

RX DU QUIGG, D.J. Pipelines under the Petroleum Act 1937.

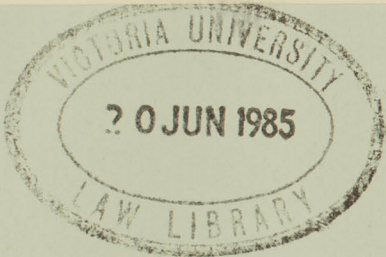
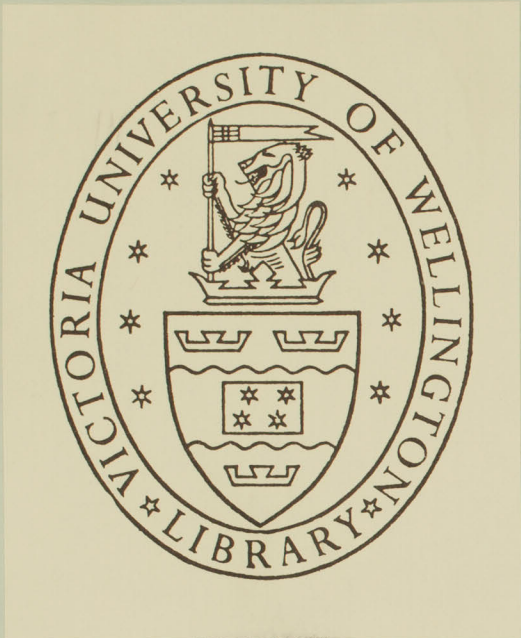
PIPELINES UNDER

THE PETROLEUM ACT 1937

"TRANSMISSION PIPELINES"

D.J. QUIGG  
Energy and Environmental Law 1984





PIPELINES UNDER THE PETROLEUM ACT 1937

("TRANSMISSION PIPELINES")

- 1.00 GENERAL
- 1.10 Definition
- 1.20 Background
- 1.30 Present Pipelines
- 1.40 Short Description of Pipe
- 1.50 Factors for Pipeline Construction
- 1.60 Standard for Pipeline Construction & Pipeline Operation
- 1.70 Design of a Pipeline
- 1.80 Pipeline Construction
  
- 2.00 APPLICATION FOR PIPELINE AUTHORISATION
- 2.10 No Pipeline Without Authorisation
- 2.20 Prescribed Application Form
- 2.30 Particulars with Application
- 2.40 Reports with Application
- 2.50 Plans with Application
- 2.60 Other Information or Plans with Application
- 2.70 Copy of Application to Local Bodies
- 2.80 Flagging the Route
- 2.90 Notice of Application
- 2.91 Submissions in Respect of an Application
- 2.92 Public Inquiry
- 2.93 Prior Approval Required
- 2.94 Decision on Application
  
- 3.00 AUTHORISATION
- 3.10 Conditions of Authorisation
- 3.20 Specific Approval for Motorway and Railways Land
- 3.30 The Authorisation's Effect
- 3.40 Amendment or Revocation of Terms and Conditions of Authorisation
- 3.50 Rights and Obligations of a Holder of an Authorisation
- 3.60 Powers
  - 3.61 general
  - 3.62 right of entry
- 3.70 Duties
  - 3.71 restoration
  - 3.72 erosion prevention
  - 3.73 enforcement of the restoration & erosion prevention duties
  - 3.74 pipelines and water
  - 3.75 works of public use
  - 3.76 roads
- 3.80 Taking of Land
  - 3.81 general
  - 3.82 compensation

4.00 MIDDLE LINE NOTICES, EASEMENT CERTIFICATES & EASEMENTS

- 4.10 Middle Line Notices
- 4.20 Easement Certificate
- 4.30 Easements

5.00 PIPELINE OWNERSHIP AND PIPELINE AUTHORISATION

- 5.10 Pipeline Ownership
- 5.20 Pipeline Authority

6.00 SUMMARY

- 6.10 Summary

APPENDIXES

- A. Map of areas serviced by transmission pipelines
- B. Flow chart of Pipeline Authorisation Procedures
- C. Draft Agreement for Entry and Grant of Pipeline Easement
- D. Standard Form for a Memorandum of Transfer (Grant of Easement)

REFERENCES

ACKNOWLEDGEMENTS

Abbreviations:

- GA - Gas Act 1982
- NGC - Natural Gas Corporation of New Zealand Limited
- PA - Petroleum Act 1937
- Petrocorp - Petroleum Corporation of New Zealand Limited

PIPELINES UNDER THE PETROLEUM ACT 1937  
 ("Transmission Pipelines")

1.00 GENERAL

1.10 Definition

Generally pipelines under the Petroleum Act 1937 are "major" artery pipes for minerals, oil and natural gas from the area of production or supply to the area where they shall be distributed to the end user (hereinafter called "transmission pipelines"). There is a general distinction between transmission ("main lines") and distribution ("supply lines") pipelines (1)

The technical definition of a transmission pipeline is as follows:

A pipeline or a proposed pipeline used or intended to be used for the conveyance of minerals, oil, or dangerous goods (other than natural gas at a gauge pressure of 2000 kilopascals or less). (2)

There are certain listed exceptions being:

- (a) Any bulk storage installation; or
- (b) Any pipeline wholly within the same plant property; or
- (c) Any pipeline between a bulk storage installation and a place where the product or material conveyed is transferred from or to a transport system other than another pipeline, unless:
  - (i) The Minister, after consultation with the Minister of Labour, otherwise directs in any particular case; or
  - (ii) The pipeline is used or intended to be used for the conveyance of liquefied petroleum gas; or
- (d) Any pipeline owned and used by a franchise holder, within the meaning of the Gas Act 1982, for the conveyance of natural gas at a gauge pressure exceeding 2000 kilopascals if the Minister, on the application of the franchise holder, so directs in any particular case; or
- (e) Any pipeline forming part of mining operations (as defined in section 2(1) of the Petroleum Act 1937), unless the Minister otherwise directs in any particular case; or
- (f) Any pipeline between a compressor and a point of discharge which is used for the conveyance of natural gas intended solely as a motor vehicle fuel.

- (1) The distinction transmission as compared to distribution pipelines is as made by J.I. Barrell in his paper "Negotiating Pipeline Routes" presented to the 1984 Gas Industry Conference. The use of transmission lines is also found in the electricity context (see Section 14 Electricity Act 1968).
- (2) Section 49(1) of the Petroleum Act 1937. It includes also all directly associated fittings pumps, tanks and appurtenances required for the conveyance of the product or material in the pipeline or for its safe operation.

The 2000 kilopascal pressure for natural gas is the most practical significant definition for transmission pipelines in 1984. (3)

Pipelines carrying natural gas at a pressure of 2000 kilopascal pressure or less are termed "distribution" pipelines. (4)

There is an important legal distinction made between transmission and distribution pipelines. Transmission pipelines are governed by the Petroleum Act 1937 (hereinafter stated as the "P.A."). (5)  
Distribution pipelines are governed by the Gas Act 1982 (hereinafter stated as the "G.A."). (6)

- (7) D. Craven - Natural Gas Pipeline Growth Highlights. A summary of Mr Craven's paper presented to the Institution of Professional Engineers was printed in the News December 1983, pages 4 and 5.
- (3) A.E. Hamond in his paper "Pipelines Are Best" presented to the February 1984 Gas Industry Conference. Mr Hamond comments on the recent amendment to this pressure level (1170 to 2000 in 1982) and states:  
"The pressure of 2000 kpa is a very 'sensible' level to accept as it matches well with materials available ... and with the upper limit of most of the Gas Utilities' distribution systems."
- (4) J.I. Barrell supra  
A.E. Hamond supra
- (5) Part II of the P.A.
- (6) Section 3 of the G.A.
- (12) D. Craven op cit. page 4.

## 1.20 Background

There has been "rapid and spectacular growth" of transmission pipelines in the North Island. (7)

Although natural gas has been utilised since the mid-19th century (8) it was not until 1959 when the Kapuni field was discovered that sufficient reserves of natural gas existed, at pressures many hundreds of times greater than previously available (9) that the cost of constructing a significant transmission pipeline system was seen as justified (10).

A transmission pipeline was first built along the west side of the North Island to supply nine undertakings (generally referred to as the 'Kapuni 9') (11) between Wellington and Auckland. Gas supplies started in 1970 and 1971 (12).

- (7) D. Craven - Natural Gas Pipeline Growth Highlights. A summary of Mr Craven's paper presented to the Institution of Professional Engineers was printed in Gas News December 1983, pages 4 and 6.
- (8) D. Craven - page 4.
- (9) A.E. Hammond - page 2.
- (10) D. Craven - page 4.
- (11) Wellington Gas Company Limited  
Auckland Gas Company Limited  
Hamilton City Council  
Hawera Gas Company Limited  
Hutt Valley Energy Board  
Levin Borough Council  
Palmerston North City Council  
Wanganui City Council  
New Plymouth City Council
- (12) D. Craven op cit. page 4.

In 1969 the giant Maui gas field was discovered. (13)

In 1981 the McKee field containing oil and associated gas was discovered. This small field differs from the Kapuni and Maui fields holding gas with associated oil and is being prepared for commercial production. (14) Oil production from the McKee field commenced in early 1984 (15).

Estimated Recoverable Reserves  
(Source Energy Plan 1984) (16)

Recoverable resources PJ +

<u>Field</u>	<u>Gas</u>	<u>Oil</u> (Including Condensate)
Kapuni	428	165
Maui	5289	708
McKee	11.2	62
Kaimiro	22.5	-
Totals	<u>5750</u>	<u>935</u>

+1 PJ is equivalent to 22,000 tonnes of crude oil. (17)

Estimated Natural Gas Usages (PJ/a) (18)

<u>Year</u>	<u>Reticulated gas</u>	<u>Total Usage</u>
1982/83	25 *	56
1996/97	54	197

\* Including Natural Gas Corporation of New Zealand Limited (hereinafter called "NGC") direct sales of approximately 7 PJ/a.

(13) Craven - page 4.

(14) Craven - page 4.

(15) Major Projects Advisory Group Newsletter June 1984 pg.15

(16) Page 30 - Table 7.1.

(17) Craven - page 4.

(18) Craven - page 4.



When all the current major petro-chemical projects are commissioned they are expected to utilise:

Ammonia/urea	4.5 PJ/a
Chemical methanol	16.0 PJ/a
Synthetic gasolene	54.0 PJ/a (19)

NGC was established in 1967. It supplies gas wholesale to the undertakings via terminal stations ("City Gates") and in turn they retail the gas within their franchise areas. In the absence of other retailers the NGC has in recent years moved into many such areas. In 1984 it supplies 26 urban areas (starting from nil in early 1978). (20)

Other transmission pipelines have been built to supply specific large scale developments (particularly power stations). (21)

There is approximately 2400 km of gas transmission pipelines laid throughout the North Island. (22)

Appendix 1 sets out in map form the areas serviced by the transmission pipelines.

It is believed that pipelines have proved the safest and most economical means for the bulk distribution of hydrocarbons. (23)

- (19) Craven - page 4.
- (20) Craven - page 4.
- (21) Craven - page 4. Including Stratford, New Plymouth and Huntly power stations.
- (22) This does not include liquid transmission pipelines. A Guide to the Petroleum Pipeline Procedures - Oil and Gas Division of the Ministry of Energy August 1984 page 6 and correspondence with J.I. Barrell.
- (23) A Guide to the Petroleum Pipeline Procedures - Oil and Gas Division of the Ministry of Energy August 1984 page 6.

1.30 Present Pipelines (24)

<u>Owner</u>	<u>Pipeline</u>
(a) Natural Gas Corporation	Natural gas from Taranaki to various places.
(b) NZ Refining Company	Refined oil products from Marsden Point to Wiri and Wiri to Auckland International Airport.
(c) Maui Development Ltd	Natural gas from Oaonui to Huntly. Condensate from Oaonui to New Plymouth Port.
(d) Liquigas Ltd	LPG from Oaonui to New Plymouth Port. LPG from Manukau to Wiri. LPG from Lyttleton to Woolston.
(e) Petralgas Chemicals (N.Z.) Ltd	Methanol from Waitara to New Plymouth Port.
(f) Petroleum Corporation of NZ Ltd	McKee Crude from McKee to New Plymouth Port.
(g) Ministry of Energy	Gas feeder line from an offtake near Waitara on the Oaonui to Huntly line to the site of stand alone Methanol plant and the Motunui synthetic petrol plant. Synthetic fuel from Waitara to New Plymouth Port.
(h) Shell Petroleum Mining Co. Ltd BP Oil Exploration Co. of NZ Ltd and Todd Petroleum Mining Co. Ltd	Condensate Line from Kapuni to New Plymouth Port.
(24) The Report of the Committee established to consider the effects of petroleum pipeline easements on property values ("the Maclachlan Report") - paragraph 1.9. The Report was printed in the New Zealand Valuer December 1983. The Committee's Report is dated July 1983.	

#### 1.40 Short Description of Pipe

There are varying diameter sizes of pipe being laid. (25) Most of the pipe is ERW (electric resistance welded) steel pipe (26) however a small amount of the pipes are spiral formed steel pipe. (27) The pipes are now (28) commonly supplied with "yellow jackets". The jackets are a high density extruded polyethylene coating protecting the pipe from corrosion. (29) Recently fusion-bonded epoxy coating has been also used for pipe. (30)

#### 1.40 Standards for Pipeline Construction & Pipeline Operation

- Previously there was the statutory requirements that "all pipelines shall be constructed of suitable and sound materials and designed, constructed, operated, and maintained in accordance with sound and accepted engineering practice". (31)
- It was envisaged that this was to be replaced by the requirement that "all pipelines shall be constructed using methods and materials designed to ensure the safe operation of the pipeline". (32)
- (25) Maximum of 864 mm diameter Oaonui-New Plymouth pipeline. Minimum of 50 mm diameter Patea pipeline. Correspondence with J.I. Barrell. Discussion D. Craven.
  - (26) ERW pipe is imported. Correspondence with J.I. Barrell.
  - (27) This method of pipe manufacture was pioneered in New Zealand and is now used by major steel pipe makers throughout the world - Gas News October 1981 page 5. Discussion with Mr M. Strachen.
  - (28) Until 1981 previously pipes were covered with bitumen or coal-tar based paints - Gas News October 1981 page 5. Discussion with M Strachen.
  - (29) Gas News December 1982 page 4 and Gas News October 1981 page 5. Natural gas pipeline construction in New Zealand - The Energy Journal supra. See also D. Craven for details of pipeline sizes in his summarised paper Gas News December 1983 page 6.
  - (30) Natural gas pipeline construction in New Zealand - The Energy Journal supra page 12. A.E. Hammond supra page 7.

### 1.50 Factors for Pipeline Construction

Relevant factors (31) for the construction of a transmission pipeline include the following:

- (i) Pipeline diameter. (32)
- (ii) Pipeline wall thickness. (32)
- (iii) Strength grade of the material of which the pipe is made. (32)
- (iv) Depth of cover.
- (v) Working pressure. (32)
- (vi) Pipeline location. (33)
- (vii) Population density of the area which the pipeline is proposed to be laid. (34)

### 1.60 Standards for Pipeline Construction & Pipeline Operation

Previously there was the statutory requirements that "all pipelines shall be constructed of suitable and sound materials and designed, constructed, operated, and maintained in accordance with sound and accepted engineering practice". (35)

It was envisaged that this was to be replaced by the requirement that "all pipelines shall be constructed using methods and materials designed to ensure the safe operation of the pipeline." (36)

- (31) J.T.E. Gilbert - Gas Pipelines and the Environment - Out of Sight But Not Out of Mind - a paper presented to the 1984 Gas Industry Conference.
- (32) These factors or similar information must be stated when applying for a pipeline authorisation. The Petroleum Pipelines Regulations 1984 -Regulation 3 (2)(d)(f).
- (33) When applying for a pipeline authorisation a report on the stability of the land along the route of the pipeline must be supplied. Regulation 3(2)(g) of the Petroleum Pipelines Regulations 1984.
- (34) This relates also to the design of the proposed pipeline (see paragraph 1.70). Correspondence with K.D. Law.
- (35) Regulation 11 of the Petroleum Pipeline Regulations 1964 (now repealed).
- (36) Draft Regulation 14(1) of the Draft Petroleum Pipelines Regulations 1983.

Presently merely the proposed standards or codes for pipeline design and construction must be stated in an application for a pipeline authorisation. (37)

There is presently no New Zealand standard code of practice for transmission pipelines. (38) However such a code is nearing completion and should be available in 1984. (39) The New Zealand Code is being prepared by a Standards Association Committee (40) and is generally believed to be based on American codes (41) and is to have two parts (one part covering petroleum as a gas carried by pipeline and the other part covering petroleum as a liquid or solid carried by pipeline). (42)

- (37) Regulation 3(2)(e) of the Petroleum Pipelines Regulations 1984. In practice the stated Code would have to meet with the approval of the Chief Petroleum Inspector. Correspondence with J.I. Barrell.
- (38) A.E. Hammond supra page 4.
- (39) A.E. Hammond supra page 4.
- (40) The Committee comprises the following persons:  
 Mr R. Askin - Ministry of works & Development Pipeline Project  
 Mr P. Atack - Liquigas Limited  
 Mr J.I. Barrell - N.G.C.  
 Mr C.E. Bartholomeusz (Chairman) - Ministry of Works & Development Pipeline Project  
 Mr G.V. Burgoyne - Shell Oil NZ Limited  
 Mr B. Cathie - Gas Association of New Zealand  
 Mr V. Gradowski - Wellington Gas Company Limited  
 Mr W. Hall - BP Gas NZ Limited  
 Mr A.E. Hammond - Hutt Valley Energy Board  
 Mr J. House - New Zealand Refining Co.  
 Mr R.A. Akroyd (Secretary) - Maui Development  
 Mr T.K. Nguyen - Mobil Oil NZ Limited  
 Mr R.E. O'Brien - Mobil Oil NZ Limited  
 Mr A.W. Price - Caltex Oil Co.  
 Mr T. Thompson - Ministry of Energy  
 Mr D. Willis - Auckland Gas Co. Limited  
 Mr K. Wood - Shell BP Todd
- (41) Being ASME/ANSI B 31-8 and DOT 192 - A.E. Hammond supra page 4.
- (42) A.E. Hammond supra page 4.

It is the writer's experience that the terms of a pipeline authorisation normally stipulates a standard for pipeline construction applicable or a code of pipeline design to be followed. (43)

It is the writer's opinion that there should be set a statutory standard of pipeline construction and operation. (44) The codes of practice would naturally be relevant when interpreting the established statutory standards. The Chief Petroleum Inspector has powers to intervene if the Inspector believes inadequate standards are being followed. (45) However the writer believes statutory standards of pipeline construction and operation are advisable to establish the very basic "code" of practice. (46) The statutory standards would not be technical in nature and would be desirable when interpreting the powers of the Chief Petroleum Inspector.

- (43) This is now the present practice although there are some existing pipeline authorisations which do not state a governing code of construction or code of pipeline design. Discussion with M. Strachen.
- (44) In line with the previous Regulation 11 of the Petroleum Pipeline Regulations 1964 (now repealed).
- (45) Sections 41 to 47C of the P.A. (by virtue of Section 48(3) of the P.A.). See also Regulations 11, 12, 13, 14, 15, 18 and 20 of the Petroleum Pipelines Regulations 1984.
- (46) Discussion with M. Strachen & J.I. Barrell. People in the industry do not necessarily concur with the writer, they believe there is presently sufficient powers conferred on the Chief Petroleum Inspector and a sufficient code of practice detailed in an authorisation when granted.

### 1.70 Design of a Pipeline

"The objective when designing a pipeline, no matter what the operating pressure, is to ensure the continuing integrity of the line and hence the safety of the general public under all conditions usually encountered. In some cases the 'usual' conditions may be of an extraordinary nature and New Zealand with its seismic problems is a good example of this." (47)

The basic design formula (48) is: (49)

$$t = \frac{P \times D}{2S \times F}$$

Where t = wall thickness  
 P = design pressure  
 D = nominal outside diameter  
 S = SMYS (the material specified minimum yield strength)  
 F = design factor

(50) A.E. Hammond supra page 6.

(51) A.E. Hammond supra page 5.

(47) A.E. Hammond supra page 4.

(48) A.E. Hammond - gleaned from Codes and standards. supra page 5.

(49) A.E. Hammond supra page 5.

(55) A.E. Hammond supra page 6. Most transmission pipelines are built reasonably close to code limits. (Correspondence with J.I. Barrell.

Failures in a pipeline do occur and generally can be attributed to one or more of the following: (50)

- (i) Interference damage.
- (ii) Material failure.
- (iii) Ground movement.

Interference naturally is likely to be greater with the increase in population density of the area of the pipeline. Population density categories or class location as they are known in the overseas Codes are numbered from 1 to 4. Class 1 and 2 cover the open country areas. Class 3 covers the suburban situation and Class 4 the city centre situation with multi-storey buildings and heavy traffic density. (51)

Most of the transmission pipelines run through Class 1 and 2 locations, and distribution pipelines through Class 3 and 4 locations. (52)

" In sparsely populated open countryside in a Class 1 location a pipeline is permitted (53) to operate at a pressure that will produce a stress equivalent to 72% of the material specified minimum yield strength (SMYS), whereas in a city centre situation, a Class 4 location, the stress has to be limited to 40% of SMYS. A pipeline designed for a Class 1 location is believed to be still safe in a Class 4 location, but the stress level is lowered in the Class 4 location to provide even greater safety because the risk of interference is considered to be higher. " (54)

" In actual practice wall thicknesses are generally in excess of those determined from the design formula as standard production sizes are used and in some instances handleability and weldability requirements call for increases in wall thickness as compared to that calculated from stress levels. Levels of stress less than 10% of SMYS often result and the extra protection that this provides can be used to justify a reduction in the depth of cover over a pipeline. " (55)

(50) A.E. Hammond supra page 6.

(51) A.E. Hammond supra page 5.

(52) J.T.E. Gilbert supra page 1.

(53) Pursuant to the overseas codes - A.E. Hammond supra page 5.

(54) A.E. Hammond supra page 5.

(55) A.E. Hammond supra page 6. Most transmission pipelines are built reasonably close to code limits. Correspondence with J.I. Barrell.



Some requirements imposed by the Code of Practice applicable in constructing a pipeline are aimed at reducing the risk of failure while others seek to reduce the effect of a gas release. Examples of the former are depth of cover over a pipeline, inspection and testing prior to commissioning, frequency of patrolling and marking of pipeline routes; while those aimed at reducing the significance and impact of a release cover such items as location of valves, proximity to buildings, odorisation, leakage survey, holding of emergency equipment and liaison with local emergency services. (56)

#### 1.80 Pipeline Construction (57)

A transmission pipeline may be seen as being constructed in three different stages. The three stages are:

- (a) field gather lines to carry gas from the well-head to a central treatment facility
- (b) main transmission pipelines
- (c) the distribution pipeline systems. (58)

Factors relevant for pipeline construction include:

- (1) financing
- (2) speed to implement
- (3) pipeline size to balance future demand with the pipeline's cost
- (4) route selection (matters relevant include terrain, land usage, ground stability, likely location of future off-take stations and population density).
- (5) specialist manpower and equipment.
- (6) market for the product. (59)

(56) A.E. Hammond supra page 6.

(57) For articles discussing legal matters and problems relating to Contracts for the Construction of Oil and Gas Pipelines see International Business Lawyer July/August 1984 pp. 289 to 313

(58) Natural gas pipeline construction in New Zealand - The Energy Journal May 1983 page 10 (no author named).

(59) Natural gas pipeline construction in New Zealand - The Energy Journal May 1983 page 10 (no author named). Discussion with M. Strachen.

New Zealand gas transmission pipelines have a higher ratio of bending and tie-ins than anywhere in the world because of New Zealand's terrain. (60)

Pipeline construction initially involves marking out the route, installing temporary gates in line crossings and grading the right of way to form a rough road along the pipeline route. (61) A continuous trench is prepared by the ditching crews except for stream, road and access crossings which are left as plugs to be dealt with by the tie-in crews. (62)

The pipes (63) are then strung out, end to end, supported on single skids and soft sawdust filled sacks, clear of the ground to enable the pipe end preparation to be cleaned prior to welding. (64) In New Zealand stringing by helicopter sometimes proves to be the most economical method of pipe delivery. (65)

A bending engineer then surveys the pipeline trench to determine the degree of bending required to enable the continuous pipeline to sit down firmly on the trench bottom and to take up the horizontal profile. (66) The required bends are then made. (67)

- (60) Natural gas pipeline construction in New Zealand - The Energy Journal - supra page 11.
- (61) Natural gas pipeline construction in New Zealand - The Energy Journal - supra page 11. See also Regulation 4 of the Petroleum Pipelines Regulations 1984.
- (62) Natural gas pipeline construction in New Zealand - The Energy Journal - supra page 11.
- (63) The standard length of pipe is 12 metres long.
- (64) Natural gas pipeline construction in New Zealand - The Energy Journal - supra page 11.
- (65) Natural gas pipeline construction in New Zealand - The Energy Journal - supra page 11. The unnamed author states this is not often used elsewhere and gives an indication of the particular difficulties with the local terrain.
- (66) Natural gas pipeline construction in New Zealand - The Energy Journal - supra page 11.
- (67) Natural gas pipeline construction in New Zealand - The Energy Journal - supra page 11.

The welding gang then welds the pipes into strings the length depending upon the terrain. (68) This is a very specialist job. (69)

The welds are tested (generally by radiography) (70) field covered with the appropriate protection, such as heat shrink polyethylene. (71)

The pipes coating system (72) is then checked for defects by means of an electronic holiday detector. (73)

After any necessary repairs are made and the trench is cleared of water and debris, the strings of pipe are lowered into the trench. (74) The strings are then tied together. (75)

- (76) Natural gas pipeline construction in New Zealand - The Energy Journal - supra page 12.
- (77) Natural gas pipeline construction in New Zealand - The Energy Journal - supra page 12. Correspondence with J.I. Barrell.
- (78) Natural gas pipeline construction in New Zealand - The Energy Journal - supra page 12.
- (68) Natural gas pipeline construction in New Zealand - The Energy Journal - supra page 11.
- (69) Natural gas pipeline construction in New Zealand - The Energy Journal - supra page 11.
- (70) Correspondence with K.D. Law.
- (71) Natural gas pipeline construction in New Zealand - The Energy Journal - supra page 11.
- (72) See page 8 for a brief description of how the pipe is normally coated for protection.
- (73) Natural gas pipeline construction in New Zealand - The Energy Journal - supra page 12.  
A "holiday" is defect in the coating. The detector applies a fairly high voltage differential between the detector ring and the pipe and thus a spark will jump from one to the other at the sight of a holiday. Correspondence with J.I. Barrell.
- (74) Natural gas pipeline construction in New Zealand - The Energy Journal - supra page 12.
- (75) Natural gas pipeline construction in New Zealand - The Energy Journal - supra page 12.

Once the pipe is laid, the pipeline is cleaned and gauged for any obstructions, using compressed air driven pigs. (76) After cleaning the pipe it is filled with water and pressure tested for a 24 hour period to approximately one and one half to twice the working pressure. (77) The pipeline is then dewatered and dried. (78) The pipeline is ready for operation. (79)

With a transmission pipeline in the North Island, generally a crew of 60 with machinery (not allowing for support and administrative staff) can complete 4-5 km (approx) of pipeline per week. (80)

- (76) Natural gas pipeline construction in New Zealand - The Energy Journal - supra page 12.
- (77) Natural gas pipeline construction in New Zealand - The Energy Journal - supra page 12. Correspondence with J.I. Barrell.
- (78) Natural gas pipeline construction in New Zealand - The Energy Journal - supra page 12.
- (79) A list of the major stages involved in pipeline construction are therefore:
- (a) Preparatory Works
  - (b) Clearing and Grading
  - (c) Ditching
  - (d) Stringing
  - (e) Bending
  - (f) Line-up and Welding
  - (g) Joint Coating
  - (h) Lower-In and Backfill
  - (i) Testing
  - (j) Restoration
- The Commission for the Environment - Environmental Guideline for Gas & Petroleum Pipelines 1984 page 5. See A Guide to the Petroleum Pipeline Procedures. Oil & Gas Division of the Ministry of Energy August 1984 pg 16-18.
- (80) This would be for the laying of a 200 mm pipe in good weather conditions. For a 300 mm pipe 3-4 km (approx) of pipeline a week would be completed and for a pipe over 300 mm 2½ km (approx) of pipeline would be laid each week.
- If the pipeline was being laid in an urban area a crew of 6-10 would normally be used with machinery, and a pipe with thicker walls would be used. Discussions with H.S.D. Norden, M. Strachen and D. Craven. See A Guide to the Petroleum Pipeline Procedures. Oil & Gas Division of the Ministry of Energy August 1984 pg 16-18.

The sequence of pipeline construction is normally as follows: (81)

- (a) A public newspaper/radio announcement of a proposed pipeline.
- (b) A formal letter advising landowners that they may be affected by the proposed pipeline.
- (c) A public meeting at which the proposed pipeline is explained.
- (d) Liaison is carried out between representatives of holders of the pipeline authorisation and landowners to discuss the exact route of the pipeline.
- (e) An agreement to enter and grant of pipeline easement is entered into between the holder of the pipeline authorisation and landowners. (82)
- (f) The pipeline is constructed.
- (g) Restoration is carried out by the holder to the land affected by the construction of the pipeline. (83)
- (h) Final compensation is paid by the holder to the landowner for loss injury or damage caused. (84)
- (i) The easement is registered against the land in question.

(81) See Allen Coster - Be Aware of Your Rights - NZ Farmer 12th January 1984 pp 20-21 and J.I. Barrell - Negotiating Pipeline Routes supra pp 2-3.

(82) See page 72 A Middle Line Notice may have been issued, see page 65.

At this stage the estimated amount of the easement fee (see page 74) is paid and any adjustment to this amount is then taken into account when final compensation is paid after construction.

(83) See page 52

(84) See page 62

## 2.00 APPLICATION FOR A PIPELINE AUTHORISATION (85)

### 2.10 No Pipeline Without Authorisation

No person or body may construct or operate a pipeline without obtaining a pipeline authorisation from the Minister of Energy. (86)

### 2.20 Prescribed Application Form

Application for a pipeline authorisation must be on the prescribed form. (87)

### 2.30 Particulars With Application

- (85) See Appendix B for a flow chart of Pipeline Authorisation Procedures. The flow chart is taken from A Guide to the Petroleum Pipeline Procedures. Oil & Gas Division of the Ministry of Energy August 1984 pg 11.
- (86) Section 50 P.A. The necessary authority may be given pursuant to a licence issued under the P.A. Also this provision is subject to the National Development Act 1979 (S.18(2), S.3(2)(e)) whereby the decision making process may be carried out pursuant to the National Development Act 1979. See for reference an article by John Hanan "The National Development Act 1979" 9 NZULR 200.
- (87) Section 51(1) P.A. Every application must be in triplicate - Regulation 3(1) of the Petroleum Pipelines Regulations 1984.

The following particulars must be specified:

- (i) The size and length of the proposed pipeline. (88)
- (ii) The material to be transported in the pipeline. (89)
- (iii) The points between which the pipeline is run. (90)
- (iv) The proposed nominal outside diameter and nominal wall thickness of the pipe. (91)
- (v) The strength grade of the material of which the pipe is made. (92)
- (vi) The proposed standards or codes for pipeline design and construction. (93)

(88) Regulation 3(2)(f) of the Petroleum Pipelines Regulations 1984. See also Section 51(2)(a) of the P.A.

(89) Section 51(2)(b) P.A. This was inserted by a 1982 Amendment to the P.A. It replaced previous particulars being:  
"The proposed location of pumping and compressor stations, terminal facilities, and other permanent appurtenances of a substantial nature intended to be used in connection with the operation of the proposed pipeline."

The new requirement is more extensive than the previous requirements, the fittings etc. must have a direct association with the pipeline.

- (90) Section 51(2)(a) of the P.A.
- (91) Regulation 3(2)(b) of the Petroleum Pipelines Regulations 1984.
- (92) Regulation 3(2)(c) of the Petroleum Pipelines Regulations 1984.
- (93) Regulation 3(2)(d) of the Petroleum Pipelines Regulations 1984. The requirement to state the nominal wall thickness of the pipeline was not contained in the Petroleum Pipelines Regulations 1964.
- (94) Regulation 3(2)(d) of the Petroleum Pipelines Regulations 1984. This requirement was not contained in the Petroleum Pipelines Regulations 1964.
- (95) Regulation 3(2)(e) of the Petroleum Pipelines Regulations 1984. This requirement was not contained in the Petroleum Pipelines Regulations 1964.

- (vii) The proposed maximum and minimum hydrostatic test pressures. <sup>(94)</sup>
- (viii) The proposed location of fittings, pumps, tanks and appurtenances intended to be directly associated with the operation of the proposed pipeline. <sup>(95)</sup>
- (ix) Sufficient details to describe the classes of land <sup>(96)</sup> (for example - National Park, Public Reserve, Railway, continental shelf, river bed etc.) to which the application relates. <sup>(97)</sup>
- (x) The name and address of the person who is intended to be the holder of the proposed pipeline authorisation. <sup>(98)</sup>

There is no requirement that the depth of cover for the pipeline <sup>(99)</sup> must be stated on application.

(94) Regulation 3(2)(f) of the Petroleum Pipelines Regulations 1984. See also Section 51(2)(a) of the P.A.

(95) Section 51(2)(b) P.A. This was inserted by a 1982 Amendment to the P.A. It replaced previous particulars being:  
 "The proposed location of pumping and compressor stations terminal facilities, and other permanent appurtenances of a substantial nature intended to be used in connection with the operation of the proposed pipeline."

The new requirement is more extensive than the previous requirements, the fittings etc. must have a direct association with the pipeline.

(96) The particular classes of land relevant are set out in Section 29 of the P.A.

(97) Section 51(2)(c) of the P.A.

(98) Regulation 3(2)(a) of the Petroleum Pipelines Regulations 1984.

(99) It is believed impractical to require the statement of a proposed depth of cover as this would depend on the geology of land under which the pipe is laid. Normally the code of practice specifies a minimum depth of cover varying in the particular circumstances (presently normal soils 1 metre, less in rock and more in horticultural areas or at crossings etc.). Correspondence with J.I. Barrell.  
 Previously Regulation 4(3)(f) of the Petroleum Pipelines Regulations 1964 required a plan be submitted to show a "typical" profile and cross-section of the pipeline indication depth of burial.



## 2.10 REPORTS WITH APPLICATION

Every application must be accompanied by:

(1) A report setting out the effects, the construction and the

There is no provision stating the applicant for the authorisation must notify the Minister if any material change in the particulars supplied occurs prior to the Minister's decision as to the application. (100)

There is no provision providing that the particulars supplied become conditions of an authorisation if granted. Therefore if the conditions of the authorisation do not cover matters provided in the supplied particulars the supplied particulars are irrelevant subsequent to being prepared for the pipeline application. (101)

"The Commission for the Environment examines all reports on the physical and social environment prepared for the Ministry of Energy in respect of pipeline authorisations, and makes submissions to the Ministry of Energy. The Ministry receives all public submissions which are then appraised and discussed with the applicant and any other parties, prior to any decision being made by the Minister." (100)

(102) Section 51(4) P.A. "The report should describe the likely environmental effects of the proposal and also the measures that will be taken to minimise any adverse impacts of pipeline construction and operation. A section on safety must also be included." Environmental Guidelines for Gas and Petroleum Pipelines - Commission for the Environment 1984 page 9. A suggested format for such reports is also outlined in the Guidelines. See also A Guide to the Petroleum Pipeline Procedure, 511 & 512 Division of the Ministry of Energy

(100) A possible insertion would be in the Petroleum Pipelines Regulations 1984 a new Regulations 3(4) and (5).

" (4) If there is any material change or amendment in the particulars, report, or plan required to be given or supplied with every such application prior to the application being granted, refused or withdrawn such material change or amendment shall be notified by the applicant as soon as possible to the Secretary of Energy.

(5) Any applicant who fails to comply with the provisions of subsection (4) of this regulation commits an offence against this Act and shall be liable, on summary conviction, for a fine not exceeding \$250 for each day or part of a day that the offence continues. "

(101) See Section 56 of the P.A. that deals with the conditions of an authorisation. There is a particular lack in the detail specified. It is submitted that the stated conditions of an authorisation should be more extensive. Also see page 35, footnote 167.

2.40 REPORTS WITH APPLICATION

Every application must be accompanied by:

- (i) A report setting out the effects the construction and the subsequent operation of the proposed pipeline may have on the physical and social environment through which it passes. (102)
- (ii) A report on the stability of the land along the route of the pipeline. (103)

Most reports produced to date (104) have been prepared by the Ministry of Works Pipeline Project Office or registered engineering consultants. (105)

"The Commission for the Environment examines all reports on the physical and social environment prepared for the Ministry of Energy in respect of pipeline authorisations, and makes submissions to the Ministry of Energy. The Ministry receives all public submissions which are then appraised and discussed with the applicant and any other parties, prior to any decision being made by the Minister." (106)

- (102) Section 51(4) P.A. "The report should describe the likely environmental effects of the proposal and also the measures that will be taken to minimise any adverse impacts of pipeline construction and operation. A section on safety must also be included." Environmental Guidelines for Gas and Petroleum Pipelines - Commission for the Environment 1984 page 9. A suggested format for such reports is also outlined in the Guidelines. See also A Guide to the Petroleum Pipeline Procedures. Oil & Gas Division of the Ministry of Energy August 1984 pg 28-32.
- (103) Regulation 3(2)(g) of the Petroleum Pipelines Regulations 1984. This was not previously required by the Petroleum Pipelines Regulations 1964. This need not be a separate report, it may form part of the report (i) above. A Guide to the Petroleum Pipeline Procedures. Oil & Gas Division of the Ministry of Energy August 1984 pg 8.
- (104) To date only reports (i) above as the requirement for the reports (ii) only came into effect on 10th May 1984.
- (105) It is the view of the Commission for the Environment that an application should not be lodged until environmental impact assessment documentation (including the report (i) above) has been examined and commented on. Commission for the Environment - Environmental Impact Audit - Kawerau-Opotiki-Gisborne Gas Pipeline 1984 page 25. Correspondence with R.B. McClymont.
- (106) Commission for the Environment. Environmental Guidelines for Gas and Petroleum Pipelines 1984 page 11. The Commission in the Guidelines advises an applicant to undertake early discussions with the Ministry of Energy where pipelines are planned to determine the scope and extent of environment reporting. The Commission believes this will assist the pipeline developer to meet the statutory requirements prior to formal application for authorisation to construct a pipeline (page 11).

2.50 PLANS (107) WITH APPLICATION

Every application shall be accompanied by a plan showing:

- (i) The flagged and clearly identifiable route of the proposed pipeline. (108)
- (ii) The roads, railways, and navigable waters along, over, or under which it is proposed the pipeline shall pass. (109)
- (iii) The proposed location of stations for reducing or increasing the pressure, of block valves, and shut off valves. (110)
- (iv) The location of all authorised pipelines wherever the proposed pipeline is to be less than 24 metres from such other pipelines. (111)

(107) One copy of the plan is required and such plan to be a scale no smaller than 1 in 70,000 in the case of rural areas and 1 in 20,000 in the case of urban areas. There is no definition of what is an "urban" or a "rural" area in the P.A. or the Petroleum Pipelines Regulations 1984. For a working meaning of the terms "urban" and "rural" one might use for guidance the meanings of "urban area" (Public Works Act 1981 Section 2) and "rural area" (Local Government Act 1974 Section 2).

(108) Section 51(3)(a) of the P.A. "Flag" is defined in the Petroleum Pipelines Regulations 1984.

(109) Section 51(3)(b) of the P.A.

(110) Regulation 3(3)(a) of the Petroleum Pipelines Regulations 1984.

(111) Regulation 3(3)(b) of the Petroleum Pipelines Regulations 1984. "Authorised pipelines" means other authorised transmission pipelines.

The Minister may request the applicant for an authorisation to furnish such other information and plans relating to the pipeline and its construction. (113)

The Minister has on occasion requested copies of environmental evaluation pursuant to this power. (114)

Again there is no provision stating the applicant for the authorisation must notify the Minister if any material change in the plan occurs prior to the Minister's decision as to the application. (112)

The scope of an EIR is discussed between the proponent, the Ministry of Energy and the Commission for the Environment. Emphasis is usually placed on assessing the environmental impacts of different route options in an EIR. Once an EIR is produced, it then becomes a public document and under the EP & IP is subject to audit procedures. The Commission for the Environment advertises the availability of the report and invites the public to make submissions. A period of six weeks is allowed for submissions to be made to the Commission for the Environment and a further six weeks is set aside for the Commission to complete its audit. Once completed, it is published and its availability is advertised through press notices. (115) It is the view of the Commission for the Environment that an application should not be lodged until environmental impact assessment documentation has been examined and commented on. (116) Under the present procedures clearly this is not likely as the requirement for environmental impact assessment documentation is only determined once the pipeline application is lodged. (117)

2.70 Copy of Application to Local Bodies (117A)

Every applicant for an authorisation must forward a copy of the application (including plans, reports and other information) to:

(113) Section 51(5) of the P.A.

(114) J.T.E. Gilbert supra page 3.

(115) Commission for the Environment - Environmental Guidelines for Gas & Petroleum Pipelines Page 11.

(116) Commission for the Environment - Environmental Pipelines Impact Audit - Kawerau-Opatiki-Gisborne Gas Pipeline 1984 page 25. Correspondence with R.B. McClymont.

(117) The Commission for the Environment have recommended clarification of the procedures for processing environmental documentation and

(112) See possible insertion of new Regulations 3(4) and (5) of the Petroleum Pipelines Regulations 1984 page 20, footnote 100.

(117A) Section 51(6) of the P.A. There is no responsibility on an applicant to forward a copy of the application to persons who it might be affected by the Pipelines. This is not made clear in A Guide to the Petroleum Pipeline Procedures. Oil & Gas Division August 1984 page 9 and Environmental Guidelines for Gas and Petroleum Pipelines 1984 page 11.

## 2.60 Other Information or Plans with Application

The Minister may request the applicant for an authorisation to furnish such other information and plans relating to the pipeline and its construction. (113)

The Minister has on occasion requested some form of environmental evaluation pursuant to this power. (114)

"Where a project has significant environmental implication, such as a high degree of public interest because it passes through densely populated areas or a national park, wilderness or other areas of scenic or biological significance, an Environmental Impact Report (EIR) may be required ...

The scope of an EIR is discussed between the proponent, the Ministry of Energy and the Commission for the Environment. Emphasis is usually placed on assessing the environmental impacts of different route options in an EIR. Once an EIR is produced, it then becomes a public document and under the EP & EP is subject to audit procedures. The Commission for the Environment advertises the availability of the report and invites the public to make submissions. A period of six weeks is allowed for submissions to be made to the Commission for the Environment and a further six weeks is set aside for the Commission to complete its audit. Once completed, it is published and its availability is advertised through press notices". (115) It is the view of the Commission for the Environment that an application should not be lodged until environmental impact assessment documentation has been examined and commented on. (116) Under the present procedures clearly this is not likely as the requirement for environmental impact assessment documentation is only determined once the pipeline application is lodged. (117)

## 2.70 Copy of Application to Local Bodies (117A)

Every applicant for an authorisation must forward a copy of the application (including plans, reports and other information) to:

- (113) Section 51(5) of the P.A.
- (114) J.T.E. Gilbert supra page 1.
- (115) Commission for the Environment - Environmental Guidelines for Gas & Petroleum Pipelines Page 11.
- (116) Commission for the Environment - Environmental Pipelines Impact Audit - Kawerau-Opotiki-Gisborne Gas Pipeline 1984 page 25. Correspondence with R.B. McClymont.
- (117) The Commission for the Environment have recommended clarification of the procedure for processing environmental documentation and applications. Environmental Impact Audit - Kawerau-Opotiki-Gisborne Gas Pipeline 1984 page 55.
- (117A) Section 51(6) of the P.A. There is no responsibility on an applicant to forward a copy of the application to persons who it might be affected by the Pipeline. This is not made clear in A Guide to the Petroleum Pipeline Procedures. Oil & Gas Division August 1984 page 9 and Environmental Guidelines for Gas and Petroleum Pipelines 1984 page 11.

- (i) the united or regional council;
- (ii) the territorial authority (within the meaning of the Local Government Act 1974)
- (iii) the Regional Water Board;

within whose district it is proposed that the pipeline be situated, at the same time as lodging the application. (118)

## 2.80 Flagging the Route

Regulation 4 of the Petroleum Pipelines Regulations 1984 states:

- "Every applicant for a pipeline authorisation shall flag the route of the proposed pipeline in such a way as to clearly identify the route and ... the applicant shall place a flag at every change of direction of the route and at every crossing of a fence line:  
 Provided that it shall not be necessary to place any flag in a road reserve (119) if it is not practicable to do so."

"Flag" is defined by Regulation 2 of the Petroleum Pipelines Regulations 1984 to mean:

"a flag, marker, or mark of any kind used to indicate the location of the route of a pipeline on the ground."

It is unclear at what time such flagging must be completed by the applicant for an authorisation. (120)

- (118) If more than one district was relevant the applicant should, although the P.A. does not make this particularly clear, forward a copy of the application to each district's united regional council, territorial authority and the Regional Water Board.
- (119) See Section 49(1) of the P.A. for the definition of "road reserve".
- (120) The proposed new requirement for flagging seems to have been inserted for the benefit of the Chief Petroleum Inspector who normally inspects a proposed route prior to the grant of the Pipeline Authorisation rather than to increase the public's notice of the proposed pipeline. Correspondence with J.I. Barrell.

The writer believes "flagging" could achieve both purposes. It would be advantageous to the public if "flagging" by the applicant had to be undertaken in conjunction with the public notice of an application for a pipeline authorisation. The public notice could draw the public attention to the fact that the route of the pipeline is "flagged".

## 2.90 Notice of Application

The Minister shall on receipt of an application for a pipeline authorisation direct the applicant to give notice to such persons and in such manner as the Minister considers necessary in the circumstances. (121)

The Minister normally requires notice to be given as follows:

- (a) Nature Conservation Council.
- (b) Water & Soil Conservation Authority.
- (c) Commission for the Environment.
- (d) Civil Aviation Transport Division. (122)

Public notice of the application must be published twice in a daily newspaper circulating in each locality (123) through which the pipeline is to pass. (124)

(121) "Fortwith" after the second publication of the public notice.

(122) "Authorized pipeline" and "pipeline" are defined in Section 49(1) of the P.A.

(123) "Buried service" or "buried utility" would seem to include:  
 - distribution pipelines and ancillary or associated devices,  
 - stormwater drains and ancillary or associated devices,  
 - sewer drains and ancillary or associated devices,  
 - gas utility cables and ancillary or associated devices,  
 - electricity cables and ancillary or associated devices.

(124) Section 52(1) of the P.A.

(122) Discussion with M. Strachen. A Guide to the Petroleum Pipeline Procedures. Oil & Gas Division of the Ministry of Energy August 1984 pg 29.

(123) There is no definition of "locality" in the P.A. It would therefore have its common dictionary definition of "district" (Chambers 12th Century Dictionary - Revised Edition with Supplement 1982).

(124) Regulation 5(1) of the Petroleum Pipelines Regulations 1984. Regulation 5(2) of the Petroleum Pipelines Regulations 1984 requires a copy of the public notice to be given to the Secretary of Energy (being the complete page of the newspaper notice). Specific notice of an application to the Gas Association has been removed (Regulation 6(2) of the Petroleum Pipelines Regulations 1964 now repealed).

A copy of the public notice must be supplied (125) to:

- (i) The owner of every authorised pipeline (126) with 24 metres of the proposed pipeline; and
- (ii) The owner of every other buried service or buried utility within 6 metres of the proposed pipeline. (127)

It is unclear the meanings of "buried service" and "buried utility" and this requirement will create a practical difficulty when more transmission pipelines are laid in urban areas, especially as there is no central index recording for such buried service or utilities. (128)

- (125) "Forthwith" after the second publication of the public notice.
- (126) "Authorised pipeline" and "pipeline" are defined in Section 49(1) of the P.A.
- (127) "Buried service" or "buried utility" would seem to include;
  - distribution pipelines and ancillary or associated devices.
  - stormwater drains and ancillary or associated devices.
  - sewage drains and ancillary or associated devices.
  - post office cables and ancillary or associated devices.
  - electricity cables and ancillary or associated devices.
- (128) The writer is informed that it is proposed to set up a Land Information System which would establish and maintain such a central index recording matters related to all land including buried services or utilities. Discussion with M. Strachen.

The writer believes the establishment of such a system utilising computer technology is essential although its establishment will be costly and some years in the future.

The Commission for the Environment is supportive of this need for co-ordinated service control centres so that a contractor, through one single phone enquiry, can obtain complete information about the location of underground services in the area where excavation is proposed. - Commission for the Environment - Environmental Impact Audit - Proposed Huntly to Auckland Natural Gas Pipeline (Pukekohe to Westfield Section) 1980 page 20 and Commission for the Environmental Audits & Appraisals 1976-1981 A Review 1983 page 99.



The form of public notice is prescribed requiring (129) the following information to be stated:

- (i) Full name of the applicant.
- (ii) That the applicant is applying for a pipeline authorisation.
- (iii) The material proposed to be conveyed in the pipeline.
- (iv) The points between which the pipeline is to run.
- (v) Where copies of the application may be inspected. (130)
- (vi) Details as to the general route of the proposed pipeline with reference to the localities (131) the proposed pipeline shall pass through or near.
- (vii) That persons have the right to make submissions to the application.
- (viii) Whether the notice is the first or second publication of such notice.

(129) Regulation 5(3) of the Petroleum Pipelines Regulations 1984. This right of representation was not previously included in the Petroleum Pipelines Regulations 1964.

The statutory basis for this Regulation has been queried. Perhaps Section 87(1) of the P.A. Act, with a "fair large and liberal" interpretation (Section 5(3) of the Acts Interpretation Act 1924) authorise the Regulation. Correspondence with G. Nutters.

(130) The Draft Petroleum Pipelines Regulations 1983 had used the word "submissions". The writer believes that "representations" in a colloquial sense is more informal than "submissions".

(131) Naturally it is hoped the Secretary of Energy who receives the submissions shall take note of the submissions when advising the Minister in respect of the application.

(129) Form 2 Regulation 5(1) of the Petroleum Pipelines Regulations 1984.

(130) Normally the offices of the relevant local authorities and local libraries. There is no requirement that the copies of the application (if any at all) must be made available at such publicly accessible places. The writer believes the copy of the application should include the accompanying plan and report (this is not spelt out as it is in Section 51(6) of the P.A.) however it is not correct that the public notice specifically notifies the public of the availability of any reports (see the Commission for the Environment - Environmental Guidelines for Gas & Petroleum Pipelines 1984 page 11).

(131) Localities seem to mean "districts". See page 26 footnote 123.

2.91 Submissions in Respect of an Application (132)

"Any person who may be affected by the granting of the authorisation may make written representations to the Secretary (of Energy) within 30 days of the date of the first publication of the public notice ...." (132)

This right to make representations (133) seems a useful means of gauging some aspects of public opinion by formalising what already happens when the Minister (134) receives unsolicited opinion from the public.

This procedure does not however provide the communication link between the applicant and those property owners and occupiers (particularly in the urban areas) living in the vicinity of the proposed pipeline as has been urgently recommended by one commentator. (135)

The right to make representations is limited to persons who may be affected (136) by the granting of the authorisation. (137)

- (132) Regulation 5(3) of the Petroleum Pipelines Regulations 1984. This right of representation was not previously included in the Petroleum Pipelines Regulations 1964.

The statutory basis for this Regulation has been queried. Perhaps Section 87(i) of the P.A. may, with a "fair large and liberal" interpretation (Section 5(j) of the Acts Interpretation Act 1924) authorise the Regulation. Correspondence with G. Hulbert.

- (133) The Draft Petroleum Pipelines Regulations 1983 had used the word "submissions". The writer believes that "representations" in a colloquial sense is more informal than "submissions".

- (134) Naturally it is hoped the Secretary of Energy who receives the submissions shall take note of the submissions when advising the Minister in respect of the application.

- (135) J.T.E. Gilbert supra page 3.

- (136) For an inclination of the meaning of "affected" see subsection 2(3)(c) of the Town & Country Planning Act 1977 where "affected" is used and the cases decided under that subsection. A list of those cases is set out in "Town & Country Planning & The National Development Act" - Sheppard & McVeagh paragraph 2.27 to 2.34.

- (137) This limitation of requiring that the person may be "affected" was not included in the similar clause in the Draft Petroleum Pipelines Regulations 1983 which involved "any persons" to make a submission to the application. There however may be a public inquiry although this is unusual. (See page 30).

## 2.92 Public Inquiry

Before granting an application for a pipeline authorisation the Minister of Energy may in his discretion refer the application or such part of the application to a Commission of Inquiry. (138)

The applicant may request and the Minister is required to grant such a request (139) to refer the application or such part of the application to a Commission of Inquiry. (140)

The inquiry is held pursuant to the terms of the Commission of Inquiry Act 1908. (141)

The Commission after carrying out its inquiry advises the Minister of its opinion in relation to the application. (142) The Minister is not required to follow the advice of the Commission. (143)

(144) Figure kindly supplied courtesy of Mr N. Strachen being the figure to the end of July 1986

(145) A Commission of Inquiry was appointed to look into aspects of the proposed extension of the pipeline.

(138) Section 54(1) of the P.A.

(139) If the applicant requests a part of the application referred to a Commission of Inquiry the Minister may in fact refer the whole application to a Commission of Inquiry - Section 54(1B) of the P.A.

(140) Section 54(1A) of the P.A.

(141) Section 54(4) of the P.A.

(142) Section 54(2) of the P.A.

(143) The writer's opinion.

### 2.31 Prior Approval Required

The Minister of Energy must seek the prior approval of:

(a) Of the sixty seven (144) applications for pipeline authorisations only one (145) Commission of Inquiry have been held.

The advice of the Commission of Inquiry is not required to be made available to the public.

The appropriate Minister or local authority may stipulate special conditions to its approval, governing the construction or operation of such pipeline through the affected (146) land. (147) However, it is submitted that any such "special conditions" must be valid conditions of the authorisation, or the authorisation if granted, may be void. (151)

Such approval shall not be unreasonably withheld.

(146) Land as described in Section 29 of the P.A.

(147) There is no definition of "reserve" in the P.A. See however Section 2 of the Reserves Act 1977.

(148) Section 52(2) and Section 55 (1st proviso) of the P.A. See Section 49(1) of the P.A. for the definition of "road reserve". Section 55 (and Section 52(2)) of the P.A. contemplate that prior consent in relation to a reserve or a road reserve is given by a local authority. Yet there are various types of road. Government roads are vested in the Crown (Section 172 the Public Works Act 1981) and controlled by the Minister of Works and Development. State Highways in boroughs are owned by the appropriate Council (Section 316 of the Local Government Act 1975) but are controlled by the National Roads Board (Section 3 of the National Roads Act 1953). There is no definition of "local authority" in the P.A. yet there is a definition of

(144) Figure kindly supplied courtesy of Mr M. Strachen being the figure to the end of July 1984

(145) A Commission of Inquiry was appointed to look into aspects of the proposed Lyttleton LPG pipeline.

The Commission comprised:

- (a) District Court Judge and Planning Tribunal  
Chairman - Judge P.R. Skelton.
- (b) Mr G.W. Ensor a former Matamata County Council county engineer and Planning Tribunal member.
- (c) Mr T. Smallfield
- (d) Mr R.A. McLennan a former Nelson Mayor.

See Gas News June 1982.

(151) See next page.

### 2.93 Prior Approval Required

The Minister of Energy must seek the prior approval of:

- (a) The appropriate Minister if the application relates to certain classes <sup>(146)</sup> of land.
- (b) The appropriate local authority if the application relates to a reserve <sup>(147)</sup> or road reserve. <sup>(148)</sup>

The appropriate Minister or local authority may stipulate special conditions to its approval, governing the construction or operation of such pipeline through the affected <sup>(149)</sup> land. <sup>(150)</sup> However it is submitted that any such "special conditions" must be valid conditions <sup>(151)</sup> of the authorisation, or the authorisation if granted, may be void.

Such approval shall not be unreasonably withheld.

- (146) Land as described in Section 29 of the P.A.
- (147) There is no definition of "reserve" in the P.A. See however Section 2 of the Reserves Act 1977.
- (148) Section 52(2) and Section 55 (1st Proviso) of the P.A. See Section 49(1) of the P.A. for the definition of "road reserve". Section 55 (and Section 52(2)) of the P.A. contemplate that prior consent in relation to a reserve or a road reserve is given by a local authority. Yet there are various types of road. Government roads are vested in the Crown (Section 122 the Public Works Act 1981) and controlled by the Minister of Works and Development. State Highways in boroughs are owned by the appropriate Council (Section 316 of the Local Government Act 1975) but are controlled by the National Roads Board (Section 13 of the National Roads Act 1953). There is no definition of "local authority" in the P.A. yet there is a definition of "local authority" in the Public Works Act 1981 (Section 2). That definition of "local authority" may not include National Roads Board. Correspondence with Mr G. Hulbert.
- (149) It is submitted that such approval only relates to the application in relation to the particular land under control of the appropriate Minister or local authority and special conditions can only govern that particular land.
- (150) Section 52(2) of the P.A. The conditions must govern "the construction or operation of such pipeline". It is submitted that therefore a condition merely stating the holder must first reach agreement as to a licence or easement with a third party is not a matter governing the construction or operation of such pipeline and is therefore an invalid condition. The writer wishes to thank Mr J. Pohl of the Ministry of Energy for drawing the writer's attention to the constraint on such prior approval conditions.
- (151) See next page.

- (151) There may be the argument that a condition precedent, the necessary consents, have not been complied with and therefore the authorisation is void. If however such consents have been obtained but are not conditions of the authorisation there may be an argument that if the terms of such consents are breached at such later stage the authorisation is also void because the consents are not in some way enforceable by virtue of the authorisation. It is noted that there is not the usual provision that upon the issue of the authorisation is conclusive evidence that all the prior formalities have been complied with. (See Section 80 of the Coal Mines Act 1979 and Section 133 of the Mines Act 1971 and Kopara Sawmilling Co. Ltd v Birch (1981) 8 NZTPA 166 interpreting Section 133 of the Mining Act 1971). Also note Section 57(1) of the P.A. states: "Every pipeline authorisation ..., subject to the provisions of this Part of this Act, shall take effect ..."

- (152) Section 53(1) of the P.A.
- (153) It is unclear the meaning of "generally" in this context. Chambers Twentieth Century Dictionary revised edition with Supplement 1982 states "generally" means: "in a general or collective manner or sense; in most cases; upon the whole."
- (154) Land as described in Section 29 of the P.A.
- (155) Section 53(2) of the P.A.
- (156) Also after having regard to any recommendation of any Commission of Inquiry to which the application may have been referred - Section 55 of the P.A.
- (157) Section 55 of the P.A.
- (158) Section 55 (First proviso) of the P.A. See page 32.
- (159) Section 55 (Second Proviso) of the P.A. This was inserted by the Petroleum Amendment Act 1982. This may have to be modified in light of the proposed right to make submissions within 30 days of the first public notice. The first public notice is required to be made within 7 days of the date of lodging the application.
- (160) e.g. not taking into account a relevant consideration or taking into account an irrelevant consideration.
- (161) To the writer's knowledge.

## 2.94 Decision on Application

The Minister of Energy, in considering any application for a pipeline authorisation shall take into account all matters, circumstances, and representations which the Minister considers relevant to the subject matter of the application. (152)

In considering any application the Minister shall generally (153) have regard to:

- (a) The public interest.
- (b) The financial ability of the applicant to construct, operate and maintain the proposed pipeline.
- (c) Any effect which the construction or operation of the pipeline may have on certain classes (154) of land. (155)

After duly considering any application for a pipeline authorisation (156) the Minister, whose decision shall be final, may grant or refuse application. (157) The Minister may not grant an application for an authorisation before obtaining any necessary prior approvals (158) and before the expiry of a period of 40 days after the date on which the Minister received the application. (159)

The Minister's decision in relation to an application for a pipeline authorisation is reviewable by the Courts (160), however to date there has been no attempt to review a Minister's decision. (161)

- (152) Section 53(1) of the P.A.
- (153) It is unclear the meaning of "generally" in this context. Chambers Twentieth Century Dictionary revised edition with Supplement 1982 states "generally" means: "in a general or collective manner or sense : in most cases : upon the whole."
- (154) Land as described in Section 29 of the P.A.
- (155) Section 53(2) of the P.A.
- (156) Also after having regard to any recommendation of any Commission of Inquiry to which the application may have been referred - Section 55 of the P.A.
- (157) Section 55 of the P.A.
- (158) Section 55 (First proviso) for the P.A. See page 32.
- (159) Section 55 (Second Proviso) of the P.A. This was inserted by the Petroleum Amendment Act 1982. This may have to be modified in light of the proposed right to make submissions within 30 days of the first public notice. The first public notice is required to be made within 7 days of the date of lodging the application.
- (160) e.g. not taking into account a relevant consideration or taking into account an irrelevant consideration.
- (161) To the writer's knowledge.

### 3.00 AUTHORISATION

#### 3.10 CONDITIONS OF AUTHORISATION

Every pipeline authorisation in the prescribed form (162) must set out:

- (a) The route of the pipeline (163) and its terminal points, (164)
- (b) The size and maximum working pressure of the pipeline. (164)
- (c) The extent to which the pipeline may be placed on, over or under any reserve, road reserve, railway, or navigable water. (164)
- (d) Such other matters and conditions as may be necessary or desirable in the interests of public safety or otherwise in the public interest or as may be prescribed in regulations under the P.A. (164)
- (e) The holder of the authorisation. (165)
- (f) What is able to be conveyed in the proposed pipeline. (165) (166)
- (g) The points between which the proposed pipeline will run. (165)

The following details are also normally set out in the authorisation.

- (i) The material of pipe and strength grade of material used.
- (ii) The minimum pipe wall thickness (for all or part of the pipeline).
- (iii) The applicable standard or code for pipeline design and construction, and the standard and code for pipeline operation, where applicable. (167)

(162) Regulation 6(1) of the Petroleum Pipelines Regulations 1984 - Form 3 of the Schedule to those Regulations.

(163) The route is delineated on a plan attached to the authorisation Regulation 6(2) of the Petroleum Pipelines Regulations 1984.

(164) Section 56(1) of the P.A.

(165) Form 3 of the Schedule in the Petroleum Pipelines Regulations 1984. The authorisation may be limited in application as the words stated in Form 3 are "construct and/or operate a pipeline". Whereas under the previous Petroleum Pipelines Regulations 1964 Form 3 of the Schedule the relevant words were to "construct and operate a pipeline".

(166) See also Regulation 7 of the Petroleum Pipelines Regulations 1984.

(167) Discussions with Mr M. Strachen and correspondence J.I. Barrell. These details must be stated when applying for a pipeline authorisation (see page 18). It is submitted that the P.A. should require that these details must be conditions of an authorisation.



## 3.20 SPECIFIC APPROVAL FOR HIGHWAY AND RAILWAYS LAND

## 3.21 Highway Land

Conditions implied into an authorisation by statute are as follows:

- (i) That the holder of the authorisation must not limit or cease, except for a cause beyond the control of the holder of the pipeline authorisation, to use the pipeline for the conveyance of natural gas, oil, or dangerous goods as provided by the authorisation without the consent of the Minister of Energy. (168)
- (ii) That the holder of the authorisation must, in the construction and operation of the pipeline, comply with the Forest & Rural Fires Act 1977, the Dangerous Goods Act 1974 and the Explosives Act 1957. (169)
- (iii) That the pipeline shall not commence to operate until it has received a notice of satisfactory completion of test by an inspector. (170)

The depth of cover for pipeline would normally be stated in the terms of a pipeline authorisation for specific areas however the general depth of cover would be covered by the terms of the code for pipeline design and construction stated in the pipeline authorisation. (171)

## 3.22

(168) Section 56(2) of the P.A.

(169) Section 56(3) of the P.A.

(170) Regulation 12 of the Petroleum Pipelines Regulations 1984. See Section 41 of the P.A. for details as to inspectors.

(171) Discussions with Mr M. Strachen and correspondence with Mr J.I. Barrell.

### 3.20 SPECIFIC APPROVAL FOR MOTORWAY AND RAILWAYS LAND

#### 3.21 Motorway Land

Section 145 of the Public Works Act 1981 is applicable to the construction and operation of a pipeline. (172)

Section 145 states:

"Neither the Crown nor any local authority nor any other person shall place any wire, cable, pipe, tower, pole, or other structure or thing on, over, or under any motorway or on, over, or under any land that has been taken, purchased, set apart, or acquired for the purpose of constructing a motorway without the prior written consent of the National Roads Board."

Therefore the consent of the National Roads Board must be first obtained to the pipeline. (173)

If a dispute arises relating to the grant of consent by the National Roads Board the dispute (174) shall be determined by the Minister of Energy and the Minister of Works and Development. (175) This dispute resolution procedure is unusual, especially if the Ministers disagree. (176)

#### 3.22 Railway Land

Section 35 of the New Zealand Railways Corporation Act 1981 is applicable to the construction and operation of a pipeline. (177)

Section 35 states:

"(1) The Corporation may from time to time, grant to any person any easement in, upon, through, over, or under any railway land, subject to such conditions and payments of rent as the Corporation thinks fit, and subject to revocation without compensation at any time when the service of the public requires it, and subject also to immediate revocation in case of the breach of any conditions under which the easement was granted:

Provided that nothing herein shall be so construed as to limit the power of the Corporation to impose additional conditions as to revocation if it thinks fit.

(172) Section 56(4) of the P.A.

(173) The writer believes the Board may consent to or decline the application or consent to the application subject to certain conditions.

(174) "Relating" must be given a wide interpretation if this provision is to make sense, otherwise the decision of the National Roads Board could not be "disputed". Correspondence with Mr G. Hulbert.

(175) Section 56(4) of the P.A.

(176) The dispute could therefore not be "determined". The writer believes that the Minister of Works has no power to direct the National Roads Board however the Minister is the Chairman of the National Roads Board (section 3 of the National Roads Act 1953)

(177) Section 56(5) of the P.A.

(2) Subject to such terms as to rental or other payment, and such other terms and conditions, including conditions as to revocation, as it deems fit, and subject also in every case to the conditions as to revocation contained in subsection (1) of this section, the Corporation may from time to time, grant to any person any of the following easements, privileges, or concessions in respect of any railway land:

- (a) Right of way or passage:
- (b) Right of access to any railway by gateway or otherwise:
- (c) Right to use water:
- (d) Right to lay, construct, maintain, and use any electric line, telephone line, telephone, telephone booth, tramway, roadway, footway, parking place, level crossing, water race, sludge channel, culvert, drain, pipe, loading bank, fuel tank, weighbridge, wharf, stage, mooring site, timber slip, boom, crane, protective tank, sluice gate, fence, or plantation:
- (e) Right to cut timber, flax, or grass:
- (f) Right to take away earth, clay, rock, limestock, ballast, gravel, or sand:
- (g) Any other easement, privilege, or concession of a similar character.

(3) Notwithstanding anything in subsection (1) or subsection (2) of this section, where any easement, privilege, or concession to which those subsections refer is granted to any person under or in connection with any licence granted under section 34(1) of this Act or under or in connection with any lease granted pursuant to any such licence, the easement, privilege, or right may be subject to such payments of rent and such conditions as the Corporation thinks fit, including conditions as to revocation without compensation when the service of the public requires it, and such additional conditions as to revocation as the Corporation considers necessary.

(4) Notwithstanding anything in any other Act, no person shall have any right to any easement, or to construct or carry out any work upon, over, or under any railway, without having first obtained from the Corporation a grant of the right as provided in this section; and the Corporation may require the person to execute a deed or agreement setting forth the conditions subject to which the right is granted.

(5) Any easement granted to a public body upon, over, or under any railway at a public level crossing shall be at a nominal rental. "

There is no obligation on the New Zealand Railways Corporation to agree to the construction of a pipeline on railway land (178). Again it is submitted that if the New Zealand Railways Corporation does not consent there is no "dispute" relating to a grant of an easement to be determined by the Minister of Energy and the Minister of Railways. (179)

(178) Section 35(4) of the New Zealand Railways Corporation Act 1981 and Sections 57(5) and 57 of the P.A.

(179) The writer believes that the Minister of Railways has no power to direct the New Zealand Railways Corporation although the Directors of the Corporation are appointed by the Governor-General on the recommendation of the Minister. (Section 4 of the New Zealand Railways Corporation Act 1981).

### 3.23 Application to both Motorways and Railways Land

It is submitted that a pipeline easement certificate (180) can not be obtained over motorway or railway land. Section 145 of the Public Works Act 1981 and Sections 56(4) and 57 of the P.A. are clear. Section 70(1) of the P.A. governing pipeline easements certificates starts with merely "Notwithstanding the provision of Section 22 of the Public Works Act 1981, ...". (181) Therefore Section 145 of the Public Works Act 1984 and Section 35 of the New Zealand Railways Corporation Act 1981 are still applicable.

However it is clear that motorway and railway land may be covered by a middle line notice. (182) Section 71 of the P.A. governing middle line notices specifically defines 'land' in that section to include a motorway and a railway and the subsection setting out the Minister of Energy's power to issue a middle line notice is prefaced by the words "Notwithstanding anything in this Act [the P.A.] ...". However Section 71 does not, it seems to the writer, authorise the holder of an authorisation to ignore the provisions of Section 145 of the Public Works Act 1981 and Section 35 of the Railways Corporation Act 1981. (183)

The National Roads Board and the New Zealand Railways Corporation generally oppose the laying of transmission pipeline along railway reserve and main arterial roads for reasons of security and strategic importance. (184)

- (180) For a description and discussion of pipeline easement certificates see page 67.
- (181) This initial reference to Section 22 of the Public Works Act 1981 was inserted in the Petroleum Amendment Act 1982. It seemingly therefore authorises the easement certificates which may have otherwise been prohibited by the Public Works Act 1981 (Section 22 of the Public Works Act 1981 prohibits compulsory taking of land unless the public work is an essential work). Correspondence with Mr G. Hulbert.
- (182) For a description of middle line notices see Page 65.
- (183) New provisions being Section 56(4) and (5) and Sections (71), (71A) and (71B) were inserted by the Petroleum Amendment Act 1982.

The new provisions for Section 56(4) and (5) noted the recently promulgated new Public Works Act 1981 and the New Zealand Railways Corporation 1981 in substitution for the previous provisions of the Public Works Amendment Act 1947 and the Railways Act 1949. However the substantive meaning of the provisions was unchanged.

- (184) J.T.E. Gilbert supra page 2

### 3.30 The Authorisation's Effect

Subject to the terms of Part II of the P.A. the pipeline authorisation shall take effect, notwithstanding the provisions of any other enactment, according to its tenor, to authorise the holder to carry out such operations as may be authorised by the authorisation or by Part II of the P.A. (185) during the currency (186) of the authorisation. (187)

Any holder of an authorisation who fails to comply with the terms or conditions of the authorisation commits an offence against the Pipeline authorisation and is liable, on summary conviction, to a fine not exceeding \$500 for each day or part of a day that the offence continues. (188)

In addition to authorising the conveyance of the specified substance every authorisation is deemed to authorise, so long as public safety is safeguarded, the conveyance of such substances as may be necessary for the operation, maintenance and cleansing of the pipeline. (189)

(185) See in particular:

- Section 68 - Powers of holders
- Section 75 - Right of Entry on Land

(186) Section 58 of the P.A. states every pipeline authorisation shall remain in force until it is revoked.

(187) Section 57(1) of the P.A. The writer believes following current NZ case law (Stewart v Grey County [1978] 2 N.Z.L.R. 577) that Part II of the P.A. is an exclusive code governing transmission pipelines. See page 64 footnote 263.

(188) Section 57(2) of the P.A.

(189) Regulation 7 of the Petroleum Pipelines Regulations 1984.

3.40 Amendment or Revocation of Terms and Conditions of an Authorisation

3.41 On application by the holder

The Minister, during the currency of a pipeline authorisation, may, on the application of the holder, amend or revoke any of the terms or conditions of the authorisation or add any new terms or conditions, if, in the opinion of the Minister any such amendment, revocation, or addition is not contrary to the public interest. (190)

An authorisation occasionally requires amendment etc. as practical or legal problems arise during the construction or operation of the pipeline. (191)

The Minister must give every person who is likely to be affected 7 days' notice of his intention to amend, revoke or add to the terms or conditions of the authorisation. (192) The amendment etc. is noted on the authorisation. (193)

The holder of an authorisation may apply to have the authorisation revoked. (194)

(190) Section 66(1) of the P.A. If an amendment to the authorisation now brings the route of the pipeline onto Public Reserve, reserve or road reserve is the prior consent of the appropriate Minister or local authority required, as is necessary for an original authorisation? It is the writer's opinion that such consents are required although Section 66(1) of the P.A. is drafted very widely. This should be clarified by inserting at the beginning of each Section 66(12) the words "Subject to Section 55(2) of the P.A." Correspondence with Mr G. Hulbert.

(191) No figure of the number of amendments that have been made was obtained by the writer.

(192) Section 66(2) of the P.A.

(193) Section 66(3) of the P.A.  
It is submitted that as with an application for an authorisation (Regulation 5(3) of the Petroleum Pipeline Regulation 1984) such persons affected should be granted the right to make written representations concerning the proposed amendment etc.

(194) Section 67(6) of the P.A.

### 3.42 Minister's Power

If the Minister is of the opinion that a holder of an authorisation has not complied with:

- (a) the terms and conditions of the authorisation, or
- (b) provisions of Part II of the P.A.
- (c) provisions of the Petroleum Pipelines Regulations 1984 (195)

the Minister may give the holder written notice specifying the nature of the default and requiring the holder to remedy the default within the time specified in the notice. (196)

The holder of an authorisation upon receipt of such notice must either remedy the default within the time specified (197) or refer the matter to arbitration within 28 days after receiving the notice. (198)

(195) The Petroleum Pipelines Regulations 1984 were promulgated pursuant to Part II of the P.A.

(196) Section 67(1) of the P.A.

(197) Clearly it would be advisable, if practical, to state such time to be 28 days in order to coincide with the period allowed to refer the matter to arbitration.

(198) Section 67(2) of the P.A.

If the holder does not remedy the default within the specified time (assuming the 28 days has elapsed to refer the matter to arbitration (199) and no such referral to arbitration has been made) the holder is in breach of Section 67(2) of the P.A. However it seems the Minister has no power to suspend or revoke the authorisation (200) and may only seek to bring proceedings alleging that the holder has committed an offence under the P.A. (liable for fines (201) ) if it can be established the holder has wilfully obstructed a person exercising any power or the performance of any duty under the P.A. (202)

If the holder does refer the matter to arbitration within 28 days of receiving the Minister's notice the arbitrators advise the Minister whether or not a default has been committed as alleged in the notice and if such default has occurred, whether or not the authorisation should be suspended or revoked. (203)

- (199) It is submitted that the holder cannot be in breach of Section 67(2) in remedying the default until the 28 days for referring the matter to arbitration has elapsed.
- (200) It seems that for Section 47J(2) of the P.A. which might allow the Minister to revoke an authorisation if it would be "just and equitable" to be applicable there must be first a referral to arbitration. Section 67(2)(b) of the P.A. "Refer the matter to arbitration under Section 47J ..."
- (201) Section 47L of the P.A. applicable if Section 86(1) of the P.A. is complied with.
- (202) Section 86(1) of the P.A.  
It is therefore submitted that it would not have been envisaged that an offence would have to be established if the Minister was seeking to revoke or suspend an authorisation if a holder of the authorisation would not remedy or refer to arbitration the default alleged by the Minister. An amendment to Section 67 may therefore be required.
- (203) Section 67(3) of the P.A.



The Minister, after having regard to the arbitrators recommendation, may revoke the authorisation or suspend the authorisation for a stated period or suspend the authorisation until the Minister is satisfied that the default complained of has been remedied (204) or the Minister may decide to take no further action. (205) However the Minister may not revoke or suspend the authorisation contrary to the recommendation of the arbitrators. (206) It is an offence to unlawfully use the pipeline for the conveyance of natural gas, oil, or dangerous goods (207) during any period when the authorisation is suspended or revoked and the person using the pipeline is liable for a fine. (207A)

- (204) Section 67(4) of the P.A.  
Any suspension of a pipeline authorisation may be subject to such terms and conditions as the Minister thinks fit - Section 67(5) of the P.A.
- (205) Section 67(4) of the P.A.
- (206) Section 67(4) proviso of the P.A.
- (207) Presumably other uses are therefore allowed, that is, the conveyance of water or other non-dangerous goods.
- (207A) Section 67(8) of the P.A.

(210) Section 69 of the P.A.

3.50 Rights and Obligations of a Holder of an Authorisation3.60 Powers3.61 General

Every pipeline authorisation shall subject to the provisions of [Part II of the P.A.] take effect, notwithstanding the provisions of any other enactment, according to its tenor, to authorise the holder to carry out such operations as may be authorised by the authorisation or by [Part II of the P.A.] during the currency of the authorisation. (208)

Notwithstanding the provisions of any other Act, regulation, by-law, certificate of title, or other authority, any pipeline authorisation issued under [Part II of the P.A.] shall, subject to the provisions of [Part II of the P.A.] and the authorisation, confer on the holder, while the authorisation remains in force, an absolute (209) right:

- (a) to construct and lay pipelines on, over, or under any land referred to in the authorisation.
- (b) to construct and lay pipelines along, on, over, or under any road, railway, tramway, bridge, navigable waters, river, or stream referred to in the authorisation.
- (c) to alter, remove, repair, operate, inspect, renew and maintain any pipeline constructed under the authority of the authorisation.
- (d) to do such other things as are necessarily incidental to the exercise of the powers and authorities of the holder under [Part II of the P.A.] (210)

(208) Section 57(1) of the P.A.

(209) The Chambers Twentieth Century Dictionary Revised Edition with Supplement (1982) defines "absolute" to mean: "free from limits, restrictions, or conditions : certain, positive : complete : unlimited : free from mixture : independent of relation to other things : pre-emptory : unrestricted by constitutional checks : capable of being conceived independently of anything else". See also Section 130 of the Property Law Act 1952 where "absolute" also appears and the Canadian case of Halley v Minister of National Revenue (1963) Ex. C.R. 372 per Thurlow, J., at page 375.

(210) Section 68 of the P.A.

For the purpose of exercising his powers and functions under [Part II of the P.A.] the holder of a pipeline authorisation may:

- (a) make such arrangements and enter into such contracts, not inconsistent with [Part II of the P.A.] or with the authorisation, as [the holder] considers necessary.
- (b) agree with the owner of any estate or interest in any land for the purchase or other acquisition of any right, and the terms upon which any such right or interest may be used or exercised or any such easement enjoyed. (211)

Notwithstanding any enactment or rule of law to the contrary any company, body, or authority shall have full power to enter into and carry out any arrangement, contract, or agreement outlined above. (212)

However such powers are subject to:

- (a) Part II of the P.A.
- (b) The terms of the authorisation.

Therefore the terms of the pipeline authorisation are critical in defining the ambit of the powers conferred on a holder of a pipeline authorisation.

(213) Section 57(1) of the P.A.

(211) Section 69(1) of the P.A. and (b) of the P.A.

(212) Section 69(2) of the P.A. Note this power is not limited to the holder of the authorisation but is also conferred on the party dealing with the holder of the authorisation in the prescribed circumstances. This is clearly aimed at conferring powers on companies with limited Memoranda of Association.

Clearly the holder of a pipeline authorisation is given wide powers to:

- (i) carry out such operations authorised by the authorisation. (213)
- (ii) the construction and laying of pipelines over certain land. (214)
- (iii) operate, maintain and alter pipelines. (215)
- (iv) to do all such things as are necessarily incidental to the carrying out of such operations authorised by an authorisation. (216)

However such powers are subject to:

- (a) Part II of the P.A.
- (b) The terms of the authorisation.

Therefore the terms of the pipeline authorisation are critical in defining the ambit of the powers conferred on a holder of a pipeline authorisation.

(213) Section 57(1) of the P.A.

(214) Section 68 paragraphs (a) and (b) of the P.A.

(215) Section 68 paragraph (c) of the P.A.

(216) Section 68 paragraph (d) of the P.A.

Normally pipeline authorisations do not stipulate powers granted to a holder of a pipeline authorisation. <sup>(217)</sup> The power to do such things as are necessarily incidental <sup>(218)</sup> to the carrying out of the pipeline operations authorised by a pipeline authorisation is the widest power given to a pipeline authorisation holder however its exact meaning is unclear.

(217) See Form 3 of the Petroleum Pipelines Regulations 1984. There is only space for "special conditions". These "special conditions" normally state certain requirements (e.g. minimum cover) which must be adhered to for certain land.

(218) The Chambers Twentieth Century Dictionary Revised Edition with Supplement (1982) defines "incidental" to mean: "incident : striking or impinging : liable to occur : naturally attached : accompanying : concomitant : occasional, casual." See also the case of Re: Fahy's Will Trusts, McKnight v Fahy, [1962], 1 ALL E.R. 73 per Plowman, J., at page 75.

(220) Right of the holder to enter on the land for the purposes of removing the pipeline or comply with the Minister's directions pursuant to Section 81 of the P.A.

### 3.62 Right of Entry

There is no unlimited right of entry granted to the holder of a pipeline authorisation without obtaining prior agreement from the landowner (219) or being authorised by the Minister of Energy or by virtue of the issue of a Middle Line Notice or obtaining a pipeline easement certificate. (220)

- (219) The holder of a pipeline authorisation must have in respect of the land concerned entered into an agreement under Section 69(1)(b) of the P.A.

It is submitted that only the landowner has the unlimited right to enter into such agreement under Section 69(1)(b) of the P.A. A lessee would only be able to enter into such agreement subject to the approval of the landowner.

- (220) Section 75(1)(2) of the P.A. See Section 81(4) of the P.A. for the right of the holder to enter on the land for the purposes of removing the pipeline or comply with the Minister's directions pursuant to Section 81 of the P.A.

A person may obtain authorisation (221) to enter on land for making surveys and preliminary investigations in respect of the construction of a pipeline. (222)

The general right of entry granted to a holder of a pipeline authorisation to exercise his rights under the authorisation or the P.A. may only be exercised if in respect of the land:

- (i) A Middle Line Notice has been issued. (223)
- (ii) The holder of the authorisation has entered into an agreement under Section 69(1)(b) of the P.A.
- (iii) The holder of the authorisation has obtained a pipeline easement certificate. (224)

The right of entry includes right of access to and egress from the land for the holder of the authorisation, his servants, workmen, and agents, and from time to time and at all times, and rights of depositing and storage machinery and material. (225) It is the writers view that the right of entry and ancillary rights are limited to land in respect of which a Middle Line Notice, a section 69(1)(b) agreement or a pipeline easement certificate has issued or been obtained (226).

- (221) Authorised in writing either specially or generally by the Minister of Energy.
- (222) Section 74 of the P.A.  
Note compensation for injurious affection or damage arising during such entry is to be agreed or to be determined by a District Court Judge, rather than determined by virtue of the provisions of the Public Works Act 1981. (See Section 74(7) of the P.A. and pages in relation to general compensation payable under the P.A.) The MacLachlan Report recommended the determination of compensation should be by a Land Valuation Tribunal (paragraph 4.3) and the writer believes this would be advisable in order that compensation determinations will be as consistent as possible.
- (223) 21 day notice is required to be given to the owner and occupier of the land. See page 65 on Middle Line Notices.
- (224) Section 75(1)(2) of the P.A.
- (225) Section 75(1) of the P.A.
- (226) Section 75(2) of the P.A. sets out the limitation and the ancillary rights are also restricted by the limitation on the entry rights. That is "the land" in section 75(2) of the P.A. is the same as "such land" in section 75(1) of the P.A.

In most circumstances agreement is reached between the holder of the pipeline authorisation and the landowner for rights of entry. Such agreement normally also states the landowner agrees to grant to the holder a pipeline easement in the form attached to the agreement. The agreement covers the following:

- (i) The holders right of entry for construction and laying the pipeline.
- (ii) The landowner agreeing to grant the holder a pipeline easement for the pipeline.
- (iii) The holders obligation to restore land affected.
- (iv) That compensation be determined pursuant to the P.A.
- (v) The holders right to caveat the land in question to protect the holders interest pursuant to the agreement.
- (vi) The agreement may also adopt the terms of a further agreement which may have been reached between the holder and Federated Farmers of New Zealand Inc. covering the particular pipeline.

A copy of a draft agreement is attached and marked Appendix "C".<sup>(227)</sup>

Normally the holder will hold a public meeting to discuss the details of any proposed pipeline with landowners likely to be affected and other relevant organisations <sup>(228)</sup> as a preliminary to obtaining the necessary agreements from the landowners affected by the pipeline. <sup>(229)</sup>

(227) See J.I. Barrell - Negotiating Pipeline Routes supra pg.3 and Allen Coster - Be Aware of Your Rights - Supra.

(228) Federated Farmers of New Zealand Inc. In many cases the pipeline owner negotiates an agreement with Federated Farmers of New Zealand Inc covering one or more transmission pipelines. Individual farmers may take the benefit of this agreement or negotiate a further separate agreement with the pipeline owner.

(229) J.I. Barrell - Negotiating Pipeline Routes - supra pg.2  
Allen Coster - Be Aware of Your Rights - Supra.



3.70 Duties3.71 Restoration (230)

Every holder of a pipeline authorisation (231) on completion of the pipeline and from time to time thereafter, shall restore all land affected by the exercise of any power conferred by the authorisation as near as practicable to the state it was in before the exercise of the power. (232)

The most important aspect of this restoration duty imposed on the holder of a pipeline authorisation is that it is continual. The obligation covers "all land affected" which may be an area much larger than merely the area specified in an arrangement etc. (or more likely an easement). (233)

3.72 Erosion Prevention (234)

Every holder of a pipeline authorisation shall take such reasonable steps as are necessary to prevent erosion arising from the construction of the pipeline. If erosion is likely to occur despite the taking of all reasonable steps to prevent it, the holder shall ensure that the pipeline is sufficiently protected from damage.

- (230) Previously the obligation on the holder of a pipeline authorisation pursuant to the Petroleum Pipelines Regulations 1964 was the following:

"the [holder], when constructing a pipeline, shall construct it in such a manner as to ensure that the surface of the land affected suffers as little permanent damage as possible having regard to the purpose for which the land is normally used, to the cost of restoring the land, and other relevant matters."

- (231) Subject to the express terms of any arrangement, contract or agreement entered into by the holder of the authorisation or the express terms of a pipeline easement certificate. Therefore if there are not express terms in the arrangement etc. or the easement certificate (normally there are not - See Form 5 (Pipeline Easement Certificate) of the Schedule of the Petroleum Pipelines Regulations 1984) then this duty as to restoration shall be applicable.
- (232) Regulation 8(1) of the Petroleum Pipelines Regulations 1984.
- (233) The Standard Agreement for Entry and Grant of Pipeline Easement and Memorandum of Transfer (Grant of Easement) attached marked "C" and "D" do not expressly exclude Regulation 8 of the Petroleum Pipelines Regulation 1984. However both the Agreement and the Memorandum specifically cover a restoration duty (clause 3 of the Agreement and paragraph (c) of the Memorandum). It is the writer's opinion that therefore if there has been such an Agreement or a Memorandum entered into then the provisions of Regulation 8(1) are inapplicable.

The bench mark of such restoration work for the land is "as near as practicable to the state it was in before the exercise of the power". It is submitted that this bench mark could cause unnecessary practical problems, especially as the restoration obligation is continual. If land is scrub land prior to pipeline operations, however with perhaps horticulture potential, it seems somewhat counterproductive to require the holder to restore the land as near as practicable to the state it was in before the exercise of pipeline operations if the land were able to be restored without any great burden to the holder to a different level, better than scrub land. It may be seen that the words "as near as practicable" allow this flexibility. However the writer believes it would be better if the restoration obligation was in line with that required for mineral Privileges. The standard restoration obligation under mining Privileges is to return the land to a condition at least as good as its condition at the commencement of the relevant activity. (234)

### 3.72 Erosion Prevention (235)

Every holder of a pipeline authorisation shall take such reasonable steps as are necessary to prevent erosion arising from the construction of the pipeline. If erosion is likely to occur despite the taking of all reasonable steps to prevent it, the holder shall ensure that the pipeline is sufficiently protected from damage. (236)

- (234) Re Application by Amoco Minerals NZ Ltd 8 NZTPA 449, 471, Re Application by Homestake NZ Exploration Ltd 9 NZTPA 260, 264. The restoration obligation in the Agreement and Memorandum should also be amended as above.
- (235) There was no similar provision in the Petroleum Pipelines Regulations 1964.
- (236) Regulation 8(2) of the Petroleum Pipelines Regulations 1984.

This obligation can not be contracted out by the express terms of an arrangement etc. The obligation is to prevent erosion "arising" (237) from the construction of the pipeline. It is submitted that this obligation continues subsequent to the construction of the pipeline. (238)

The erosion prevention obligation is counter-balanced and overshadowed (239) by the obligation that if erosion is likely to occur despite the taking of all reasonable steps to prevent it, the holder shall ensure that the pipeline is sufficiently protected from damage.

#### 1.74 Pipelines and Water

Every holder of a pipeline who is liable shall ensure that a pipeline which is permanently submerged or laid in swampy or other soft soil that may become water-logged or [ ] is suitably anchored or weighted to prevent it from floating. (241)

- (237) The Chambers Twentieth Century Dictionary Revised Edition with Supplement (1982) defines "arise" to mean: "to raise up : to get up : to take rise, originate : to come into being : view or activity." See the cases Re Calrymple, Hogg v Provincial Tax Commission [1941] 2 W.W.R. 309, per MacDonald, J., at p.p. 303, 304 and Government Insurances Office of N.S.W. v Green [1967] A.L.R. 106; (1965) C.L.R. 437, per Menzies, J. at p. 442.
- (238) Do the words "arising from the construction of the pipeline" limit the obligation to within a reasonable period from pipeline construction? Would these words cover erosion occurring some ten years subsequent to the construction of the pipeline arising because of change to the land resultant from the construction of the pipeline? The writer's view is yes, if it can be established that the construction of the pipeline and the resultant change to the land caused the erosion.
- (239) In the writer's opinion.

### 3.73 Enforcement of the Restoration & Erosion Prevention Duties

There is however no right given to the owner of the land affected to initiate proceedings to force the holder of the authorisation to comply with the restoration obligation or the erosion prevention obligation. The authority responsible for enforcing the restoration and erosion prevention obligation is the Minister of Energy. The landowner might initiate proceedings against the Ministry of Energy to seek to force the Ministry to take action against the holder of the authorisation. The landowner would not necessarily be given any monies collected as fines if the holder of the authorisation had breached any such obligation.

The landowner might apply to the Courts to force the holder to stop carrying out certain operations alleging a breach of statutory duty. (240)

### 3.74 Pipelines and Water

Every holder of a pipeline authorisation shall ensure that a pipeline which is permanently submerged or laid in swampy or other soil that may become waterlogged or flooded is suitably anchored or weighted to prevent it from floating. (241)

(240) See De Smith's *Judicial Review of Administrative Action* 4th Edition 1980 pp 321-322 and the case Taranaki Catchment Commission and Regional Water Board v R. & D. Roach Ltd [1983] NZLR 641.

(241) Regulation 8(3) of the Petroleum Pipelines Regulations 1984. There was no similar provision in the Petroleum Pipelines Regulations 1964. The writer believes such a requirement would normally be covered by a stated standard or code applicable for pipeline construction and operation, and it is submitted that it should not have to be stated in the Regulations. Correspondence J.I. Barrell.

3.75 Works of Public Use

Where it is found necessary in the exercise of the powers conferred on holders of authorisations under this Part of this Act to alter or interfere with any road, railway, tramway, public work, watercourse, sewer, drain or gas or waterpipe, under the control of the Crown or any authority having control of the work by virtue of any enactment, the alteration or interference shall be made in such manner as to interfere as little as possible with the work so altered, and so as to afford to the public and to every person entitled to use the same an equal use and convenience as before the alteration of interference. (242).

This provision has no application to privately (243) owned land and is only applicable when the holder is exercising powers conferred on a holder of an authorisation under Part II of the Act (244) in relation to limited classes of land or works (245).

3.76 Roads (246)

Every holder of a pipeline authorisation (247) on completion of the pipeline and from time to time thereafter shall at the option of the road controlling authority restore the surface of the road or pay the reasonable costs incurred by the road controlling authority in restoring the surface of the road (248)

(242) Section 76 of the P.A.

(243) Land owned by other than the Crown or an authority having control of the work by virtue of any enactment. It is submitted that "an authority" does not include an individual. There is no definition of "authority" in the P.A. Also it is not clear of the meaning of "the work". It is submitted that Section 76 of the P.A. should be amended to clarify its precise scope and the circumstance of application.

(244) Not applicable if relevant power exercised pursuant to the terms of an authorisation although as discussed, it will be rare that powers are set out in an authorisation.

(245) Any road, railway, tramway, public work, watercourse, sewer, drain or gas or waterpipe.

(246) There is no definition of road in the P.A. or Petroleum Pipelines Regulations 1984. See Section 121 of the Public Works Act 1981 and Section 315 of the Local Government Act 1974 for definitions of the word "road". Section also Section 76 of the P.A. as it applies to any road.

(247) Subject to the express terms of any arrangement, contract or agreement entered into by the holder of the authorisation or the express terms of a pipeline easement certificate.

(248) Regulation 8(1)(b) of the Petroleum Pipelines Regulations 1984.

The obligation is continual (249) yet it seems such continual obligation, unless further damage is caused to the road by pipeline repairs etc. is inappropriate in the circumstances (250). It seems that it should be clarified that the restoration obligation covers only road affected by the exercise of any power confirmed by the authorisation (251).

There is no stated "bench mark" to which the road has to be restored. Presumably it is the state of the road before the exercise of power. (252)

- (249) It is submitted it should be clarified if and when this obligation ceases.
- (250) The reason for the continual obligation may be that slumping in roads may continue for a lengthy time after pipeline construction. Correspondence with Mr G. Hulbert.
- (251) As with the general restoration obligation (see page 52).
- (252) As discussed previously the writer's opinion is that the road should be returned to a condition "at least as good as" its condition at the commencement of the relevant activity.

3.80 Taking of Land3.81 General

Section 78 states as follows:

"(1) Notwithstanding the provisions of Section 22 of the Public Works Act 1981, for the purpose of carrying out any function authorised by a pipeline authorisation or any other function necessary for the efficient operation of the pipeline or necessarily incidental to the operation of the pipeline, the Governor-General may, on the application of the holder of an authorisation and at his expense in all things, take under the Public Works Act 1981, as if for a public work which is an essential work within the meaning of that Act, any land or any particular estate or interest in any land (whether for the time being subsisting separately or not) or any easement of profit a prendre over any land (whether for the time being subsisting or not): Provided that this subsection shall not apply unless the Minister is satisfied that the holder is not able to purchase or otherwise acquire the land or interest in land at a reasonable price from the owner thereof and the Minister recommends the Governor-General accordingly.

"(2) The provisions of Section 35(2) of [the P.A.] shall, with the necessary modifications, apply to the taking of any land or interest in land under this section in all respects as if the holder of the authorisation were a licensee referred to under the said section 35."

Section 35(2) of the P.A. states:

"(2) Notwithstanding anything to the contrary in the Public Works Act 1981, the effect of a Proclamation issued for the purposes of this section shall be to vest the land, estate, interest, easement, or profit a prendre, as the case may be, in the licensee instead of in the Crown; and all proceedings subsequent to the issue of the Proclamation in respect of compensation, or otherwise for the purpose of complying with the said Act, shall be taken against the licensee, who shall be deemed to be the respondent and shall be liable in respect of the taking to the same extent as the Crown or the Minister of Works and Development would have been liable if the taking had been for the purpose of a Government work.

(253) Sect

(254) Sect

(255) Section 26(2)(3) of the Public Works Act 1981.

(256) Section 26 - Agreement

(257) Section 22 of the Public Works Act 1981.

To the writer's knowledge no land has been taken pursuant to Section 78 or Section 35 of the P.A.

There is confusion as to the manner of application of these sections especially in relation to a pipeline holder being a private company, such as Petrocorp or NGC.

The provisions of the Public Works Act 1981 sets up procedures for the acquisition of land for public works (253) by the Minister (254) of Works & Development, a local authority (255) or the Governor General (normally to vest the land in the Crown or a local authority). Acquisition may be agreement or by compulsion. (256) Acquisition by compulsion is only applicable if the public work is essential work. (257)

- (253) Sections 16(1) and 20(2) of the Public Works Act 1981.
- (254) Section 16(2) of the Public Works Act 1981. It is unclear who is a local authority. Petrocorp, NGC or the National Roads Board?
- (255) Section 26(2)(3) of the Public Works Act 1981.
- (256) Section 26 - Agreement  
- Compulsory
- (257) Section 22 of the Public Works Act 1981.



There are two views as to the application of the procedures for taking land pursuant to Section 78 [and Section 35] of the P.A.

1. A holder of an authorisation making an application under Section 78 [or Section 35] of the P.A. is seeking to apply the general procedures of the Public Works Act 1981. The power of the Governor-General is utilised to take the land however the preliminary procedures applicable prior to the Governor-General exercising his power must be complied with (258) and in the circumstances the holder (not being the government) comes within the definition of a local authority and must initiate the taking of the land as a local authority. (259)
2. A holder of an authorisation making an application under Section 78 [or Section 35] of the P.A. is seeking to apply the specific provision of P.A. which in turn incorporates an ability of the Governor-General to take land pursuant to a specific provision of the Public Works Act 1981. The ancillary procedures carried out prior to the Governor-General using his power pursuant to Section 26 of the Public Works Act 1981 are inapplicable. (260)

The writer believes the second view is the better view taking account of the following factors:

- (a) The specific words of Section 78 [or Section 35] of the P.A. (especially the words "as if for a public ...").

(258) Section 26(2) of the Public Works Act 1981 must be read subject to subsection (1).

(259) This is the view of Mr J. Pohl and Mr G. Hulbert.

(260) Section 26(2) of the Public Works Act 1981 is not to be read subject to subsection (1) in the circumstances and stands alone.

See for a discussion of the procedures - P. Salmon: The Compulsory Acquisition of Land in New Zealand 1st Edition 1982 page .

- (b) That Part II of the P.A. has been drafted as an exclusive code and although the powers of another Act may be applicable it seems incongruous that the procedures of another Act should be applicable.
- (c) That if a holder of an authorisation to utilise Section 78 [or Section 35] of the P.A. is then seen to be a local authority it is submitted that Section 78 [or Section 35] of the P.A. would have merely had to "deem" such, and would have done so by specific words.

(2) The provisions of subsections (2), (3) and (4) of section 39 of [the P.A.] shall, as far as they are applicable and with the necessary modifications, apply to claims for compensation under this section.

(3) This section shall apply to claims on behalf of the Crown, as well as to claims by or on behalf of other persons.

(4) Notwithstanding any enactment or rule of law, the exercise of any power conferred on the holder of an authorisation shall not be curtailed, suspended, or delayed by reason of the fact that any claim for compensation under this section has been made but not determined.

(261) Note this is not applicable to compensation payable for injurious affection or damage due to entry on land for the purpose of making surveys and preliminary investigations. See Section 74(7) of the P.A. See the MacLachlan Report and K.G. Stevenson - Pipeline Compensation N.L. Valuer December 1963 for a fuller discussion of this matter.

Note however that Section 77 of the P.A. does not seem applicable to a taking of land under Section 78 of the P.A. (Section 74(2)) refers back to Section 35(2) of the P.A. which infers compensation for the taking of land under Section 78 is settled "to the same extent as the Crown or the Minister of Works and Development would have been liable if the taking had been for the purpose of a government work [under the Public Works Act 1943]". Correspondence with Mr G. Gilbert.

3.82 Compensation (261)

Section 77 of the P.A. generally (261) governs compensation.

It states as follows:

- "(1) Subject to section 74(7) [of the P.A.] every person having any right, title, estate, or interest in any land or property injuriously affected by the exercise from time to time of any powers conferred by this Part of [the P.A.] or by any authorisation shall be entitled to full compensation for all loss, injury, or damage suffered by him.
- (2) The provisions of subsections (2), (3) and (4) of section 39 of [the P.A.] shall, as far as they are applicable and with the necessary modifications, apply to claims for compensation under this section.
- (3) This section shall apply to claims on behalf of the Crown, as well as to claims by or on behalf of other persons.
- (4) Notwithstanding any enactment or rule of law, the exercise of any power conferred on the holder of an authorisation shall not be curtailed, suspended, or delayed by reason of the fact that any claim for compensation under this section has been made but not determined.

(261) Note this is not applicable to compensation payable for injurious affection or damage due to entry on land for the purpose of making surveys and preliminary investigations. See Section 74(7) of the P.A. See the MacLachlan Report and K.G. Stevenson - Pipeline Compensation N.Z. Valuer December 1983 for a fuller discussion of this matter.

Note however that Section 77 of the P.A. does not seem applicable to a taking of land under Section 78 of the P.A. (Section 78(2)) refers back to Section 35(2) of the P.A. which infers compensation for the taking of land under Section 78 is settled "to the same extent as the Crown or the Minister of Works and Development would have been liable if the taking had been for the purpose of a government work [under the Public Works Act 1981]". Correspondence with Mr G. Hulbert.

Sections 39(2)(3)(4) are as follows:(262)

- "(2) Where any claim for compensation under this section arises in respect of the exercise of any power by or on behalf of any licensee, the person liable for the compensation (if any) that becomes payable shall be the licensee, who shall be deemed to be the respondent for the purposes of the Public Works Act 1981.
- (3) Where in any other case the claim arises in respect of the exercise of any power by or on behalf of the Crown or the Governor-General or any Minister of the Crown, the Minister of Works and Development shall, subject to Section 102 of the Public Works Act 1981, be liable for the compensation (if any) that becomes payable, and shall be deemed to be the respondent.
- (4) In default of agreement between the parties, claims for compensation under this section shall be made and determined within the time and in the manner provided by the Public Works Act 1981, and the provisions [of the P.A.] shall, so far as they are applicable and with the necessary modifications, apply in respect of claims under this section. "

(262) As Part 11 is an exclusive code governing transmission pipelines - see Section 4(1), Section 62 and Page 40 Footnote 187. For a greater discussion see T. Slack - Planning for petroleum development - Petroleum Development - New Zealand Law (1984) 14 Wm.L.J. 35-41.

The writer understands that presently a Maori Land Court has decided a compensation dispute, stating that the parties have agreed to the Maori Land Court decision and a compensation issue by allowing the matter to be put to that Court. It is submitted that this is an appropriate interpretation of the Act.

(262) The Public Works Act 1928 is to be read as the Public Works Act 1981 - see Section 21 of the Acts Interpretation Act 1924.

Part V of the Public Works Act 1981 sets out the relevant procedures for deciding compensation rights and the Land Valuation Tribunal is the final arbitrator of the amount of compensation. It is submitted that the compensation provisions set out in the P.A. are the exclusive provisions relevant when deciding compensation and that the Land Valuation Tribunal has exclusive jurisdiction to decide compensation. (263)

(263) As Part II is an exclusive code governing transmission pipelines - see Section 57(1), Section 68 and Page 40 footnote 187. For a greater discussion see T. Black - Planning for petroleum development - Petroleum Development - New Zealand Law (1984) 14 NZUWLR 35 pp 39-40.

The writer understands that presently a Maori Land Court has decided a compensation dispute, stating that the parties have agreed to the Maori Land Court deciding such a compensation issue by allowing the matter to be put to that Court. It is submitted that this is an incorrect interpretation of the P.A.

#### 4.00 MIDDLE LINE NOTICES, EASEMENT CERTIFICATES & EASEMENTS

##### 4.10 Middle Line Notices

If the Minister of Energy is satisfied (264) that the construction of any pipeline in respect of which an authorisation has been granted is of national importance he may issue a Gazette defining the middle line of the pipeline, or any part of it (265) ("the Middle Line Notice"). The Minister must notify as soon as practicable after the publication of the Middle Line Notice every owner of, and every person with a registered interest in, land affected by the Notice (so far as they can be ascertained) of the existence and effect of the Notice. (266)

The Middle Line Notice defines the land within 100 metres from the middle line upon or in respect of which it is intended to exercise the powers conferred by the P.A. or any other Act in respect of the construction, maintenance and use of the pipeline. (267)

There are certain restrictions on construction work (including the provision of access for vehicles and plant). When placing the pipeline in its final position construction work shall be confined to a strip of land:

- (a) Not more than 30 metres wide; or
- (b) Of such greater width as the Secretary of Energy (after consultation, if possible, with the occupier of the land) may allow in any particular case owing to special circumstances -

within the strip of land defined in the Middle Line Notice. (268)  
The restrictions are only applicable in placing the pipeline in its final position. (269)

(264) Notwithstanding anything in the P.A.

(265) Section 71(2) of the P.A. The Minister may revoke, amend or alter the notice.

(266) Section 71(7) of the P.A. It merely gives notice of the Middle Line Notice. There is no right to make submissions or objections. It is restricted to those persons being the owners of land or persons with a "registered" interest in land affected by the Notice. They must be advised of the existence and effect of the Notice.

(267) Section 71(3) of the P.A.

(268) Section 71(4) of the P.A.

(269) The rationale seemingly being that only in placing the pipeline in its final position will there be any definity as to the pipelines route. The limited area to which final construction work is restricted may not necessarily be the area which is set out in the easement certificate finally registered for the land concerned (and normally the area in the easement certificate is less than 30 metres wide).

The holder of the authorisation must, within 6 months after the completion of the pipeline:

- (i) Prepare suitable plans. (270)
- (ii) Prepare and present to the Minister for signature an easement certificate for all the land affected by the pipeline and in respect of which no agreement (271) has been reached with the landowners concerned. (272)

The effect of the Middle Line Notice is to give notice to landowners effected by a pipeline of national importance that their land, or part of their land, may be or will be subject to an easement certificate. (273) The landowner or occupier of the land concerned must be given, where possible, 21 days' notice by the holder of the relevant authorisation of the holders intention to exercise any right of entry (274) for the purpose of exercising rights conferred on the holder by the authorisation or the P.A. (275)

- (270) Section 73(8) of the P.A. The plans prepared in accordance with Section 72 of the P.A. The writer believes that in practice the Registrar General of Land requires the plan (pursuant to Section 72 of the P.A.) to be a "DP" rather than "SO" plan. However normally the local District Land Registrar does not require the plans to be signed by the registered proprietors, exercising their discretion under Section 167 of the Land Transfer Act. Correspondence with Mr G. Hulbert.
- (271) Agreement pursuant to Section 69(1)(b) of the P.A.
- (272) Section 71(8) of the P.A. The easement certificates cover all the land affected (not merely the strip of land affected by final construction work - see page 69 footnote (2)). Every such easement is deemed to have been issued under Section 70 of the P.A. (Section 71(9) of the P.A.)
- (273) If no agreement is reached.
- (274) Sections 75(3) of the P.A.
- (275) See page 49 for general discussion of a holder's right of entry.

4.20 Easement Certificates

Section 70(1) states:

- " (276) ... if the Minister [of Energy] is satisfied that the holder of a pipeline authorisation, after making reasonable attempts to do so, has been unable to reach agreement under Section 69 of [the P.A.] to purchase or acquire an easement in respect of the land affected, the Minister shall, on the application of the holder, issue to the holder a pipeline certificate in the prescribed form under the hand of the Minister specifying, with respect to the land to which the certificate relates -
- (a) the land on, over, or through which the pipeline is authorised to pass;
  - (b) such matters as may be prescribed by regulations under [the P.A.]."

The holder of the authorisation must forward a copy of the application for an easement certificate, to the owner and the occupier of the land to which the application relates at the same time as the application is forwarded to the Minister. (277) The holder must also forward a copy of the easement certificate to the owner and the owner if the easement certificate is issued. (278)

- (276) Notwithstanding Section 22 of the Public Works Act 1981 which states:  
 "Notwithstanding anything in this or any other Act, land may not be compulsorily acquired under this or any other Act unless the public work in respect of which it is required is an essential work." (emphasis added)
- (277) Section 70(1A) of the P.A.
- (278) Section 70(5) of the P.A. There is no time stated for the holder to comply with this obligation, it is submitted that it would be interpreted to have to be complied with within a "reasonable time" subsequent to the issue of the easement certificate.



There are certain limitations on the area that may be covered by an easement certificate.

- (a) The pipeline strip can not exceed 20m in width. (279)
- (b) In no place shall the actual line of the pipeline be closer than 2m to an easement boundary as shown on any plan attached to the easement certificate. (280)

The form and terms of an easement certificate are set out in the Petroleum Pipelines Regulations 1984. (281) A plan is attached to the easement certificate (for land other than roads) indicating the intended route of the pipeline and showing the strip of land affected. (282)

(279) Section 70(6) of the P.A. and also Section 70(2) of the P.A.

(280) Second Schedule (Class 3) of Form 5 of the Petroleum Pipelines Regulations 1984. The writer has summarised the rights granted to the holder of the authorisation.

(281) Second Schedule (Class 3) of Form 5 of the Petroleum Pipelines Regulations 1984.

(282) Second Schedule (Class 2) of Form 5 of the Petroleum Pipelines Regulations 1984.

(279) Section 70(3) of the P.A.

(280) Section 70(3) of the P.A.

(281) Regulation 9 of the Petroleum Pipelines Regulations 1984. Two forms - one where the land is road and one for where the land is other than road. Note there is no definition of 'road' (see page 56 footnote 246).

(282) Form 5 of the Petroleum Pipelines Regulations 1984. The normal width is 12 metres.

The easement certificate empowers the holder of the authorisation to enter the land in question, (283) lay, operate, maintain, repair the pipeline and remove from the land all vegetation and artificial structures as is necessary. (284)

The holder must complete work with all convenient speed, but with due care and alteration, and shall take reasonable precautions to prevent injury to persons or livestock. (285)

Further there is the provision (286) that where the pipeline is laid below the surface of the ground, the holder shall bury it so that it will not interfere with the ordinary cultivation of the land, and in doing, or in exercising any of the other rights (287) the holder shall cause as little damage as possible to the surface of the land. The inter-relation between this provision and the rights given to the holder of the authorisation is seemingly ambiguous. Clearly when laying etc. the pipeline the holder has power to remove from the relevant land covered such vegetation as is necessary. Is this provision merely governing the resultant effect of the pipeline, that is, once the pipeline is in there is the obligation on the holder not to interfere with the ordinary cultivation of the land? How does this provision inter-link with Regulation 17 of the Petroleum Pipelines Regulations 1984 governing excavations and other works near pipelines? (288)

- (283) Section 70(6) of the P.A. and also Section 75(2) of the P.A.
- (284) Second Schedule (Clause 1) of Form 5 of the Petroleum Pipelines Regulations 1984. The writer has summarised the rights granted to the holder of the authorisation.
- (285) Second Schedule (Clause 3) of Form 5 of the Petroleum Pipelines Regulations 1984.
- (286) Second Schedule (Clause 2) of Form 5 of the Petroleum Pipelines Regulations 1984.
- (287) The Petroleum Pipelines Regulations 1984 Form 5 states "... other rights set out in clause 2 of this Schedule". It is clause 2. The writer believes there has been a typographical error and it perhaps should be clause "1" of this Schedule.
- (288) Regulation 17 is applicable to land subject to a pipeline easement yet also subject to the express terms of a pipeline easement certificate. The terms of the pipeline easement certificate are therefore paramount over the terms of Regulation 17.

It is envisaged that the easement certificate be obtained prior to the pipeline being laid. (289) This is normally the case however not always. The procedure envisaged involves plans being prepared prior to the pipeline being laid, easement certificates being obtained, the pipe laid, a new plan being prepared noting pipeline "as built" and finally a variation of easement certificate (290) noting the "as built" line of the pipeline. This is the standard procedure hoped to be followed. However in practice, especially with time restraints and the costs involved for pipelines, often the easement certificate is only issued with the plan noting the "as built" pipeline. The holder of the pipeline authorisation believes it had the authority to enter the land to lay the pipeline because of agreement (291) with the landowner or because there was a Middle Line Notice applicable.

The use of easement certificates has also decreased with the passing of the Petroleum Pipelines Regulations 1984. This is because of the alteration to the form of Pipeline Easement Certificate set out in the Petroleum Pipelines Regulations 1984. (292) The Easement Certificate now on the face states "... the Minister of Energy, being satisfied that the holder of the authorisation ... has been unable to reach an agreement under section 69 of the [PA] ..." (293)

- (289) Section 70(2)(3) of the P.A. talks of the 'intended' line of the pipeline.
- (290) See Section 73(3) of the P.A. An easement certificate may be varied or cancelled, with the consent of pipeline authorisation, by the Minister of Energy. It is clear a variation of an easement certificate can not cover land which was not previously included in the original easement certificate. See also Regulation 9(3) and Form 6 of the Schedule of the Petroleum Pipelines Regulations 1984.
- (291) Often verbal. See the case Ashford & Wylie v Jones (High Court New Plymouth 23 August 1984 (A64/83) Vautier J.). Whether such verbal agreements confer such authority is doubtful because the verbal agreement must be an agreement entered into under Section 69(1)(b) of the P.A. and the terms which the holder obtains any right, interest or easement in or upon the land may not be sufficiently agreed to be "an agreement" (Section 75(2)(b) of the P.A.). However if the owner and the landowner agree that an easement certificate or standard form easement will issue or be entered into, with appropriate compensation then it is submitted that there is an agreement pursuant to Section 69(1)(b) of the P.A.
- (292) Previously in Form 5 of the First Schedule of the Petroleum Pipelines Regulations 1964 did not repeat these words appearing in Section 70(1) of the P.A.
- (293) Form 5 of the Schedule.

Previously the use of easement certificates had been used in order to expediate (294) legalisation of the holder's right concerning the pipeline and with the agreement of the landowner. (295)

The number of easement certificates are as follows:

- (i) 3 (agreement with landowner unable to be reached)
- (ii) figure unknown (with the agreement of the landowner)

The number of easement certificates will now be minimal and only where no agreement is able to be reached with the landowner.

- (294) Easement Certificates are merely issued by the Minister of Energy whereas a Memorandum of Transfer (Grant of Easement) requires the signature of the landowner and the holder of the authorisation and the deposit of a plan at the Land Transfer Office covering the land in question. See page 66 footnote 270 as to the practical requirements for the plan.
- (295) This was particularly used by the Ministry of Works in relation to pipelines covered by Middle Line Notices - Section 71(8) of the P.A. It was perhaps unclear, where an easement certificate was issued pursuant to Section 71(8) and deemed to have been issued under Section 70, whether the holder had to be unable to reach agreement with the relevant landowner. It has been seen that with the change in the wording of an easement certificate an easement certificate issued pursuant to Section 71(8) (as with Section 70) of the P.A. can only be done if the Minister of Energy is satisfied that the holder is unable to reach agreement with the relevant landowner.

Now the procedure is to use Memoranda of Transfer (Grant of Easement) entered into pursuant to Section 69(1)(b) of the P.A.

4.30 Easements

The holder of a pipeline authorisation normally enters into a Memorandum of Transfer (Grant of Easement) with the owners of the land over which or under which the pipeline passes. (296)

The holder has the power to enter into such Memorandum (297) and any company, body or authority (298) also is granted such power, pursuant to the P.A. (299) if they do not have such power originally. (300)

The entering into an agreement pursuant to the P.A. (301) such as an easement, gives the holder entry rights on to the owner's land (302) under the P.A.

(296) The number of Memoranda presently entered into 1000 (approx) and a further 500 (approx) are envisaged in the next twelve months alone. For a recent discussion of the enforcement of an oral agreement see the case Ashford & Wylie v Jones (High Court New Plymouth 23 August 1984 (A. 64/83) Vautier J.)

(297) Section 69(1) of the P.A.

(298) Note: There is not "any person". There are no definitions in the P.A. for company, body or authority. However it is submitted that these words do not cover the same meaning as "any person" and may not include individuals. This clearly covers companies with restricted Memoranda of Association.

(299) Section 69(2) of the P.A.

(300) At common law or under a particular statute.

(301) Section 69(1)(b) of the P.A. Note: not Section 69(1)(a) of the P.A. There may be a limitation in Section 69(1)(b) where:

"... the holder ... may in any land for the purchase or other acquisition of any right, interest or easement in or upon the land ..." (See Allen Coster - Be Aware of Your Rights supra page 2). The writer does not believe that the statutory interpretation maxim - ejusden generis - should be read to limit "acquisition" to not cover the gratuitous granting of an easement etc. See Congreve v Inland Revenue Commissioners [1947] 1 ALL E.R. 168, C.A., per Cohen L.J., at p. 173 affd., [1948] 1 ALL E.R. 948

(302) Section 75 of the P.A. See page 49

The easements normally cover the following:

- (i) The holder's right to lay, construct, operate, maintain, repair, renew, change the size of and remove the pipeline and all appurtenances in, over and through the land being described as the easement strip. (303)
- (ii) The holder's right of ingress or egress. (304)
- (iii) The holder's right to remove vegetation from the easement strip.
- (iv) The landowner is restricted in the use he/she may put the land being the easement strip and a permit system is commonly used in order that the landowner may use to the maximum advantage the land being the easement strip. (305)
- (v) The landowner rights to compensation for loss, injury and damage. (306)

(307) In gross means the rights are granted to the person or body itself rather than in favour of land. There is some dispute in England as to whether easements may be granted in gross (See R. & P.A. Foulds - The Valuation of Pipelines - Line Easements & Wayleaves 1987 page 13) however it is accepted in New Zealand pursuant to the Land Transfer Act 1952 that easements may be granted in gross.

(308) See J.L. Barrett - Regulating Pipeline Routes page 3.

(309) See page 57 on Easement Certificates.

(310) See J.L. Barrett - Regulating Pipeline Routes page 3.

(303) Note Section 72(2) of the P.A. that the pipeline may not be closer than 2 metres from the boundary of the easement strip.

(304) This is over the landowner's land owned, not merely the land covered by the easement strip. The writer believes this is necessary for the holder's reasonable use of the land covered by the easement strip.

(305) See Regulation 17 of the Petroleum Pipelines Regulations 1984 which as with the standard form easement envisages a permit system. The standard form easement also specifically notes appropriate compensation may be payable by the holder of the pipeline authorisation if the permit is revoked.

(306) See Appendix D for a copy of a standard form easement used by NGC.

NGC easements are in gross (307) rather than NZ Refining Company easements which are appurtenant to land.

The easements are obtained by agreement between the holder of the pipeline authorisation and the landowner. (308) If the holder can not obtain an agreement for the easement the holder may apply for the Minister of Energy to issue an Easement Certificate (309) which in effect compulsorily acquires an easement. (310) It is rare that an Easement Certificate is obtained to compulsorily acquire such an easement. (311)

The landowner receives compensation from the holder of the pipeline authorisation. There are two separate components to such compensation:

- (a) The easement fee, which is based on the area of easement on the particular property and the land value of the particular paddock. (312)

(307) In gross means the rights are granted to the person or body itself rather than in favour of land. There is some dispute in England as to whether easements may be granted in gross (See R. & P.M. Poole - The Valuation of Pipe - Line Easements & Wayleaves 1962 page 15) however it is accepted in New Zealand pursuant to the Land Transfer Act 1952 that easements may be granted in gross.

(308) See J.I. Barrell - Negotiating Pipeline Routes supra page 3.

(309) See page 67 on Easement Certificates.

(310) See J.I. Barrell - Negotiating Pipeline Routes supra page 3.

(311) To date (June '84) three such easement certificates have been issued - See J.I. Barrell - Negotiating Pipeline Routes supra page 3. A Guide to the Petroleum Pipeline Procedures. Oil & Gas Division of the Ministry of Energy August 1984 pg 13-14.

(312) This is not a legal term but has developed into a convenient way of arriving at an initial calculation of the compensation payable. In standard circumstances it is calculated at 50% of the paddock value of the land contained in the easement. The paddock value is the standard acreage value of the land for the area. The MacLachlan Committee recommended that "land value" as defined in the Valuation of Land Act 1951 should replace "paddock value" when used in this context. This in effect becomes the minimum compensation offered and the property owner if he considers a greater loss has been suffered has the right to establish this means of a "before and after" valuation. See the MacLachlan Report paragraph 4 J.I. Barrell - Negotiating Pipeline Routes supra page 3, K.G. Stevenson - Pipeline Compensation - NZ Valuer - December 1983 pp.447-451 and Editorial Comment - Pipeline Easements - NZ Valuer - December 1983 pg. 423.

- (b) Compensation for loss of production or other losses suffered during the course of construction. (313)

It is NGC's policy to pay the Easement Fee prior to construction of the pipeline. A final adjustment of compensation is made and paid after construction has been completed. (314)

- (313) J.I. Barrell - Negotiating Pipeline Routes - supra page 3. Further details and other issues concerning compensation for easements (including multiple easements) are set out in the MacLachlan Report Supra, K.G. Stevenson - Pipeline Compensation - NZ Valuer December 1983, pp 447-451, Editorial Comment - Pipeline Easements - NZ Valuer December 1983 page 423, Allen Coster - Be Aware of Your Rights NZ Farmer supra, Poole & Poole - The Valuation of Pipeline Easements and Wayleaves supra.
- (314) J.I. Barrell - Negotiating Pipeline Routes - supra.



## 5.00 PIPELINE OWNERSHIP AND PIPELINE AUTHORITY

### 5.10 Pipeline Ownership

In New Zealand a pipeline is the property of the holder of the pipeline authorisation (315) whether or not the pipeline is affixed to any land or whether or not the pipeline authorisation granted in respect of the pipeline has been suspended or revoked. (316)

One commentator has stated that there are two options available in relation to pipeline ownership:

- (i) Government ownership and regulation; or
- (ii) Private ownership and Government regulation. (317)

New Zealand legislation allows for private ownership and there is Government regulation by virtue of the P.A.

Broadly speaking the purpose of the P.A., Part II, in relation to transmission pipelines, is to enable the Minister of Energy to control the location of transmission pipelines and to control construction, operation and maintenance of such pipelines in the interests of the public and to acquire land or rights over land (compulsorily if necessary) for the benefit of the construction or operation of the transmission pipelines. (318)

(315) Sections 81(1)(2) of the P.A.

(316) Section 81(2) of the P.A.

(317) Rory E.S. Argyle - The Ownership & Financing of Infrastructure Including Pipelines - Australian Mining & Petroleum Law Journal 1980 Volume 2 No. 2 page 205 at page 213.

(318) The purpose is similar to that for some Australian jurisdictions (Petroleum Pipeline Act 1969 (W.A.), Pipeline Act 1967 (NSW) and Pipeline Act 1967 (Victoria) and the United Kingdom Pipelines Act 1962. - Rory E.S. Argyle supra p. 214.

The P.A., Part II, does not contain tariff regulating powers (319) nor does it impose common carrier duties.

The P.A., Part II, is therefore considerably different from some American jurisdictions which impose statutory common carrier status (320) upon pipeline owners and rendering them subject to regulatory Authority with powers extending to tariffs. (321) This American legislation (322) was believed necessary in the public interest because of a need to enure the supply of such a vital commodity, in their case, oil, and to maintain competitive prices of that commodity. This seems to have been dictated by the circumstances that there was a monopoly of the means of production and transportation of oil in favour of a privately owned oil company. (323)

- (319) It does not contain ministerial powers in relation to tariff rates chargeable to third parties as does the similar purpose Australian legislation - Rory E.S. Argyle supra p.214. The Minister of Energy may in set circumstances fix the charges payable by a third party (not the holder of the pipeline authorisation) for the use of the pipeline - Section 64 of the P.A.
- (320) See A.M. Johnson - Petroleum Pipelines and Public Policy, 1906-1959 Harvard University Press 1967 Chapter 11.
- (321) See Rory E.S. Argyle supra pp.213-214.
- (322) Also coupled with anti-trust laws.
- (323) See Rory E.S. Argyle supra pp.213-214

The Government in New Zealand for the recent energy projects and transmission pipelines has been involved through the vehicle of a limited liability company (Petrocorp). The Government owns all of Petrocorp's shares. A subsidiary of Petrocorp, Natural Gas Corporation of New Zealand Limited (NGC) has undertaken the construction and operation of many of New Zealand's transmission pipelines, especially those arterial lines linking New Zealand's main North Island cities. However there are other transmission pipeline owners (324) and sometimes those owners will include Government involvement.

(324) See page 6

(325) Other transmission pipeline owners:

NZ Refining Company Ltd	(no government involvement)
Maui Developments Ltd	(50% government involvement)
Liquigas Ltd	(25% government involvement)
Petralgas Chemicals (NZ) Ltd	(51% government involvement)
Petrocorp	(government controlled)
Ministry of Energy	(government controlled)
Shell, BP, Todd Group	(no government involvement)

## 5.20 Pipeline Authority

Therefore although there is extensive government involvement with transmission pipelines it has been suggested that there is a need for the establishment of a single authority to be responsible for all forward planning and for the co-ordination of operations and administration. (326)

It is seen that a pipeline authority would have the following main functions:

- (i) The overall planning of transmission pipelines.
- (ii) The ownership of pipeline corridors. (327)
- (iii) Co-ordination of the operation of pipeline owners. (328)

(326) The Report of the MacLachlan Committee (para 8.1).

(327) Pipeline corridors are seen as strips of land owned by pipeline owners (rather than land which has easement rights noted on the titles) which would accommodate a multiplicity of pipelines.

(328) The Report of the MacLachlan Committee (para 8.2).

Two other functions may also be relevant for any proposed pipeline authority, being:

(iv) Pipeline Financing

(v) Pipeline Liability.

It is possible to achieve rationalisation through a purely regulatory body as opposed to a body which both owns and regulates (329) The North American pattern takes this form.

There are many transmission pipelines owned and operated by the private sector, normally subject to government regulation. (330)

There is the policy question to be answered when proposing a pipeline authority - the extent of Government involvement in transmission pipelines. Already we have seen that presently there is considerable Government involvement.

The MacLachlan Committee in proposing a pipeline authority has been seemingly swayed by the administrative and co-ordination problems existing with eight separate pipeline owners, rather than any policy view that there should be direct government ownership because of the strategic importance of transmission pipelines to New Zealand's energy plans.

The writer would see many advantages in the establishment of a purely regulatory body. The present system of multiple pipeline ownership would remain. (331)

(328) Rory E.S. Argyle supra pg.216

(330) See for examples Rory E.S. Argyle supra pg 217

(331) It seems in practice that many transmission pipelines are operated by a single body (NGC) on behalf of various pipeline owners. Ministry of Energy keep a registry of transmission pipelines and pipeline owners. Correspondence with J.I. Barrell and discussions with D. Craven.

6.00 SUMMARY

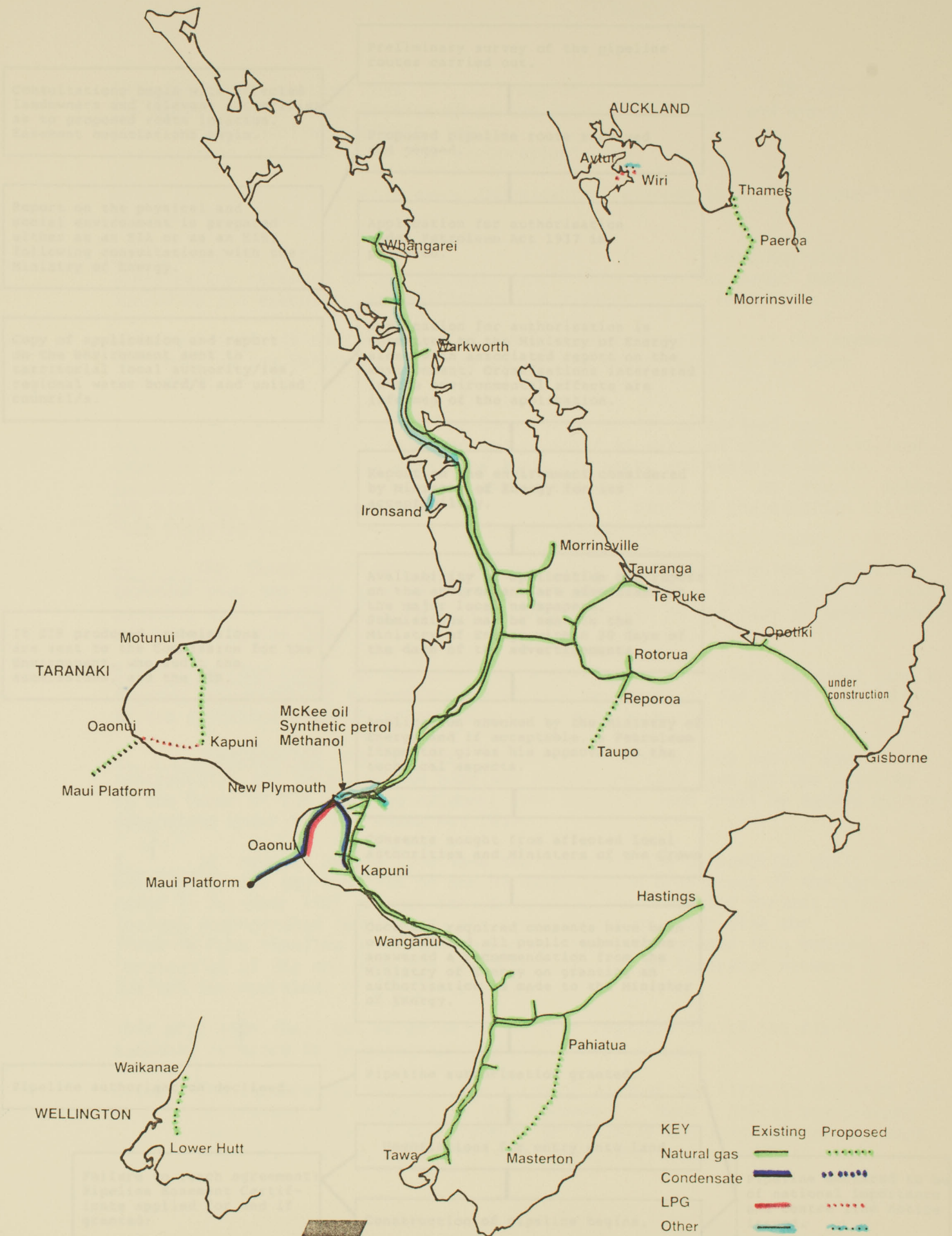
6.10 Summary

The paper has initially described the factual framework in which transmission pipelines are constructed and operated. This has been followed by an outline of the legal requirements for obtaining a pipeline authorisation which is necessary to authorise the construction of transmission pipelines. The powers, rights and obligations bestowed or imposed on the holder of a pipeline authorisation are then discussed. There has been emphasis throughout the paper on the practical application of the legal requirements on the construction and operation of transmission pipelines. The paper highlights particular matters that should be clarified.

The legal requirements governing transmission pipelines have been amended at various times in line with the rapid development of transmission pipelines however the paper suggests that further amendments should be considered.

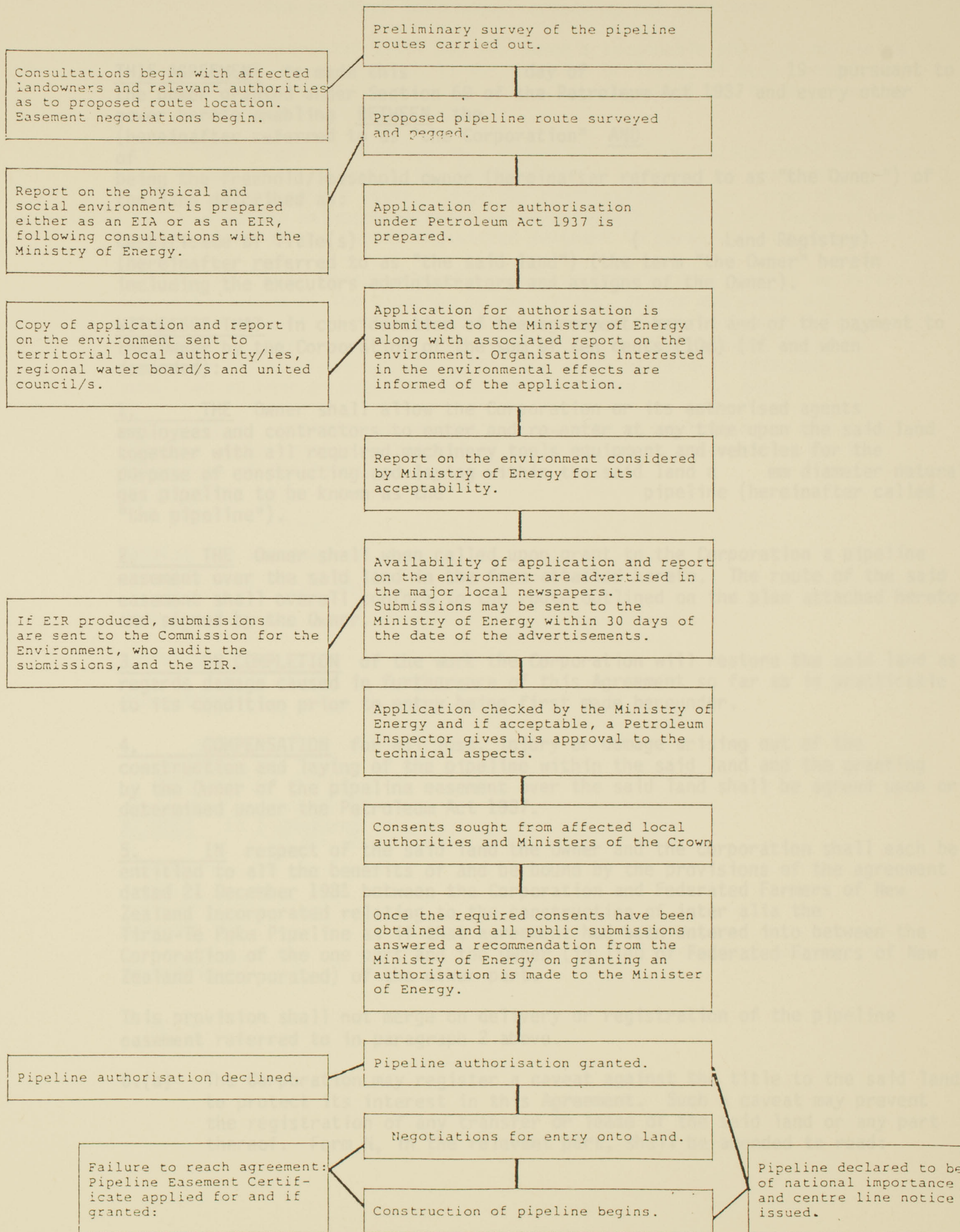


PIPELINES UNDER THE PETROLEUM ACT



The 2 existing pipelines in the South Island are the Lyttelton-Woolston LPG and Products pipelines. The one proposed line is a coal slurry pipeline north of Westport.

PIPELINE AUTHORISATION PROCEDURES





AGREEMENT FOR ENTRY AND GRANT OF PIPELINE EASEMENT

( \_\_\_\_\_ PIPELINE )

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ pursuant to the power granted under Section 69 of the Petroleum Act 1937 and every other power hereto enabling BETWEEN the (hereinafter referred to as "the Corporation" AND of being the freehold/leasehold owner (hereinafter referred to as "the Owner") of the land described as:

Certificate of Title(s) \_\_\_\_\_ ( \_\_\_\_\_ Land Registry) (hereinafter referred to as "the said land") (the term "the Owner" herein including the executors administrators and assigns of the Owner).

WITNESSES THAT in consideration of the agreements herein and of the payment to the Owner by the Corporation of the sum of ten cents (10¢) (if and when demanded):

1. THE Owner shall allow the Corporation or its authorised agents employees and contractors to enter and re-enter at any time upon the said land together with all required machinery tools equipment and vehicles for the purpose of constructing and laying within the said land a \_\_\_\_\_ mm diameter natural gas pipeline to be known as the \_\_\_\_\_ pipeline (hereinafter called "the pipeline").

2. THE Owner shall when called upon grant to the Corporation a pipeline easement over the said land in the form attached hereto. The route of the said easement shall overall conform to the route outlined on the plan attached hereto and signed by the Owner.

3. ON COMPLETION of the work the Corporation will restore the said land as regards damage caused in furtherance of this Agreement so far as is practicable to its condition prior to entry being first made hereunder.

4. COMPENSATION for all loss, injury or damage arising out of the construction and laying of the pipeline within the said land and the granting by the Owner of the pipeline easement over the said land shall be agreed upon or determined under the Petroleum Act 1937.

5. IN respect of the said land the Owner and the Corporation shall each be entitled to all the benefits of and be bound by the provisions of the agreement dated 21 December 1981 between the Corporation and Federated Farmers of New Zealand Incorporated relating to the construction of inter alia the Tirau-Te Puke Pipeline as if that agreement had been entered into between the Corporation of the one part and the Owner (in lieu of Federated Farmers of New Zealand Incorporated) of the other part.

This provision shall not merge on delivery or registration of the pipeline easement referred to in paragraph 2 above.

6.(a) The Corporation may register a caveat against the title to the said land to protect its interest in this Agreement. Such a caveat may prevent the registration of any transfer or lease of the said land or any part thereof. Form N, in the relevant part, shall be amended to read:

"... forbid the registration of any memorandum of transfer or lease (but no other instrument) affecting the said land ..."

- (b) The Corporation shall pay the Owner's reasonable costs on obtaining the Corporation's consent to any transfer or lease, if such consent is granted by the Corporation. Such consent shall not be unreasonably withheld by the Corporation.
- (c) This right of registering a caveat by the Corporation shall merge upon the registration by the Corporation of the pipeline easement referred to in paragraph 2 above. Upon the registration by the Corporation of the pipeline easement referred to in paragraph 2 above the Corporation shall withdraw any caveat registered pursuant to paragraph 6(a) above.

7. THE Owner hereby consents to all work being done that is necessary for the installation of the pipeline below streams, drains and other water courses, on or adjoining the Owner's property, subject to first such work being undertaken in accordance with the requirements of the Regional Catchment Authority (if any) and secondly, that the reinstatement is effected to a condition as near as practicable to the condition prior to entry.

8. THIS Agreement is subject to the Corporation holding or obtaining a pipeline authorisation in respect of the pipeline in accordance with the provisions of the Petroleum Act 1937.

WITNESS to Signature:

Name:

Address:

Occupation:

.....  
Owner

WITNESS to Signature:

Name:

Address:

Occupation:

.....  
On behalf of the Corporation

MEMORANDUM OF TRANSFER  
(Grant of Easement)

(hereinafter called "the Grantor") being registered as the proprietor of an estate

subject however to such encumbrances liens and interests as are notified by memorandum underwritten or endorsed herein in all that piece of land situated in the LAND REGISTRATION DISTRICT of \_\_\_\_\_ as is more particularly described in the schedule attached hereto (hereinafter referred to as "the hereinafter described land").

IN CONSIDERATION of an Agreement for Entry and Grant of Pipeline Easement dated / / between the Grantor and the Grantee and of the covenants hereinafter contained DOTH HEREBY TRANSFER AND GRANT unto a duly incorporated company having its registered office at Wellington (herein called "the Grantee") the following rights and interests as an easement in gross:

1. THE right from time to time and at all times to lay construct operate inspect maintain repair renew change the size of and remove the pipeline and all appurtenances thereto (the pipeline and all appurtenances being together hereinafter except where the context requires a different construction referred to as "the said pipeline") in over or through those parts of the hereinafter described land marked ( ) on Deposited Plan (which said parts marked ( ) are hereinafter referred to as "the said strip of land") the said pipeline to remain the property of the Grantee and to pump move convey and transport through or within the said pipeline natural gas products.

2. THE right within the boundaries of the said strip of land to remove all cultivated or natural vegetation including trees and shrubs.

3. THE rights of ingress and egress together with its engineers surveyors workmen contractors with or without any vehicles implements tools pipes and materials of any kind in over and through the hereinafter described land for any and all purposes necessary or convenient to the exercise by the Grantee of its rights and interests herein granted, but causing the minimum of disturbance to the Grantor his land stock and other property in so doing.

4. THE right within the boundaries of the said strip of land to construct operate inspect maintain repair renew change and remove such above ground devices or any one or more of them as the Grantee may consider necessary or convenient for the said pipeline. The expression "above ground devices" shall include (inter alia) valves surface marker posts test pipes and points aerial crossing bridges and bridge abutments metering devices booster station bridges and fences around these devices.

AND IT IS HEREBY COVENANTED AND AGREED by and between the parties hereto as follows:

- (a) The Grantor shall have the right to use the said strip of land except as such use may unreasonably interfere with the enjoyment of the rights and easements granted herein but shall not erect any building construction or fence or plant any tree or shrub within the boundaries thereof disturb the soil thereof below a depth of metres from the surface or do anything thereon or therein which would or could damage or endanger the said pipeline without the written consent of the Grantee. Such consent shall not be unreasonably withheld, but may be given subject to reasonable conditions including the power to revoke with appropriate compensation if it is revoked.
- (b) The Grantee shall bury the said pipeline so that it will not interfere with the ordinary cultivation of the hereinafter described land and in so doing or in maintaining repairing renewing changing or removing the said pipeline shall cause as little damage as possible to the surface of the hereinafter described land.

(c) The Grantee shall pay the costs of restoring all damaged fences and the said surface as nearly as possible to their former condition or state excluding any trees or shrubs removed so often as the same shall be necessary hereunder and in addition shall in accordance with the provisions of the Petroleum Act 1937 and its amendments pay to the Grantor compensation for all other loss injury or damage suffered by the Grantor in respect of the rights acquired by the Grantee under this easement.

In relation to compensation the Grantor and the Grantee may refer to the said Agreement For Entry and Grant of Pipeline Easement.

The Grantee may grant any license or right in respect of any estate or interest conferred by this Transfer and may assign any such estate or interest.

In this Transfer where the context so requires or admits the singular includes the plural and the masculine gender includes the other genders and vice versa and words importing persons include companies and vice versa.

This grant and the covenants and conditions herein set forth shall be binding upon the executors administrators successors and assigns of the parties hereto.

IN WITNESS WHEREOF this Transfer has been executed the \_\_\_\_\_ day of \_\_\_\_\_ 19 .

SIGNED by the abovenamed )  
 )  
as Grantor in the presence )  
of: )

REFERENCES

THE COMMON SEAL of )  
 )  
 as Grantee )  
 was hereunto affixed in the )  
 presence of: )

T. Slack )  
 )  
 ..... Director

Environment )  
 )  
 ..... Director/Secretary

A. Coster )

B. Craven )

J. Donald )

Energy Plan 1984 )

The Energy Journal )

Gas News )

J.T.E. Gilbert )

The Ownership and Financing of  
Infrastructure Including Pipelines,  
Australian Mining and Petroleum Law  
Journal 1980 volume 2 No. 2 Page 203.

Negotiating Pipeline Schemes, A paper  
presented to the 1984 Gas Industry  
Conference.

Planning for Petroleum Development and  
New Zealand Law (1984)14 N.Z.L.J. - 1, 8  
35.

Environmental Audits and Appraisals 1975  
- 81 & revs to 1983.

Guidelines for Gas and  
Petroleum Pipelines 1984.

Environmental Impact Audit - Kaipara -  
Orotiki - Gisborne Gas Pipeline 1984

Environmental Impact Audit - Proposed  
Huntly to Auckland Natural Gas Pipe  
(Pukekohe to Westfield section) 1980

Environmental Protection and Enhancement  
Procedures 1981.

Be Aware of Your rights - NZ Farmer 12th  
January 1984

Natural Gas Pipeline Growth Highlights,  
A summary of Mr Craven's paper presented  
to the Institution of Professional  
Engineers is printed in Gas News December  
1983.

Pipelines - Australia's Energy Arteries  
The APFA Journal 1974 page 22

Gas Pipelines and the Environment - Out  
of Sight but Not Out of Mind, A paper  
presented to the 1984 Gas Industry  
Conference.

## REFERENCES

- R.E.S. Argyle - The Ownership and Financing of  
Infrastructure Including Pipelines.  
Australian Mining and Petroleum Law  
Journal 1980 volume 2 No. 2 Page 205.
- J.I. Barrell - Negotiating Pipeline Routes. A paper  
presented to the 1984 Gas Industry  
Conference.
- T. Black - Planning for Petroleum Development and  
New Zealand Law (1984)14 N.Z.U.W. - L.R.  
35.
- Commission for the  
Environment - Environmental Audits and Appraisals 1976  
- 81 A review 1983.
- Environmental Guidelines for Gas and  
Petroleum Pipelines 1984.
- Environmental Impact Audit - Kawerau -  
Opotiki - Gisborne Gas Pipeline 1984
- Environmental Impact Audit - Proposed  
Huntly to Auckland Natural Gas Pipe  
(Pukekohe to Westfield section) 1980
- Environmental Protection and Enhancement  
Procedures 1981.
- A. Coster - Be Aware of Your rights - NZ Farmer 12th  
January 1984
- D. Craven - Natural Gas Pipeline Growth Highlights.  
A summary of Mr Craven's paper presented  
to the Institution of Professional  
Engineers is printed in Gas News December  
1983.
- J. Donald - Pipelines - Australia's Energy Arteries  
The APEA Journal 1974 page 22
- Energy Plan 1984
- The Energy Journal
- Gas News
- J.T.E. Gilbert - Gas Pipelines and the Environment - Out  
of Sight but Not Out of Mind. A paper  
presented to the 1984 Gas Industry  
Conference.

A Guide to Environmental Law in New Zealand - 2nd Edition 1984

A Guide to the Petroleum Pipeline Procedures - Oil and Gas Division of the Ministry of Energy - August 1984

- A.E. Hammond - Pipelines are Best. A paper presented to the 1984 Gas Industry Conference.
- J. Hanan - The National Development act (1979) 9 NZULR 200
- International Business Lawyer- Various papers on Contracts for the Construction of Oil & Gas Pipelines July/August 1983 pages 289 to 313.
- A.M. Johnson - Petroleum Pipelines and Public Policy 1906-1959 Harvard University Press 1967.
- The MacLachlan Report - The report of a quasi-governmental committee established to consider the effects of petroleum pipeline easements on property values. (dated July 1983) Printed in the New Zealand Valuer December 1983.

Major Projects Advisory Group Newsletters

- R. & P.M. Poole - The Valuation of Pipeline Easements and Wayleaves. The Estates Gazette Limited 1962.
- P. Salmon - The Compulsory Acquisition of Land in New Zealand 1st Edition 1982.
- K.G. Stevenson - Pipeline Compensation - N.Z. Valuer December 1983.



## ACKNOWLEDGEMENTS

The writer wishes to acknowledge the assistance of the following people in relation to the preparation of this paper.

A. Discussions With:

- |               |   |  |
|---------------|---|--|
| J.I. Barrell  | - | Pipelines Operations Manager with NGC  |
| D. Craven     | - | Commercial Manager with NGC  |
| H.S.D. Norden | - | Pipeline Construction Engineer with NGC  |
| G. Nicholas   | - | Construction Engineer Ministry of Works and Development Pipeline Project                       |
| J.W. Pohl     | - | Office Solicitor to the Ministry of Energy   |
| M. Strachen   | - | Executive Office - Exploration Geothermal & Gas Development Division of the Ministry of Energy |

B. Correspondence With:

- |                |   |  |
|----------------|---|--|
| J.I. Barrell   | - | As above   |
| G.P. Hulbert   | - | District Solicitor (Napier) to the Ministry of Works & Development.  |
| K.D. Law       | - | Previously Administrative Officer with Ministry of Works & Development Pipeline Project. Now Director of Administration Computer Services Division at the State Services Commission. |
| R.B. McClymont | - | Officer with the Commission for the Environment.   |
| T.P. Thompson  | - | Chief Petroleum Inspector with the Ministry of Energy.   |

C. Special thanks to Hilary Cartwright & Helen Shardlow for kindly typing (and retyping) this paper.

r  
Folder  
Qu

Quigg, D. J  
Pipelines under  
the Petroleum Act

1937  
455648

VICTORIA UNIVERSITY OF WELLINGTON  
**LIBRARY**

**LAW LIBRARY**

A fine of 10c per day is  
charged on overdue books

37212000849008



VICTORIA UNIVERSITY OF WELLINGTON LIBRARY

r  
Folder  
Qu

Quigg, D. J  
Pipelines under  
the Petroleum Act  
1937

455648

Due	Borrower's Name
19/4/55	E. Kelly
<del>12/8/86</del>	DQM

