

Unbundling your property rights: statutory rights of access to private land

Property owners have an expectation that they can control who has access to and use of their land. However, what is often overlooked is that in some circumstances, third parties have statutory rights to enter onto and use private land without the permission of the landowner.

Introduction

This article considers the statutory rights of entry that apply under the Electricity Act 1992 (**Electricity Act**) and the Telecommunications Act 2001 (**Telecommunications Act**) (together, **the Acts**) and how these rights could affect or restrict the use of your land.

Overview

Prior to the enactment of the Acts, the Crown (and its agents by way of various electricity and communications operators and distributors) (**Distributor**) did not always require an agreement with a landowner to use and install infrastructure on private land for the operation and/or distribution of electricity or telecommunications. Instead the Distributor could rely on statutory rights that effectively overrode a landowner's right of control for that purpose, or gave the Distributor powers to acquire private land for its operations.

While the earlier statutory rights of installation and acquisition for electrical and telecommunications purposes have now been removed under the Electricity Act and the Telecommunications Act, both Acts include provisions to protect Distributor's existing use rights for infrastructure that was installed prior to the enactment of those Acts. This means that where a Distributor's electrical or telecommunication assets meet the definition of "existing works" under these Acts, it will not

have, or need, an easement or other registered interest updated against private land to enable it to use that land for its operations.

What are "Existing Works"?

Under the Electricity Act "existing works" include any fittings (for example lines, poles and cables) used, designed or intended for use, in or in connection with the generation, conversion, transformation, or conveyance of electricity that were:

- (a) installed prior to 1 January 1998 by a state-owned enterprise or mixed model ownership company (Genesis Energy Limited, Mercury NZ Limited and Meridian Energy Limited) that is a generator of electricity; or
- (b) installed by any other person prior to 1 January 1993.

Under the Telecommunications Act "existing works" includes all the items that meet the definition of "existing works" under the Electricity Act as well as:

- (a) any works for the transmission or reception of signs, signals, impulses, writing, images, sounds, instruction, information, or intelligence of any nature by means of any electromagnetic system. relating to the provision of telecommunications under the Post Office Act 1959 (or any former Act) constructed before 1 January 1988; and
- (b) fibre optic cables installed on or before 1 December 2016 for the conveyance of electricity (for example, fibre optic cable installed for the purposes of monitoring and ensuring control of the electricity network).

(together, **Existing Works**)

How Could My Land Be Affected Under These Acts?

Where there are Existing Works on your land:

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- (a) you cannot remove, relocate, or modify the existing works without permission from the Distributor;
- (b) if you want the Existing Works relocated on your land, you may make a request to the Distributor to that effect. However, the Distributor does not have to agree, and any relocation may be at your cost;
- (c) you may not do anything on the land that may interfere with the Existing Works; and
- (d) the Distributor may, with reasonable notice (unless there is an emergency) enter onto your land to inspect, maintain, upgrade, operate and repair the Existing Works.

Where the Distributor does not have Existing Works or any upgrade goes beyond certain criteria, they have no right to enter or use your land. Distributors will usually have to enter into an agreement with a private landowner to use the landowner's land for its operations. The rights and obligation agreed in those negotiations are often registered against the landowner's title by way of a registered easement or some form of covenant.

Why Is This Important?

Because rights associated with Existing Works may not be registered against a record of title to private land, it is not always immediately obvious whether the infrastructure meets the definition of Existing Works and is permitted to be there by virtue of the Electricity Act and Telecommunications Act. Often these only come to light when the Distributor wishes to exercise its rights, for example, to undertake repairs or maintenance of its infrastructure.

While Distributors are entitled to exercise their rights of access to their Existing Works on private land, they also have a number of obligations to the landowner. As the landowner, you have the right to:

- (a) refuse access if the processes in the Acts are not followed (for example, if insufficient notice is given);
- (b) set reasonable conditions around access to your land, such as determining the point and/or time of entry, and in the case of commercial premises, requiring compliance with specific health and safety procedures; and
- (c) refer any unresolved land access complaints to Utilities Disputes, and/or refer any disputes about the works to the Environment Court.

Being aware that existing use rights in respect of electricity and telecommunications assets may exist is important, particularly if looking to purchase property. As a part of due diligence investigations, you should confirm with your lawyer the location of any power lines or infrastructure and check whether these are subject to registered easements. If not, it may be prudent to make enquiries to confirm the ownership of any infrastructure on the land and whether the infrastructure is subject to the provisions of the Electricity Act and Telecommunications Act.

If you are approached with a request to agree to installation of infrastructure on your land, we can assist with advice on form of agreement and easements (if required).

Want to know more?

If you have any questions about these matters please contact our specialist [property team](#).