



NEW ZEALAND
LAW SOCIETY

NZLS EST 1869

Greater Christchurch Regeneration Amendment Bill

26/03/2020

Submission on the Greater Christchurch Regeneration Amendment Bill 2020

1. Overview

- 1.1 The New Zealand Law Society | Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to make a submission on the Greater Christchurch Regeneration Amendment Bill 2020 (**the Bill**).
- 1.2 No new post-earthquake regeneration powers are proposed in the Bill, and clause 8 of the Bill revokes the extraordinary powers contained in section 71 of the Greater Christchurch Regeneration Act 2016, which replaced the Canterbury Earthquake Recovery Act 2011. Section 71 contains powers to provide an expedited way to make changes to the Resource Management Act 1991, plans and other documents. Some of these powers are now considered to be unnecessary. It is also now over nine years since the major 2011 Canterbury Earthquake occurred.
- 1.3 The progressive move to the return and normalisation of Christchurch regeneration powers to local leadership and the consequent further withdrawal of the Crown's role in this is appropriate, in particular as to planning processes. This is likely to be supported by relevant local authorities and other Christchurch stakeholders, as well as the community at large. It is supported by the Law Society.
- 1.4 The Law Society considers there is a continuing concern about the need for fair compensation for the public taking of private property. The Bill provides an opportunity to amend the Greater Christchurch Regeneration Act 2016 to provide for this. The Law Society recommends the inclusion of a provision in the Bill amending the open-ended ministerial discretion to determine compensation in section 114 of the Act.

2. Comments

- 2.1 The Law Society made a submission on the Greater Christchurch Regeneration Bill 2015¹ (**the 2015 Bill**), which was subsequently enacted as the Greater Christchurch Regeneration Act 2016 (**the Act**), expressing concern about two matters.

Power to suspend, amend or revoke

- 2.2 First, the Law Society commented on the powers of the Minister under (then) clause 42 of the 2015 Bill to suspend, amend or revoke legislative instruments. This became section 71 of the Act. This gives the Minister the power to suspend, amend or revoke various documents, including statements and plans under the Resource Management Act 1991 and plans and policies under the local government 2002. The Bill revokes section 71 and has consequential amendments to references in the Act to section 71.
- 2.3 The Law Society fully supports this amendment.

¹ Available at https://www.lawsociety.org.nz/_data/assets/pdf_file/0009/97281/Greater-Christchurch-Regeneration-Bill-3-12-15.pdf.

Compensation for compulsory acquisition of land

2.4 Secondly, the Law Society was concerned about the (then) clause 82(3) of the 2015 Bill, which provided for the Minister to determine whatever amount he or she thinks fit by way of compensation for compulsorily acquired land. That provision was not in fact enacted in the Act. The provisions in the Act relating to compensation (Part 2, Subparts 2 and 3) remain unaffected by the current Bill. Section 110 of the Act provides that Subpart 3 applies to land compulsorily acquired under the Act or the Canterbury Earthquake Recovery Act 2011. Sections 82 and 83 of the Act provide for compensation for demolition of buildings and for damage to other property caused by demolition of building.

Ministerial discretion

2.5 While section 112 of the Act provides that a person who suffers such loss is entitled to compensation from the Crown, by section 114(1) it is the Minister who determines whether compensation is payable and the amount of the compensation. Under section 114(3) the Minister must have regard to the matters in section 114(4) “*but is not limited to determining the amount of compensation on that basis alone*”.

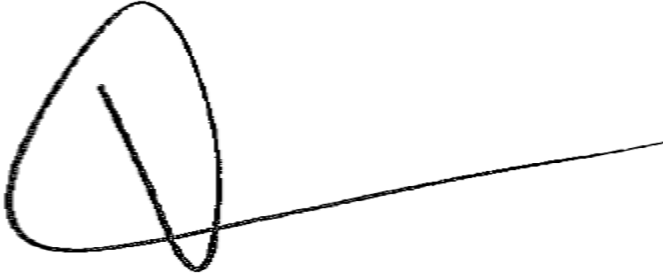
2.6 Section 114(4) provides that the matters in section 114(3) are the current market value of the land as determined by a valuation carried out by a registered valuer and the relevant provisions of Part 5 of the Public Works Act 1981. The latter provides for a comprehensive regime for the payment of compensation for land taken under that Act and the determination of a claim for compensation by the Land Valuation Tribunal.²

2.7 The concern expressed in the Law Society’s 2015 submission as to the need for fair compensation provisions remains. Fair compensation for the public taking of private property is a fundamental constitutional principle. The justification for giving the Minister an open-ended discretion to determine compensation is not clear. While section 119(1)(e) provides for a right of appeal to the High Court against a determination under section 114, this does not satisfactorily address the concern.

2.8 The Law Society considers that the Bill should amend section 114(3) by repealing the proviso in section 114(3) that the Minister “is not limited to determining the amount of compensation on that basis alone”. This would mean that the two matters in section 114(4) which the Minister must have regard to are mandatory, and other considerations would be irrelevant.

² These provisions in the Act essentially reflect those in section 64(3) of the Canterbury Earthquake Recovery Act 2011 (“For compensation for the compulsory acquisition of land, the Minister must determine compensation having regard to its current market value as determined by a valuation carried out by a registered valuer; and so far as practicable, the Minister must determine compensation in accordance with the relevant provisions of Part 5 of the Public Works Act 1981”).

2.9 If it were intended that section 114(3) would give the Minister power to award an amount of compensation *higher* than the current market value and under Part 5 of the Public Works Act 1981, then it is submitted this should be expressly made clear.³

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Andrew Logan
NZLS Vice President
26 March 2020

³ See note 1 above, at [3.5] – [3.6].