2 Wellington Town Belt legislative and policy framework

Land acquired by the Council for Town Belt purposes but not protected under the Town Belt Deed: Chest Hospital (2002) and Vice Regal Park (1981 and 1990) behind Wellington Hospital in Newtown

2.1 How is the Wellington Town Belt managed?

The Wellington Town Belt comprises 389.68 hectares held in trust under the Town Belt Deed.

The deed is the key document giving Council legal authority over the Town Belt and provides primary powers to make rules and regulations to govern the use of the Town Belt (See section 2.3).

The deed is almost 140 years old. Its age, archaic language and nature, however, means it is too general to provide clear guidance and consistency for the management decisions that need to be made on a regular basis. For this reason, and to follow best practice, the Council adopted the Town Belt Management Plan in 1995. This attempted to translate the intent of the deed into a set of operational practices through two statements of purpose (aims) and a number of policies on how different aspects of the Town Belt should be managed.

In 2011 the Council approved a set of guiding principles to support the review of the management plan.

The current management and governance framework is as follows:
2.2 Town Belt principles

Guiding principles summarise common values shared by an organisation or a group of people for a collective purpose. They are developed by organisations to give their staff a clear understanding of the organisation’s priorities and guide them on how they should behave in the multitude of different situations they encounter in their work.

Guiding principles are not rules or policies and do not dictate or set specific directives on how the Town Belt should be managed. Instead they are used to develop policies and guide decision making.

The draft guiding principles for the Town Belt were developed from feedback on the wider community’s values and aspirations for the Town Belt. They are relatively generic, representing a generally accepted view for the Town Belt from a number of widely different perspectives.

The final principles were approved by the Council on 16 December 2011 with amendments approved by the Council in June 2013:

**The Wellington Town Belt will be protected and enhanced by the Council for future generations.**

This reflects the Council’s commitment to ensuring that the Town Belt will be protected for Wellingtonians to enjoy.

The physical size and continuity of the Town Belt will be retained and enhanced.
The Town Belt will continue to be governed in trust by the Council, under the 1873 Deed and subsequent legislation on behalf of the citizens of Wellington.

The Council will work in partnership with mana whenua to manage the Town Belt.

This recognises that mana whenua will have an ongoing role in the management of the Town Belt, consistent with our current relationship.

The Town Belt’s landscape character will be protected and enhanced.

The landscape character of the Town Belt has changed and been modified since humans first interacted with it. The Council will protect and enhance the key features of this landscape character (acknowledging that vegetation change will occur over time), which are:

- the continuous ‘horseshoe’ shape of hills between the central business district and surrounding suburbs
- the vegetated slopes interspersed with areas of open ground
- undeveloped skylines (ie Te Ahumairangi and Mt Victoria/Te Ranga a Hiwi etc)
- the contrast between the patchwork of native and exotic vegetation and the densely developed central business district.

Healthy ecosystems supporting indigenous biodiversity are once again flourishing on parts of the Town Belt.

The Town Belt brings nature into the city and has potential to be an important focal area for improving, extending and connecting the city’s ecology.

Healthy ecosystems on the Town Belt contribute to the city’s resilience and ecology by delivering ecosystem services such as fresh air, opportunities for outdoor recreation, carbon sequestration, and reduced run-off after storm events. Key factors in ecosystem health include:

- diversity and connectivity of indigenous vegetation
- sufficient natural habitats (including streams) to support expanding native animal populations
- adequate animal and plant pest control.

The Town Belt is for all to enjoy.

This concerns equity of access and use of the Town Belt. The Council believes that the Town Belt should be available for all Wellingtonians to enjoy. The Council is committed to ensuring that the Town Belt will continue to be improved with more access and improved accessibility features where it is reasonably practicable to do so.

The Town Belt will be used for a wide range of recreation activities.

The Town Belt should cater for a wide range of sporting and recreation activities, managed in a way to minimise conflict between different users. Co-location and intensification of sports facilities within existing hubs and buildings is supported where appropriate.

The Council will encourage and support community participation in the management of the Town Belt.

This recognises that Wellingtonians will have an ongoing role in the management of the Town Belt. The Council values community input and acknowledges the work of individuals and groups to protect, enhance and use the Town Belt. The Council will support and encourage community participation, which underpins long-term sustainability.
Management of the Town Belt will acknowledge historical and cultural links to the land.

The Town Belt has a rich and diverse history and the Council recognises that the historical link of mana whenua to the land has not been well acknowledged in the past. The Council intends to take significant historical and cultural values into account when making decisions about the Town Belt.

### 2.3 Wellington Town Belt legal status

The Town Belt is land held by the Council as the trustee of a trust created in 1873.

Under the Wellington City Reserves Act 1871, the Superintendent of the Province of Wellington was directed to convey the land that was to become the modern Town Belt:

> "to the Mayor, Councillors and Burgesses for the time being of the City of Wellington to hold the same to the said Mayor, Councillors and Burgesses and their successors upon such trusts and for such purposes of public utility to the City of Wellington and its inhabitants as shall in and by the Deed or Deeds of conveyance thereof be expressed and declared".

The Superintendent complied with this direction by settling a trust. On 20 March 1873 a deed was sealed by the Superintendent which conveyed the Town Belt land to Council's predecessor upon trust

> ..."to be forever hereafter used and appropriated as a public recreation ground for the inhabitants of the City of Wellington in such manner as in and by such rules and regulations to be from time to time made in that behalf by the [Council] shall be prescribed and directed".

The deed also empowered the Council to lease parts of the Town Belt in order to raise revenue for the purposes set out in the Wellington City Reserves Act 1871 and the Wellington City Reserves Act 1872. These purposes were to fund the 'ornamentation and utilisation of the Town Belt', the Board of Governors of the Botanic Gardens, and the construction and maintenance of various roads. This power is now effectively historic.

As well as being held in trust by the Council, the Town Belt is also a recreation reserve under the Reserves Act 1977.

While the Reserves Act 1977 is probably the most important source of the Council's day-to-day powers, under section 5(2) of that Act, it applies to the Town Belt subject to the 1873 Deed.

The Council's primary duty is to execute the trust created by the 1873 deed in accordance with its terms and the general law. In other words, the Council's powers must be exercised in a manner that is consistent with the object of using the Town Belt as a public recreation ground for the inhabitants of Wellington.

The Council's most important powers can be summarised as follows:

**General management powers**

Under the 1873 deed, the Council may manage the Town Belt "in such manner as in and by such rules and regulations to be from time to time made in that behalf by the [Council] shall be prescribed and directed". In practice however, Council manages the Town Belt under the powers it has in respect of recreation reserves under the Reserves Act 1977.

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3 The Council's powers as the trustee of the Town Belt come from the 1873 Town Belt Deed, the Wellington (City) Town Belt Reserves Act 1908, the Trustee Act 1956, and the Reserves Act 1977.
Under section 41(11) of the Reserves Act 1977 the Council must, in the exercise of its functions, comply with the Town Belt Management Plan.

**Leasing powers:** The Council may lease parts of the Town Belt in accordance with section 54 of the Reserves Act 1977.

**Powers to grant easements:** The Council may grant rights of way and other easements over the Town Belt in accordance with section 48 of the Reserves Act 1977.

**Powers to grant licences:** The Council may grant licences to use parts of the Town Belt in accordance with section 54 of the Reserves Act 1977.

### 2.4 Wellington Town Belt protection and enhancement

Today the Council holds 389.68 hectares in trust under the Town Belt Deed. In addition it proposes to manage 130.3378 hectares4 of Wellington City Council-owned reserve and open space land under this draft plan.

Regaining the original 1841 boundary of the Town Belt is unrealistic, considering the way the city has developed. However, the Council's proposed priorities will focus on protecting the remaining size of the Town Belt, and strengthening its continuity and open-space values through land additions and boundary adjustments.

### 2.5 Objective

**To protect and enhance the historical integrity and role of the Wellington Town Belt**

### 2.6 Policies

**Protection of the Wellington Town Belt**

2.6.1 To protect Town Belt land under the 1873 Town Belt Deed.

2.6.2 The physical size of the Town Belt will be retained and enhanced.

2.6.3 If the Crown proposes to take Town Belt land for a public work then the Council will pursue its replacement with Crown or other land of equal or greater landscape, ecological, and or recreational value for incorporating into the Town Belt. In addition that there be no voluntary agreement with the Crown over land taken compulsorily under the Public Works Act as that would be contrary to the Council’s trustee obligation.

**Wellington Town Belt additions**

2.6.4 Land shall be added to the Town Belt that complements and strengthens the distinctive Town Belt character based on the following criteria:

1. The land may have been part of the original Town Belt in 1841.
2. The land strengthens the visual, ecological connectivity and/or physical continuity of the Town Belt’s horseshoe shape and/or has a visual connection with the central city and/or inner suburbs.
3. The land has consistent or complementary landscape and recreational values and linkages to neighbouring Town Belt.

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4 It is proposed that this land will be added to the Town Belt as part of legislative change. See policy 2.6.6
4. The land may have ecological, historical and/or cultural features that require protection.

5. The land enhances the provision of a range of sporting and informal recreation activities.

These criteria must be taken together and not used in isolation. However, in particular circumstances, certain criteria may have more relevance or weight. In particular, a cost-benefit assessment will be carried out to assess the land’s priority for return relative to other pieces of land.

2.6.5 The Council will work in partnership with the Port Nicholson Block Settlement Trust and the Crown, in particular the Ministry of Education and relevant Crown agencies, where there is realistic potential for negotiations to result in reinstatement of original Town Belt land to the Town Belt.

**Legalising additions to the Wellington Town Belt**

2.6.6 To seek formal Town Belt status for all land identified to be added to the Town Belt in Appendix 2 by introducing Town Belt legislation.

2.6.7 To adjust the legal boundary of the Town Belt so it conforms with the physical boundary where appropriate. These areas are identified in the sector plans.

2.6.8 Land identified to be either added or removed from the Town Belt as part of the legal boundary adjustment programme shall be included in the Town Belt legislation.

**2.7 Wellington Town Belt alienations**

The Crown (latterly through the Superintendent of the Province of Wellington) held the Town Belt from 1841 to 1871 and, despite instructions from the New Zealand Company that the land was not to be built upon, one-third of the original Town Belt (around 195ha) was alienated and developed for community and social welfare purposes. For example, land for the McCleverty Awards, hospital, ‘lunatic’ and educational purposes, and the Mt Victoria signal station. These alienations and others after 1871 are described below.

The alienations were well intended in response to community pressures and problems. The perceived value of the Town Belt’s continuous open space was considered much less than the need to find affordable land for community facilities. Consequently, the size, continuity and shape of the original Town Belt changed significantly (see the map of original Town Belt on page 5).

The first alienations took place in 1847 with the McCleverty Awards that allocated around 200 acres (80.94ha) of the 1544 acres to Māori in recompense for settlers occupying Māori land in Thorndon. The 200 acres now comprises the ‘ex-Telecom’ land on Te Ahumairangi Hill and land that has subsequently been developed for residential housing in Northland, Thorndon, Kelburn, Aro Valley, Brooklyn and Vogeltown. The remaining land was approximately 1344 acres (543.9ha).

In 1861, of the 1344 acres, 1234 acres (499.4ha) was granted by the Crown to the Superintendent of Wellington Province to be held “in trust for the purposes of public utility of the Town of Wellington...” The 100 acre shortfall appears to include land at and around the Basin Reserve and land allocated for Wesleyan Reserve of which parts are part of the Wellington Botanic Garden.

In 1872, the Superintendent allocated a total of at least 166 acres (67.18ha) of the 1234 acres for public utility purposes. This comprised 143 acres (57.87ha) for college purposes and a lunatic asylum. This land is now occupied by Wellington Hospital, the ‘ex-Chest Hospital’ land off Alexandra Road, Wellington College, Wellington East Girls’ College and the Vice Regal property. The Superintendent also allocated 18 acres (7.28ha) at Clifton Terrace for general hospital purposes and 5 acres (2.02ha) at the top of Mt Victoria for a signal station.
The purposes of community health, education and communication fall within the wide meaning of the phrase public utility, and accordingly are legally authorised in terms of the 1861 grant. The 166 acres was never subject to legal protection of the more narrow purpose of public recreation ground under the 1873 deed.

In 1873, only 1061 acres (429 hectares) was finally conveyed to the Wellington City Council on trust to be forever used as “public recreation ground for the inhabitants of the City of Wellington”. It is only this land that has been subject to trust for Town Belt reserve purposes. Since 1873, and contrary to the trust, land has been removed from the Town Belt by the Crown and/or the City Council. To do this requires legislative change. Since 1873, there have been the following alienations:

- land occupied by Victoria University
- land off Colville/Paeroa streets in Newtown
- ex-tram depot, now Council housing in Mansfield Street, Newtown
- electricity substation on Nairn Street
- Te Aro School land, Abel Smith Street
- ex-fire brigade land at the top of Constable Street
- land for roads as the city expanded.

2.8 Reinstatement policy in the 1995 Management Plan and 1998 Reinstatement Policy

The 1995 Wellington Town Belt Management Plan aimed to reinstate to Town Belt status all original Town Belt land owned by the Crown or Crown agencies and extend the Town Belt by adding new areas to enhance public recreational and green belt qualities, such as the reserve areas between existing Town Belt and Wellington’s south coast, and between the Town Belt and Zealandia (Karori Wildlife Sanctuary).

The Town Belt Reinstatement Policy 1998 had the following objectives:

- To assess the extent to which there is a legitimate grievance.
- To restore to Town Belt status land originally envisaged for Town Belt and which is suitable for such purposes.
- For land that is suitable for Town Belt purposes but which is substantially constrained in some manner (eg by existing buildings meriting preservation or is land which forms an integral part of non-Town Belt activity, notably schools), either:
  - safeguard the open-space qualities of the area concerned from inappropriate development and obtain agreement for the land to be returned to Town Belt status if it is no longer required for those purposes or
  - seek compensation (eg financial, land exchange) in exchange for the alienated land or
  - recommend a mix of initiatives appropriate to the particular situation.
- For land that is no longer suitable for open-space purposes, assess whether it is appropriate to seek compensation.
- Assess the Council’s own past actions towards Town Belt land that has been alienated.
- Recommend action to obtain Crown acknowledgement of the Council’s grievance.
- Minimise the risk and cost to the Council, particularly from litigation, in achieving the above goal and objectives.

Since 1995, the Council has acquired the following land for Town Belt purposes:
• former Telecom land and Rangiohua land on Te Ahumairangi Hill
• former Chest Hospital land on Mt Victoria.

More information about these acquisitions is found in section 8 (8.1 and 8.7).

The Council cannot add this land to the Town Belt, without legislative change.

2.9 The Port Nicholson Block (Taranaki Whānui ki Te Upoko o Te Ika) Claims Settlement Act 2009

The 2009 Treaty Settlement of Taranaki Whānui gave mana whenua right of first refusal for some sections of former Town Belt land still held by the Crown or Crown agency. If the Crown wanted to dispose of the land it must be offered first to the trustees of the Port Nicholson Block Settlement Trust (PNBST).

The Claims Settlement Act has altered the Council’s approach to the reinstatement of original Town Belt land owned by the Crown or Crown agency.

The Council’s priority is to identify land it wants returned to the Town Belt by following the Town Belt Assessment criteria. The Council will then negotiate how this land can be returned to Town Belt with the Port Nicholson Block Settlement Trust and relevant Crown agencies.

The Council will no longer hold a grievance with the Crown on behalf of the citizens of Wellington, but will work with the Crown and PNBST concerning land that has been ‘lost’ from the Town Belt as originally set aside by the New Zealand Company. When this former Town Belt land is no longer required for public purposes it should be transferred to the Council to be managed as Town Belt.

2.10 Proposed approach to Wellington Town Belt additions

Regaining the original 1841 boundary of the Town Belt is unrealistic considering the way the city has developed. A majority of the alienated original Town Belt land has either been subdivided into private residential property or used for a community purpose, such as Wellington Hospital and Victoria University. The Council’s policy is to recognise and provide for the continued operation and development of Wellington Hospital and Victoria University.

The proposed priorities focus on protecting existing Town Belt land from any further reduction, strengthening its continuity and open-space values through land additions and boundary adjustments, and ensuring formal legal Town Belt status of land identified to be added to the Town Belt.

It is the Council’s intention to continue to protect the existing Town Belt through the provisions of the 1873 Town Belt Deed.

In situations where removal of Town Belt land occurs outside the Council’s control (eg by the central government through the Public Works Act), the Council will pursue the replacement of this land with open-space land of equal value or character to be returned to the Town Belt.

There are three categories of land that could potentially be added to the Town Belt. They are:

1. Land alienated from the original Town Belt but still suitable for Town Belt purposes
   This includes:
   • land currently owned by the Council but not protected by the Deed. For example, former Vice Regal, Chest Hospital, and Telecom land and Stellin Memorial Park. These areas are included in this management plan.
• land currently owned by the Crown or Crown agency. This land is now subject to the Port Nicholson Block (Taranaki Whānui ki Te Upoko o Te Ika) Claims Settlement Act 2009 giving Taranaki Whānui the right of first refusal to acquire when any of these properties are declared surplus (See 2.6.5). This land includes:
  • land at Clifton Terrace (former Correspondence School site)
  • land at Abel Smith Street (open-space land adjacent to Te Aro School)
  • part of the Wellington College and Wellington East Girls’ College
  • part of Government House (this land is not covered by the Right of First Refusal provisions).

• Private land fitting the criteria.

2. **Existing Council reserve land not part of the original Town Belt**
   This includes:
   • land that strengthens the original Town Belt concept such as Point Jerningham, Western Slopes Reserve, Polhill Gully and the Rangiohua lands.

3. **Small pieces of land identified through Wellington Town Belt boundary adjustments**
   In 1994, as part of the preparation of the 1995 Town Belt Management Plan, the Council completed a Town Belt land status investigation. This identified some legal anomalies relating to the Town Belt boundaries. For example:
   • where roads have divided the land and created small unworkable alienations so that the land effectively functions as road reserve
   • where actual road alignments differ significantly from the legal roads on land title documents. Boundary adjustments are required so that the legal Town Belt boundary conforms to the physical boundary. This may require land to be either removed or added to the Town Belt.

Previous policy on Town Belt additions primarily focused on whether the land was part of the original envisaged Town Belt boundary of 1840. Although a historical basis is an important consideration, any additions to the Town Belt should be assessed to ensure the land complements and/or strengthens the Town Belt’s distinguishable character in addition to its historical basis.

**Assessment criteria** for addition of land to Town Belt are based on what makes the Town Belt distinct and recognisable. The Town Belt’s distinguishable features include its:

• perceived continuity and horseshoe shape of open space, comprising the first line of hills and undeveloped skylines encircling the central city
• geographic location and close visual relationship with the central city and inner suburbs
• patchwork and diversity of exotic and native vegetation providing habitats for native fauna.
• availability to be used for a wide range of sporting and informal recreation activities
• accessibility and provision of pedestrian and cycling linkages to key community destinations
• rich historical and cultural links with Wellington citizens and mana whenua.

There is more information about the possible additions to the Town Belt and boundary adjustments in each management sector (chapter 8). The assessment criteria have been used to recommend additions and rationalisations.