

## Appendix 4: Drafting instructions

### INTRODUCTION

- 1 Council's instructions for preparing draft local legislation for the Wellington Town Belt (in this document called 'the Bill') are set out below. While these instructions endeavour to provide a reasonably comprehensive framework for preparing the Bill, they do not and are not intended to cover every detail. Council will consult further on the Bill once it has been prepared. It is intended that this subsequent stage of consultation will deal with detailed matters of drafting.
- 2 It is important to be clear about what is meant by the Town Belt. In this document:
  - 2.1 'Original Town Belt' refers to all of the land intended as Town Belt in the New Zealand Company's 14 August 1840 plan and/or proclaimed as Town Belt in 1841. This land includes the Wellington Botanic Gardens.
  - 2.2 '1873 Town Belt' refers to that part of the Original Town Belt that was conveyed upon trust to the 'Mayor, Councillors and Citizens of the City of Wellington' by deed dated 20 March 1873 (**1873 deed**).
  - 2.3 'Legal Town Belt' refers to that part of the 1873 Town Belt that has never been alienated from and is still held by Council, as well as any other land that becomes added to the Legal Town Belt.
  - 2.4 'Council' refers to the Councillors who, from time to time, comprise the governing body of Wellington City Council; which is itself a body corporate with perpetual succession.
- 3 In very broad terms, Council wants the Bill to:
  - 3.1 Be consistent with the Town Belt Guiding Principles adopted by Council in December 2011.
  - 3.2 Recognise the history and significance of the Original Town Belt.
  - 3.3 In conjunction with the 1873 deed, establish a legal framework for Council's trusteeship and management of the Legal Town Belt that is self-contained and easily understood.
  - 3.4 Provide Council with ~~relatively flexible~~ powers to manage the Legal Town Belt, provided that it does so in a way that is consistent with ~~both~~ the charitable purpose of the 1873 deed, ~~and~~ the management plan in force at the time, and the principles in paragraph 14 below.
- 4 It is possible that unforeseen matters of law and/or policy may arise as part of

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the drafting process. For example, these instructions have been prepared without any input from the Parliamentary Counsel Office, which will be sought during the Bill drafting process. Rather than going back to Council as any new matters arise, they will be incorporated into and consulted on as part of the Bill. Such further consultation will take place before any decision is made by Council to proceed with the Bill.

### INSTRUCTIONS

#### Preamble

- 5 This part of the Bill will not create any legal rights or obligations. The Bill will:
  - 5.1 Acknowledge the significance of the Original Town Belt to both mana whenua and the citizens of Wellington; and
  - 5.2 Summarise the history and concept of the Original Town Belt from the instructions given by the New Zealand Company to William Mein Smith in 1839 through to the 1873 deed.

#### The land

##### *Defining what land is Legal Town Belt*

- 6 The Bill will recognise the boundaries of the Original Town Belt by reference to the relevant plans and/or proclamations.
- 7 The Bill will, by reference to a schedule, define what land is Legal Town Belt and thus held by Council and managed subject to the 1873 deed and the Bill. The schedule will:
  - 7.1 Include all of the 1873 Town Belt that has never been alienated from and is still held by Council;
  - 7.2 Include any other land held by Council that Council considers ought to become Legal Town Belt from the day that the Bill is enacted; and
  - 7.3 Define Zoo and Chest Hospital special areas. The Chest Hospital will comprise only the building footprint and immediately surrounding grounds, not all of the land that was transferred to Council from Capital and Coast District Health Board.

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- 8 It is noted that:
- 8.1 The Basin Reserve is subject to a different deed of trust and will be unaffected by the Bill.
  - 8.2 Those parts of the Canal Reserve which have not become legal road are Legal Town Belt. (The Canal Reserve is the lawn/garden area running between Kent and Cambridge Terraces.)
  - 8.3 While part of the Original Town Belt, the Wellington Botanic Garden is now subject to a different Act of Parliament (the Wellington Botanic Garden Vesting Act 1891) and will be unaffected by the Bill.
- 9 The Bill will provide an appropriate mechanism enabling minor boundary adjustments to be made so that the status of land within and adjacent to the Legal Town Belt matches the facts on the ground. This mechanism is required because, in some places, existing formed roads and other infrastructure does not match the registered surveyed boundaries. The mechanism will not provide for boundary adjustments to be made in respect of either private encroachments or any new roads or infrastructure. To the extent possible, the mechanism will:
- 9.1 Override the usual legislative requirements for stopping and creating legal road;
  - 9.2 Deem any added land to be Legal Town Belt;
  - 9.3 Deem any subtracted land to be free from the 1873 deed and not Legal Town Belt;
  - 9.4 Require appropriate surveys to be completed and documents lodged with LINZ and/or Gazette notices published; ~~and~~
  - 9.5 Exempt such boundary adjustments from any restrictions applicable under other legislation (for example subdivision restrictions under the Resource Management Act 1991); and
  - 9.6 In respect of any State Highway, implement agreement(s) already reached between Council and the New Zealand Transport Agency.

### ***Adding new land***

- 10 The Bill will include a mechanism that enables Council to add new land (i.e. land not included within the schedule referred to in paragraph 7 above) to the Legal Town Belt at any time after the Bill has come into force. Such new land may be part of the Original Town Belt, part of the 1873 Town Belt, or any other appropriate land. For any new land to be eligible, Council must be the registered proprietor of the fee simple title to the land. The mechanism will require public consultation and a Council resolution that is not able to be

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delegated. Upon being added to the Legal Town Belt, any new land will be deemed to be subject to the 1873 deed. Save for any minor boundary adjustments (refer to paragraph 9 above), the Bill will **not** include a mechanism that allows Council to remove land from the Legal Town Belt (although the Public Works Act 1981 will continue to apply). A decision by Council to remove ~~Removing~~ any land from the Legal Town Belt would require a subsequent Act of Parliament.

11 ~~The Bill will ensure that any land no longer required or used as part of either the Wellington Botanic Garden or Winter Show Buildings will revert to Legal Town Belt.~~

### Legal status

121 ~~The Bill will confirm that Council holds the Legal Town Belt upon trust pursuant to the 1873 deed. The Bill will codify the terms of that trust as being:~~

121.1 ~~Council holds the Legal Town Belt as trustee;~~

11.2 ~~The trust is a charitable trust; and~~

121.23 ~~The charitable purpose of the trust is to forever hereafter use and appropriate the Legal Town Belt as a public recreation ground for the inhabitants of the City of Wellington. The term 'public recreation ground' will be interpreted as applying to circumstances as they arise. In other words, how the words are interpreted will not be frozen so that they mean whatever they did when first used in 1873.~~

13 ~~The Bill will define 'recreation ground' generally in accordance with the following definition:~~

**Recreation ground** means an area provided for recreation and sporting activities, the enjoyment of the public and the protection of the natural environment, with an emphasis on outdoor activities (both active and passive).

14 ~~The Bill will be a code for how the Legal Town Belt is governed. Following the Bill's enactment, the legal status of the Legal Town Belt will be sourced primarily from the Bill, rather than the underlying 1873 deed.~~

12 ~~Any additional powers or restrictions Council may or may not have pursuant to the 1873 deed will be abolished. In the event of any inconsistency between the Bill and the 1873 deed, the Bill will prevail.~~

153 ~~The Bill will provide that the Legal Town Belt is not subject to the Reserves Act 1977 (or any corresponding legislation which succeeds the Reserves Act 1977).~~

## **Principles**

- 164** The Bill will include an appropriate set of statutory principles based broadly on:
- 164.1** The 1873 deed;
  - 164.2** The Town Belt Guiding Principles adopted by Council in December 2011;
  - 164.3** The concept of the Original Town Belt, including the instructions from the New Zealand Company Secretary John Ward to William Mein Smith, which included the intention that the land be 'public property', 'to supply space for recreation and common to the public'; and
  - 164.4** The existing restriction of area to be leased under the Wellington (City) Town Belt Reserves Act 1908 of no more than 40 hectares in total.
- 15** The Bill will require Council and any other person involved in the trusteeship and management of the Legal Town Belt to have regard to and seek to apply the statutory principles. All of the statutory principles must be considered together, and no statutory principle will take precedence over any other.

## **Council's powers**

### ***General***

- 186** Subject to the restrictions imposed by the Bill itself, the Bill will provide that Council has full capacity for the purposes of performing its role as trustee of the Legal Town Belt (refer to section 12 of the Local Government Act 2002). To resolve any doubt, Council's powers will include:
- 186.1** Undertaking work within the Legal Town Belt which Council considers desirable (including constructing, repairing, demolishing and maintaining buildings);
  - 186.2** Restricting public access to the Legal Town Belt to enable work to be carried out safely or facilitate temporary activities; and
  - 186.3** Setting conditions or rules to regulate use of the Legal Town Belt.
- 197** Council will have no power to:
- 197.1** Voluntarily sell, exchange or use as security any part of the Legal Town Belt;
  - 197.2** Grant leases, licences or easements other than in accordance with the Bill; ~~or~~

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~~197.3~~ Act in a way that does not comply with the management plan in force at the time (refer to paragraph 25.5 below); or

~~19.4~~ Authorise any 'for profit/commercial' use of any part of the Legal Town Belt unless that use is necessary to enable the public to obtain the benefit and enjoyment of the Legal Town Belt or for the convenience of persons using the Legal Town Belt.

### ***Leasing, licensing and buildings (other than for the Chest Hospital and Zoo)***

~~2018~~ The Bill will require Council to have regard to the principles in paragraph 14 above whenever making a decision to:

~~2018.1~~ Grant a lease or licence of any part of the Legal Town Belt;

~~2018.2~~ Authorise a sub-lease or sub-licence of any part of the Legal Town Belt; or

~~2018.3~~ Authorise any use of the Legal Town Belt.

~~2119~~ Notification of and consultation with the public will be required before Council:

~~2119.1~~ Grants a lease or licence of any part of the Legal Town Belt;

~~2119.2~~ Authorises a 'for profit/commercial' sub-lease, sub-licence or use of any part of the Legal Town Belt; or

~~2119.3~~ Constructs, or authorises the construction of, any building on the Legal Town Belt.

~~2220~~ For leases and licences which are granted:

~~2220.1~~ The maximum term will be ~~2033~~ years (including any rights of renewal).

~~2220.2~~ Council may authorise the lessee or licensee to restrict access to facilities and/or charge for admission or membership.

~~2220.3~~ Council may authorise the construction or retention of buildings.

~~2220.4~~ The lease or licence must specify what uses of the land are permitted.

~~2220.5~~ Any sub-leasing, sub-licensing or unpermitted use of the land must be authorised by Council.

~~22.6~~ No more than 8 hectares of Legal Town Belt may be leased at any one time.

~~2321~~ Appropriate transitional arrangements will be put in place for existing leases and licences.

### ***Easements and rights of way***

~~2422~~ The Bill will allow easements and rights of way to be granted over the Legal Town Belt for any public purpose (including any environmental purpose), provided that:

~~2422.1~~ Notification of and consultation with the public is required; and

~~2422.2~~ Council must:

~~2422.2.1~~ Have regard to the principles in paragraph 14 above;

~~2422.2.2~~ Consider the impact that any easement or right of way would have on the Legal Town Belt; and

~~2422.2.3~~ Consider whether alternatives exist.

### ***Existing rights infrastructure***

~~2523~~ The Bill will not affect any registered interests in the Legal Town Belt which exist at the time it comes into force and such interests will be deemed lawful. Any public ~~infrastructure~~ utilities on the Legal Town Belt that ~~is~~ are owned by Council and exists at the time the Bill comes into force will:

~~2523.1~~ Be deemed lawful; and

~~2523.2~~ Council will, at any time in the future, be able to register an easement in respect of any such infrastructure utility in favour of any party entitled to the use of it.

### ***Chest Hospital and Zoo***

~~2624~~ The Bill will provide that, in respect of the defined areas containing the Chest Hospital and Zoo, Council will have ~~broad~~ appropriate powers to manage these facilities (including by granting leases and licences), limited only by its obligation to comply with the Town Belt management plan.

### **Management plan**

~~2725~~ The Bill will codify the requirement for a management plan, including:

~~2725.1~~ Council must adopt a management plan.

~~2725.2~~ Appropriate notification of and consultation with the public about any proposed management plan or amendment to a management plan is required.

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- ~~2725.3~~ There must be no more than 10 years between reviews of the management plan.
- ~~2725.4~~ When adopting a management plan, Council must have regard to the principles in paragraph 14 above.
- ~~2725.5~~ In the exercise of its functions, Council must comply with the management plan in force at the time.
- ~~2725.6~~ The management plan must set out any conditions or rules to regulate the use of the Legal Town Belt, including any restrictions on leasing or licensing any part of the Legal Town Belt or constructing any building on the Legal Town Belt.

~~2826~~ A transitional provision will allow for the management plan that exists at the time the Bill comes into force to be carried over.

### **Repeal of other legislation**

~~2927~~ The Bill will repeal or amend any other local legislation that, when the Bill comes into force, would be in conflict with it or have become redundant. The enactments to be considered for repeal will include:

- ~~2927.1~~ The Wellington City Reserves Act 1871 and the Wellington City Reserves Act 1872; and
- ~~2927.2~~ The Wellington (City) Town Belt Reserves Act 1908.