

## TRANSMISSION LINES –WHO’S GOT THE POWER?

*This article has been written by Fergus Rutherford: Registered Valuer and Director, Baker & Associates, Masterton.*

### INTRODUCTION

New Zealand’s electricity infrastructure is in a perilous state.

There has been almost no investment in maintenance and/or upgrade of the electricity transmission network throughout the country for a number of decades. It has got to the point where significant investment and upgrade of existing transmission lines plus construction of new transmission lines is essential to maintain power supply to New Zealand’s residential, business and industrial customers.

This upgrading work has begun in earnest, with a significant number of line upgrades currently underway. To allow much of this work to both existing and planned infrastructure, agreements with affected landowners hosting the lines must be reached.

Due to the fact that limited work has taken place on the existing network over recent years, many landowners have become relatively blasé in their attitude towards transmission lines and have allowed upgrade and maintenance works to take place on their properties as a matter of course. These landowners have been left in the position of allowing works to their property without due consideration of the landowners’ rights; adequate recognition of statutory requirements that need to be followed by the lines companies; and the subsequent compensation that should be due to the landowners as a result of these upgrades.

*Should you be contacted in regards to maintenance and upgrade on an existing line on your property or in regards to a new transmission line, you should be aware that the landowner holds significant rights in negotiations with the lines company and these should not be given away lightly.*

### MAINTENANCE VS UPGRADE VS NEW LINES

The three main areas where you may be affected as a landowner include construction of new lines, upgrade to existing lines, and maintenance of existing lines. A clear distinction must be drawn between upgrade to existing lines and maintenance of existing lines, as the requirements on the lines operator is clearly different in each case.

Obviously if you are contacted with regard to a new power line proposed to be situated on your property, the lines company must negotiate with you in terms of what type of infrastructure is proposed and what property rights they wish to acquire.

In almost 100% of cases this property right is negotiated by way of an easement which is an interest in the property, registered on the title and generally existing for all time. There is compensation payable to the landowner for the granting of this easement and calculation of it involves both the assessment of the value of the land right associated with the easement and the injurious affect to the adjoining land. The injurious affect to the adjoining land involves the assessment of the devaluation associated with the land caused by the presence of the new transmission line.

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Work completed on existing lines can generally be classed into two areas – one being upgrades to the existing line and the second being maintenance to the existing line.

The lines company does have the right to enter your property to upgrade or maintain or repair existing lines. Should the works being completed on the lines involve only maintenance or repair, and not further injuriously affect the property, lines companies do have the right to complete this work without further recourse to the landowner. However they must give adequate notice of the works that are to take place and not further disturb the land in any way in terms of accessing the lines for the required works. However, should the work involve an upgrade to the line, which injuriously affects the remainder of your property, then the lines operator is bound by statute to negotiate and purchase an easement through your property, which will include compensation to the landowner?

## **COMPENSATION METHODOLOGY**

The traditional methodology in assessing the value of such an easement has been set out under the Public Works Act 1981. This Act has long been relied upon as an accepted method of assessing the value of a property right taken for a transmission line and has found favour with the Courts over the years. Its basic premise is one of equivalency whereby the landowner should be in no better or no worse financial position prior to or subsequent to the work created on the line.

Compensation is calculated using a before and after method. The before and after method assesses the value of the property before the works or upgrade are in place, and then after such works are in place, with the difference in the figure being the amount of compensation due to the landowner.

In our opinion this methodology is relevant only where property rights or freehold land are being taken for public works under compulsory acquisition. Compulsory acquisition involves the taking of the land right or a portion of land for a public works, whether the landowner is agreeable or not, and can only be instigated by the Crown.

Lines operators and lines companies do have the ability to apply to the Crown to compulsorily acquire land but do not have compulsory acquisition powers as of right. They therefore must, in the first instance, negotiate with the landowner as to the level and type of works being constructed on the land, and as to an adequate level of compensation or consideration for the infrastructure being established.

In our opinion the giving up of a property right, i.e. a new easement over a property, and subsequent injurious affect that will apply to the property, does have a commercial value and this is borne out by market transactions which are taking place in an increasing number. Sale transactions for easements for transmission lines can be analysed like any other market sale and it is these new transactions that should be relied upon when assessing compensation.

*There is a body of evidence which helps to quantify the market value for such a property right and in our opinion it should not be based on an equivalency basis or before-and-after approach.*

Why should any landowner be forced to give up a property right that amounts to the devaluation in his property and not acquire a commercial premium that would be associated with the sale of any other land?

## **EASEMENT CONSIDERATIONS**

If you are approached by a lines company for the construction of a new line or for the purchase of an easement for the upgrade of an existing line, there are four separate areas of compensation that must be considered.

### **1. Easement Fee**

This relates to the property right that you will be giving up by the granting of the easement. The proposed easement document will set out the area of the property that this will affect including the width and location of the portion of land the proposed line is to be constructed on.

This easement fee can be related back to the value of the land. In our opinion it has a separate market value and is in

addition to any injurious affect that can be attributed to the property.

## 2. Injurious Affect

Injurious affect relates to the devaluation of land adjoining the easement strip.

Buildings, access, cultivation, installation of irrigation, and the planting of shelter belts and trees are all examples of activities which will be restricted on the land immediately adjoining the easement strip as a result of the granting of the easement, and therefore will devalue that land plus other land immediately adjoining it.

Injurious affect can be quantified, and once added to the easement fee will determine the total quantum of consideration due to the landowner for the granting of the easement.

## 3. Disturbance

Disturbance is a separate issue and should be calculated at the time that works are undertaken on the transmission line.

Should any earthworks, cultivation, or any disturbance take place on the property over and above its state prior to the works taking place, then compensation for pasture loss, production loss, and nuisance to the landowner should be calculated and further compensation paid.

## 4. Access Agreement

It is our experience that many lines companies have a rather laissez-faire attitude towards access in regards to completing such works. Once agreement with the landowner has been completed in terms of compensation, often they access the property through any route or any means which they deem easiest for them. In our opinion a separate access agreement should be negotiated prior to any works taking place and in some cases it may be necessary to negotiate a separate right-of-way or access easement to the area of land associated with the electricity easement.

## Summary

- In summary, if you are approached by a lines company in order to get access to your property for construction of a new line or upgrade or maintenance of a new line, do not allow immediate access.
- Often lines companies endeavour to complete their works by “stealth” in many cases and do not adequately address landowner rights in terms of compensation/consideration payable to them.
- We recommend that you get advice from a suitably knowledgeable professional with regards to the rights you are giving up, their market worth, and what requirements lines companies can impose on you in the short term.
- Do not allow any access unless you are fully satisfied as to the terms under which the lines companies can enter the land and as to any compensation that is due to you.
- It must be borne in mind that an easement may be necessary to complete the works and it must also be borne in mind that the lines companies can apply to the Crown to compulsorily acquire the land.
- It is in the landowners’ interest to negotiate a settlement prior to compulsory taking, as at that point the Public Works Act 1981 will come into force and the equivalency provisions within it will apply.
- *Bear in mind the giving up of the land right and any resulting injurious affect has a commercial worth and in our opinion a premium should be paid over and above the Public Works Act equivalency assessment calculated on a before and after basis.*
- *Overall, be ready for some dispute with the lines companies as it is in their commercial interest to acquire these rights at the cheapest possible price, rather than adequately recognise the landowners’ rights and compensate accordingly.*

***If you are about to, or are already engaged in negotiation of property rights around either transmission lines or energy generation (wind farms, hydro-electric), we strongly recommend that you speak to our experienced team in Fergus Rutherford [Fergus@bakerag.co.nz](mailto:Fergus@bakerag.co.nz) and Stuart McCoshim [stuart@bakerag.co.nz](mailto:stuart@bakerag.co.nz) at Baker & Associates 063788174.***