands.
>
> (6) 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.

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[52] Utilities which were not in public ownership usually operated under, and enjoyed statutory powers conferred by, private Acts of Parliament.

> (7) Sections 40 and 41 of the Public Works Act 1981 shall apply to land acquired or taken in accordance with this section as if the network utility operator concerned were the Crown.
>
> ...

[78] We accept that the s 186 procedure could have been invoked. Orion is a network operator and a requiring authority. It could have applied under s 186(1) to the Minister to have an easement taken over Mrs Seaton's land. Assuming the Minister agreed, such an easement could have been taken and vested in the name of Orion. Mrs Seaton would have dealt with the Minister in relation to compensation and the Minister would have been entitled to reimbursement from Orion for the costs and expenses of the exercise. The taking of the easement would have been subject to Mrs Seaton's right to appeal to the Environment Court under s 24 of the Public Works Act.

[79] There is scope for argument as to the significance of s 186 when construing what is permissible under the Public Works Act, the critical provisions of which antedate the Resource Management Act. The reasons of the majority do not address how the current situation could have been dealt with prior to the enactment of the Resource Management Act. On their approach to the Public Works Act provisions, statutory powers of acquisition could not practically have been deployed in support of the road-widening project in issue in the present case.[53] We think it would be odd to construe the relevant provisions of the Public Works Act in a way which meant that in the years preceding the enactment of the Resource Management Act, its provisions could not have been relied on to enable the present road-widening exercise. In any event, and more generally, if an easement from Mrs Seaton is indirectly required for the purposes of road-widening, the ability of the Minister to initiate compulsory acquisition should be unaffected by the existence of an alternative procedure under s 186 pursuant to which Orion's direct requirements in relation to the transmission of electricity can be met.

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[53] In theory, the Minister would have been able to secure the removal of the towers, but that would not achieve much unless the lines could either be otherwise supported (by towers on Mrs Seaton's land) or removed (which would presumably have had a significantly inconvenient impact on the transmission of electricity). As far as we can tell, based on our own research, the utilities did not have powers of compulsory acquisition and thus could not have compulsorily acquired easements over (a) Mrs Seaton's land for a relocation of the towers or (b) over other land if the course of the transmission lines was to be changed.

[80] The majority conclude that there are two respects in which Mrs Seaton might be better off if s 186 of the Resource Management Act, rather than the Public Works Act, had been invoked: first, in relation to compensation negotiations and, secondly, as to appeal rights. For the reasons given, we do not think that it would be of controlling significance if this conclusion were correct, but, in any event, as we will explain, we are not persuaded that Mrs Seaton would suffer any prejudice by reason of the process which has been adopted.

[81] We were told by Mr Rennie that if s 186(1) had been invoked, Mrs Seaton would have been able to negotiate the payment of compensation with Orion instead of the Crown, which would have been her preferred course of action. This point is adopted in the reasons of the majority. We have a different view. In the first place, in the present context – where the taking results from a Government work for which NZTA in the end must foot the bill – it is far from clear that her expectations in this regard would be met. More importantly, under both processes she has an entitlement to appropriate compensation to be paid by the Crown, and it seems to us that acceptance of Mr Rennie's argument in this respect is contrary to the scheme of s 186 and in particular the terms of s 186(5).

[82] The functions and role of the Environment Court on a s 24 appeal are set out in s 24(7):

> The Environment Court shall—
>
> (a) ascertain the objectives of the Minister or local authority, as the case may require:
>
> (b) enquire into the adequacy of the consideration given to alternative sites, routes, or other methods of achieving those objectives:
>
> (c) in its discretion, send the matter back to the Minister or local authority for further consideration in the light of any directions given by the court:
>
> (d) decide whether, in its opinion, it would be fair, sound, and reasonably necessary for achieving the objectives of the Minister or local authority, as the case may require, for the land of the objector to be taken:
>
> (e) prepare a written report on the objection and on the court's findings:

(f) submit its report and findings to the Minister or local authority, as the case may require.

[83] Where s 186(1) of the Resource Management Act has been invoked, the references to "Minister" in (a) and (d) must be read as a reference to the network utility operator (because the proposed taking will be to give effect to its objectives, rather than those of the Minister). But that said, we cannot see how Mrs Seaton's appeal rights in relation to the course of action as proposed by the Minister would, in practical terms, differ from those she would have had if the s 186(1) procedure had been followed. This is because of the overlap between the Minister's objectives and those of Orion. On either statutory process, it would be open to Mrs Seaton to challenge the need to shift the towers and, assuming such need is established (as it presumably would be given the agreed statement of facts), the appropriateness of what is proposed by Orion.

Conveyancing mechanisms, ss 4A and 40 of the Public Works Act and s 186(4) of the Resource Management Act

[84] The Crown envisages the taking of an easement which will enable relocation of the towers and maintenance of the towers and lines. Counsel for Mrs Seaton says that the Public Works Act does not provide a mechanism by which such an easement can be taken and vested in Orion. In this respect, the policy underlying s 40 of the Public Works Act is important. That policy is that where land previously compulsorily acquired for a public work is not required for either that work or another public work, it should be offered back to the original owner. We confess to having some difficulty in envisaging how that policy, and more particularly s 40, might apply in relation to an easement, the surrender of which will only benefit the owner for the time being of the servient tenement (who may well not be the original owner) and which in any event can be extinguished if no longer required. That said, if the purposes of the Minister and Orion could only be achieved by conveyancing mechanisms which were inconsistent with the rights created by s 40, that would provide a cogent argument in favour of the appellant.

[85] The suggestion that s 4A provides a way around this difficulty can be dismissed. This section provides:[54]

> **4A Powers of Minister of Lands**
>
> Without limiting the powers conferred on the Minister of Lands by any other Act, *the Minister of Lands shall have power to*—
>
> (a) *acquire any land, building, or structure required for any Government work*, to settle the purchase price or compensation therefor, *and to* administer, develop, improve, *transfer, or dispose of any such property*:
>
> (b) acquire or hire personal property, including plant, stores, and equipment required for the performance of any of the Minister's activities or undertakings, and dispose of such property when no longer required or when commercially practicable.

[86] When the Public Works Act was first enacted, the expression "Minister" was defined as meaning the Minister of Works and Development.[55] This definition was repealed in 1988 at the same time as s 4A was inserted, as part of the disestablishment of the Ministry of Works and Development. We consider that the primary purpose of s 4A was to establish that the Minister of Lands may exercise the powers conferred by the Act on "the Minister" in relation to, inter alia, acquiring and disposing of property. Although there are some difficulties with this view,[56] we do not think it tenable to construe s 4A as conferring powers of acquisition and disposal which are independent of, and not affected by constraints imposed in, the later provisions of the Act, which we see as actually conferring the powers in question and constraining their exercise.

[87] But although we do not see s 4A as resolving the conveyancing problem identified by the appellant, we can see other solutions. First, at least on the basis of the arguments deployed, we can see no reason why the grantee could not be the Crown with the terms of the easement giving it the right to permit Orion to relocate the towers and carry out any necessary maintenance. Secondly, we consider that the

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54 Emphasis added.

55 It was also defined as the Minister of Railways "to the extent provided for in section 10(1) of the Government Railways Act 1949".

56 The expression "Minister" is specifically defined for the purposes of most of the various parts of the Act meaning that if our interpretation is right there is some duplication. As well, the powers referred to in s 4A are described in terms which do not correlate precisely with the later provisions which, to our way of thinking, actually confer the powers.

Crown can take an easement as grantee (on terms permitting the Crown or its licensees, and thus Orion, the necessary rights of relocation and maintenance) and then transfer that easement to Orion under s 186(4). Under both options, s 40 of the Public Works Act would still apply.

The analogy proffered by Chambers and Glazebrook JJ

[88] In their reasons, Chambers and Glazebrook JJ postulate an analogy:

> It is by no means uncommon, of course, for businesses to have to close down or move when the land on which they have been operating is required for public works. It is not the responsibility of the Crown to assist in the decision-making of the businesses' owners or in the relocation of the businesses, if that is the owners' decision. The Crown is not empowered to take other land to assist in relocation. Its powers are limited to paying compensation to the person whose business has been affected.

[89] We find this analogy unconvincing. The "other land" is not required, either directly or indirectly, to facilitate or enable the public works. But in the present case, the road-widening cannot be completed without the removal of the towers. As removal of the towers, without more, would be incompatible with the use of the road (because of inadequate clearance between the lines and the road), replacement towers on Mrs Seaton's land and thus an easement are required.

A conclusion

[90] We see the case as requiring the application of the statute to the undoubtedly unusual facts of the case at hand.[57] For the reasons explained, we consider what is proposed to be well within the language of the statute and not outside its purpose. We would dismiss the appeal.

Solicitors:
Rhodes & Co, Christchurch for Appellant
Crown Law Office, Wellington for Respondent

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[57] As will be apparent, no case involving similar facts was cited to us.