

BEFORE THE BOARD OF INQUIRY

IN THE MATTER of the Resource  
Management Act 1991

AND

IN THE MATTER of applications for  
resource consent and  
notices of requirement  
by Transpower  
New Zealand Limited  
for the North Island  
Grid Upgrade Project

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STATEMENT OF EVIDENCE OF JOHN CRAIG MILES ON BEHALF OF  
TRANSPOWER NEW ZEALAND LIMITED  
(Property acquisition and landowner liaison)

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## INTRODUCTION

### Qualifications and role

1. **MY** name is John Craig Miles. I am employed by Transpower New Zealand Limited (**Transpower**) in the role of Property Manager - Projects. I have been working at Transpower since August 2003.
  
2. I hold the following qualifications:
  - (a) Bachelor of Business, majoring in Accounting from the Western Australian Institute of Technology;
  - (b) Bachelor of Commerce, majoring in Property from Curtin University in Western Australia;
  - (c) Advanced Certificate in Business, majoring in Real Estate from Technical and Further Education in Western Australia; and
  - (d) I have over 24 year's experience working on major infrastructure projects within both Australia and New Zealand. This experience has involved the negotiation of numerous property interests associated with major infrastructure projects, including the 1600km long Dampier to Perth Natural Gas Pipeline and associated high pressure gas laterals, and numerous easements for transmission lines with voltages of 66kV, 110kV, 132kV, 220kV and 330kV.
  
3. **PRIOR** to taking up my current position at Transpower, I was at Western Power in Western Australia, where I was responsible for leading and coordinating a team to undertake the following:
  - (a) Seek and obtain approvals from all statutory authorities, legislative bodies, community groups and members of the public, for all transmission line capital works; and
  - (b) Establish and enact policies, procedures, and strategies, that deliver the required environmental and other statutory approvals for all

capital works/projects at minimum cost, within the necessary timeframes/programme and to the technical requirements of the organisation.

4. **MY** role at Transpower involves the following duties/responsibilities:
  - (a) acquisition of property rights in a timely manner to ensure construction activities can proceed on time and meet expected commissioning dates;
  - (b) providing high level property input into the preparation of Transpower's Grid Upgrade Plans;
  - (c) ensuring the Transpower Property Group delivers performance within an agreed budget;
  - (d) development of strategic and operational plans to meet Transpower's current and future land and property needs;
  - (e) ensuring effective personal and team contributions to the property support processes throughout Transpower;
  - (f) developing and maintaining business relationships with other business groups within Transpower;
  - (g) providing leadership to the Property Group to support achievement of Transpower's Statement of Corporate Intent objectives; and
  - (h) proactively managing external relationships with Maori and other land owners.
  
5. **AMONG** other Transpower projects, I have been involved with the development of the process to determine the route of the North Island Grid Upgrade Project (**Upgrade Project**).
  
6. I confirm that I have read and am familiar with the Code of Conduct for Expert Witnesses in the Environment Court Consolidated Practice Note (2006). I

have approached the preparation of this evidence in the same way that I would for the Environment Court.

### **Scope of evidence**

7. **MY** evidence will address the following matters in relation to the Upgrade Project:
- (a) Transpower's approach to acquisition of property interests for the Upgrade Project;
  - (b) The easement restrictions that will apply within the areas to be designated by the Notices of Requirement (**NORs**);
  - (c) Transpower's consultation with landowners affected by the physical works required for the Upgrade Project;
  - (d) Transpower's intended landowner liaison during construction of the works and ongoing relationship management following commissioning of the works; and
  - (e) Issues raised in submissions. I note that many issues raised in submissions relate to property acquisition and compensation issues which I understand are outside the current hearing. However, I have provided responses where appropriate given the importance of these issues to landowners.

### **TRANSPOWER'S APPROACH TO ACQUISITION OF PROPERTY INTERESTS FOR UPGRADE PROJECT**

8. **THE** Upgrade Project crosses approximately 315 properties (there are over 600 separate parcels of land). As at 25 January 2008, Transpower owns 71 of these properties and has entered into agreements to obtain easements over 12 properties. My team and I are currently in the process of negotiating easements over the remaining properties. The properties which have been purchased are located as set out below:

- Franklin District: 26 (and part of 1 other property)

- Manukau City: 14
  - Matamata-Piako District: 7
  - South Waikato District: 1
  - Taupo District: 2
  - Waikato District: 13 (and part of 1 other)
  - Waipa District: 7
9. **TRANSPOWER'S** general approach is to obtain an easement over affected properties involved in the Upgrade Project. Based on my experience, it is considered normal practice for transmission line companies in Australia and New Zealand to negotiate an interest in land in the form of an easement in gross rather than the acquisition of the freehold interest.
10. **AN** easement allows the landowner to continue to own the underlying land and continue to use the land (subject to the provisions of the easement), while giving adequate protection for the works and allowing ongoing maintenance to take place. I understand that other network operators in New Zealand generally obtain easements for lineal projects.
11. **WHERE** Transpower has negotiated the outright purchase of the freehold interest, it is with the intention in most circumstances to re-sell that land with a registered easement in place to protect the works. The reason for this is Transpower does not require exclusive possession of the land. It simply requires a right to build, operate, maintain and access the works and ensure that the works can operate safely. An easement provides sufficient protection to allow these activities to be carried out while the landowner retains ownership of the land.

#### **KEY RESTRICTIONS WITHIN THE DESIGNATED AREA**

12. **AN** Easement Memorandum (**Common Bundle of Exhibits tab 4**) is registered with LINZ and forms the basis of the registered easements that are being negotiated for the Upgrade Project.
13. I set out in **Annexure A**, clause 2.1 of the Easement Memorandum. It contains a number of restrictions on activities within the easement area. In particular,

the Owner is not permitted to undertake the following without the prior written consent of Transpower:

- (a) alter or disturb the present grades and contours of the surface of the Easement Area except in the course of normal farming and grazing operations;
  - (b) erect buildings and structures on the Easement Area;
  - (c) plant vegetation on the Easement Area that may exceed 2.5 metres in height or breach any legal requirement regarding vegetation near electricity lines;
  - (d) operate equipment or vehicles on the Easement Area within a minimum clearance distance of 6 metres from any electricity transmission line conductor;
  - (e) excavate or deposit material on the Easement Area;
  - (f) impede Transpower's access over the Easement Area or land or damage the surface of agreed access routes;
  - (g) knowingly cause or permit flooding; and
  - (h) light fires or burn off vegetation within the Easement Area.
14. **CLAUSE** 2.1(b) prevents the erection of any building or other structure (including fences and utility structures) on the Easement Area. In addition, it is Transpower's intention to remove all existing buildings, structures and improvements from the Easement Area to provide a safe and clear corridor.
15. **TRANSPOWER** has decided to seek a clear corridor to ensure the safe and efficient operation of the line.
16. **WHERE** necessary, existing fences and utility lines will also be modified in conjunction with landowners and utility operators, to minimise the impacts of induced currents close to the transmission line. The electrical safety issues of concern are described in Mr Mitton's evidence.

17. **CLAUSE 2.2** of the Easement Memorandum provides that the Grantor may not subdivide their land without the prior written consent of Transpower. I discuss this restriction and the reasons for it later in my evidence.

#### **CONSULTATION WITH LANDOWNERS AFFECTED BY PHYSICAL WORKS**

18. **TRANSPOWER** appointed case managers to consult with directly affected persons at the Upgrade Project's inception in October 2004. I will only discuss the role of the property case managers who reported to me, as there were other parties involved in the wider consultation process, but this is covered by Mr Phillips in his evidence.
19. **THE** case managers first contacted directly affected persons commencing from October 2004.
20. **THE** role of the case managers is:
- (a) to be a primary point of contact for landowners, for all matters relating to the proposed new line;
  - (b) to keep directly affected landowners advised of the current status of the Upgrade Project, including advising landowners when Transpower obtains approvals, such as the approval of the Electricity Commission;
  - (c) to seek consent from the landowners for Transpower's engineers and valuers (and other consultants) to visit their properties to review access and construction issues and to value the properties (either for an easement or for freehold purchase); and
  - (d) to negotiate agreements with the landowners. These agreements include an agreement to access land for the purpose of survey and investigation, the Agreement to Grant an Easement and any other agreements that may be specific to a particular landowner to allow the works to proceed. An example may be the relocation of an airstrip or an agreement with a person holding a secondary interest in the land (such as a forestry right or mining title).

21. **MY** role is to manage the property components of the Upgrade Project and part of that role involves the supervision of the work of the case managers.

#### **LANDOWNER LIAISON DURING CONSTRUCTION OF WORKS**

22. **IT** was my recommendation that the existing case managers stay with this project as the principal point of liaison with landowners until the new transmission line has been constructed and commissioned and all site restoration activities have been completed.
23. **THIS** has been implemented by Transpower and will ensure that landowners have one point of contact with Transpower who they can contact to resolve any issues that may affect them and/or their property. Case managers will be a contact interface between Transpower, the construction contractor / Alliance partners and the landowner.

#### **ON-GOING RELATIONSHIP MANAGEMENT**

24. **WHEN** I joined Transpower in 2003, the land requirements had changed dramatically from a company that needed access to land primarily to inspect and maintain its assets to one that was starting projects to upgrade and build new lines.
25. **IN** recent years, Transpower has sought to improve its relationship with landowners. To this end it has:
- (a) issued a commitment to landowners and/or occupiers and the community, setting out Transpower's commitment to landowners and the community and stating, amongst other things, that Transpower will consult with interested groups and people about new transmission initiatives and will pay compensation for new easements;
  - (b) issued a Landowner's Booklet setting out Transpower's rights, obligations and commitments to landowners and clarifying what landowners are able to do near electricity lines;

- (c) entered the Electricity and Gas Complaints Commissioner scheme which allows landowners to refer disputes regarding land access to the Commissioner for resolution;
  - (d) made information about the Electricity and Gas Complaints Commissioner scheme, Transpower's commitment to landowners and the community, and the Landowner's Booklet available on Transpower's website and through stakeholders;
  - (e) consulted with South Canterbury Federated Farmers to establish a template Land Access Protocol Agreement which will be offered to various landowners affected by existing lines throughout the country, and which will include commitments by Transpower relating primarily to entry onto land for inspection, repairs and maintenance, and requiring Transpower to comply with site-specific entry requirements requested by landowners; and
  - (f) been part of a Landowner Liaison Group with interested parties including Federated Farmers and Forest Owners Association, to work collaboratively in establishing an easement agreement with terms acceptable to both parties for the Upgrade Project.
26. **THESE** are initiatives that are in the early stages of implementation and ongoing with the intent to improve relationships with interested parties as assets will remain on the landowner's land for a considerable period of time.
27. **AS** part of the consultation with landowners for the Upgrade Project, access and construction assessment reports have been prepared in which the landowners and Transpower have agreed access routes to be used in the future for inspection and maintenance. Transpower is required by the Easement Memorandum (**Common Bundle of Exhibits tab 4**) to provide plans of these agreed access routes to the Owner upon request (clause 3.4). It is Transpower's aim to minimise the risk of future disagreements over access by clarifying the access routes in advance.
28. **IN** addition, Transpower is required by the Easement Memorandum to give notice to landowners before entering their land to inspect, repair or maintain the transmission line (clause 3.5). The easement specifically provides that the

landowner is entitled to impose reasonable conditions on Transpower's access to the land (clause 3.6). These clauses are consistent with obligations imposed by the Electricity Act 1992 in relation to existing works and have been applied by Transpower since their introduction in 2001.

## **ISSUES RAISED IN SUBMISSIONS**

29. A number of submissions raise issues in relation to property, access and compensation. I have already commented on the relevance of many of these submissions to the hearing before the Board of Inquiry. I discuss these submissions below.

### **Issues raised by Lorraine Bilby and Ross Stewart (Submission No. 0730)**

30. **LORRAINE** Bilby and Ross Stewart raise issues relating to constraints on landowners who enter easement agreements with Transpower. Their submission relates to all the NORs. In particular that:
- (a) a landowner signing an easement agreement no longer has any control over any other utility which Transpower may wish to lease that easement area to, in order to derive further income;
  - (b) a landowner could be severely affected by this arrangement with further loss of value to the property; and
  - (c) in an environment where the possible sale of state owned assets is not out of the question, a landowner could find that effectively part of the rights of their property have been sold off to third parties.
31. **IN** response, I note that the provisions of the standard Easement Memorandum developed by Transpower expressly allows Transpower to lease, licence, or transfer, the easement to a third party (clause 6.2). Even in the absence of this provision, Transpower as the holder of an interest in land is able at common law to transfer, lease or licence that interest to another person. Any holder of the easement will not be able to use the easement for any purpose other than that initially granted by the landowner and will be subject to the same terms and conditions as set out in the easement.

32. **THE** easement is limited to purposes connected with the transmission of electricity including telecommunications and the standard Easement Memorandum is subject to negotiation between Transpower and the landowner. The final registered easement document may vary from property to property depending on what is negotiated.
33. **EVEN** if the easement was transferred to another electricity operator, that entity would be limited to the rights that Transpower had acquired.
34. **IT** is my view, that it would be unreasonable to limit or remove Transpower's rights to sell its assets (including the easement interest) to third parties.

**Issues raised by Camperdown Holdings Limited (Camperdown) (Submission No. 0842)**

35. **CAMPERDOWN** raises issues in relation to compensation. Its submission relates to the NOR for the underground cable from Pakuranga to Brownhill, and the associated Auckland Regional Council consents. Camperdown seeks that all matters be dealt with on an equitable basis with appropriate compensation for all issues of disruption when and where they occur.
36. **TRANSPower** is committed to fairly compensating landowners whose properties are physically affected by the works (ie that have the proposed line on their property) and in line with normal compensation principles. Compensation will be paid based on the provisions of the Public Works Act 1981 (**PWA**) with the intention that the financial losses suffered by the owner from the works are met on an equitable basis. Where the works directly affect the land, that may include compensation for any diminution in the value of the land, any injurious affection to the land, and any temporary or permanent damage and disturbance that is attributable to the works.

**Issues raised by R and J Carpenter (Submission No. 0717)**

37. **R and J Carpenter** raise issues in relation to property. Their submission relates to the NOR within the Manukau City Council district and the Auckland Regional Council land use consent application (34711) and discharge consent (34712).

38. **THEY** state that their concerns may be capable of resolution by agreement and ask that Transpower contact them to discuss this.
39. I have looked into this matter and have determined that the designation affects a very small triangle of land at the north eastern boundary of the property. After considering the scope of easement required to protect the works, I can confirm that no easement will in fact be required across the Carpenter land.

**Issues raised by Dennis Dare (Submission No. 0516)**

40. **DENNIS** Dare's submission relates to the Auckland Regional Council, Brownhill Substation, and resource consent applications 34711 and 34712. Mr Dare submits that some of the tower foundations are situated very close to his property and that the earthworks and associated discharges of contaminants will affect his commercial orchard operation.
41. **MR** Dare has a chestnut farm on his property. The proposed easement clips the south western boundary of the property, affecting an area of approximately 0.0938ha out of a total parcel area of 17.1034ha. There are no towers located on the property and the easement affects the property due to the minimum easement width required of 65m to protect the transmission line. The nearest tower is approximately 50m from the boundary of the property.
42. **ONCE** the construction programme is known, these types of issues can be addressed on a site by site basis. It is unlikely that the earthworks will cause any discharge or contaminants in respect of the Dare property and I am sure that Transpower can address Mr Dare's concerns about any earthworks or discharges of contaminants through negotiation. The relevant resource consents will also encompass measures to mitigate effects of the nature referred to by Mr Dare.

**Issues raised by Mark and Lindsay Dodd (Submission No. 0701)**

43. **MARK** and Lindsay Dodd's submission relates to all NORs and resource consent applications. They submit that the overhead line crosses the back 4ha of their property, destroying any value that block of land currently has.

44. **MR** and Mrs Dodd seek that the easement width be increased to reflect the height of the pylons and that no restrictions are applied to property outside the easement.
45. **THE** Dodd's statement that the rear 4ha of the property value has been destroyed by the works is a compensation issue that needs to be resolved through the negotiation process and if that fails through compulsory acquisition under the PWA, in which case the quantum of compensation is determined by the Land Valuation Tribunal.
46. **THE** easement through the Dodd property is approximately 74m wide. The Easement Memorandum only applies restrictions outside of the defined Easement Area, to prevent landowners from doing anything which might interfere with the rights of Transpower under the easement or the efficient operation of the works, cause damage to the works, endanger the continuity or safety of the supply and distribution of electricity or impede Transpower's access to the easement corridor.
47. **THE** Easement Memorandum includes a restriction on the landowner subdividing the land without Transpower's prior consent. Transpower is concerned that a subdivision (or a series of subdivisions), could lead to a situation where no practical access is available to the line and I note this has occurred in parts of New Zealand already in respect of existing lines.
48. **THE** purpose of this restriction is expressly set out in the Easement Memorandum and states that it is included to protect access. This is to provide future guidance for the landowners and Transpower, when a landowner seeks to subdivide the land. When subdivisions occur, I anticipate that Transpower's access to the line for inspection and maintenance will, to some extent, align with access routes used by the owners of the subdivided properties and appropriate permanent access arrangements can be agreed at that time.
49. **EVERY** valuer will be aware of the content of the proposed easement document and they take these matters into consideration when determining the quantum of compensation.

Issues raised by Neil Laurence and Suzanne Lindsay Fuller (Submission No. 0720)

50. **NEIL** Laurence and Suzanne Fuller's submission relates to all NORs. They submit that pylons should not be built over the heads of future housing suburbs and lifestyle blocks. They raise concerns about:
- (a) the removal of hundreds of timber pruned pine trees which are only 3 years from harvest date;
  - (b) the loss of forestry income from the pine tree removal; and
  - (c) Transpower requiring their forestry plantation to be cleared to a width well in excess of the 65 metre easement width. They submit that the 65 metre easement width is inadequate because the proposed line will impact on their land beyond the easement limitations.
51. **WITH** regards to the removal of trees, the compensation for the loss of timber will be part of the compensation assessment for the easement. It is normal in these types of situations for Transpower to engage a suitable expert to determine the loss that will be suffered as a result of any removal of trees that would normally provide the landowner with some form of income in the future. It is also Transpower's normal process to meet the cost of a similar report that the landowners are encouraged to obtain, so that they have their own expert advice. The compensation principles are such that a landowner would be compensated for any loss suffered as a result of the permanent removal of the trees.
52. **THE** current easement widths are 74m between Towers 13A and 14, 65m between Towers 14 and 15, and 112m between Towers 15 and 16A/B. If there is a need for existing trees to be removed outside the easement area, this would be negotiated and appropriate compensation paid. Transpower has been and is continuing to work through the issues raised above with the Fullers and are hopeful that agreement can be reached on a suitable acquisition and compensation package.

**Issues raised by Federated Farmers of New Zealand Incorporated (Submission No. 1060)**

53. **FEDERATED** Farmers raise issues in relation to constraints on property use and compensation. Its submission relates to all NORs and applications for resource consents. Federated Farmers submits that Transpower does not have systems and procedures in place to resolve issues of indemnity for landowners, liability of landowners, and compensation for landowners across whose land lines will be run, and in particular:
- (a) Transpower continues to assert that liability may arise on the part of landowners for outage of lines in the event that maintenance, which is required by and at the cost of the landowner, is not undertaken. Federated Farmers submits that disruption to the electricity network would seem to result in huge liabilities falling on the landowner;
  - (b) Compensation for such a liability in perpetuity is very likely to exceed the freehold value of the land over which the line will pass;
  - (c) The Electricity Act 1992 presumes that new electricity infrastructure and the upgrade of existing electricity infrastructure will occur only after agreement is reached with the affected landowner. Transpower has refused to finalise any standard form of easement on terms that are acceptable to the landowners;
  - (d) Transpower has refused to accept liability for route maintenance and outages; and
  - (e) Transpower has consistently refused to enter into any agreements that would properly compensate land owners for the use made by Transpower of their land.
54. **IN** response, I note Transpower's standard easement terms for the Upgrade Project were developed with significant input from Federated Farmers and other groups. I believe that Federated Farmers largely approved the easement terms with few differences remaining. It is not clear what is being referred to in paragraph (a) above in terms of "maintenance" or what is being referred to in terms of liability for route maintenance or outages.

55. **TRANSPOWER'S** view is that if a landowner deliberately or negligently causes any damage to the line, Transpower should be in a position to elect whether to seek damages from that landowner (subject to any issues of remoteness of damage or any specific defences (available at law)).
56. **THE** Transpower standard Easement Memorandum has two indemnity clauses (clauses 7.1 and 7.2). These are as follows:
- "7.1 The Grantee indemnifies the Grantor against any physical damage to the Land or anything located on the Land and any damage to a third party for which a claim is brought against the Grantor where that damage is caused by any act or omission of the Grantee not permitted by this Easement Instrument or any negligent act or omission of the Grantee.
- 7.2 The Grantor indemnifies the Grantee against any physical damage to the Works or Equipment and any other property of the Grantee and any damage to a third party for which a claim is brought against the Grantee where that damage is caused by any act or omission of the Grantor undertaken wilfully or with wilful disregard and not permitted by this Easement Instrument or any negligent act or omission of the Grantor."
57. I note by way of clarification that the landowner is the "Grantor", and the Grantor's indemnity relates to damage that is caused by an act or omission that is undertaken wilfully or with wilful disregard or negligence of the Grantor. In the circumstances, I am of the opinion that this is a reasonable position for Transpower to take to ensure the safe operation of the works.
58. **FEDERATED** Farmers also raises issues in relation to Transpower's Easement Memorandum restricting the planting of vegetation and the lighting of fires or burning off of vegetation in the easement area. It states that the easement required across forestry land is wider than that across farmland, which implies that farmland within the "*additional*" area is constrained in use in that it may not be converted to forestry.
59. **THE** planting of vegetation within the Easement Area is restricted to ensure that trees do not come into contact with the transmission line. The easement width through forestry areas is dependent on a number of factors including the enhanced risk profile relating to trees falling on the line. The additional

easement width and restrictions on land use would be reflected in the amount of compensation payable.

60. **CLAUSE** 1.1(g) of the standard easement Memorandum provides Transpower with the right:

*"to clear and keep the Easement Area clear of vegetation (including trees), structures (including fences), earth, gravel and stone, and to clear and keep the Land clear of any vegetation (including trees), structures (including fences), earth, gravel and stone which is or is likely to be or become, in the reasonable opinion of the Grantee, a danger or hazard to the safety or operation of the Works, will impede the Grantee's access to the Works or will otherwise interfere with the Grantee's rights under this Easement Instrument."*

61. **THE** first part of clause 1.1(g) allows Transpower to remove any vegetation from within the easement area. The second part of clause 1.1(g) applies to the part of the land outside the easement area and allows Transpower to remove vegetation which is or is likely to be or become a danger or hazard to the safety or operation of the line. This is designed to capture trees which are located outside the easement area but remain a hazard, such as trees which may fall onto the line. There is an obligation on Transpower to act reasonably when identifying dangerous or hazardous trees outside the easement area.
62. **THESE** additional rights outside the Easement Area are taken into account when assessing the amount of compensation paid to the landowner.
63. **THE** burning off clause of the Easement Memorandum (clause 2.1(h)) is restricted to the Easement Area only. It may be permitted if Transpower agrees in writing depending on the circumstances.
64. **FEDERATED** Farmers also raises issues in relation to consultation. In particular, Federated Farmers submits that Transpower has not entered into meaningful consultation with potentially affected landowners on matters of detail, such as issues related to compensation for landowners for the use of their land, potential landowner liability, and the indemnification of landowners for losses that might be suffered as a result of the proposed transmission lines.

65. I have been responsible for the ongoing contact with landowners since this project was announced publicly in October 2004. This contact has included ongoing discussions in relation to compensation, and a number of valuations have been prepared by Transpower's appointed valuers and also received from landowners.
66. I do not accept the suggestion that Transpower has not had meaningful consultation with landowners on matters of compensation where landowners have been willing to engage with Transpower. Where landowners have not been willing to discuss these issues, Transpower has continued to attempt to engage with landowners, but it cannot force landowners to discuss these issues if they are ultimately not willing to do so.

**Issues raised by Franklin District Council (Submission No. 1048)**

67. **FRANKLIN** District Council's submission relates to the Upgrade Project in its entirety. The Council raises a number of concerns about matters relating to easements and compensation, and seeks clarification as to matters set out in the applications. The Council seeks clarification of:
- (a) the calculations used by Transpower to establish the risk to the line from falling trees;
  - (b) the easement width required (this is covered by other evidence including that of Mr Lake and Mr Campbell);
  - (c) whether Transpower has any intention of restricting landowners from growing trees on land outside the 65 metre easement;
  - (d) the economic and environmental effects beyond the easement; and
  - (e) compensation for restrictions on land use.
68. **IN** relation to (a) above the risk of damage to the transmission line from falling trees has been assessed to be higher in forestry areas and this is one of the factors reflected in the easement width through those areas.

69. **IN** relation to paragraph (c), I have already commented on this issue in paragraph 52 above.
70. **IN** relation to paragraph (d), it is not clear to me whether the Council is referring to affected landowners' land or to the wider community.
71. **TO** the extent that reference is made to impacts upon landowners beyond the Easement Area, these impacts are assessed as part of the overall compensation payable to the landowner for the grant of the easement. To the extent that reference is made to issues relating to wider economic and environmental impacts on the community, these issues are beyond my area of expertise.
72. **IN** relation to paragraph (e), the compensation amount payable to landowners takes into account the overall effect of the works on the property. Normal compensation principles determine the value of the property before the works and the value of the property after the works are constructed. This is known as a "before and after" assessment.
73. **THERE** are many components to this assessment including, but not limited to, the highest and best use of the property, the effect on value of the land within the easement area, the diminution in value to the adjoining land (or injurious affection), the impact on the value of buildings dependent on their location in relationship to the works, permanent disturbance such as not being able to use an existing airstrip etc. The assessment would also take into account any likely subdivisional potential of the land.
74. **IN** summary, and in response to the Council's submission, compensation is payable based on the PWA for the restrictions imposed through the easement.

**Issues raised by Glencoal Energy Limited and Margaret, Jan and Andrew Stirling (Submission No. 1070)**

75. **GLENCOAL** Energy Limited and Margaret, Jan and Andrew Stirling raise issues in relation to property and the proposed easement. The submission relates to the overhead line NORs through Franklin and Waikato Districts.

76. **TRANSPower** is in continuing discussions with the landowners and Glencoal and draft easement agreements have been provided. Transpower are currently awaiting a report from Glencoal as to the quantity of coal that may be impacted by the works and once that information is to hand Transpower will endeavour to determine the adequate level of compensation payable.
77. **THERE** is an existing transmission line that already affects the property and this would have had an impact on the mining operation, even if this new work was not envisaged.
78. **TRANSPower** will continue to negotiate with the parties involved to try to come to an acceptable solution.

**Issues raised by Edgar James Smith and Kathleen Frances Smith, Glenhaven Farm Limited and Okaeria Trust (Submission No. 0817 and 0819)**

79. **MR** and Mrs Smith of Glenhaven Farm Limited and Okaeria Trust raise issues in relation to their property. Their submission relates to the overhead line NORs for Manukau, Waikato, Matamata-Piako, Waipa, South Waikato, and Taupo Districts, and the Environment Waikato resource consent applications. They raise concerns about the lack of compensation for property owners whose farms or homes are located close to, but not on, the proposed line, despite potential adverse effects.
80. **TRANSPower** in the case of a negotiated easement acquisition applies the compensation principles provided for in the PWA. The same position applies in the case of a compulsory acquisition.
81. **IN** order to receive compensation the land must be physically affected by the works. Landowners whose land is in close proximity to the works but not affected by the works, are not entitled to compensation.

**Issues raised by Haunui Farm Limited (Submission No. 1067)**

82. **HAUNUI** Farm Limited raises issues in relation to easements. Its submission relates to all NORs and applications for resource consents. Haunui Farm Limited raises concerns about:

- (a) whether the easement width is adequate; and
  - (b) whether appropriate land access has been negotiated with landowners.
83. **THE** general issue of easement width is discussed in relation to other submissions above.
84. **IN** relation to point (b) above, land access is an ongoing issue that the Case Managers who report to me are currently negotiating with landowners. A number of access agreements have been prepared and presented to landowners. Some landowners do not have towers located on their property, and so unless Transpower requires access through their properties to get to a tower on an adjoining property, there may not be any need to negotiate access at this stage with all landowners affected by the Upgrade Project. If the line passes across a property and there are no towers on it, Transpower will still require an easement in order to construct, operate and have access to the line. This is an ongoing matter and one that I and my case managers are constantly involved in.

**Issues raised by Timothy James Meredith Johnston (Submission No. 0792)**

85. **MR** Johnston's submission relates to the NOR for the overhead line within the Matamata-Piako District. His submission raises issues relating to the easement and compensation. He submits that:
- (a) annual easement payments should be made to landowners;
  - (b) the easement strip should be widened to ensure that a collapsed tower does not affect land beyond the easement line; and
  - (c) the option of total farm purchase should be available because compensation can result in unfair treatment of farmers whose land is significantly affected.

86. **IN** relation to point (a), Transpower has taken the view that easements should be acquired on the basis that the total amount of compensation is fixed on a "once for all" basis. This is in accordance with the PWA.
87. **IN** relation to point (b), the question of easement width is addressed in other evidence as already mentioned. The remote question of a tower collapse is dealt with in the evidence of Mr Lake.
88. **IN** relation to point (c), and as discussed previously, Transpower has purchased a number of properties for the Upgrade Project. I am of the opinion that Transpower has treated landowners fairly when dealing with them on compensation matters. Not all landowners agree with the quantum of compensation offered by Transpower and where compensation cannot be agreed between the parties, Transpower have offered dispute resolution mechanisms to resolve these disputes.
89. **I**, as the Property Manager responsible for the acquisition of interest in land, need to be mindful of treating everyone equally and that is why all Transpower's valuation advice is based on a consistent methodology.
90. **WHERE** there is a dispute and the quantum of compensation cannot be resolved, I have instructed the case managers to seek a second valuation, to ensure that the quantum of compensation being offered is fair and reasonable. I have tried to ensure that these second valuations are obtained as independently as possible, and with no information about the level of compensation being assessed by Transpower's original valuer and or the landowner's valuer.
91. **IT** is not in Transpower's interests to be unreasonable in dealing with these matters as the alternative of a compulsory acquisition is both costly and time consuming. This needs to be balanced with the need for compensation to be assessed on an equitable basis.
92. **AS** mentioned earlier in my evidence, it is Transpower's current policy to acquire easements for the Upgrade Project. The compensation payable will always be commensurate with the degree of impact on a particular property and I would therefore disagree that "*compensation can result in unfair treatment of farmers whose land is significantly affected*". However there will

still be cases where Transpower will consider the purchase of the whole of a property. Ultimately it is a matter of negotiation between Transpower and the landowner concerned.

**Issues raised by Manukau City Council (MCC) (Submission No. 0861)**

93. **MCC's** submission relates to all NORs and resource consent applications. MCC submits that the proposed designation/easement width is inadequate and states that any attempts to impose restrictions on the use of property beyond the easement line is identified and reflected in easements and designations.
94. **MCC** seeks:
- (a) Transpower's agreement, at the request of MCC, to surrender any easement granted over land that is no longer required due to new subdivision roads vested in MCC; and
  - (b) Transpower's undertaking not to use the terms of the designation to oppose any land rentals regimes that may be imposed generally throughout the Manukau district by MCC in respect of works within roads.
95. **IN** relation to point (a), I believe that it is not necessary to surrender an existing easement over land which is to be vested as road. Under the Resource Management Act 1991 (**RMA**), the road vests clear of the easement. Before the road is vested, MCC will however need to seek Transpower's written consent to the vesting as a party with an interest in that land in the same manner as anyone with a registered interest in the land.
96. **TRANSPOWER** has statutory rights under the Electricity Act 1992 to construct and maintain transmission lines over or under roads (although, Transpower cannot construct towers or other works on the surface of the road in reliance on those powers). However if, and to the extent that these statutory powers did not apply, Transpower would want to have a long term lease or licence arrangement in place to enable it to occupy the road on a continuing basis.

97. **IN** relation to point (b), I am unclear as to what the relationship could be between the designation and land rentals. It seems that this is a matter to be resolved outside the NOR process.

**Issues raised by Marie Morgan Trust Limited (Submission No. 0987)**

98. **MARIE** Morgan Trust Limited raises issues in relation to compensation. Its submission relates to the Otahuhu to Brownhill NOR. Marie Morgan Trust Limited seek appropriate compensation for the loss of value to its property as a result of the effect the 15 year delay in laying the underground cable down Jeffs Road will have on future activities.
99. **MY** understanding is that the cable route is within the Jeffs Road alignment and does not encroach into the land. As such there is no question of compensation payable to the Marie Morgan Trust as there is no requirement to seek an interest in the land. There maybe some temporary disturbance issues, but these would need to be addressed at the time of construction.

**Issues raised by Mr and Mrs Brian and Anne Matheson (Submission No. 0542)**

100. **MR** and Mrs Matheson raise issues in relation to compensation. Their submission relates to all NORs and resource consent applications. Mr and Mrs Matheson raise concerns that landowners who do not fall within the "easement line" but are still affected by the proposal, will not receive any compensation.
101. **COMPENSATION** is payable to landowners whose properties are physically affected by the works. Transpower pays compensation based on normal PWA principles. As I have already mentioned, there is no requirement to compensate landowners who are not physically affected by the works.

**Issues raised by Alan McCulloch (Submission No. 0989)**

102. **MR** McCulloch raises issues in relation to compensation. His submission relates to all NORs and applications for resource consent. Mr McCulloch submits that it is essential for landowners to have an opportunity to establish

compensation for loss of economic and amenity value, and also loss of carbon credits.

103. **LANDOWNERS** physically affected by the works will be compensated based on the principles of the PWA. As part of this valuation exercise, it would take into account (to the extent that it is relevant) the matters raised by Mr McCulloch.

**Issues raised by Ministry of Health (MOH) (Submission No. 0823)**

104. **MOH's** submission raises issues relating to property. Its submission relates to all NORs. In particular, it submits that consideration be given to the possibility of preventing new housing or other development immediately beneath and in the vicinity of the lines, for example, by providing an easement option.
105. **TRANSPOWER** is required to obtain an appropriate property right to enable the works to proceed. In the majority of cases, this interest in land will be an easement in gross and one of the provisions of the easement will be to ensure that no buildings (including dwellings) are located within the easement corridor.

**Issues raised by Orini Hilltops Limited, Waikato Quarries Limited, Perry Aggregates Limited and Orini Downs Station Limited (Submission No. 0839, 0840, 0838 and 0837)**

106. A number of submissions raise issues in relation to easements. The submissions of Orini Hilltops Limited, Waikato Quarries Limited, Perry Aggregates Limited, and Orini Downs Station Limited relate to the NOR for the overhead line through Waikato District and the resource consents from Environment Waikato. In particular they submit that:
- (a) the easement terms and conditions that are included in the already registered easement are not fair and sound and reasonably necessary, as set out in section 24(7)(d) of the PWA, for Transpower to carry out its objectives;
  - (b) Transpower has attempted to negotiate easement terms and conditions with advocacy groups such as Federated Farmers and Landowners Forum, but no agreement has been reached;

- (c) In the event that no agreement is reached with landowners, the conditions for electricity easements in Schedule 4 of the Land Transfer Regulations 2002 (**Regulations**) would apply as these have been specifically provided for that purpose, unless the Minister of Lands can justify on reasonable grounds that the Regulations are inadequate;
- (d) Despite no agreement being reached, Transpower has unilaterally registered an easement instrument that is not consistent with section 5 of the RMA and that creates adverse effects for landowners that exceed those specifically provided by regulation;
- (e) The terms and conditions contained in the easement instrument stray from those prescribed in the Regulations to the detriment of landowners. It is submitted that the easement instrument:
  - (i) is generally classified as an easement rather than the more specific Electricity Easement classification provided by the regulations;
  - (ii) includes rights to use the easement for non-electricity purposes such as telecommunications, roads for example;
  - (iii) includes rights to transfer, lease and license the easement including parts of the easement without the consent of the landowner;
  - (iv) includes rights to occupy any part of the land outside the easement strip and to fence off this land without restriction;
  - (v) includes requirements for landowners to gain written approval for activities outside the bounds of the easement strip that could endanger the supply of electricity without specifying the activities;
  - (vi) includes requirements for landowners to gain written approval for subdivisions outside the bounds of the

easement strip (which suggests the easement strip is not wide enough); and

(vii) assigns liability to landowners.

107. **AS** a general observation, I would note that this submission raises matters that are substantially if not wholly beyond the scope of the current hearing, notwithstanding the reference to section 5 of the RMA. I also note that many of the issues raised are dealt with in response to other submissions.

108. **IT** is my understanding that the electricity and telecommunications easement terms set out in the Fourth Schedule to the Land Transfer Regulations 2002 are designed for simple electricity and telecommunications services to residential properties and not adequate to deal with a transmission line of this scale. These easement terms were not provided for use by the Minister of Lands, but as default easement provisions in the absence of specific alternative provisions. I note that the electricity and telecommunications easement terms set out in the Fourth Schedule to the Land Transfer Regulations 2002 are not mandatory.

109. **IMPORTANTLY** to Transpower, the "standard" easement terms in the Fourth Schedule to the Land Transfer Regulations 2002, do not set out specific detailed limits on the landowner's activities on the easement area and if used without significant amendment, these easement terms could lead to damage to the line and prevent the efficient long term operation of the line.

110. **IN** addition, those easement terms do not include:

- (a) a limit on the scale of the line which can be constructed under the easement;
- (b) clauses dealing with the construction and use of access tracks and the installation of gates within fences,
- (c) a right for Transpower to remove trees from the easement area;
- (d) an obligation on Transpower to manage trees and similar vegetation on the easement area; and

- (e) specific provisions setting out the minimum period of notice which must be given by Transpower before entering the land.
111. **IN** my view, many of these clauses are to the benefit of landowners as they clarify or limit Transpower's rights in a way which is not dealt with in the easement terms set out in the Fourth Schedule to the Land Transfer Regulations 2002.
112. I am not aware of any basis on which the Minister of Lands would need to show that a departure from the easement terms set out in the Fourth Schedule to the Land Transfer Regulations 2002 is due to those easement terms being inadequate. In my view, those easement terms would be inadequate for this project for the reasons set out above.
113. **TRANSPOWER** obtained input from Federated Farmers and other landowner groups on its standard easement terms and these groups were largely supportive of Transpower's goals. While the landowner groups have not "signed off" on the easement terms, my understanding is most concerns of the landowner groups were resolved at the time.
114. I also note the following:
- (a) Transpower requires a right to convey telecommunications as well as electricity as Transpower uses telecommunications to control the National Grid;
  - (b) Transpower will need to construct access tracks on the land to provide access to the towers and therefore the easement terms set out this right;
  - (c) Transpower will need to temporarily occupy parts of the land outside the easement area in order to construct the works, and any fencing off will be for the safety of Transpower's and the landowner's employees and contractors and livestock. I note that this right is included in almost all easements (usually phrased as "enter and remain"); and

(d) As addressed earlier in my evidence, the limitation on subdivision without Transpower's consent is included primarily to make sure that any subdivisions will not have the effect of cutting off Transpower's ability to access the transmission line.

115. I would note that easement terms in the Easement Memorandum are intended to be used as the basis of the Agreement between a landowner and Transpower to grant an easement. In the event of a compulsory taking, it is initially a matter for the Minister of Lands to determine the easement terms for the taking.
116. **ORINI** Hilltops Limited, Waikato Quarries Limited, Perry Aggregates Limited, and Orini Downs Station Limited also make submissions in relation to an access agreement. They submit that Transpower has failed to settle a model access agreement endorsed by landowner advocacy groups for use in landowner negotiations.
117. I am not sure of what Orini Downs class as a "model access agreement". Transpower has been working with the South Canterbury Federated Farmers Group on a standard access agreement, but this relates to access to existing works where we rely on our statutory rights of entry rather than a registered easement.
118. **WITH** regard to the Upgrade Project, it is intended to agree permanent access routes to the works by negotiation with a landowner and this could be documented through an exchange of letters, an agreed plan, or alternatively a registered right of way easement. It is possible that agreed access routes will be varied from time to time. It has been my experience, that a number of landowners prefer a more informal agreement when it comes to access, as different access routes may be used at different times of the year and may change over time with farm development, amalgamation of farming land. Transpower will have a right under the registered easement to have access to the line and Transpower will use agreed access routes where these are available at the time of entry.
119. **A** number of landowners are not keen to have permanent access routes registered against their computer registers (titles) by way of a right of way easement. In my experience, a registered right of way, while providing a clear

access right, may be unnecessarily rigid. Transpower is willing to consider a variety of options when it comes to access and this is a matter of negotiation between the parties on a case by case basis.

120. **ORINI** Hilltops Limited, Waikato Quarries Limited, Perry Aggregates Limited, and Orini Downs Station Limited also make submissions in relation to reverse sensitivity. They submit that the proposed 400 kV line will have reverse sensitivity effects on the future development of existing commercial rock quarries located upwind of the proposed line. These reverse sensitivity issues relate to the effect of dust on the overhead line from quarry operations.
121. **THE** issue of reverse sensitivity is covered by other evidence.
122. **ORINI** Hilltops Limited, Waikato Quarries Limited, Perry Aggregates Limited, and Orini Downs Station Limited also make submissions in relation to rock reserves that have not been identified on Transpower's Constraints Map for the locality.
123. **AS** in the case of other land which may have special features, it is ultimately a matter for the assessment of compensation where specific impacts cannot be avoided.
124. **ORINI** Hilltops Limited, Waikato Quarries Limited, Perry Aggregates Limited, and Orini Downs Station Limited also make submissions in relation to consultation. They submit that Transpower has already discounted the alignment preferences of Orini Downs Station Limited (namely being off the property or along the property boundary as far from future quarry operations as possible), because it has fixed the entry and exit points to Orini Downs Station as a consequence of discussions it has previously concluded with neighbouring landowners
125. **THE** alignment and in particular the position of the towers was part of the ACRE process with the attendant consultation process. These have been explained to the Orini representatives during a site visit on the property by a Transpower engineer and case manager. Any change of alignment that may suit the Orini owners will also impact on other affected landowners north and south of the property. Negotiations are currently underway with the Orini

representatives on the compensation for the effect of the lines on their property.

126. **ORINI** Hilltops Limited, Waikato Quarries Limited, Perry Aggregates Limited, and Orini Downs Station Limited also make submissions in relation to wealth transfer, particularly in regard to a one off compensatory payment.
127. **THE** premise on which compensation is assessed, is to put landowners physically affected by the lines, in the same position as they were prior to the implementation of the works. I have sought independent valuation advice in determining Transpower's offers of compensation and landowners are able to obtain their own independent valuation advice with Transpower meeting the reasonable cost of that independent advice. This is part of Transpower's normal negotiation process and inevitably there will be discrepancies in valuations given the nature of valuation process and the opinions of the valuers involved. Where agreement cannot be reached between the valuers Transpower is prepared to consider alternative processes to resolve outstanding disputes as mentioned above.
128. **ORINI** Downs Station Limited, Orini Hilltops Limited, Waikato Quarries Limited, and Perry Aggregates Limited, also submit that:
- (a) for operational safety reasons there should be a uniform easement width across each property;
  - (b) the maximum easement strip referred to in the NOR should apply along the entire 400kV line so that landowners, councils and other affected parties are aware of a default width without having to refer to individual certificates of title and deposit plans; and
  - (c) a uniform easement width would also enable Transpower to efficiently promote the easements in terms of constraints and safety.
129. **THE** factors which led to the selection of a uniform easement width of 65 metres are addressed in other evidence and I also comment on this point when addressing other submissions.

130. **IT** is not clear to me what "operational safety reasons" there may be for a uniform easement width through each property. Transpower has carefully considered the circumstances where a wider easement width has been necessary. I do not consider that there is any appropriate basis for establishing a uniform easement width, irrespective of the position on a property by property basis.

**Issues raised by Raukawa Trust Board (Submission No. 1177)**

131. **RAUKAWA** Trust Board's submission relates to all NORs and resource consent applications. It submits that Transpower has asserted that liability on the part of landowners for "outage" may arise in the event that maintenance of the Transmission Corridor is not undertaken to its satisfaction by or at the cost of the landowner. The Trust submits that compensation for uncapped liability as a result of disruptions exceeds land value.
132. **THERE** are similarities between this submission and other submissions discussed above. I refer to my earlier comments in this response.
133. I am unsure of a number of the issues being raised by this submission, but as previously outlined in my evidence, there is a cross indemnity provision in the standard Easement Memorandum. Any physical damage would have to be caused by an act or omission of a landowner undertaken negligently, wilfully, or with wilful disregard for a landowner to be liable for any damages subsequent to an outage.

**Issues raised by Regis Park Stage 2 Limited (Submission No. 0765)**

134. **REGIS** Park Stage 2 Limited's submission relates to all NORs and resource consent applications. It submits that Transpower has failed to obtain independent checks on their assumptions on the likely costs of compensation for land and access through Whitford and other parts of Manukau.
135. **TRANSPOWER** has obtained independent valuation advice in determining the quantum of compensation likely to be payable on the Upgrade Project.

136. **COMPENSATION** has been an ongoing issue from the time this project commenced. I have sought independent advice with regards the estimate of the quantum of compensation that was likely to be required to be paid for the Upgrade Project as a whole.
137. **THAT** information is the basis of our property cost estimates that were part of the submission that was presented to the Electricity Commission for approval. My understanding is that the Electricity Commission then sought its own independent review of the property component of the works through PB Power and The Property Group. I am confident that the figures used are robust and appropriate for the works being undertaken.

**Issues raised by Lorraine Storey and the Hon William Robson Storey (Submissions No. 0742 and 0740)**

138. **LORRAINE** Storey and Hon Robson Storey made separate submissions. Both submissions relate to all NORs and resource consent applications. They submit that Transpower's rules impact on the economic viability of the property. They state that electric fencing is restricted by the Electricity Rules and the lighting of fires in proximity to the lines is discouraged. A further 400kV line would have a disastrous effect on the use of the property without any compensation to the landowner for the additional cost and nuisance involved.
139. **THE** Storeys have a number of existing transmission lines on their property. Transpower has "existing works" rights under the Electricity Act in respect of those lines. The building of a new transmission line cannot be carried out without first obtaining a property right and the payment of compensation for that right. The compensation will take into account the issues raised in this submission to the extent that they are relevant to the assessment of compensation under with the PWA.
140. **IT** is not clear what restrictions under the "Electricity Rules" are being referred to.

141. **IN** addition, Hon Robson Storey submits that:
- (a) little or no compensation has ever been paid for the lines that currently cross his property; and
  - (b) compensation is limited to the impact of the 400 kV line on current activities and does not include future land use.
142. **MY** understanding is that the legislation that was in place at the time when the existing lines were constructed, required landowners to make a claim for compensation within two years of the works being established. Therefore it was up to landowners at the time to seek a compensation payment, and right to compensation is now statute barred.
143. **THIS** is not the case with the construction of this transmission line. There are no legislative powers that allow Transpower to build the new line without obtaining a property right from the landowner. I would hope that most of these rights can be negotiated with landowners, but failing agreement, there is a process for the rights to be acquired under section 186 of the RMA, then the PWA. Ultimately, full compensation needs to be paid and if this cannot be agreed between the parties, in the context of a compulsory taking, the determiner of the quantum is the Land Valuation Tribunal.
144. **HON** Robson Storey also raises concerns about the inequitable way Transpower will deal with the removal of the ARI-PAK A line. Landowners who have both the proposed line and the ARI-PAK A line on their properties will have compensation assessed for the proposed line with a deduction for the "betterment" caused by the removal of the ARI-PAK A line. Landowners who have the ARI-PAK A line on their property, but not the proposed line, will not be charged for "betterment" when the ARI-PAK A line is removed from their property.
145. **THIS** is the normal process in determining the quantum of compensation. The valuers that Transpower engage assess compensation in accordance with the provisions of the PWA. There is a provision in the PWA regarding "betterment" but this can only be offset against the compensation payable. There is no provision in the legislation to require landowners who have the ARI-PAK A line being removed from their properties and are not getting the

400kV line in its place, to pay Transpower a betterment allowance. That is a "windfall" to that particular landowner as a result of the current legislative requirements, but is not a matter that Transpower can control.

**Issues raised by Janet Sceats (Submission No. 0476)**

146. **JANET** Sceats' submission relates to the NORs for the overhead lines in Franklin and Waikato districts. She submits that there is a quarry located on the easement strips on her property and that, once the strip is taken, she will have to obtain rock from outside the farm and pay for the cartage of the rock. She submits that she will not be compensated for this inconvenience.
147. **THE** potentialities of a property including any actual impact on a local quarry resource would be taken into account in the assessment of compensation. If this resource cannot in fact be used due to the impact of the works, then this would be an item of permanent disturbance that could be quantified and appropriate compensation paid.

**Issues raised by Harry Seales and Beverley Jane Seales (Submission No. 0520 and 0247)**

148. **HARRY** Seales and Beverley Seales made separate submissions. These submissions relate to all NORs and resource consent applications. They raise concerns about Transpower charging them a "betterment fee", if it removes the 110 kV line on their property. They submit that they should receive rent for hosting the line for 67 years if a betterment fee is to be charged. I have discussed this issue in relation to the submission by Lorraine and the Honourable Robson Storey.
149. **IN** addition, Mr Seales' submission raises the following concerns and issues:
- (a) For three years, Transpower has been threatening landowners on the proposed route that if landowners do not fully co-operate with it, the State will force landowners to walk off their land;
  - (b) Landowners will be forced to live under the line because their property cannot be sold;

- (c) Transpower will use force to obtain entry to landowners' land;
- (d) Transpower asks landowners to sign agreements allowing it to buy the easement area without giving a firm price;
- (e) Transpower must indemnify all property owners from accidents or damage; and
- (f) Landowners have no right to go near the pylons and would not want to. But, Transpower would have the right to sell the easement to a third party possibly even to overseas interests, for gas pipes, telephone cables and so on.

150. I would make the following comments on the points raised in the Seales submission:

- (a) Transpower has not been "threatening" landowners as suggested. It has been in the process of negotiating property acquisitions and more recently easements.
- (b) Landowners cannot be forced to live literally *under* the line, as the easement will preclude any new buildings and any existing homes will be removed and compensation provided.
- (c) In the absence of agreement, in order to gain access to private land for project investigative purposes, Transpower must use the statutory powers under section 111A of the PWA. This enables the landowner to contest the grant of access before the District Court. In order to gain access to construct and operate the new line Transpower needs to acquire an appropriate property right.
- (d) I am not aware of any situations where Transpower asks landowners to sign agreements allowing it to buy the easement area without giving a "firm price". Transpower does forward documents to landowners that are Agreements to Grant Easements and these may not have the compensation figure shown, but they are for information only, and to allow the landowner time to review the agreement and to provide copies to the landowner's valuer and lawyer. No landowner

would be asked to sign an agreement unless the compensation payable was set out and then the signing of the agreement by both parties constitutes the agreement.

(e) There is a cross indemnity provision in the Easement Memorandum as mentioned earlier in my evidence.

(f) I have discussed the sale of the works to a third party in relation to the Bilby/Stewart submission.

151. **MR** Seales also seeks a requirement that Transpower record the name of each Transpower employee who goes on to a landowner's property and not admit any employee with a criminal record or whose immigration papers are not in order.

152. **IT** is not clear to me as to the context in which Mr Seales is making this submission. In particular, I am unclear whether it relates to access to investigative purposes under section 111A of the PWA or in respect of the construction and maintenance of the new line. The standard Easement Memorandum requires Transpower to give notice to the landowner of when entry is required.

153. **IN** further response to this aspect of the submission, I note that Transpower almost invariably uses specialist contractors to both construct and maintain lines and considerable care is exercised in selecting appropriate contractors who have reliable staff.

154. **MR** Seales also raises concerns about existing easements, and the proposed easement devaluing his property. He submits that the corridor covers 70% of his property, but that Transpower will not purchase his property. He submits that Transpower may have to enter his property 600-700 times, but that Transpower will not pay for the disruption. He submits that Transpower is willing to pay for the 65m easement area, but not the rest of the farm, however the rest of the farm will not be able to be sold. Mr Seales seeks to receive full compensation.

155. I have reviewed the Seales file and note that the property where the line traverses affects four titles owned by the Seales and these comprise

approximately 102.5ha. The easement required through these properties amount to approximately 10.7ha or approximately 10.5% of the total area and not the 70% claimed by the landowner.

156. **TRANSPOWER** will need to enter the property on many occasions as there are several towers to be constructed on the Seales property. It is incorrect to state that Transpower will not pay for disruption. Temporary disturbance is one of the issues that need to be resolved as part of the compensation package and this is normally carried out during construction when the impact of the works can be assessed based on the construction programme.
157. **TRANSPOWER'S** easement compensation is assessed based on an "Easement Fee" methodology. As such, there is compensation attributable to the easement area itself and then it is necessary to consider the injurious affect to the balance of the land. In the majority of cases, it is the "injurious affection" component of the claim that equates to the greater proportion of the compensation amount. As such, it is incorrect to state that land outside the easement is not considered in the compensation package.
158. **MR** Seales also raises the issue as to why Transpower does not have Maori land for the Upgrade Project.
159. **MR** Taylor and Mr Campbell have discussed the ACRE process for route selection. I wish to briefly comment on the reason why Maori Land was avoided (where possible), and the process of identifying Maori Land parcels through this process. I also note that this issue is addressed in the first statement of evidence of Ms Allan. The proposed route for the transmission line does cross three areas of Maori Land.
160. **ONE** of the important reasons why Maori land was as far as was practical avoided through the ACRE process was due to the additional risk that this category of land would pose if compulsory acquisition was required under the PWA. In particular, Transpower would have been required to establish before the Minister agrees to commence compulsory acquisition that all other practical alternatives to taking Maori land had been considered, even if they were not ideal, and were not reasonably acceptable (eg. impracticable or unreasonably expensive).

161. **AT** the time of route selection, this requirement was set out in LINZ's *Accredited Supplier Standard 1: Acquisition of Land under Public Works Act 1981*. This guideline was withdrawn, and replaced by a new guideline which is dated 1 June 2005. This replacement guideline, entitled *Guidelines to the Standard for the Acquisition of Land under the Public Works Act 1981*, contains the same requirement.
162. **AS** with any linear project, there was (and is) a risk that the compulsory acquisition process may need to be invoked. Accordingly, to avoid the risk of not being able to show that all other practical alternatives to taking Maori land had been considered, Transpower mapped known Maori land and avoided it where possible. Ms Hendren, in her evidence, discusses her role in the clarifying and confirming the mapped information.
163. I also note that it was important to avoid Maori land at the outset, during the route selection stage. This timing was necessary, as there is very limited flexibility to move tower locations to avoid an entire particular property at a late stage without impacting on a large section of the route. In particular, moving one tower has the ability to impact on tower locations for some distance. Accordingly, any requirement to move the alignment at a late stage could have the ability to undermine other tower locations.
164. **IN** addition, Beverley Seales' submission raises concerns about:
- (a) security issues, and in particular that landowners need to know who is entering the property and when, and that people sign in when entering the property;
  - (b) the farm being unable to be farmed for a considerable time because of construction and also the removal of five existing pylons; and
  - (c) Transpower telling them how to farm their land, what crops and animals are permitted, how to apply fertiliser, where they can plant trees or erect fences.
165. I have already commented on (a) above. In respect of (b) above, disturbance to farming operations can be the subject to a claim under the PWA.

Transpower will of course keep disturbance to be caused by construction of the new line and the removal of the existing line to a minimum.

166. IN respect of (c) above, I have already explained above the restrictions of land use that are necessary for the safe and efficient operation of the new line. These restrictions are part of the easement for which compensation is payable.

167. MRS Seales also raises issues in relation to land development. Her submission relates to all NORs and resource consent applications. Mrs Seales submits:

*"If Transpower is right, and there is no danger or devaluation to land outside the 65 metre easement, why will Transpower not allow us to undertake a minor subdivision hundreds of metres from the proposed line? Land that far way in neighbouring ownership has no compensation allowed for, so is considered unaffected. What's different?"*

168. MR Campbell, in his evidence deals with wider reverse sensitivity issues arising on the subdivision of land and in that context he comments on Mrs Seales' submission.

169. I have already explained in my evidence the reason why the Easement Memorandum includes restrictions on a landowner subdividing land without Transpower's prior consent - it is not Transpower's intention to unnecessarily restrict landowners from further subdividing land as the restrictions contained within the easement will apply. This clause is aimed at protecting access to the line and to make sure no buildings get built on the easement area. Transpower may require that access routes get formalised as right of way easements when the subdivision goes through. The existence of such restrictions on landowners is taken into account when assessing compensation for the purchase of an easement.

#### **Issues raised by Dr Robin Smart (New Era Energy) (Submission No. 0473)**

170. DR Smart's submission relates to all NORs and resource consent applications. He raises concerns about the approach to compensation as follows:

*"I consider that the Public Works Act in its current form with its stipulation of 65m away from a Public Work as the boundary between "affected" and "adjoining" land owners, coupled with a high threshold for successfully claiming "injurious affection" as an adjoining landowner under the Act, has added to the difficulties. We are advised that to successfully claim compensation as an adjoining land owner it must be shown that the land cannot be used for its intended purpose as a direct effect of the public work. We have been further advised that there has not been a successful claim in New Zealand because of the height of the threshold. This ignores the substantial loss in value on a much wider swathe of land than 65m away for many affected adjoining land owners. Modern public works are in general much larger than they were at the time of passing the Act. The distance should be left to the Court's discretion for each Public Work under consideration, due to inherent variation in each case. The principle that private owners should be fairly compensated when adversely affected by Public Works should be adhered to without an unfair arbitrary exclusion as applies at present. The current situation is manifestly unjust. I submit that it has been used by Transpower to reduce the true cost of its proposal in that the effect on land values has been greatly underestimated. A true valuation would favour other more acceptable alternatives, especially undergrounding."*

171. **THIS** submission raises a number of legal issues and are best left to a response in the context of Transpower's legal submissions. I am not aware of the nature of Dr Smarts' legal advice, but as already discussed in relation to other submissions, Transpower intends to make compensation payments to physically affected landowners. It does not have an obligation to compensate owners who do not have the proposed line on their property.

**Issues raised by Kevin Swney (Submission No. 0995)**

172. **KEVIN** Swney's submission relates to all NORs and resource consent applications. He submits that:
- (a) the easements appear to be non-negotiable and will impact on farming the land effectively;

- (b) the purchase of properties by Transpower will cost more than proposed as land prices are undervalued; and
- (c) there are inconsistencies in Transpower's compensation allocation, as properties have been purchased from some willing sellers while other willing sellers have been ignored.

173. I respond to this submission as follows:

- (a) As already mentioned, Transpower has proposed a standard Easement Memorandum and will negotiate on specific clauses, but ultimately if agreement cannot be reached as to the terms of acquisition, the only alternative is compulsory acquisition.
- (b) I am not certain how the amount of total compensation is relevant to the issues before the Board of Inquiry and as already mentioned, Transpower believes its estimates are reasonable.
- (c) Transpower has previously negotiated the purchase of land on a "*willing buyer-willing seller*" basis where the landowner met the purchase criteria that was determined by Transpower. I would point out that even where the threshold was met and negotiations were entered into not all have been concluded, as Transpower could not agree terms or price satisfactory to the two parties.

**Issues raised by Mark Thompson and Astrid Bosse (Submission No. 0759)**

174. **MARK** Thompson and Astrid Bosse's submission relates to all NORs and resource consent applications. They submit that the proposed Brownhill Substation will reduce the value of properties overlooking the site, but that no compensation has been offered for the reduction.

175. **AS** already explained above, Transpower is not required to compensate landowners whose properties are not physically affected by the new line.

**Issues raised by Jill and Marinus Van Het Bolscher (Submission No. 0810)**

176. **JILL** and Marinus Van Het Bolscher's submission relates to the MCC overhead line NOR through the district of Manukau City Council and the NOR for the Underground Cable from Otahuhu to Brownhill. They submit that consideration of compensation for the designations must include full recognition of the potential to subdivide land. They submit that their property is in a highly sought after area, adjacent to the closely settled and developing area of Flat Bush and that this will bring significant pressure for re-zoning to a higher density in the future, and regard to these effects must be given when assessing the effects of Transpower's proposal.
177. **MY** understanding of compensation principles under the PWA is that the potential for subdivision (to the extent that it exists) is a relevant factor in determining land value and the compensation payable for the easement interest.

**Issues raised by David and Lynne van Deventer (Submission No. 0002)**

178. **DAVID** and Lynne van Deventer's submission relates to the overhead line NOR in Franklin District. They seek that a fair compensation package be negotiated, which accurately reflects the immediate and ongoing devaluing impact on their property.
179. **AS** already mentioned, compensation will be assessed having regard to the provisions of the PWA.

**Issues raised by Waipa District Council (Submission No. 0919)**

180. **WAIPA** District Council's submission in relation to property issues relates to all NORs. The Council submits that inadequate consideration has been given to the enhancement of amenity values, in particular that the Electricity Commission considered it inappropriate to evaluate personal costs such as the adverse effects on property value, because this was beyond the remit of the Commission.

181. **WHERE** the works physically affect a property, these matters are taken into account through the normal compensation assessment process. I am not aware of the relevance of the views of the Electricity Commission on amenity values to the current hearing. This is a matter to be assessed by the Board of Inquiry in the course of the current hearing.

**Issues raised by Dennis John Scott (Submission No. 0380)**

182. **MR** Scott raises issues in relation to his property. His submission covers all NORs and applications for resource consent. Mr Scott submits that:

- (a) he lives on land next to a farm that carries the line and is not entitled to compensation for the line;
- (b) he has applied to subdivide his land, which is half a kilometre or more from the line, and all his neighbours have given their approval for the subdivision;
- (c) Transpower have opposed the subdivision on the basis that it does not fit with Transpower's plans and the subdivision will be affected by the line;
- (d) if the line has such an effect on his property, he should be entitled to compensation;
- (e) if the line has such an effect on houses nearly a kilometre away, then it is too dangerous to go through countryside with dwellings much closer to it; and
- (f) Transpower have consistently spoken of a 50 metre corridor for safety – have they been misleading the country on this issue?

183. I believe that I have already dealt with most of the issues raised by Mr Scott. In so far as paragraph (e) is concerned, I am not aware of the basis for this statement. To the extent that he is raising health and safety issues, these are dealt with in other evidence.

184. **IN** so far as (f) is concerned, the minimum NOR corridor width is 65m and as explained in other evidence. I am not aware of any mention of a 50 m wide easement at any time that I have been involved in this project relating to the 220kV/400kV capable transmission line. Transpower has adopted 50m wide easements on some existing lines where we have had to acquire easements in terms of upgrade works but these are for 220kV lines and are appropriate for those lines.

## CONCLUSIONS

185. I have commented in my evidence on Transpower's approach to the acquisition of property interests for the Upgrade Project, and the restrictions namely are intended to apply within the areas to be designated. Transpower's approach to these matters has been dictated by the necessity to ensure that the proposed lines and cables for the Upgrade Project can be operated and maintained effectively and efficiently.

186. I have briefly described Transpower's consultation with landowners whose properties would be physically affected by the works required for the Upgrade Project, and intended landowner liaison during construction of the works. I consider that these processes are consistent with Transpower's overall approach to consultation as part of the Upgrade Project.

187. **THERE** have been a large number of submissions in respect of property and easement matters associated with the Upgrade Project. I have endeavoured to respond to these submissions irrespective of their relevance to the Board of Inquiry process, given the importance of these issues to landowners.



**John Craig Miles**  
**1 February 2008**

## Annexure A

### (Clause 2.1 of the Easement Memorandum)

- 2.1 The Grantor will not, without the prior written consent of the Grantee (which will not be unreasonably withheld or delayed), do or allow the following to be done:
- (a) alter or disturb the present grades and contours of the surface of the Easement Area except in the course of normal farming and grazing operations (but subject to the restrictions set out in this Easement Instrument) or otherwise with the prior written consent of the Grantee on each occasion;
  - (b) erect any building or other structure (including fences and utility structures) on the Easement Area;
  - (c) plant any vegetation on the Easement Area that will or may when fully grown exceed 2.5 metres in height or breach any legal requirement applying from time to time regarding vegetation near electricity lines;
  - (d) operate any Equipment or Vehicles on the Easement Area within a minimum clearance distance of 6 metres from any electricity transmission line conductor;
  - (e) excavate or deposit material on the Easement Area;
  - (f) impede the Grantee's access over the Easement Area or over the Land or damage the surface of any agreed access routes;
  - (g) knowingly cause or permit flooding of the Easement Area;
  - (h) light any fires or burn off vegetation within the Easement Area; or
  - (i) do any other thing on the Land which may interfere with or restrict the rights of the Grantee under this Easement Instrument or the efficient operation of the Works, cause damage to the Works or endanger the continuity or safety of the supply and distribution of electricity.