IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

CIV-2013-409-000274
[2013] NZHC 2173

BETWEEN	FOWLER DEVELOPMENTS LIMITED Applicant
AND	THE CHIEF EXECUTIVE OF THE CANTERBURY EARTHQUAKE RECOVERY AUTHORITY Respondent
AND	THE HUMAN RIGHTS COMMISSION Intervener

CIV-2013-409-000843

BETWEEN	QUAKE OUTCASTS Applicant
AND	THE MINISTER FOR CANTERBURY EARTHQUAKE RECOVERY First Respondent
AND	THE CHIEF EXECUTIVE OF THE CANTERBURY EARTHQUAKE RECOVERY AUTHORITY Second Respondent
AND	THE HUMAN RIGHTS COMMISSION Intervener

Hearing: 22,23, 24 July 2013

Counsel: S P Rennie and J E Bayley for Fowler Developments
FMR Cooke QC, MSR Palmer and LJC McLoughlin-Ware for Quake Outcasts
D J Goddard QC, P A McCarthy and A J Wicks for Respondents

Judgment: 26 August 2013

JUDGMENT OF PANCKHURST J

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Judicial review proceedings

[1] This case concerns two applications for judicial review heard together by consent. The genesis of each proceeding was the making of offers by the chief executive of the Canterbury Earthquake Recovery Authority (CERA) to purchase either vacant land, or uninsured residential properties, for 50 percent of the 2007 rating value of the land. The land or properties are situated in the Christchurch residential red zone. The zone defines land areas considered unlikely to be suitable for continued residential occupation for a prolonged period.

[2] The applicants, Fowler Developments Limited and the Quake Outcasts (an unincorporated group of land and property owners who are identified in a schedule containing individual names and addresses) are aggrieved at the level of the buy-out offer. In particular, they consider that their treatment is unequal by comparison to that accorded to insured residential property owners who received a 100 percent buy-out offer.

[3] The applications for judicial review assert various grounds of challenge. The principal ground is that the 50 percent offers are unlawful because they were not made in accordance with the requirements of the Canterbury Earthquake Recovery Act 2011 (the Act). It is also alleged that the 50 percent offers are oppressive, disproportionate, and in breach of the applicants' human rights.

[4] The principal relief sought is that the decisions which gave rise to the 50 percent offer be set aside and that the decision-maker(s) be required to reconsider the individual situations of the applicants in terms of the purposes and principles of the Act.

[5] The Human Rights Commission (HRC) was joined as an intervener, since it considers that the case raises significant human rights concerns. The Commission filed detailed written submissions, but did not appear at the hearing.

The applicants

[6] As its name implies, Fowler Developments Limited (the Company) is a property development company. At the time of the devastating Canterbury Earthquakes from September 2010 to June 2011 the Company owned 11 residential sections at Brooklands, on the north-eastern outskirts of Christchurch. The sections had rating values of either $170,000 or $190,000 each, and a total value of $1.95 million. On 23 June 2011 the Prime Minister and the Minister for the Canterbury Earthquake Recovery (the Minister) announced the creation of the Christchurch residential red zone. (Previously the central business district area of the city had been declared a red zone, but this case concerns the residential red zone). The sections owned by Fowler Developments Limited fell within the orange zone – areas where further work was required to determine if land repair and residential occupation was feasible in the short to medium term.

[7] In November 2011, however, the Brooklands residential area was zoned red. Subsequently, the Company received and accepted an offer from the chief executive of CERA to purchase the 11 sections for 50 percent of their rating value (the 50 percent offers). The sale was settled subject to an agreement that the Company's judicial review application could still proceed. By then, the proceeding had already been issued in February 2013.

[8] The Outcasts, as I shall call them, now comprise 46 individual or joint owners of properties in the red zone. At the hearing I made an order for the joinder of a couple who became the 45th applicants in this proceeding. Subsequent to the hearing application was made for the joinder of the 46th applicant, Barbara Byers, and in the absence of opposition I make an order for her joinder.[1]

[9] The Outcasts own either vacant land, or uninsured residential properties, in the red zone.[2] The division between owners of vacant land and owners of uninsured residences is about equal. They can sell their properties to the Crown for 50 percent of the rating value of the land. Some have done so, subject to an agreement similar to that reached by Fowler Developments Limited. Others have received a purchase

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1 Pursuant to r 4.56 of the High Court Rules.

2 One applicant owns an uninsured commercial property.

offer, but not accepted it. A few did not complete a consent form, and did not therefore receive an offer from the chief executive.

The relief sought

[10] Fowler Developments Limited sought a declaration that its 50 percent offer was invalid, an order setting aside the decision to make that offer, and a further declaration requiring the chief executive to make a 100 percent offer. The Company's statement of claim alleged that the offer was made pursuant to a power conferred in the Act, but was unlawful for a failure to accord "equal treatment" to all property owners in the red zone, and was also irrational and arbitrary.

[11] The Outcasts' statement of claim was more broadly framed. The relief sought was three declarations: namely that decisions to create the red zone and an associated "clearance strategy", and to make 50 percent offers to the Outcasts, were unlawful; and a further declaration that owners who elected not to accept the 50 percent offer were entitled to remain in their properties supported by essential facilities as permitted by law. In addition, the Outcasts sought a direction consequent on the 50 percent offers being set aside that the chief executive make 100 percent offers to them.

[12] At the hearing the submissions contained a considerable focus upon the implications and appropriateness of the relief claimed. Various alternative approaches were discussed. This culminated in my suggesting to Mr Cooke QC that the preferable course was that he redraft the terms of relief sought by the Outcasts in written form. This was done and presented in the course of counsel's reply submissions. Mr Goddard QC was given leave to respond to the reformulation in writing, which he duly did.

[13] Mr Rennie, on behalf of Fowler Developments Limited, adopted the submissions made on behalf of the Outcasts, but also advanced supplementary submissions on behalf of the Company. As it happens the reformulated relief now sought by the Outcasts is close to that originally sought by the Company, at least with reference to the main point of relief. I propose, therefore, to approach the

question of relief by reference to the Outcasts reformulation. I shall also give separate consideration to the Company's position, if necessary.

[14] The Outcasts reformulation is as follows:

> A A declaration that "neither the declaration of the red zone, nor the subsequent offers made by the Crown in those zones affect the existing rights at law of residential occupation of property owners in those zones.
>
> B The decision(s) of the respondents to offer to purchase the properties of the Quake Outcasts are set aside, and the matter is remitted to the Ministers and chief executive who made the decisions to make new decisions to offer to purchase the properties in accordance with law, requiring them under s 4(5)(b) of the Judicature Amendment Act 1972 to make such decisions in accordance with the following directions. The decisions should:
>
> (1) be in accordance with the purposes of the CER Act, particularly the need to ensure that affected communities recover from the impacts of the earthquakes; and
>
> (2) have regard to:
>
> (i) recognition that a market for the properties as residential properties no longer exists;
>
> (ii) the previous use of the 2007 RV as a basis for acquisition;
>
> (iii) the cost of acquiring an equivalent replacement property;
>
> (iv) the individual circumstances of the property owners; and
>
> (v) the reasons for the Court's judgment".

"A" is in substitution for what was previously the third declaration sought. "B" is an amalgamation of what were previously the second declaration and an associated direction. The previous first declaration, that the red zone and the 'clearance strategy' be declared unlawful, is no longer pursued.

[15] I note that this reformulation is of considerable moment. It makes some aspects of the argument I heard irrelevant, or at least of lesser significance. This judgment is tailored to what is required to respond to the new formulation and may

not, therefore, respond to every argument advanced in the course of the three days of the hearing.

The issues

[16] In my view the applications, as reformulated with regard to the relief sought, raise three main issues:

(a) Does the creation of the red zone and the making of buy-out offers to property owners within the zone affect the property rights of the applicants?

(b) Should the decision(s) which resulted in the chief executive making 50 percent offers to property owners in the red zone be set aside?

(c) If so, what form of relief is appropriate, if any?

Are the property rights of owners within the red zone adversely affected?

Common ground

[17] Curiously and despite the applicants seeking a declaration confirming that their property rights are unaffected there is no dispute concerning this aspect. Mr Goddard said as much in his written submissions at the hearing. He also cited observations made by Asher J in *O'Loughlin v Tower Insurance;*[3]

> ... I set out what the red zone did not do:
>
> (a) It did not prohibit building or the granting of building consents in the area for repair or rebuilding.
>
> (b) It did not prohibit residents from continuing to live in the red zone.
>
> (c) It did not require residents to demolish or repair their houses.
>
> In terms of what the creation of the red zone did do, it created an area in which CERA would make offers to purchase the properties of insured residents.

[3] *O'Loughlin v Tower Insurance* (2013) 17 ANZ Insurance Cases 1-966 at [27] and [28].

While I do not disagree with these observations as far as they go, they were made in a markedly different context – in deciding whether the creation of the red zone occasioned physical loss or damage to a house in terms of an insurance policy.

[18] Initially the Outcasts sought a declaration that if they elected to remain in their properties they were entitled to the support of essential facilities (services) as permitted by law. The declaration was seemingly directed at service providers. The purpose of the reformulated declaration is less obvious. However, I shall return to that aspect shortly.

[19] The fact that common ground exists concerning the proposition that creation of the red zone did not affect legal rights reflects a fundamental difference which was centre stage at the hearing. The applicants argued that the creation of the red zone was a quintessential element of CERA's earthquake recovery strategy. As such, the Minister was bound to implement the red zone under the Act, paying due regard to the statutory checks and balances. This, however, did not happen. Instead, Mr Brownlee was one of several ministers who made the decision to create the red and associated zones; and to make 100 percent offers to most property owners within the red zone.

[20] Mr Goddard argued that the decisions were lawful policy decisions made by Cabinet, or by ministers acting under delegated Cabinet authority. The statutory powers available under the Act did not need to be exercised. The Crown did not need statutory authority to "publish information". This, the argument continued, was all that the ministers did in deciding to divide greater Christchurch into four zones including the red zone. As neither legislative nor statutory powers were exercised the legal rights of property owners remained intact.

[21] Hence, to the extent that there is common ground, it is fragile. In reality its basis is disagreement as to both the correct characterisation of the decisions and how they could be lawfully reached. To understand these differences the factual background to the decision-making and the statutory framework need first be examined.

The factual background

[22] The first in the series of devastating earthquakes occurred on 4 September 2010. On 15 September the Canterbury Earthquake Response and Recovery Act 2010 came into force. Two purposes of the Act were to facilitate the response to the Canterbury earthquake and to provide adequate statutory power to assist with that response.[4] Statutory power was provided by Orders in Council whereby the provisions of numerous enactments could be the subject of exemption, modification, or extension.[5] The Minister for Canterbury Earthquake Recovery could initiate an Order in Council by recommendation to the Governor-General after taking into account the purposes of the Act and any advice of the Recovery Commission.[6]

[23] However, the 2010 Act was shortlived. The further major earthquake on 23 February 2011, which occasioned major loss of life and property damage, resulted in the enactment of the Canterbury Earthquake Recovery Act 2011. In the meantime, CERA had already been established as a new department of government by Order and Council.[7]

[24] The February 2011 earthquake hastened work on the assessment of land damage and the identification of the worst affected areas. This led to high level consideration of whether people would need to be relocated from some areas and, if so, whether voluntary or compulsory acquisition of their properties should follow.

[25] On 13 June 2011 another earthquake struck causing further damage and liquefaction, particularly in the worst affected areas of greater Christchurch. A week later Cabinet authorised a group of eight Ministers, including the Prime Minister, the Minister of Finance, and the Honourable Gerard Brownlee, to take decisions on matters relating to Canterbury earthquake land damage and remediation issues.

[26] The group of eight moved quickly. On 22 June 2011 the 'ad hoc group of Ministers' as they were referred to in the papers, reached agreement upon a detailed

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4 Section 3(a)(b).
5 Section 6(4).
6 Section 6(1)(2).
7 State Sector (Canterbury Earthquake Recovery Authority) Order 2011.

strategy for the zoning of greater Christchurch and the Crown purchase of properties in the worst affected areas. The minute of the decisions recorded an acceptance that urgent decisions and announcements from the Government were needed to provide certainty to home owners, create confidence to enable people to move forward with their lives, and to also provide confidence in decision-making processes for home owners, business owners, insurers and investors.[8]

[27] The Ministers adopted a four part division of greater Christchurch into green, red, orange and white zones. The green zone covered areas where there was no significant land damage and rebuilding could commence. The red zone was reserved for areas where rebuilding was not likely to occur in the short to medium term due to significant land and infrastructure damage, and a high risk of further damage from aftershocks, flooding or spring tides. The orange and white zones were an area where further work was required to determine if rebuilding could occur in the short to medium term, and the Port Hills area where the June aftershocks necessitated further damage assessment, respectively.

[28] The group of Ministers agreed that the Crown should make offers to purchase "insured residential red zone properties in order to provide the certainty, confidence and simplicity that these land owners require ...".[9] The property owners were to have the choice of two options. Option A entitled the property owner to a payment of the 2007 rating value of the property, with all earthquake related insurance claims to be assigned to the Crown. Option B entitled the property owner to receive the 2007 land value, but retain their private insurance rights (except their EQC land claim which was to be assigned to the Crown).[10] The Cabinet minute recorded the financial implications of the decisions, namely that the gross cost of purchases in the red zone would be up to $1.7 billion, although insurance recoveries would reduce the net cost considerably.

[29] On 23 June 2011 the Prime Minister and Mr Brownlee jointly announced the zoning decisions. Mr Key said at the outset:

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[8] Affidavit of Mr Haohsi Tsao, exhibit 106, Cabinet Minute of Decision at 2.7 and 2.8.
[9] 2.26 of the Cabinet minute.
[10] 2.27 of the Cabinet minute.

> Since the first earthquake struck in September last year, the Government has been working to provide certainty for residents about what their future holds. We recognise that many people have their life savings tied up in their homes. Each subsequent earthquake has made an already large and complex challenge more difficult ...

He then outlined the division of greater Christchurch into the four zones based on advice from geotechnical engineers. The basis of the 100 percent buy-out offers was outlined, while Mr Brownlee's remarks included:

> The Government will continue to provide the public with timely and accurate information on the state of the land and what it means for residents.

[30] In due course insured property owners within the red zone who returned a consent form to CERA received an offer to purchase from the chief executive, Mr Roger Sutton. An accompanying fact sheet answered a number of generic questions, including:

> **What will happen to my property if I decide that I do not want to accept the Crown's offer?**
>
> If you decide that you do not want to accept the Crown's offer you should be aware that:
>
> The Council will not be installing new services in the residential red zone.
>
> If only a few people remain in a street and/or area, the Council and other utility providers may reach the view that it is no longer feasible or practical to continue to maintain services to the remaining properties.
>
> Insurers may cancel or refuse to renew insurance policies for properties in the residential red zones.
>
> While no decisions have been made on the ultimate future of the land in the residential red zones, CERA does have powers under the Canterbury Earthquake Recovery Act 2011 to require you to sell your property to CERA for its market value at that time. If a decision is made in the future to use these powers to acquire your property, the market value could be substantially lower than the amount that you would receive under the Crown's offer.

Mr Brownlee and Mr Sutton made similar remarks to these in media interviews.

[31] The June 2011 decisions of the Ministers included a nine months time allowance from receipt of an offer for property owners to decide whether to accept

the offer or not. Property owners could also defer settlement of the purchase up to 30 April 2013.

[32] During the second half of 2011 community workshops were held by CERA seeking public comment on a recovery strategy for greater Christchurch. A draft strategy was made available for public comment in September and October 2011. The Recovery Strategy was released in May 2012. Section 01 entitled *What is the Recovery Strategy?* included this:

> When the CER Act was passed in April 2011, it was thought that the recovery strategy might address:
>
> 1. Areas where rebuilding or other redevelopment may or may not occur, and the possible sequencing of building or other redevelopment;

However, the text continued: [11]

> The Strategy has not been able to address all of these issues, partly because of ongoing seismic activity. It is also a huge and complex task to make decisions about land zoning and the location and timing of rebuilding. Similarly, it is not yet clear where Recovery Plans – which are statutory documents with the power to overwrite a range of planning instruments – will be the most appropriate and effective way to provide direction. ...

[33] At section 16 the Strategy referred to the *Built Environment Recovery* and "land zoning decisions" were discussed, including that there are over 7,400 properties in the red zone and over 180,000 in the green zone as of May 2012. The text continued:

> - Residential Red Zone Land Clearance is overseeing the clearance of residential red zone properties and the return of the land to open space. It consists of three stages over two or three years. The first stage is to remove built structures and services. The second will involve larger-scale land clearance and grassing. The final stage will be to liaise with utility providers to remove public infrastructure no longer needed. After that, Land Information New Zealand will manage the open space. Wherever possible, these activities will preserve significant trees and will keep options open for the way the land will be used in future.

[34] Commencing in about April 2012 CERA officials commenced work in relation to the offers to be made to remaining red zone property owners – those not covered by the June 2011 announcement. The group comprised insured residential

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[11] Recovery Strategy for Greater Christchurch at 1.2.

leasehold property owners, vacant land owners, uninsured house owners and insured commercial/industrial property owners. There were only six properties in the first category. The land was owned by a district council, but the occupiers held leasehold interests and had insurance cover in relation to their homes. Subsequently, the Crown made 100 percent offers on condition that the leaseholders entered into agreements with the local body to acquire a freehold interest in the land. The fourth category, insured commercial/industrial properties, comprised 22 owners. These owners also received a 100 percent offer in relation to improvements, but a 50 percent offer in relation to land value. This reflected the circumstance that the land did not have EQC insurance cover, not being residential land.[12]

[35] The applicants fall into the other two categories: owners of vacant land or uninsured residential properties. On 30 August 2012 the Minister approved a revised Cabinet paper which related to the four categories of red zone owners. With reference to vacant land and uninsured residential properties the paper noted:

> There are strong arguments for not extending an offer to these property categories on the same terms as for insured properties. It would compensate for uninsured damage, be unfair to other red zone property owners who have been paying insurance premiums, and it creates a moral hazard in that the incentives to insure in the future (where insurance is available) are potentially eroded.

However, the paper then noted the costs associated with such owners electing to remain in the red zone. There would then be "limited scope to decommission infrastructure – which is costly to maintain". The Christchurch City Council had estimated an ongoing infrastructure cost per household of over $16,000, compared to the pre-earthquake cost of about $600 per household. This calculation assumed a 79 percent occupancy rate, and noted that the per household figure would increase significantly as more people moved out.

[36] The paper continued:

> Properties with no insurance in the red zones are also in a different situation to similar properties in the green zones. Red zone properties are in areas of severe infrastructure damage, many surrounding neighbours have either left or are planning to leave (as evidenced by the high uptake rate of the Crown

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12 Section 19 Earthquake Commission Act 1993.

> offer),[13] and there is considerable uncertainty about what will happen to these areas in the future. Therefore I [the Minister] do not support the option of no offer being made as there are good reasons to support exit from the red zones.

The Minister favoured 50 percent offers to recognise the considerable earthquake damage to both land and improvements, the lack of insurance, but also that there was some residual property value.

[37] In relation to vacant land the Cabinet paper referred to an opinion of the Valuer General that on account of land damage it may be worth only 10 percent of its pre-earthquake value, but the paper still favoured a 50 percent offer to "help support the signal that the government wants to encourage property owners to move on from the red zone". The financial implications of these recommendations were costed on the basis of 50 uninsured residential properties at $5.42 million, and 65 vacant sections at $7.12 million.

[38] On 3 September 2012 the Cabinet Business Committee agreed with and adopted the Minister's recommendations in relation to both uninsured residential properties and vacant land.

[39] The 30 August Cabinet paper, I note, was developed through drafts. In preceding months CERA officials had also prepared discussion documents which canvassed the issues and available options. By way of example, on 5 June 2012 a Project Manager of Property Acquisitions said this in relation to the then latest version of a briefing note:

> When considering these issues, I keep coming back to the fact that at some stage we need to acknowledge/recognise that the decisions to date have effectively (albeit not formally) rendered the red zone abandoned or retired. In doing so any market that would have otherwise existed for the sale of red zoned properties has been removed and as a consequence any value that red zone properties may have retained has been taken away. I appreciate that to date this issue has been intentionally avoided but I suspect that we will eventually be called to task on it. Any attempt to argue that this has not occurred would be difficult to sustain when we have already communicated publically that the red zone will become depopulated, uninsurable and services will be withdrawn (note that we also need to consider how these

[13] A footnote recorded that to 18 August 2012 out of 7,560 owners 75 percent had accepted Crown offers.

decisions will impact on the ability of CCC/WDC/CERA to withdraw services to these sections).

[40] On 13 September 2012 the Minister announced the further red zone decisions. His release detailed the offers to be made to each category of property owner. He commented that the offers were made "in order to aid recovery and support the objectives of the residential red zone process ...". The Cabinet Business Committee's minute of 3 September restated the objectives, including certainty of outcome, creation of confidence to enable people to move forward with their lives, and creation of confidence for decision-makers including insurers and investors.

[41] In November 2012 CERA published a document entitled *Purchase Offer Supporting Information for Uninsured Property Owners in the Red Zone*. It confirmed that an offer to purchase would be made upon receipt of a consent form from the property owners. Owners would then have until 31 March 2013 to accept the Crown offer, with settlement of the transaction to occur by 30 April 2013. The document included the same advice as had been provided in the fact sheet given to the recipients of 100 percent offers relating to what would happen if owners did not accept the Crown's offer (see [30]).

[42] On 14 December 2012 a CERA deputy chief executive provided to the Minister a paper entitled *Final Settlement Date for Flat Land Residential Red Zone Property Owners*. It addressed an emerging problem in relation to owners seeking an extension in relation to the final settlement date, 30 April 2013, because of their inability to find alternative accommodation within the timeframe. The paper considered three options. The first was to continue with the current policy. One factor in favour of this approach was that any change to the settlement date would delay "the clearance programme".[14] Option two was a blanket extension to the final settlement date, which likewise was seen as likely to "cause significant delays to the clearance programme in the RRZ".[15] Option three, the preferred option, was to provide case-by-case extensions to the final settlement date. The Minister, on 17 December 2012, approved option three.

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[14] At [25].

[15] At [31].

[43] He also agreed that extensions would only be granted to those who met strict criteria based on personal vulnerability or the existence of exceptional circumstances beyond the owner's control. The Minister did not approve a recommendation that authority to approve extensions be vested in the chief executive, with authority for him to sub-delegate the power as required. Further, the Minister fixed the final settlement date as 31 July 2013, not 31 October 2013 as had been recommended. The need for a careful communication strategy to ensure that owners did not view extensions as "an automatic entitlement" was adopted.

The statutory framework

[44] The Canterbury Earthquake Recovery Act was passed by Parliament under urgency in response to the February 2011 earthquake. Part one contains preliminary provisions, including the purposes of the Act:[16]

> (a) to provide appropriate measures to ensure that greater Christchurch and the councils and their communities respond to, and recover from, the impacts of the Canterbury earthquakes:
>
> (b) to enable community participation in the planning of the recovery of affected communities without impeding a focused, timely, and expedited recovery:
>
> (c) to provide for the Minister and CERA to ensure that recovery:
>
> (d) to enable a focused, timely, and expedited recovery:
>
> (e) to enable information to be gathered about any land, structure, or infrastructure affected by the Canterbury earthquakes:
>
> (f) to facilitate, co-ordinate, and direct the planning, rebuilding, and recovery of affected communities, including the repair and rebuilding of land, infrastructure, and other property:
>
> (g) to restore the social, economic, cultural, and environmental well-being of greater Christchurch communities:
>
> (h) to provide adequate statutory power for the purposes stated in paragraphs (a) to (g):
>
> (i) to repeal and replace the Canterbury Earthquake Response and Recovery Act 2010.

The Act binds the Crown: s 5.

[45] Part Two, headed "Functions and powers to assist recovery and rebuilding", is divided into a number of subparts. Subpart one provides for input into decision-

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[16] Section 3.

making by the community and cross-party forums. The Minister must arrange community forums at least six times per year, by inviting at least 20 suitably qualified persons to participate in each forum. The Minister and the chief executive must have regard to information or advice provided by the forum.[17] In addition, the Minister must arrange a cross-party Parliamentary forum from time to time and invite the attendance of members of Parliament resident in greater Christchurch, or those who represent a Christchurch constituency.[18]

[46] Subpart two defines the functions of the Minister and the chief executive. The Minister is responsible for developing a recovery strategy for greater Christchurch as well as recovery plans; may suspend, amend or revoke the whole or parts of Resource Management Act documents applying to greater Christchurch; may give directions to councils and council organisations; may compulsorily acquire land and determine the compensation payable; must appoint a Review Panel of four suitable persons to provide advice in relation to delegated legislation required for the purposes of the Act; and must provide quarterly reports and an annual review to Parliament concerning the exercise of powers under, and the operation and effectiveness of, the Act.[19]

[47] The chief executive is responsible for developing a Recovery Strategy and a Recovery Plan if directed to do so by the Minister; commissioning and disseminating information; controlling building, demolition and removal work; closing and restricting access to roads; and acquiring land and property, amongst other powers.[20]

[48] Importantly, s 10 provides:

> **Powers to be exercised for purposes of this Act –**
>
> (1) The Minister and the chief executive must ensure that when they each exercise or claim their powers, rights, and privileges under this Act they do so in accordance with the purposes of the Act.
>
> (2) The Minister and the chief executive may each exercise or claim a power, right, or privilege under this Act where he or she reasonably considers it necessary.

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[17] Section 6.
[18] Section 7.
[19] Section 8.
[20] Section 9.

[49] In the *Independent Fisheries* case[21] the Court of Appeal noted the extraordinary powers conferred under the Act, but added:

> [14] At the same time, as the Act itself recognises, the powers conferred by Parliament on the Executive in this context are not unfettered. Parliament was concerned to ensure that, notwithstanding the need to confer extraordinary powers on the Executive to deal with an extraordinary situation, the rule of law was protected. Hence the powers conferred on the Minister are not untrammelled. The Act contains express provisions constraining the exercise by the Minister of his powers and there is a right to challenge the exercise of the powers by judicial review proceedings, such as the present.

With regard to the operation of s 10 the Court added:

> [18] In our view, the meaning of the provision is clear when the focus is on its text and purpose in the context of this Act. In short, two elements are involved: The Minister must consider the exercise of the power "necessary", that is, it is needed or required in the circumstances, rather than merely desirable or expedient, for the purposes of the Act. The Minister must consider that to be so "reasonably", when viewed objectively, if necessary by the Court in judicial review proceedings such as these. The Minister must therefore ask and answer the question of necessity for the specific power that he intends to use. This means that where he could achieve the same result in another way, including under another power in the Act, he must take that alternative into account.

[50] Section 11 governs the development of a Recovery Strategy for the Minister's consideration. The chief executive must develop the document, which s 11(3)(a) defines in these terms:

> The Recovery Strategy is an overarching, long-term strategy for the reconstruction, rebuilding, and recovery of greater Christchurch, and may (without limitation) include provisions to address:
>
> (a) The areas where rebuilding or other redevelopment may or may not occur, and the possible sequencing of rebuilding or other redevelopment: ...

[51] A draft Recovery Strategy was to be developed within nine months of the Act coming into force and following one or more public meetings.[22] The draft was then to be publicly notified, with opportunity for members of the public to make written comments on the document.[23]

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21 *Canterbury Regional Council v Independent Fisheries* [2012] NZCA 601.
22 Section 12.
23 Section 13.

[52] Of present importance is the effect of a Recovery Strategy, defined in s 15:

> (1) No RMA (Resource Management Act 1991) documents or instrument referred to in section 26(2), including any amendment to the documentation or instrument, that applies to any area within greater Christchurch may be interpreted or applied in a way that is inconsistent with a Recovery Strategy.

The balance of the section provides that the strategy forms part of the RMA document and prevails in the event of conflict, and that the strategy may not be reviewed.

[53] Sections 16 to 26 govern Recovery Plans. A Recovery Plan must be consistent with the Recovery Strategy, but may be developed and approved before a Recovery Strategy is approved.[24] Once a Recovery Plan has been developed by the Minister following consultation and public meetings, the plan is binding. Section 23 provides that a Recovery Plan trumps the exercise of functions and powers under the RMA in that a variety of decisions, or recommendations, may not be made if inconsistent with the plan. More specifically, s 27 enables the Minister to suspend, amend or revoke a range of controls within the greater Christchurch area, including resource management, local government, land transport and conservation controls.

[54] Subpart four governs information gathering and dissemination. The control of building works and, most relevant for present purposes, the power to acquire and dispose of property. Section 53 empowers the chief executive, in the name of the Crown to purchase land and personal property. And, s 54 empowers the Minister to acquire land compulsorily in the name of the Crown, subject to the payment of compensation under subpart five.

Analysis of the Red Zone Decision

[55] Counsel characterised the decision to create the red zone in markedly different ways. Mr Cooke portrayed it as in the nature of a zoning decision ordinarily governed by the RMA. Accordingly, for the decision to be made according to law the Minister had to invoke section 27 of the Act and suspend or revoke the zoning of these areas proclaimed to be red, because they were unlikely to

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[24] Section 18(1)(2).

be fit for rebuilding in the short to medium term. In essence, counsel said that property owners within the red zone no longer enjoyed the entitlements pertaining to the particular residential zone governing their land under the district plan.

[56] Mr Goddard, however, contended that although the Act conferred extraordinary powers upon the Minister, it did not exclude or limit powers that existed independently of the Act. He said the red zone was created "in the exercise of the Crown's common law powers to publish information. The Crown does not need statutory authority to make information available to the public". Accordingly, the Minister's involvement in the June 2011 decision-making process, and in the announcement of the red zone, did not involve the exercise of any power under the Act – nor did it need to.

[57] These differences led to a focus upon two issues:

(a) whether the red zone decision was a governmental decision authorised by common law or in terms of the so-called third source of power, and

(b) whether Parliament had legislated in such a way in passing the Act as to evince an intention to regulate the Canterbury earthquake recovery in terms of the prescribed statutory regime.

Both issues concern the extent, and use, of the Crown's prerogative powers.

[58] The Royal prerogative, or prerogative power, has been explained in this way:[25]

> 'Prerogative' power is, properly speaking, legal power which appertains to the Crown but not to its subjects. ... Although the courts may use the term 'prerogative' in this sense, they have adopted the habit of describing as 'prerogative' every power of the Crown which is not statutory, without distinguishing between powers which are unique to the Crown, such as the power of pardon, from powers which the Crown shares equally with its subjects because of its legal personality, such as the power to make contracts, employ servants and convey land.

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25 HWR Wade and CF Forsyth *Administrative Law* (10th ed, Oxford University Press, London, 2009) at 182.

[59] The third source of power is a controversial area, recently examined by Professor Harris.[26] In *R v Ngan* McGrath J referred to this article, stating:[27]

> As Professor Harris has pointed out, thousands of government actions take place every day under this form of legal authority. *Most are administrative and free from controversy, as they have no impact on the legal rights of citizens*. (emphasis added)

But, I doubt that it is necessary to enter the debate concerning the third source of power in this case. Here, I think the determinative issue is the nature, or character, of the red zone decision and whether that decision was one that could only be made using the statutory powers under the Act.

[60] I do not accept the argument that the creation and announcement of the red zone was simply an exercise of the Crown's undoubted power to publish information. In my view it was much more than that.

[61] Curiously, the Cabinet minute of 22 June 2011 decision only referred to the four newly defined zones as "noted" by the decision-makers. The relevant "agreed" actions were that the Crown would make purchase offers to most red zone property owners, and that there would be a public announcement of this. There was, of course, by the Prime Minister and the Minister on 23 June. The manner in which the decision was recorded must have been deliberate. The importance and sensitivity of the zoning decision was, however, self evident.

[62] The decisions must, I think, be viewed as a package. There were four elements: the zones, the purchase offers, the announcement and the clearance strategy – although this last element was revealed post-announcement, and only gradually. In combination the package was essentially destructive of the residential zoning designations of the red zone land. In reality the decisions meant that over time the red zone would cease to be residential, and would become open space. In the meantime, the residential zones under the district plan subsisted, but in reality were no longer operative.

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[26] Harris, "The 'Third Source' of Authority for Government Action Revisited" (2007) 123 LQR 225.

[27] *R v Ngan* [2008] 2 NZLR 48 (SC) at [96].

[63] The RMA governs how property owners may use their land. Section 9 provides a negative definition, that no-one may use land in a manner that contravenes a national standard, or a regional or district rule. Most important in this instance is the district plan, which prescribes conditions for the use and development of residential sections by reference to zoning. The applicants' land was zoned residential, but subject to different building criteria depending upon the permitted intensity of residential development. The property owners had the right to establish and live in their homes subject to compliance with the plan.

[64] It is the function of the City Council under section 31 of the RMA to manage and control "the effects of the use, development or protection of land and associated natural and physical resources ...". In doing so, the Council before bringing down or changing a plan is required to make an evaluation of "alternatives, benefits and costs".[28] Hence, as Elias CJ has stated: [29]

> The district plan is key to the (RMA's) purpose of enabling "people and communities to provide for their social, economic, and cultural well being". It is arrived at through a participatory process, including through appeal to the Environment Court. *People and communities can order their lives under it with some assurance*. (emphasis added)

That was no longer so in the red zone.

[65] As the submission of the HRC emphasises New Zealand's international obligations are also relevant in this context. New Zealand has ratified the Universal Declaration of Human Rights,[30] together with the two main treaties the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESCR). Article 17 of the former provides:[31]

> 1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

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[28] Section 32 Resource Management Act 1991.

[29] *Discount Brands Ltd v Westfield (New Zealand) Ltd* [2005] 2 NZLR 597 (SC) at [10].

[30] Universal Declaration of Human Rights adopted and proclaimed by United Nations General Assembly Resolution 217 A (III) on 10 December 1948.

[31] ICCPR adopted by the General Assembly of the United Nations on 19 December 1966.

> 2. Everyone has the right to the protection of the law against such interference or attacks.

The use and enjoyment of one's home is a fundamental human right. In my view the creation of the red zone comprised an interference with that right. Whether that interference was arbitrary and unlawful depends on whether the red zone decision had to be made pursuant to the Act, a question to which I now turn.

Do the principles in De Keyser's case apply here?

[66] In *Attorney-General v De Keyser's Royal Hotel Limited*[32] the House of Lords considered whether prerogative powers had been displaced by the enactment of statutory powers in favour of the Crown. The case concerned whether compensation was payable to the owners of a hotel which had been requisitioned during wartime for defence purposes. The Crown asserted that the royal prerogative enabled it to take possession of the premises without obligation to pay compensation. Lord Parmoor said in relation to prerogative powers:[33]

> The growth of constitutional liberties has largely consisted in the reduction of the discretionary power of the executive, and in the extension of Parliamentary protection in favour of the subject, under a series of statutory enactments. The result is that, whereas at one time the Royal Prerogative gave legal sanction to a large majority of the executive functions of the Government, it is now restricted within comparatively narrow limits. The Royal Prerogative has of necessity been gradually curtailed, as a settled rule of law has taken the place of an uncertain and arbitrary administrative discretion.

[67] As to when the prerogative is overtaken by statute Lord Dunedin said this:[34]

> ... it is equally certain that if the whole ground of something which could be done by the prerogative is covered by the statute, it is the statute that rules. On this point I think the observation of the learned Master of the Rolls is unanswerable. He says: "What use would there be in imposing limitations, if the Crown could at its pleasure disregard them and fall back on prerogative?"[35]

[68] In my view the *De Keyser* test is met in this case. The Act contained express powers to make, and implement, decisions to create a red zone and make purchase

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[32] *Attorney-General v De Keyser's Royal Hotel Limited* [1920] AC 508.
[33] Page 568.
[34] Page 526.
[35] See also *NZ Recreational Fishing Council Inc. v Sanford Ltd* [2009] 3 NZLR 438 (SC) at [63].

offers to affected property owners. Indeed, the repeal of the Canterbury Earthquake Response and Recovery Act 2010 in favour of the new Act is instructive. Under the 2010 Act, the Minister could seek an exemption, modification or extension in relation to numerous other statutory provisions where this was necessary for the purposes of the earthquake recovery. He was required to heed advice from an advisory body, after which an Order in Council having the effect of legislation could be obtained to effect the statutory change.

[69] By contrast, the 2011 Act is rather more prescriptive, particularly in relation to public consultation and the development of a recovery strategy and plans. Significantly, s 27 enables the Minister to suspend, amend or revoke in whole or part an RMA document pertaining to Greater Christchurch. Likewise, s 53 empowers the chief executive to purchase property in the name of the Crown; and s 54 the Minister to compulsorily acquire property in terms of the Public Works Act 1981. The exercise of these powers, however, would be subject to s 10, as that section was analysed and explained in *Independent Fisheries*.

[70] I doubt that there could be a clearer case of express statutory powers conferred on the Crown in a well defined field than this. It follows in my view that the Minister was obliged to invoke section 27 in order to define and create the red zone.

[71] Why this was not done is not explained in the Minister's affidavit. It states at the outset that the applicants "challenge my involvement in Cabinet decision-making, rather than the exercise by me of my statutory powers", but the balance of the affidavit does not explain how it was decided to proceed by way of group ministerial decision-making. Given the terms of the Act, and the Minister's personal responsibility to guide the response to and recovery from the impacts of the Canterbury earthquakes, it must have been the case that thought was given to this issue, and presumably advice taken, before an election to proceed outside the Act was made.

[72] Mr Goddard sought to overcome this deficiency by making very detailed submissions directed to the Public Finance Act 1989 and the State Sector Act 1988.

He stressed the financial implications of the red zone buy-out and the fundamental principle that a government department cannot commit to capital expenditure except as expressly authorised by an appropriation, or other authority. Hence, the argument concluded on the note that "major policy decisions involving significant expenditure are made by Cabinet, and in making decisions on how to exercise powers and perform functions of a discretionary nature that involve the expenditure of public money the relevant Minister or official can and must take into account the available funding under the relevant appropriation".

[73] This analysis was, I think, something of a distraction. I accept of course that the Minister could not possibly commit the government to massive expenditure without the approval of Cabinet. But there is a distinction between decision-making and appropriation principles. Here the Act provided extensive powers, and governed by whom and how they were to be exercised. The availability of government funding was crucial, but was nonetheless a separate issue, although one that had to be factored into the process. Financial considerations did not enable the Act to be put aside in favour of decision-making by a group of Ministers on behalf of Cabinet.

Is the relief sought appropriate?

[74] The Outcasts seek a declaration that neither the declaration of the red zone, nor the subsequent offers made by the Crown to property owners in those zones, affect the existing rights at law of residential occupation of property owners in these zones. Mr Goddard, in a reply memorandum, opposed this relief both because the 22 June 2011 decisions did not purport to legally affect the rights of property owners and because the terms of the proposed declaration were inapt in any event. I shall deal with these aspects separately.

[75] Although the Outcasts no longer seek a declaration that the creation of the red zone and the associated clearance strategy were unlawful, I nonetheless consider it essential to examine whether the red zone decision in particular was made according to law. The contentions advanced on behalf of the respondents require this approach. Mr Goddard's acceptance that property owners' rights were not affected was a reflection of his contentions that decision-making outside the Act was permissible,

and that the red zone was created by the exercise of the Crown's power to "publish information". Rejection of these propositions means that the concession falls away.

[76] Mr Goddard also submitted that the declaration was inappropriate because the phrases "declaration of the red zone" and "the existing rights at law of residential occupation of property owners" were unclear. Any order should specify a particular decision and also the unaffected existing rights at law. Counsel further submitted that the rights of those property owners who have accepted the Crown's purchase offer are clearly affected, whereas the proposed declaration does not recognise as much.

[77] The final point raises a matter of major significance. At the time of the hearing, out of 6,643 insured residential property owners, 6,607 had received Crown offers. The other 36 owners had not consented to the receipt of an offer. Moreover, 98.97 percent of those who had received an offer had also accepted it. Even in relation to vacant land owners and uninsured residential property owners the figures are:

	Total Properties	**Offer Sent**	**Accepted**
Vacant Land	74	70	72.79%
Uninsured Residential	91	89	62.64%

[78] Hence, regardless of the decision-making process and my conclusion that the decision was not made according to law, the fact remains that the present situation is essentially a fait accompli. This suggests that the Crown offers were pitched at a level sufficient to enable most members of the red zone community to recover from the impacts of the Canterbury earthquakes. Or at least, the buy-out offers, particularly the 100 percent offers, were perceived as a better option than the market place could possibly provide.

[79] These factors no doubt influenced the Outcasts' decision to no longer seek a declaration that the red zone decision be set aside. Over two years have passed since the decision was made. Sometimes, events subsequent to a decision being made, particularly where the interests of third parties are involved, can erode or even

remove the utility of relief which previously might have been appropriate.[36] In these circumstances the more modest reformulation of the relief sought is understandable.

[80] But, it remains for me to confront whether even this relief is appropriate. A number of the points raised in opposition have substance. But to my mind the Outcasts are entitled to relief in the form of a suitably framed declaration. Although remedies in the judicial review context are discretionary, where there is a finding of error of the present kind it is essential that the Court clearly says as much.[37]

[81] Accordingly, I make:

> A declaration that the decision to create the red zone announced on 23 June 2011 did not lawfully affect the property rights of the property owner applicants in the proceeding CIV-2013-409-000843 (the 'Outcasts').

This declaration provides clarification, and vindication, but is limited to those who have successfully challenged the decision-making process.

Should the September 2012 50 percent offers be set aside?

Who was the decision-maker?

[82] To briefly recap, CERA officials, the general manager and a senior adviser of strategy planning and policy, prepared iterations of a draft Cabinet paper. The final draft met with the approval of the Minister, who on 30 August 2012 signed the paper so it could be lodged with the Cabinet office. The paper contained recommendations made in the name of the Minister.

[83] On 3 September 2012 the Minister chaired a meeting of 12 Ministers who comprised the Cabinet Business Committee. For present purposes the key decision taken was the agreement of the Committee that the Crown make offers to purchase vacant land, and uninsured improved properties, in the red zone "on the same terms as Option Two for insured residential properties, but at a reduced rateable value (50 percent) in respect of the land component of the value".

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[36] See for example *Fowler and Roderique Limited v Attorney-General* [1987] 2 NZLR 56 (CA).
[37] *Fitzgerald v Muldoon* [1976] 2 NZLR 615 (SC) at [623] (lines 37-40).

[84] On 13 September 2012 the Minister publically announced the basis of the intended Crown offers (including those to be made to insured commercial/industrial, and leasehold residential, property owners).

[85] The affidavits filed by the Minister and Mr Sutton in these proceedings refer to the decision-making process. The Minister said:

> [71] While it is Mr Sutton's function under the Act to make offers to acquire property for earthquake recovery purposes, on behalf of the Crown, *I was satisfied that it was necessary for the purposes of the Act for these offers to be made,* and in particular that it was necessary to enable a focused, timely, and expedited recovery. I would have been surprised if Mr Sutton had decided not to proceed with an offer, once the making of such an offer and the expenditure on those offers had been authorised by Cabinet. And as explained above, the Cabinet decisions on funding set a ceiling on what Mr Sutton could offer in respect of these properties as he could not offer to pay out more public money than Cabinet had authorised. (emphasis added)

[86] Mr Sutton said:

> [41] Having received authority from Cabinet to make offers in respect of vacant land, uninsured properties, insured commercial/industrial properties and the residential leasehold properties, my office began the offer process. *It is perhaps self-evident, but I considered that it was necessary to make the offers that Cabinet had authorised for the purposes of the earthquake recovery.* Once funding had been made available for that purpose I was in a position to make those offers, by exercising my powers under section 53 of the Act which enables me to purchase land in the name of the Crown.
> (emphasis added)

[87] I interpret these comments as passing acknowledgments that both the Minister and the chief executive understood the obligation imposed by s 10 of the Act. That said, the fact is that the decision to make the 50 percent offers was not made under, and in compliance with the requirements of, the Act.

Grounds of challenge

[88] The Outcasts' main claim is that the decision to make 50 percent offers was not made under the Act and is therefore unlawful. They further allege that the offer is oppressive, disproportionate, contrary to their human rights and an abuse of power. In support of these grounds various factual arguments were advanced, including that the prevailing circumstances in September 2012 were such that the purchase offers were a form of "de facto compulsory acquisition". Another factual contention was

that the "moral hazard" thesis, which underpinned the decision to limit the offers to 50 percent of the rating value of the land, was misconceived.

[89] The Fowler Developments case was put on the basis that in terms of the Act the chief executive, and the Minister, were duty bound to act in an even handed manner. There were several planks to the contention that the Company had not received equal treatment. As an owner of vacant land, it could not obtain insurance cover as it is unobtainable. Once building construction began, insurance cover would have been taken up and this would have triggered EQC cover of the land as well. It followed that the moral hazard argument, that making 100 percent offers to uninsured property owners would provide a future disincentive to owners taking out insurance cover, was misplaced. More generally, counsel also submitted that the boundaries of the red zone were drawn on a policy basis to define areas where land remediation and infrastructure repair was problematic, but with no regard to the individual circumstances of owners within the zone.

The offers were not made under the Act

[90] The finding, and reasoning, relating to the creation of a red zone is of equal application to the September 2012 decision to make 50 percent offers to the applicants. Following the Committee meeting the Minister made a public announcement and then the chief executive invoked s 53 to make purchase offers, but there was no deliberative process as required under s 10 and the Act generally. Both simply proceeded to implement a decision made in Committee. In my view, it inevitably follows that the essential decision was made outside of, and without regard for, the statutory regime and was not made according to law.

The other grounds of challenge

[91] There is, I think, considerable overlap between the main ground of challenge and the further grounds identified above, and likewise in relation to the various factual contentions. This is so because the purposes of the Act; including enabling communities to respond to and recover from the earthquakes, community participation and restoring of the social, economic, cultural and environmental

wellbeing of the greater Christchurch communities; demanded societally equitable decision-making.

[92] I do not propose to consider the other grounds of challenge in any detail. I doubt that it would be profitable to do so.

[93] For example, the argument that the applicants were faced with de facto compulsory acquisition offers late last year is not particularly helpful. On the one hand, the decision of the Supreme Court in *Waitakere City Council v The Estate Homes Limited*[38] is authority for the proposition that a compulsory taking occurs only when a land owner is compelled to transfer rights under protest and with no choice. This suggests that there was no sufficient element of compulsion in this case. On the other hand, red zone residents faced with a Crown purchase offer, had no or little option but to accept it. In the first place the offers were pitched at a level sufficient to make them attractive, given that the subject land was not only damaged, but within the red zone. Particularly as areas became depopulated, infrastructure fell into disrepair and essential services came under threat, the outlook for property owners was bleak. In reality, they had but Hobson's choice.

[94] Similarly, the moral dilemma debate is of limited utility. On the one hand it seems a legitimate factor to take into account, as the Ministers did. But on the other it was a blunt instrument because no distinction was drawn between those who made a deliberate election to be uninsured and those who were uninsured through no fault of their own, including because insurance cover was unobtainable.

[95] The lack of even-handedness argument however, has I think considerable merit. Clearly, the main impetus for the June 2011 decision to make 100 percent offers to insured property owners was the need to provide certainty and create the confidence necessary to enable people to move on with their lives, given that "many people have their life savings tied up in their homes", to borrow the Prime Minister's phrase. Importantly, these considerations apply equally to many of the applicants, particularly those who are the owners of uninsured house properties.

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[38] *Waitakere City Council v The Estate Homes Limited* [2007] 2 NZLR 149 (SC).

[96] Yet it is apparent that payments of 50 percent of the land rating value will not enable many property owners to make a fresh start. This is clear from the questionnaires completed by applicants in the Outcasts' proceeding. Many owners are people of modest means, some are elderly and it is commonplace that their land and home is their one substantial asset. I am satisfied that the plight of this relatively small group has not been adequately considered in light of the purposes of the Act.

Is relief appropriate?

[97] The Outcasts seek relief as set out in [14B].

[98] At the hearing relief was opposed on the basis of delay. However, the applicants reformulation of the relief sought has changed matters. The period of delay is at most from mid September 2012 to February 2013 (Fowler Developments) and May 2013 (the Outcasts). I do not consider this period of delay disqualifying in the circumstances of this case and provided relief is confined to the applicants alone, a relatively small group in the overall context.

[99] There are two aspects to the proposed relief, the setting aside of the 50 percent offer decision and remission of that question for reconsideration in light of proposed directions.

[100] As to the first aspect Mr Goddard forcefully challenged the appropriateness of relief directed to setting aside the decision made by the Cabinet Business Committee. By reference to *New Zealand Maori Council v Attorney-General*[39] he submitted that Cabinet decisions are policy decisions which do not affect legal rights or interests. Even if Cabinet had purported to exercise a statutory power vested in some other decision-maker, the appropriate course would be to make a declaration that the decision did not amount to an exercise of the power or affect the rights and interests of others. I accept this analysis. Here, it seems to me the Minister recommended and participated in the Committee decision, with the result that the chief executive had no or little option but to implement the decision pursuant to s 53 of the Act. It was the announcement of the decision by the Minister on

[39] *New Zealand Maori Council v Attorney-General* [1996] 3 NZLR 140 (CA).

13 September 2012 and the making of the offers by the chief executive subsequently that should be set aside.

[101] With regard to the second aspect I am satisfied that a direction to reconsider the 50 percent offers made to the applicants, and to make a fresh determination in accordance with the purposes of the Act, is appropriate. However, I do not favour a list of factors to which the decision-makers are to have regard. The Act, in particular its purposes, provide the required template. Otherwise, the reasons contained in this judgment may also be of assistance.

Conclusion

[102] Accordingly I make:

(a) A declaration that the decision to offer to purchase the properties of the applicants on the terms announced by the Minister on 13 September 2012 was not made according to law and is set aside, as are the offers subsequently made to the applicants by the chief executive.

(b) A direction that the Minister and the chief executive reconsider and reach a new decision to purchase the applicants' properties, such decision to be made in accordance with law:

(i) as required by the purposes and principles of the Canterbury Earthquake Recovery Act 2011, and

(ii) with regard paid to the reasons contained in this judgment.

Leave is reserved to the parties to revert to the Court in relation to the terms of relief in [81] and [102] if clarification is required.

[103] Costs are reserved. The applicants may file a memorandum within 15 working days, to which the respondents may reply within 10 working days.

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