IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE

CIV-2021-485-202
[2021] NZHC 1050

UNDER	Judicial Review Procedure Act 2016 and Part 30 of the High Court Rules
IN THE MATTER OF	an application for judicial review of the decision of the Minister for Land Information to compulsorily acquire land under ss 103–106 of the Greater Christchurch Regeneration Act 2016
BETWEEN	ROLAND HAMISH LOGAN AND SHARON JOY NG Applicants
AND	MINISTER FOR LAND INFORMATION Respondent

Hearing: 6 May 2021

Appearances: T Mijatov, P M Smyth and M R G van Alphen Fyfe for Applicants
H Ebersohn, R A Elvin and G Niven for Respondent

Judgment: 11 May 2021

Reissued: 12 May 2012

JUDGMENT OF ISAC J
[Application for interim order]

Introduction

[1] The Crown and the Christchurch City Council wish to construct a new stadium in Christchurch. The area designated for the stadium is in the central city and includes land owned by the applicants, Mr Logan and Ms Ng, at 212-214 Madras Street. Situated on their property is a 110-year-old building known as the NG building. It is occupied by 12 tenants.

[2] The applicants have applied for judicial review of decisions by the Minster for Land Information to compulsorily acquire the NG building under the Greater Christchurch Regeneration Act 2016 (the Act) to make way for the stadium.

[3] The applicants have also sought an interim order under s 15 of the Judicial Review Procedure Act 2016 enjoining the Crown from acquiring title to their property and preventing demolition of the NG building pending determination of the proceeding.

[4] In an interim judgment of 29 April I granted an interim order declaring that until further order of the Court:[1]

(a) the Crown ought to consider the Proclamation issued by the respondent on 20 April 2021 as stayed from further effect until further order of the Court; and

(b) the Crown ought not take any further action that is, or would be, consequential on the issue of the Proclamation, including but not limited to the steps contemplated on the part of the Registrar-General of Land under s 105 of the Act.

[5] On 6 May I heard submissions from the parties on whether the interim order should be sustained until the application for judicial review has been determined.

[6] I have concluded that it should be for three reasons:

(a) First, the claim cannot be said to be without merit. In my assessment it is clearly arguable.

(b) Second, the applicants are likely to suffer irreversible prejudice if the order is not made and their claimed procedural rights are ultimately vindicated at trial.

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1 *Logan and Ng v Minister for Land Information* [2021] NZHC 945.

(c) Third, the balance of convenience and overall interests of justice favour preservation of the NG building until the substantive merits of the application for judicial review have been determined. A hearing of the substantive application can be allocated in August 2021, and the delay of three to four months as a result of the interim order must be measured against the project's genesis in 2012.

Background

[7] The NG building was erected in 1905 having been commissioned by Sir Westby Brook Perceval, New Zealand's Agent-General in London from 1891 to 1896.

[8] The applicants' case is that it is one of the few remaining buildings in Christchurch with significant architectural heritage value. It survived the Canterbury earthquakes due to extensive strengthening works undertaken by the applicants between 2003 and 2010.

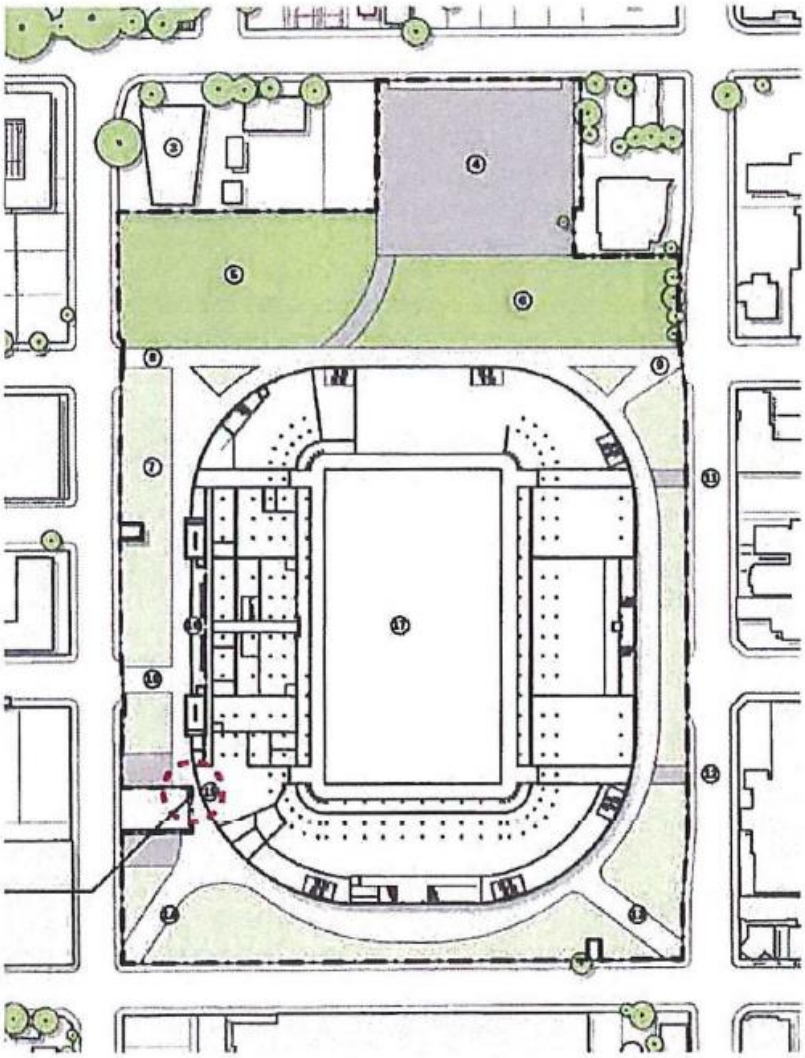
[9] Dr Ian Lochhead, a former Associate Professor of Art History at the University of Canterbury, and an expert in the history and theory of architectural heritage conservation, provided an affidavit setting out the history and architectural significance of the building:

> The NG Building is the only surviving warehouse designed by J.C. Maddison left in Christchurch and one of only two buildings by Maddison to survive in the central city, the other being the former Government Buildings (1910–13) in Worcester Street on the east side of Cathedral Square. Maddison was a significant figure in the development of Christchurch and Canterbury architecture from the 1880s until 1914. …

[10] Dr Lochead went on to say:

> The Ng Building represents a now rare example in Christchurch of the way in which nineteenth-century architects used the language of historicism to give architectural dignity to buildings of essentially utilitarian function. … Up until 2011 that continuous chain of architectural influence was in evidence throughout central Christchurch; now it can be found in only a handful of isolated examples.

[11] As noted, the NG building is now situated within an area of the central city designated for the stadium, known as the Canterbury Multi-Use Arena (CMUA). The area is situated between Madras, Barbadoes, Hereford and Tuam Streets. In the diagram below, the relationship of the proposed site of the CMUA to the NG building is illustrated. The overall area designated for use as the CMUA appears as a dotted line. The NG building appears toward the bottom left of the CMUA area. A red circle marks the corner of the building:



[12] Although the Minister is exercising his power of compulsory acquisition under the Act, the responsibility for the stadium design and construction rests with the Christchurch City Council, or more particularly a company which the Council wholly owns called CMUA Project Delivery Ltd (Project Delivery Ltd). As a result, it appears much of the stadium design work and assessment of options to preserve the

NG building have been carried out by Project Delivery Ltd and its technical advisers rather than the Minister or his officials.

[13] Between 2012 and 2020 there have been ongoing discussions between the applicants and the Crown, the Council and Project Delivery Ltd about the NG building's future. The applicants say at various times there appeared to be some hope that the building could be saved. Initially, that prospect involved incorporation of the NG building into the stadium design. After that option was rejected by Project Delivery Ltd, focus shifted to a possible relocation of the building to another area on Madras Street.

Events move at a pace — late 2020 and early 2021

[14] Between April 2020 and 29 January 2021, engagement between the parties intensified and became harder-edged.

[15] It is unnecessary for me to describe the content of those discussions in detail here, but it is fair to say that both sides now contend the other did not approach them with an open mind or any real commitment to reach an agreement. Both sides also suggest the other was responsible for periods of significant delay in progressing a negotiated resolution by way of a voluntary sale.

[16] By 29 January 2021 the applicants had indicated they would enter negotiations in relation to a voluntary acquisition, but only if the Crown kept an open mind as to "the real possibility that the NG building would be incorporated" into the stadium design.[2]

[17] On 9 February 2021, Land Information New Zealand (LINZ) advised the applicants that it had contacted the board of Project Delivery Ltd and been advised "that is not feasible for the NG Building to be incorporated into the CMUA design".

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[2] By "incorporation", the applicants did not mean that they would continue to own, occupy and use the property. Rather, they intended a voluntary sale and disposition of the property to the Crown but as part of the voluntary sale, the building would be preserved and used as part of the stadium development.

[18] Shortly after that, LINZ officials provided the Minister with a briefing paper seeking his decision on whether he considered it necessary to commence the compulsory acquisition process. The Minister considered the briefing paper and made a decision to issue a notice of intention the following day, 26 February 2021. This is the first decision that the applicants seek to review. A notice of intention was then served on the applicants on 1 March.

[19] Following an article appearing in The Press on 10 March, new dialogue between the parties occurred relating to possible relocation of the NG building as a means of saving it from demolition. In a letter of 12 March, the applicants suggested a without prejudice meeting should occur in the week of 22 March, "the purpose of such meeting would be to discuss the feasibility of a relocation of the building on the site".

[20] That meeting occurred on 23 March. From the evidence currently before the Court the extent of information provided by the applicants about the proposed relocation option is not clear. It appears the meeting involved the provision of some written material from an engineer setting out a broad scheme for the work; the applicants proposed to brace and then lift the NG building onto rollers in order to move the structure to a location further north on the CMUA site, near the Christchurch Transitional Cathedral on Hereford Street.[3] It also appears the applicants offered to pay the cost of relocation, and may have provided an estimate for doing so in the region of $3m.[4] It is not clear whether under the proposal the building would remain in the applicants' ownership and use, or might again be incorporated into the stadium as part of its operation.

[21] On 7 April 2021, the Chairman of Project Delivery Ltd provided an eight page letter to LINZ. I will return to the letter in greater detail later in this judgment but for now it is sufficient to say that it represented a complete rejection of the concept of building relocation principally due to practical and financial considerations.

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3 The Christchurch Transitional Cathedral is also commonly known as the "Cardboard Cathedral".

4 I say it appears the applicants provided an estimate for relocation of $3m at the meeting because that is the sum mentioned in a letter from Project Delivery Ltd to LINZ of 7 April 2021, to which I turn at [41] in this judgment.

[22] Finally, on 14 April LINZ officials provided the Minister with a further briefing paper. It sought the Minister's decision to progress with a proclamation under s 104 of the Act. The following day, 15 April, the Minister made a decision to pursue compulsory taking through a proclamation, and gave advice to the Governor-General to that effect.

[23] The Proclamation was advertised in the Gazette on 20 April 2021. It was expressed to take effect on the 14th day following publication, being 4 May 2021.

[24] As noted in my interim judgment, land specified in a proclamation becomes absolutely vested in fee simple in the Crown, and freed and discharged from all interests of any kind.[5] In this case that would have the effect of vesting title to the NG building in the Crown and extinguishing the lease interests of the 12 tenants occupying it.

Framework for grant of s 15 orders

[25] Under s 15(1) of the Judicial Review Procedure Act, the Court may make an interim order prohibiting a respondent from taking any further action in exercise of a statutory power if, in its opinion, it is necessary to do so to preserve the position of the applicant. Although s 15(3) prohibits an order being made against the Crown if it is the respondent, s 15(3)(b)(i) allows the court to make an interim order *declaring* that the Crown ought not to take any further action that is, or would be, consequential on the exercise of the statutory power.

[26] Section 15 requires a two-stage approach.[6] First, the Court must be satisfied that an interim order is necessary to preserve the applicant's position pending trial. Second, if the applicant has satisfied the Court it has a position to preserve pending a hearing of its substantive proceeding, the Court has a discretion to grant the interim relief sought.

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5 *Logan and Ng v Minister for Land Information*, above n 1, at [8].

6 *Carlton &United Breweries Ltd v Minister of Customs* [1986] 1 NZLR 423 (CA) at 430; *Easton v Wellington City Council* [2010] NZSC 10, (2010) 20 PRNZ 360; *Save the Queen Street Society Inc v Auckland Council* [2021] NZHC 1005 at [22]–[24].

[27] There are no strict tests to apply to an application for interim orders under the Judicial Review Procedure Act.[7] Factors that may be relevant to a determination of whether interim orders are necessary to preserve the position of the applicant include the nature of the review proceedings, the character, scheme and purpose of the legislation under which the impugned decision was made, the factual circumstances including the nature and prima facie strength of the applicant's challenge, the expected duration of an interim order and the overall interests of justice.[8]

Scheme of the Act

[28] The Greater Christchurch Regeneration Act repealed and replaced the Canterbury Earthquake Recovery Act 2011.[9] Nevertheless, some of the key provisions of the Recovery Act appear largely unaltered in the current legislation.

[29] The Act confers wide powers on ministers of the Crown to make decisions intended to ensure the expeditious recovery of Christchurch.

[30] One of the key powers the Act confers relates to the compulsory acquisition of land necessary for key projects. The power is similar to that conferred on the Crown and territorial authorities under the Public Works Act but with two key differences. First, there is no right of objection to the Environment Court from any proposed taking by the Crown. Second, a landowner whose property is compulsorily acquired has no right to an offer-back in the event the land is no longer required for the work for which it is taken. In this way, the statutory safeguards limiting the power are significantly truncated.

[31] Reflecting the breadth of the power, ss 11 and 102(a) of the Act seek to place important procedural limits on its exercise.

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7 In *Carlton &United Breweries Ltd v Minister of Customs*, above n 6, at 430, Cooke J noted that "there should not be any general rule that a prima facie case is necessary before interim relief can be granted under s 8. In general the Court must be satisfied that the order sought is necessary to preserve the position of the applicant for interim relief – which must mean reasonably necessary."

8 See also *Save the Queen Street Society Inc v Auckland Council*, above n 6, at [24], where Venning J observed: "When considering whether to exercise [the] discretion the Court will consider all the circumstances of the case, including the apparent strengths and weaknesses of the claim, the competing advantages and detriments to the parties, the status quo, the public and private repercussions, and the overall interests of justice."

9 Greater Christchurch Regeneration Act, s 146(1).

[32] Under s 102(a), the Minister may exercise the power of acquisition *only if* the Crown has made reasonable endeavours to acquire the land by agreement. And under s 11, the Minister may exercise a power under the Act "where he or she reasonably considers it necessary".

[33] The Court of Appeal considered the predecessor of s 11 in *Canterbury Regional Council v Independent Fisheries Ltd*.[10] The Court described the provision as an important constraint on the exercise by the Minister of his powers. First, the Minister must be satisfied that the exercise of the power is "necessary" in the sense that it is needed or required in the circumstances. Second, the Minister must give reasonable consideration to the question of necessity. In other words, the Minister must "reasonably consider" the exercise of the power to be "necessary":[11]

> 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.
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> …
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> The expression used is not, as is commonly the case, "reasonably necessary". Here "reasonably" qualifies "consider" not "necessary". The Minister must "reasonably consider" the exercise of the power to be "necessary". The purpose of s 10 is to provide a safeguard against the exercise by the Minister of powers which carry significant consequences, including the overriding of normal processes, procedures and appeals under the RMA. Accordingly, the ordinary meaning of "reasonably", which results in a relatively high threshold, is appropriate in the context of the Act.
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> (footnotes omitted)

[34] In this review proceeding, the applicants intend to challenge the decision to compulsorily acquire their property by arguing that the power has not been exercised in accordance with the Act. First, they wish to argue that the Minister failed to make reasonable endeavours to acquire the land by agreement, contrary to the requirement

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10 *Canterbury Regional Council v Independent Fisheries Ltd* [2013] 2 NZLR 57.
11 At [18] and [20].

in s 102(a). Second, they will argue that in light of errors in the information provided to the Minister, the Court should not be satisfied that the Minister's consideration of necessity was reasonable.

[35] Against the backdrop of the statutory scheme I will now turn to consider the arguments of the parties.

Application

[36] For the Minister, Mr Ebersohn responsibly acknowledged that the applicant had a position to preserve under the first stage of the enquiry. That is because without an ongoing s 15 order the applicants will lose any legal interest in their property, their building is liable to be demolished and the leasehold interests of 12 tenants will also be extinguished.

[37] As a result, the focus of the argument, and my consideration, relates to discretionary factors and whether the overall interests of justice warrant an ongoing order.

[38] The submissions focussed on the following three factors:

(a) The overall merits of the parties' positions;

(b) The extent and nature of prejudice to both sides; and

(c) The overall interests of justice.

[39] I turn now to those factors.

The overall merits of the parties' cases

[40] I begin by noting that the case presented by the applicants to me at the hearing was significantly different from the pleaded case. That is understandable, however, because prior to 10 am on 5 May, the day before the hearing, the applicants and their counsel had not had access to the written record of the decisions of the Minister that

they sought to challenge. Not unsurprisingly the focus and nature of the proposed challenge shifted once the record of the decision was available.

[41] For the applicants, Mr Mijatov identified four key issues for consideration at trial. First, he focussed on the letter of 7 April 2021 from Project Developments Ltd to LINZ setting out the company's detailed rejection of the applicants' relocation proposal. Significantly, that letter was one of five attachments provided to the Minister as part of the briefing note that resulted in the decision to issue the proclamation on 15 April. Mr Mijatov says his clients had not seen that letter before 5 May, and were denied the right to be heard on the adverse claims it makes before the Minister made his decision. A number of contested matters, such as the building's earthquake resilience, were presented to the Minister as fact. As a result, he says the process misfired and was unfair. His clients were deprived a basic right to natural justice before an adverse decision was made.

[42] Second, flowing from the first argument he contends the decision to issue the Proclamation is the product of mistakes of fact that were material to the outcome. Without intending to be exhaustive, I took the applicants to argue the 7 April letter:

(a) wrongly and inaccurately described the NG building as earthquake prone, and failed to inform the Minister that one reason for the claim that it was earthquake prone is the Council's decision not to remove the adjacent but largely demolished buildings that share party walls with the NG building;

(b) suggested, by implication, the NG building has no heritage value worthy of preservation;

(c) asserted the costs of moving the building would be in the order of $5.7m, when the costs are estimated to be significantly less than that.

[43] Third, Mr Mijatov argued that the record of the Minister's decision reveals it is prone to a challenge on the basis of irrelevant considerations. First, it was submitted the briefing note suggests that demolition of the NG building might save the Crown

$400,000 in costs associated with the final demolition and removal of the adjacent buildings. Second, reference is made in the briefing note to the expiry of the Minister's power to compulsorily acquire the land under the Act in June 2021, suggesting that an underlying reason for the exercise of the power was the prospect of a longer and procedurally more complex process under the Public Works Act 1981.

[44] Finally, Mr Mijatov argued that, contrary to s 102(a) of the Act, the Minister had failed to make reasonable endeavours to acquire the land by agreement, principally on the basis that he declined to provide an assurance that he would approach negotiations with an open mind in relation to the incorporation of the NG building into the stadium design.

[45] In response, Mr Ebersohn submitted that the applicants' case was weak, and they had been given a fair opportunity to advance the relocation proposal before the Minister made his decision. The applicants advanced the relocation proposal at the without prejudice meeting on 23 March. That information was provided to the Minister before he made his decision. The applicants also received a summary of Project Delivery Ltd's 7 April response in a letter from LINZ's solicitors on 14 April but chose not to respond or raise additional issues before the Minister made his decision on 15 April. There was no requirement to provide a further opportunity to be heard. Had there been, an endless ping-pong match would ensue with further expert advice being sought on both sides. Ultimately, the Minister's role was not to determine which expert view was best. He simply needed to make a decision based on the material before him and the decision he reached — preferring the views of LINZ and Project Delivery Ltd — was one clearly open to him.

[46] Mr Ebersohn also argued that the relocation proposal only arose once the premise of the necessity for the land was accepted. That is because moving the building from the land so the stadium could be built presupposes that the applicants' land *is* necessary for the stadium. Accordingly, relocation as an option is irrelevant to whether it is necessary to acquire the land.

[47] Having considered the merits of the rival arguments, it is enough to record that I cannot conclude the applicants' claim is so lacking in merit that their position ought

not be preserved pending the substantive hearing of their proceeding. My consideration focuses on the alleged breach of natural justice, because that was the primary argument on which the argument centred.

[48] Natural justice has been described as fair play in action, as fairness writ large.[12]

[49] The content of the right to natural justice is always contextual. Rigid rules cannot be laid down. Often, the question is what form of procedure is necessary to achieve justice without frustrating the apparent purpose of the legislation.[13] Courts will also look to the rules that apply to the decision-maker, the interests at stake, the effects of an adverse finding on an individual, and the severity of the sanction the body is empowered to impose.[14]

[50] The significance or severity of the decision is important. Generally, the more significant a decision is, the more we expect the process to be fair. And courts will require greater compliance with standards of fairness when there is a significant decision involved.

[51] The statutory context here is important. Although there is a clear purpose behind the Act — to expeditiously facilitate the regeneration of Christchurch — it is also crucial to remember that the issue underlying the proceeding is the compulsory acquisition of land under a statutory scheme that allows no rights of objection or offer-back process.[15] The powers vested in the Crown under the Act are some of the more significant in our legal system. The processes adopted by the Crown to exercise those powers therefore need to be fair. Without determining the point, there may be merit in Mr Mijatov's argument that the absence of safeguards present in an enactment such as the Public Works Act places a greater procedural obligation on the Minister and his officials to ensure fairness.

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12 See *Furnell v Whangarei High Schools Board* [1973] 2 NZLR 705 (PC) at 718.

13 *Dotcom v United States of America* [2014] 1 NZLR 355 [2014] NZSC 24 at [120] citing *Daganayasi v Minister of Immigration* [1980] 2 NZLR 130 (CA) at 141; and *Wyeth (NZ) Ltd v Ancare New Zealand Ltd* [2010] NZSC 46, [2010] 3 NZLR 569 at [40].

14 *Peters v Collinge* [1993] 2 NZLR 554 at 567.

15 In contrast to the Public Works Act.

[52] Generally, the right to be heard requires decision-makers to give affected parties notice of the case to be met. Affected parties need to be made aware of adverse information the decision-maker intends to rely on in arriving at their decision so they can respond to it. Often complaints that information was not disclosed to affected parties concern immigration or licensing decisions, where the decision-making processes and context are different to the present.[16]

[53] However, I do not see the different contexts — at least at this preliminary stage — as limiting the applicability of the principle that parties should be made aware of information prejudicial to their case and be given an opportunity to respond before a decision is made. And as noted earlier, the nature of the power in issue is deeply intrusive; it involves the compulsory acquisition by the State of private property rights. Added procedural care in the exercise of such powers is arguably warranted.

[54] Finally, while the Minister's argument that the relocation proposal was irrelevant to the decision because it presupposes the necessity for the land is a matter for the substantive hearing, as I understood the argument the applicants say they are willing to sell the land if the building can be relocated. That willingness, they say, goes to whether the Minister could reasonably consider it necessary to exercise the power of compulsory acquisition, as required under s 11(2) of the Act, and also whether the Minister had discharged his obligation to first make reasonable endeavours to acquire the land by agreement under s 102(a).

[55] As I have said, at this interim stage the Court can only get a broad sense of the merits of the applicants' case. It is at least arguable that there was a defect in the decision-making processes leading up to the issue of the Proclamation. Whether there was any such defect is of course a question for trial. It will be at that point that the Court will be able to make a fully informed assessment of the statutory context, and process.

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16 See for example *Mohu v Attorney-General* [1983] 4 NZAR 168 (HC), *Daganayasi v Minister of Immigration*, above n 13, and *Mockford v New Zealand Milk Board* HC Dunedin A44/80, 14 October 1981.

[56] For the sake of completeness, I also note that I have considered the balance of the applicants' and the Minister's arguments on the merits. Having done so, I am reinforced in my view that there is sufficient merit in the applicants' proposed claim that it is necessary to preserve their position pending trial.

Prejudice to both sides

[57] Prejudice to the applicants was accepted by the respondent. It seems highly likely such prejudice would be irreversible in the event the applicants' claim was successful. First, it would seem unlikely that the legal position between the applicants and their 12 tenants could be recovered once the freehold interest vests in the respondent and the leases are extinguished. And in the interim the NG building itself is liable to be demolished.

[58] Against prejudice to the applicants the respondent points to prejudice for Project Delivery Ltd. Any delay, it is said, may result in significant increased construction costs. Those costs are likely to be borne by the people of Christchurch, given the Christchurch City Council's responsibility to meet the majority of the costs of construction. Evidence was provided for the Minister by Messrs Gouveia and Pearson, explaining the impact on the timing of the project should there be a delay in acquisition and demolition of the building. One key aspect of that evidence is the need to demolish the NG building in order to complete geotechnical investigations, which will inform the final location and foundation design for the stadium.

[59] Broadly, the evidence suggests that the development has reached a critical juncture, and acquisition is now urgent with significant knock-on effects — both in terms of time and cost — if further delay is encountered as a result of an interim order.

[60] While I do not wish to understate the impact of delay as a result of ongoing interim orders, I note two relevant considerations.

[61] First, there may be an extent to which the apparent urgency is self-generated. The briefing papers to the Minister noted the likelihood of a judicial review challenge as a risk to the project and timeline. More fundamentally, it is difficult to lay all of the delay between 2012 and 2020 at the feet of the applicants. The short delay involved in

hearing the application pales in comparison to the eight previous years during which the possibility of compulsory acquisition has been in contemplation, but not advanced in earnest. Relevant here also is the fact that under s 104 of the Act a notice of intention remains effective for a period of three years. That period can be extended up to five years if within the three-year period the Minister has by further notice confirmed the intention of taking the land. The Act's focus on expedition needs to be seen against the statutory timeframes it promulgates.

[62] Second, while there will most likely be a financial cost resulting from further delay, that needs to be weighed against the loss of a building claimed by the applicants and their expert witness to be a now rare example of historical architectural significance. If ultimately their proceedings are successful, and on reconsideration the Minister takes a different view, loss of the structure may be a matter of regret not only for the applicants and their tenants, but for the community as a whole.

[63] Overall, given the evidence and the nature of the prejudice asserted by both sides, I consider the balance rests in favour of the interim preservation of the NG building pending a substantive hearing.

Overall justice and the balance of convenience

[64] In light of the position I have reached on overall merits and the risk of prejudice, I consider the justice of the case requires an interim order sustained through until trial.

[65] Two further considerations assist me in that conclusion. First, a substantive fixture can now be allocated on 16-17 August 2021. So the period of delay is known, and not significant.

[66] Second, the applicants through counsel advised the Court they are willing to facilitate geotechnical testing on their property, albeit on the land surrounding the footprint of the NG building. Mr Mijatov submitted that the ability to undertake such testing will still be of assistance to the Project Delivery Ltd, and may mitigate the impact of delay on the stadium project.

Result

[67] For the foregoing reasons, the interim order recorded in my interim decision of 29 April 2021 will continue to trial.[17]

[68] I reserve leave for the respondent to apply to vary or rescind the order should circumstances change. Here I have in mind a concern relating to the trial date, or in relation to facilitation of geotechnical testing on and around the applicants' property.

[69] The applicants will need to file an updated pleading articulating the nature of their challenge. I would encourage the parties to agree on a timetable and file a joint memorandum. If they are unable to do so, a case management conference will need to be allocated promptly given the proposed trial date.

[70] Given the short delay before the substantive hearing, I reserve costs pending determination of the substantive application.

Isac J

Solicitors:
Smyth & Co, Christchurch for Applicants
Crown Law Office, Wellington for Respondent

[17] *Logan and Ng v Minister for Land Information*, above n 1.