

Land Information New Zealand entitled to sell property previously available for buy-back

Legislation	Ombudsmen Act 1975, Public Works Act 1981
Agency	Land Information New Zealand
Ombudsman	Beverley Wakem
Case number(s)	A12515 (previously unpublished)
Date	2007

Claim as successors for the offer-back of a disused school site—Ombudsman not wholly satisfied with some aspects of the process adopted by LINZ, but concluded that claimants could not fall within the statutory definition of ‘successor’

The complainants were the grandchildren of the original owner of a disused school site in Canterbury. The land had been transferred to the Canterbury Education Board with an offer-back for the site if it was no longer in use. By the time the land was no longer required by the Board, the original owner (their grandfather) had passed away.

The complainants believed that the offer-back should have been offered to the descendants of the original owner, and Land Information New Zealand had acted unreasonably in its disposal of the land. A grandchild can make such a claim under section 40(5) of the Public Works Act. This section provides:

For the purposes of this section, the term successor, in relation to any person, means the person who would have been entitled to the land under the will or intestacy of that person had he owned the land at the date of his death; and, in any case where part of a person’s land was acquired or taken, includes the successor in title of that person.

The Ombudsman formed the opinion that the complainants did not fall within the special definition of ‘successor’ for the purposes of section 40 of the Act, because this provision limited the right to a person who could claim to be an immediate successor under the Will, or

on the intestacy, of the original owner. On the face of it, the complainants did not appear to be in that position.

There were also difficulties in establishing that Land Information New Zealand (LINZ) had acted in some way which could be characterised as unreasonable in the way in which it had approached the sale of the school property. It was noted that there had been a significant change in the character of the land as to exempt it from the need to offer it back to the original owner or his successor (section (2)(b) of the Public Works Act refers). However, the Ombudsman was not required to pursue this matter because of the fact that the complainants did not fall within the special definition of 'successor' for the purposes of section 40 of the Public Works Act.

The Ombudsman concluded that on the information available, LINZ would have been entitled to disregard the complainants as potential successors.

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