

Disputed Facts

[16] It is in dispute whether:

- (i) the agreement of which System Sales seeks specific performance is that signed by the Suttles for the sale and purchase of the land to System Sales;
- (ii) it was a fundamental term of the agreement that the lots 1 and 2 retained by the Suttles should both adjoin the public road on the South as shown on the Suttle Plan;
- (iii) which subdivision plan, if any, was incorporated into the agreement; and
- (iv) there was a unilateral variation of the agreement by System Sales.

[17] Other material facts will be considered under the issues to which they relate. I now turn to deal with the issues.

Is the agreement that signed by the Suttles?

[18] The plaintiff seeks specific performance of an agreement dated 15 July 1998 allegedly made between itself and the Suttles for the sale and purchase of the land the subject matter of the application.