



Supreme Court of New Zealand

29 April 2013

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

**ANN MARY SEATON v MINISTER FOR LAND INFORMATION
(SC 44/2012)
[2013] NZSC 42**

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz.

The New Zealand Transport Agency (NZTA) resolved to widen Russley Road in Christchurch as part of its project to upgrade State Highway 1. The completion of this road-widening project requires the removal of three electricity towers, which currently sit on the boundary between the carriageway of State Highway 1 and land belonging to Ann Seaton, the appellant. These towers were, until recently, owned by Orion New Zealand Ltd and Transpower New Zealand Ltd. The towers are now owned solely by Orion.

NZTA's solution, with which the utilities agree, is for the towers to be moved onto Mrs Seaton's land. NZTA entered into negotiations with Mrs Seaton to acquire easements over her land for this purpose. After some months of unsuccessful negotiation, NZTA decided to use the Public Works Act 1981 to force Mrs Seaton to accept the relocation of the towers onto her land. The Minister for Land Information,

acting on the advice of NZTA, issued a notice under s 23 of the Public Works Act, effectively requiring Mrs Seaton to grant easements over her land in favour of the utilities. Mrs Seaton lodged her objection to the proposed taking in the Environment Court. Before the Environment Court hearing, Mrs Seaton applied for judicial review in the High Court.

In the High Court, Mrs Seaton sought declarations that both the Minister's decision to take the easements and the related s 23 notice were invalid, essentially on the ground that NZTA did not need the easements for the widening of State Highway 1. She argued that NZTA could not compulsorily acquire the easements for the utilities' benefit under the Public Works Act. The High Court found in favour of Mrs Seaton but its decision was overturned by the Court of Appeal. The issue before the Supreme Court was whether the Minister properly used the Public Works Act processes to compulsorily acquire the easements over Mrs Seaton's land.

The Supreme Court has held, by a majority comprising Elias CJ, Chambers and Glazebrook JJ, that the Minister cannot acquire the easements over Mrs Seaton's land under the Public Works Act. Accordingly, the Minister's decision to take the easements and the s 23 notice in relation to it are invalid. The utilities need to follow the procedure under s 186(1) of the Resource Management Act 1991.

The majority held that the Minister is empowered to acquire land that is indirectly required for a Government work under s 16(1) of the Public Works Act. Although there is some ambiguity in the legislation, it is consistent with the Act's overall text and purpose to interpret s 16(1) as permitting the Minister to acquire an interest in land if it is reasonably required, directly or indirectly, for a specified Government work.

However, the majority has held that the easements are not reasonably required, directly or indirectly, for the Government work of road-widening. Rather the easements are required for works of the utilities. Thus the Minister cannot purport to acquire the easements compulsorily under s 16(1) of the Public Works Act to transfer them to the utilities.

McGrath and William Young JJ, in the minority, would have held that the Crown could acquire the easements under the Public Works Act on terms that would allow it to grant relocation and maintenance rights to the utilities, with the possibility of ultimately transferring the easements to the utilities under s 186(4) of the Resource Management Act. In their view the proposed taking was supported by the dual public purposes of road-widening and electricity generation, and the absence of any tangible prejudice to Mrs Seaton.

The appeal is accordingly allowed. The Court of Appeal's judgment is set aside and the orders made in the High Court are restored.

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