

- [63] However, such an interpretation of clause 12 appears to be in conflict with the provisions of clause 3 of the agreement, where the Suttles undertook “in order to give full effect to [the] agreement ... to remove or shift the dwellinghouse existing on lots 1 and 2 being retained by them to an extent necessary to avoid encroachment on the roadway (including verge) adjoining the lots and to ensure the compliance with the conditions and stipulations of the Chief Town Planner in respect of the development of the said roadway including verge.”
- [64] It is far from clear what is meant by the phrases “to an extent necessary to avoid encroachment on the roadway (including verge) adjoining the lots.” Nonetheless, it seems that there was within the contemplation of the parties the likelihood that it could become necessary to remove or shift the dwellinghouse to accommodate the construction of the roadway, presumably, the right of way. Indeed they provided for a penalty to be imposed on the Suttles in the event of a failure to remove or shift the dwellinghouse. So the question is, which of these two clauses is the governing clause? Applying the principle of statutory interpretation that where in a document two clauses are in conflict with each other, the latter prevails, I hold that clause 12 being the latter clause prevails over clause 3 of the agreement.