

MACALISTER MAZENGARB

BARRISTERS & SOLICITORS AND NOTARIES PUBLIC

Refer to: Robin Buxton

Email: robin.buxton@macalistermazengarb.com

14 February 2013

By facsimile: 472 8626

John McSorley  
Barrister  
WELLINGTON

Dear John

**THE WELLINGTON TOWN BELT**

An Opinion in regard to the ownership of what is generally known to submitters and others as the Clifton Terrace land being the land recently occupied by the Correspondence School as its offices ("the Site").

1. The control, use and ownership of the Site has been in dispute from time to time over the last 20 years. The writer has been involved in those disputes including correspondence, meetings and negotiations from time to time, most occurring more than 10 years ago.
2. The background of this Opinion relates to the two known attempts of the Government through its agent at the time, Landcorp, to offer the Site for sale. It is assumed that the offer was for a fee simple title to this land with no restriction as to its use.
3. There appears to be no dispute that the Site was part of the original Town Belt. It was therefore dealt with in conjunction with and as part of the various Governmental and Provincial Council actions occurring in the 1840s through to the 1870s.
4. Both the New Zealand Government when it was dealing with the Site and subsequently the Provincial Council when the Site was vested for specific purposes in the Superintendent of the Province of Wellington indicates that the Site was held on trust. The trust resulted from the original gift of the Town Belt by the New Zealand Company to the citizens of Wellington. The Town Belt would have vested beneficially in the Donee at the time of the gift.
5. Histories of the Town Belt are attached to the existing and proposed management plans for the Town Belt even though the histories are not complete.

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6. I am not aware of any document in the form of a deed of gift, but as the gift was made in the UK by a UK Company I would not expect to see such a document. Nor am I an expert in English law as it existed in 1839-1840. The letter from the company to its surveyor was clear and was acted upon by the recipient. The plan he prepared is widely available including a coloured copy still in the Council's offices.
7. One could compare the situation to the current NZ situation where the NZ Company's sales brochures were equivalent to a prospectus. They defined what the project was, how it was to be structured, and what the settlers/section purchasers could expect. There was a clear expectation of the settlers that a town belt would be established. Current legal practice would make this an enforceable obligation. Correspondence quoted in the histories and Joan Quinn's informative thesis clearly indicates that the settlers in the 1840s regarded the Town Belt as their property.
8. Actions taken in the British Parliament in 1841 and by our Government about that time clearly indicate an acceptance by those institutions that the gift had been perfected in so far as the law of NZ permitted this to be recognised then.
9. This is further confirmed by the statutes/deeds in the 1850s and 1860s referring to the Town Belt being held on trust by, first, the NZ Government, and then the Provincial Council through its Superintendent.
10. It is acknowledged that when the New Zealand Company effectively folded, the Government purchased all the remaining assets of the Company. Nothing was done in respect of the Town Belt as it then existed and subsequent transfers of Town Belt plans certainly indicated that the land was still held in trust for the citizens of Wellington, effectively confirming the original gift of 1840 made pursuant to New Zealand Company instructions of 1839.
11. In respect of the Correspondence School site this originally formed part of a larger block that was appropriated with other adjoining lands that more recently were vested in the local Hospital Board. In 1870 an Act purported to transfer to Wellington City the various lands then comprising Town Belt including the Site. This was superseded by the Wellington City Reserves Act 1871 which effectively removed significant amounts of land from the Town Belt before passing the remaining balance to the predecessor of Wellington City Council. This Act "authorised" but effectively instructed the Superintendent of the Wellington Province to transfer the various bits of remaining Town Belt land to the various proposed recipients listed in the Act, and the provisions of the 1871 Act (which apparently became law on 5 October 1872) included the Site.
12. The relevant Act is attached to this Opinion. Clause 5 and the Third Schedule to the Act specifically deal with the Site. Clause 5 authorises the Superintendent of the Province to convey the site to Trustees for a General Hospital in such manner and subject to such conditions as the Superintendent (with the consent of his Executive Council) shall deem appropriate. The section continues that this appropriation of the Site shall be subject to "the vested right, if any, of all persons and bodies politic or corporate which at the date of the passing of this Act exist under any Deed or Instrument appertaining or relating to the said land". Being a statutory provision it

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has to be followed, and cannot be ignored just because it may raise difficulties at this time.

13. The land therefore could only be appropriated as provided in the section provided the vested rights were recognised. These were the rights existing in October 1872. At that time the Superintendent, as had the Government before him, held the land in trust for the citizens of Wellington. There was no statutorily established body in existence that represented the people of Wellington during the relevant periods from 1840 through to 1872 which could hold it in trust for the people of Wellington. It had previously been transferred to the Superintendent as a result of Government policy to transfer reserves up till then held by Central Government to the control of the Provinces in which they were situated where the Government had previously been holding them in trust for those Provinces, or specified persons or organisations within those Provinces. The Provinces themselves had not been established when these lands first came into the control of the Government.
14. The writer has not been able to find any other statutory provision, Order in Council, Deed or other similar document that effectively altered the trust that had existed following the original gift up until the time that Town Belt land could be and was transferred to the ultimate beneficiaries being the Wellington City Council on behalf of the people of Wellington.
15. It follows that the vested right if any that existed at the time of the passing of the Act were those that had been acknowledged over the preceding more than 30 years by both Central and Provincial Government, namely the ownership of the people of Wellington of the Town Belt. The only exceptions were those lands taken out of the Town Belt by statute within that period for the various purposes that are referred to in the histories referred to above.
16. In my view section 5 is a clear preservation of the vested right of Wellington City Council as it existed in 1872 and indeed back to 1840 when the gift was carried into effect by surveying and therefore defining the land that was the subject of the gift.
17. The writer has raised this particular issue from to time over the last 20 years or so with both Central Government and the City of Wellington. The writer's recommendation was to get the provisions of clause 5 recognised as preserving the rights now vested in Wellington City Council or, if doubt existed, apply for a declaratory judgement to resolve any doubt.
18. In support of this Opinion I would however point out that there were various discussions, negotiations and apparent resolutions occurring in the 1990s when groups such as Action for the Environment and Friends of the Town Belt negotiated with Central Government over its proposals to sell the Site. After the first sale attempt, and representations from the local Member of Parliament and others, a provision in a Government Bill authorising the sale was removed and the offering of the Site was withdrawn from the market. Without warning, a few years later, another attempt was made on behalf of the Government to sell the land. At a meeting between representatives of LINZ and Landcorp together with the Rt Hon Philip Burden, SOE Minister at the time, this and other matters were specifically discussed. I was aware that Mr Burden had background knowledge of similar situations and he

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confirmed that he understood what it meant by vested interests, and the status of land held in trust. The main matter raised by the Landcorp representative on behalf of the Correspondence School was to claim that the Government owned the land because it had purchased it. When pressed to explain who they had purchased it from the representative pointed out that they had paid something over £2000 to the Hospital Trustees for the land. A claim was also made that it was Crown Land as it originated from a Crown Grant. This overlooks the fact that almost all privately owned land titles issued in the 19<sup>th</sup> century arose in this manner and had no relevance to the current position.

19. My answer was that if you don't buy from the legal owner, you get no better title than the person from whom you bought the land. In other words, the Correspondence School held subject to the same trusts that the Hospital Board had previously held the land on. No payment or agreement had ever been reached with Wellington City Council on behalf of the people of Wellington to sell the land to either the Hospital Board or the Education Board and/or Department.
20. The Rt Hon Mr Burden indicated that he understood that proposition and instructed Landcorp to withdraw the property from sale.
21. It has not, to my knowledge, been offered for sale again.

Yours faithfully

**MACALISTER MAZENGARB**



**Robin Buxton**  
**Consultant**