

**REPORT 4**  
(1215/52/IM)

**TOWN BELT LEGISLATIVE AND POLICY FRAMEWORK  
REVIEW – DRAFT MANAGEMENT PLAN AND DRAFTING  
INSTRUCTIONS FOR PROPOSED TOWN BELT BILL**

**1. Purpose of report**

To seek the agreement of the Strategy and Policy Committee (SPC) to recommend to Council to consult on the draft Town Belt Management Plan and a set of drafting instructions for a proposed Town Belt bill.

**2. Executive summary**

On 16 December 2011 the Council completed stage 1 of the Town Belt Legislative and Policy Framework Review with the adoption of nine guiding principles. The principles have been used to guide stage 2, a review of the Town Belt Management Plan 1995 and Town Belt Reinstatement Policy 1998. The review has been guided by an internet based survey of 1000 Wellingtonians, a series of deliberative workshops, and public submissions received during consultation on the guiding principles.

The draft Town Belt Management Plan produced following the review covers 389.68 ha managed under the Town Belt deed and 85.03 ha not covered by the deed but to be managed under this plan. The draft plan proposes some overall changes in approach:

- Revised criteria for assessing land for addition to and management as Town Belt. Additional land should add to the continuity and horse shoe shape of open space, comprising the first line of hills and undeveloped skylines encircling the central city.
- A partnership approach with mana whenua to manage the Town Belt and working with Port Nicholson Block Settlement Trust for the return of Original Town Belt<sup>1</sup> land held by the Crown.
- A new approach to assessing uses and development based on a system of rules.
- Limiting the development of sporting facilities to existing sport and recreation parks, and encouraging clubs to work together to use existing facilities more intensively.

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<sup>1</sup> Original Town Belt refers to all of the land proclaimed as Town Belt in 1841

Stage 3 involves the preparation and enacting of a local Town Belt bill to rationalise, clarify and consolidate Town Belt governance under the Town Belt Deed. Officers have developed a set of drafting instructions outlining the overall objectives and scope of the proposed bill. Once adopted these will form the basis for drafting a Town Belt bill. The instructions identify that the Town Belt will remain a charitable trust under the 1873 deed with the same purpose, and will continue to be managed under a management plan. However the Town Belt will no longer be covered by the provisions of the Reserves Act.

Approval is now being sought to consult on the draft Town Belt Management Plan as well as the drafting instructions for a proposed Town Belt bill.

### **3. Recommendations**

Officers recommend that the Strategy and Policy Committee:

1. *Receive the information.*
2. *Recommend to Council that:*
  - (a) *The draft Town Belt Management Plan be approved for public consultation in accordance with the requirements of the Reserves Act 1977*
  - (b) *Drafting instructions for the proposed Town Belt bill be approved for public consultation.*
3. *Delegate to the Chief Executive Officer and portfolio leader the authority to approve minor wording, formatting and content changes as agreed by the Committee.*
4. *Instruct officers to meet directly with mana whenua and key stakeholder organisations as part of the consultation process.*
5. *Note that public consultation on the drafting instructions and the draft Town Belt Management Plan will occur from mid October for a period of two months and that the drafting instructions and Town Belt Management Plan will be presented to SPC for final approval in May 2013 following public consultation.*

### **4. Background**

The ***Town Belt and Basin Reserve Deed*** (the Deed) sealed by the Superintendent of Wellington on 20<sup>th</sup> March 1873 conveyed responsibility for the Town Belt to the Mayor, Councillors and citizens of Wellington. This remains the key document giving the Council legal authority over the Town Belt and provides the powers to make rules and regulations to govern the use of the Town Belt.

Wellington City Council adopted the current Town Belt Management Plan (the Plan) in 1995. This attempted to translate the intent of the Deed into a set of operational practices through the use of two statements of purpose (Aims) and a

number of clear policies on how different aspects of the Town Belt should be managed.

In 1998 the Council adopted the Town Belt Reinstatement Policy which intended to resolve the Council's grievance on behalf of the citizens of Wellington, concerning land that has been lost from the Town Belt as envisaged by the New Zealand Company (Original Town Belt land). It also identified what land the Council could reasonably seek for return to the Town Belt.

Both plans contained policies around legislative change. In particular the Reinstatement Policy stated:

*11. The Council shall prepare a suitable Bill to:*

- *Modernise the existing Town Belt legislation*
- *Add Council owned land to the Town Belt or add other land with the owner's written permission*
- *Achieve the purposes of this Policy to the extent that this has not been able to be successfully achieved by obtaining through negotiation the Crown's acknowledgement of the legitimacy of the Council's grievance and the adoption of initiatives to address this grievance.*

In 2002 officers started work on a Wellington Town Belt Bill. The work was put on hold in 2003 following the release of the Waitangi Tribunal Report. "*Waitangi Tribunal, Te Wanganui ā tara me ōna Takiwā: Report on the Wellington District 2003*" and a request from Wellington Tenth Trust to delay legislative change until their treaty settlement had been resolved.

In 2009 the Treaty Settlement Act of Taranaki Whanui ki te Upoko o te Ika was passed which gave Port Nicholson Block Settlement Trust (PNBST) right of first refusal (RFR) for some sections of the Original Town Belt land held by the Crown.

#### **4.1 Town Belt and Legislative Policy review**

In early 2010, a high level analysis of the legislative and policy framework for the Town Belt took place as the Plan was 14 years old and in need of review. The analysis indicated:

- A need for clearer 'Statement of Purpose' or 'guiding principles' in the Town Belt Management Plan to help ensure that community aspirations were reflected in the policies and, through that, the operational practice.
- A need to clarify how the Council's ongoing relationship with *mana whenua* with respect to the Town Belt should be incorporated in the Town Belt Management Plan.

The project is in 3 stages:

Stage 1: Development of guiding principles (completed)

Stage 2: Review of the Town Belt Management Plan and Town Belt Reinstatement Policy

Stage 3: Legislative change through a local Parliamentary bill

**Stage one – guiding principles:** Consultation on the draft principles took place in mid 2011 with a final set of principles adopted by the Council on 16 December 2011.

The Town Belt Guiding Principles are;

- 1. The Wellington Town Belt will be protected and enhanced by the Council for future generations.*
- 2. 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.*
- 3. The Council will work in partnership with mana whenua to manage the Town Belt.*
- 4. The Town Belt's landscape character will be protected and enhanced.*
- 5. The Town Belt will support healthy populations of indigenous biodiversity.*
- 6. The Town Belt is for all to enjoy.*
- 7. The Town Belt will be used for a wide range of recreation activities.*
- 8. The Council will encourage and support community participation in the management of the Town Belt.*
- 9. Management of the Town Belt will acknowledge historical and cultural links to the land.*

The Council also agreed to a review of the Town Belt Management Plan and Town Belt Reinstatement Policy.

**Stage two - The Town Belt Management Plan 1995 and Town Belt Reinstatement Policy 1998 Review Process:** The review of the current management plan and the Town Belt Reinstatement Policy has been guided by:

- An internet-based survey of 1000 Wellingtonians carried out in late 2009 to assess what people valued about the Town Belt, what they considered the major threats were, how they used it and what they liked and disliked about it.
- Two deliberative Town Belt Management Principle workshops held in early April 2011 and a subsequent hui/workshop for constituents of the Port Nicholson Block Settlement Trust took place on 6 May 2011. The output from these workshops (and the other research work already mentioned) was used to prepare a draft set of guiding principles to guide the future management of the Town Belt.

- The development of the draft principles and public feedback received.

A review of policies in the Town Belt Reinstatement Policy has been completed and policies incorporated into the revised management plan.

It is proposed that once approved, the draft plan (2012) replaces the 1995 Management Plan and the 1998 Reinstatement Policy and sets a strategic direction for the next ten years. The draft plan provides a clear framework to make decisions and manage the Town Belt for the next 10 years. The objectives and policies in this plan explain the intended methods for the protection, management, development, operation and public use of the Town Belt.

**Stage three: Legislative changes:** The Council confirmed the status of the Town Belt Deed when it adopted the guiding principles

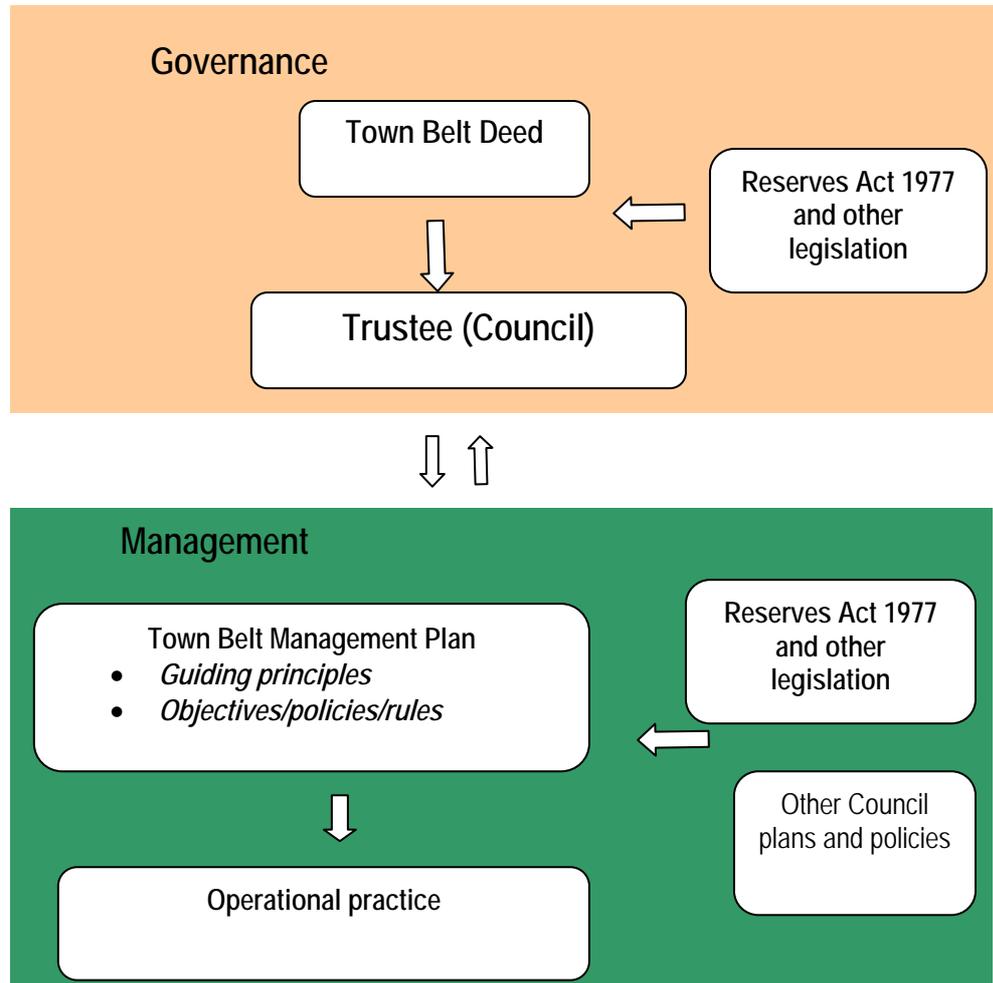
*The Town Belt will continue to be governed in trust by the Council, under the 1873 Deed and subsequent legislation on behalf of the citizens of Wellington.*

The Town Belt Deed is the key document giving the Council legal authority over the Town Belt and provides the primary powers to make rules and regulations to govern the use of the Town Belt.

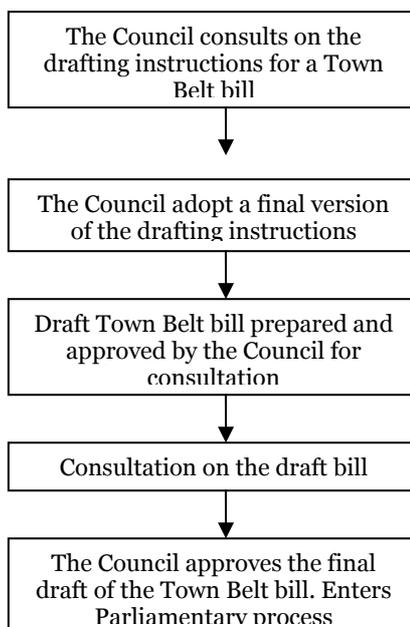
Officers have reviewed the governance framework and identified improvements that will require legislative change through a local Town Belt Bill. Council's obligations and powers as trustee of the Town Belt come from a range of sources - including the 1873 deed, the Reserves Act 1977 and a number of quite old statutes. The relationship between these sources can be complex and hard to understand, in some cases leading to controversy and dispute.

New local legislation (Town Belt bill) will simplify the basis upon which Council holds and manages the Town Belt. These proposals are in the form of drafting instructions or objectives that outline why the changes are needed and what they will achieve. In addition local legislation will enable the Council to add land to Town Belt and in some cases, remove land from Town Belt.

## Current legislative framework:



**A Local bill** is promoted by local authorities to deal with matters confined to a particular locality to allow a function not authorised in the general law to be undertaken. The local member of Parliament is likely to be the member in charge of a local bill. In this case Grant Robertson, MP for Wellington Central will introduce the bill. The overall process is as follows:





*This report is officer advice only. Refer to minutes of the meeting for decision.*

## 5. Discussion

### 5.1 Stage 2: Draft Town Belt Management Plan 2012 (inc review of Town Belt Reinstatement Policy)

The Draft Plan (Appendix 2) provides a framework to make decisions and manage the Town Belt for the next 10 years. The objectives and policies in this plan explain the intended methods for the protection, management, development, operation and public use of the Town Belt.

The Draft Management Plan identifies:

- the current legal framework for the Town Belt
- the guiding principles previously adopted by the Council
- the natural and cultural features of the Town Belt and how these will be protected
- the recreational role of, and activities on the Town Belt
- general management objectives and policies

The Plan does not cover the Wellington Botanic Garden, Wellington Zoo or Wellington Showgrounds, except the artificial turf behind Te Whaea.

The key policy development and changes are summarised in table 2 along with implementation actions:

**Table 2. Key policy development and changes**

Theme	Key policy changes	Implementation
Coverage of the plan	The plan covers 389.68 ha managed under the Town Belt Deed and 85.03 ha of land not covered by the Deed but to be managed under this plan. These lands have been assessed using the proposed criteria for addition of land to Town Belt, policy 2.9.4 Draft TBMP.	The 85.03 ha of land managed as Town Belt will be added to Town Belt as part of the legislative change.
Land reinstatement	<p><b>New:</b> If the Crown proposes to take Town Belt land for a public work then the Council will pursue its replacement with Crown land of equal or greater landscape, ecological, and or recreational value for Town Belt purposes. Refer to policy 2.9.3, Draft TBMP.</p> <p><b>New:</b> The Council will work in partnership with the Port Nicholson Block Settlement Trust, the Crown and relevant</p>	Priority for reinstatement are the Ministry of Education “College” lands

	<p>Crown agencies regarding the reinstatement of Original Town Belt owned by the Crown that is suitable for Town Belt purposes. For example the Ministry of Education Wellington College lands.</p> <p><b>New:</b> List in each sector land that is proposed to be added to or removed from Town Belt</p>	
Recreation	<p><b>New:</b> To limit the development of sporting facilities to existing sport and recreation parks and encouraging clubs to work together to use existing facilities more intensively. It also recognises the changing nature of sport and that some development of sport and recreation facilities will be needed.</p> <p><b>New:</b> Support for community gardens and orchards subject to fulfilling a range of criteria</p>	The revised plan identifies which sport and recreation parks will continue to provide for outdoor sports and which larger hubs may cater for more intensive mixed development (indoor and outdoor facilities).
Ecology	<p><b>New:</b> Focus changed to identify the major role the Town Belt can play in the city's ecological framework. In particular</p> <ul style="list-style-type: none"> <li>• ensuring the protection and restoration of indigenous habitats</li> <li>• restoring streams</li> <li>• increasing indigenous vegetation cover</li> </ul>	The revised plan sets priorities for pest control and revegetation.
Administration Section 9 - rules for use and development	<p><b>New:</b> We have developed a new section with three categories of activities:</p> <ul style="list-style-type: none"> <li>• <b>Allowed activities</b> that are allowed or anticipated in the Town Belt such as walking, running, organised sport, and dog walking</li> <li>• <b>Managed activities</b> that are not specifically allowed or prohibited and require a case by case assessment, such as leasing land and buildings, community gardens, commercial activities and events</li> <li>• <b>Prohibited activities</b> such as trail bikes, hunting and open fires.</li> </ul>	

In addition the 2012 plan proposes to continue to:

- gradually replace pine trees with native vegetation to enhance the ecological value of the Town Belt
- increase informal use for walking, biking and other activities.

## **5.2 Key issues, opportunities and actions**

**5.2.1 Land reinstatement** - The Crown (latterly through the Superintendent of the Province of Wellington) held the Town Belt from 1841 to 1871. During that time one third of the Original Town Belt (approximately 195 ha) was alienated and developed for community and social welfare purposes. Today the Council holds 389.68 hectares in trust under the Town Belt Deed. In addition it proposes to manage 85.03 hectares under this Draft Plan. See Appendix 2.

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 existing size and configuration of the Town Belt, and strengthening its continuity and open space values through land additions and boundary adjustments.

Key policies include

- Adding land to Town Belt that complements and strengthens the distinctive Town Belt character by following the proposed assessment criteria. (Policy 2.9.4 Draft TBMP).
- By following the assessment criteria for the addition of land to Town Belt it is proposed to protect an additional 85.03 hectares of Wellington City Council owned open space and reserve land under the Town Belt Deed. This will occur as part of the Town Belt legislation (Bill).
- If the Crown proposes to take Town Belt land for a public work then the Council will pursue its replacement with Crown land of equal or greater landscape, ecological, and or recreational value for Town Belt purposes.
- Working in partnership with the Port Nicholson Block Settlement Trust, the Crown and relevant Crown agencies regarding the reinstatement of Original Town Belt owned by the Crown that is suitable for Town Belt purposes. For example the Ministry of Education Wellington College lands.

**5.2.2 Partnership with mana whenua** - At present, Wellington City Council's relationship with mana whenua is managed through Memoranda of Understanding (MOU's) with the Port Nicholson Block Settlement Trust and Te Rūnanga o Toa Rangatira Incorporated. Mana whenua have indicated that they wish to be more involved in the future management of the Town Belt.

The Town Belt holds great cultural significance to Māori. One of the guiding principles adopted by the Council in 2011 is:

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

The plan identifies the ways in which this partnership will occur including working together over return of Original Town Belt (see above), preparing the cultural history section for this plan, ensuring mana whenua are regularly advised on activities and developments on Town Belt and that Council recognises the significance of the Town Belt to mana whenua.

**5.2.3 Community Partnership** - 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. Key policies include:

- Providing opportunities for more individuals, groups, and businesses to be involved in activities on the Town Belt such as habitat restoration; recreation development such as tracks and organising events.
- Supporting the work of adjacent property owners to beautify the Town Belt when this work is consistent with the policies in the Management Plan.
- Supports the continued leasing of Town Belt by sporting and recreation groups whilst encouraging greater use and sharing of existing facilities.

**5.2.4 Landscape Management** – The Council will protect and enhance the unique landscape character of the Town Belt. Use of the Town Belt is increasing, whether for informal activities such as walking and mountain biking or for organised sport. The plan recognises this and the pressure for change and development it brings.

Key policies include

- Development will only be sited on Town Belt if it is necessary for public recreation purposes and subject to assessment as outlined in the administration section (section 9). Note there are specific policies relating to utilities.
- Limiting development on skylines or highly visible areas, and removing buildings when they are no longer required
- Continuing the gradual replacement of exotic forest with natives. Some areas of exotic forest will be retained and enhanced. These are identified in sector plans.

**5.2.5 Ecology/biodiversity** – The Town Belt has the size and location to act as a major habitat for indigenous biodiversity and improve the city's ecological resilience and connectivity.

Key policies include:

- Restoring indigenous habitats on Town Belt to:
  - a. ensure ecological connectivity of the Town Belt and adjacent reserve land
  - b. enhance the species diversity of the Town Belt.
  - c. replace exotic trees removed as part of a hazardous tree removal programme
- prioritising plant and animal pest management based on :
  - a. areas representative of the biodiversity of the central city
  - b. areas important for ecological connectivity
  - c. areas of hazardous tree removal
  - d. areas of high amenity and recreation value

**5.2.6 Recreation** – The Town Belt has always been an important area of open space with room for both informal activities and organised sport. As use rises and pressure increases for the development of new facilities a balance is needed between the developed spaces and the “natural” areas.

Key policies include:

- Recognising that sporting activities have a long and important presence on Town Belt and some development will be needed as sports evolve and grow
- Limiting development to existing sport and recreation parks and leased spaces. More detail around the type and location of development is identified in the sector plans.
- Maximising the use of existing facilities including co-location of sporting clubs and organisations
- Increasing the track network to provide more accessible routes and circuits for bikers and walkers.
- Support for community gardens and orchards subject to fulfilling a range of criteria
- Assessing the provision of Dog Exercise areas on Town Belt during the review of the Dog Policy. In particular Sector 3 Brooklyn Hills, Sector 4 Macalister Park and Sector 9 Mt Victoria/Matairangi.

**5.2.7 Culture and history** - 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.

Key policies include:

- Explore options for heritage recognition and protection under the Open Space C zoning during the review of the open space chapters in the District Plan.
- Where appropriate, Māori place names will be used, in conjunction with European place names on signs and maps.

- To collate, record and disseminate Māori and European historical information of the Town Belt land.

**5.2.8 Administration Section- Rules for Use and Development** - This part of the plan outlines the rules relating to the provision and management of all development and activities on the Town Belt.

Within the Town Belt a range of activities and experiences are offered and there are a range of values associated with the Town Belt as a whole and with the various sectors. As activities have the potential to impact on other park visitors and the environment, they need to be managed by the Council by approving the activity.

Each activity is identified as fitting one of the following three categories, and this determines what type of permission applies and what process any activity is subject to:

- **Allowed activities** - These are activities that are generally ‘allowed’ or anticipated in the Town Belt, but that may be subject to restrictions in order to protect park values and provide for the health, safety and wellbeing of visitors.
- **Managed activities** - Managed activities are those that are not specifically ‘allowed’ or ‘prohibited’ and any that are not listed in this management plan or require a case-by-case assessment. These activities are generally undertaken in a specific location and may involve temporary or longer term allocation of a park area or structure for a specific use.
- **Prohibited activities** - These are activities considered to be inappropriate because of the permanent adverse effects on the environment or those that are incompatible with the park values, characteristics and/or management focus or other approved activities.

**5.2.9 Management Sectors** – The plan is divided into geographical sectors each recognising the complexity of the topography, vegetation, uses and communities of interest inherent in the Town Belt. See Appendix 2.

Key policies include:

### **Sector 1 - Te Ahumairangi Hill**

- retaining the unbuilt “natural’ character of the Hill and restoring podocarp-broadleaf forest cover following gradual removal of exotic tree cover
- retaining and enhancing the deciduous woodland below Wadestown Road (Queens Park)
- Defining the formed road boundaries of Upper Weld Street and removing the land from Town Belt.

## **Sector 2 - Kelburn Park**

- Retaining and enhancing the village green character of the sports field and adjacent croquet club
- Opening up the park frontage onto Salamanca Road and visual connection with Victoria University
- Maintaining the mixed species character of the woodland aiming for a gradual removal of exotic weed species and a return to podocarp hardwood forest
- Reviewing the boundary between Town Belt and Salamanca Road to assess if unformed parts of the road can be stopped and incorporated into Town Belt.

## **Sector 3 - Aro Valley/Polhill Gully**

- Restoring the area into podocarp/broadleaved forest and managing it consistently with George Denton Park and Waimapihi Stream Catchment
- Protecting and maintaining the unbuilt character of this sector.

## **Sector 4 – Brooklyn Hills**

- Maintaining Tanera Park, Nairn Street Park and Prince of Wales Park as sites for outdoor sport and recreation
- Extending the existing native forest in the sector to form a consistent vegetation cover based around the moister gullies and south facing slopes
- Adding Council land at Coolidge Street and Epuni Street to the Town Belt and removing 3 small areas off Brooklyn Road/Washington Avenue, Nairn Street and Connaught Terrace.

## **Sector 5 – Macalister Park**

- Retaining the open space character of Macalister Park and gradually improving plantings for shade and shelter
- Gradually removing large conifers alongside Finnimore Terrace and replacing with natives
- Retaining and managing the eucalyptus forest below Finnimore Terrace in the medium term
- Investigating possible options through this sector for the Island Bay to CBD cycleway and walkway
- Regularising the existing and legal road alignments at Liardet Street. The current carriageway through Macalister Park is on Town Belt land.

## **Sector 6 – Golf Course/Mount Albert**

- Establishing a coastal forest cover on the higher ground on the eastern and western ridges
- Retaining the parkland character and ultimately replace the historic pines around Newtown Park

- Maintaining and developing Wakefield Park, Martin Luckie Park, Mt Albert Park, Newtown Park and Melrose Park as facilities for outdoor sport and recreation
- Continue to work with the Mornington Golf Club to assess the scope, scale and facilities provided at the Berhampore Golf Course and the development and management opportunities available
- Regularising the existing and legal road alignments at Volga Street and Mount Albert Road.

### **Sector 7 – Newtown/Crawford Road**

- Adding the former Chest Hospital land to the Town Belt and managing it with specific policies that recognise its historic character and the need to have a long term sustainable use
- Protecting the visual and landscape quality of Alexandra Road, as an important scenic route through the Town Belt.

### **Sector 8 - Hataitai Park**

- The Council will continue working with New Zealand Transport Agency (NZTA) to identify options for reducing or mitigating the impacts of State Highway 1 on the Town Belt and in particular Hataitai Park.
- Returning the northern wedge above Hapua Street to native coastal forest and gradually remove the mature conifers on the eastern side of Alexandra Road
- Establishing an Advisory Group of sporting organisations to develop a long term master plan for Hataitai Park which will:
  - retain the landscape character of the hub whilst allowing flexibility for sporting development
  - plan for the changed Ruahine street frontage to reflect its amenity value and prominent location in association with NZTA
  - identify changes to access and parking as a result of the state highway development
  - identify opportunities to rationalise and/or share sporting infrastructure and buildings wherever possible. In particular an assessment should be carried out over the future of the velodrome
  - work with Wellington Badminton and NZTA to look for suitable alternative locations for badminton hall if its removal is confirmed

## **Sector 9 – Mt Victoria/Matairangi**

- Developing vegetation guidelines for Mount Victoria based on the following intentions:
  - Continue establishing native forest on the steep slopes north of Palliser Road
  - Continue the theme of coastal shrub vegetation on the summit ridge between the Mount Victoria Lookout and Centennial Memorial
  - Improve views from Mount Victoria Lookout with vegetation management and selective removal of mature pine trees.
  - Identify areas where conifer/eucalypt forest should be retained and perpetuated
  - Maintain the commemorative planting area in Charles Plimmer Park
  - Ensure succession planting of taller tree species, and
  - Aim to strengthen visual unity along the ridge.
- Retaining the isolation strips along the ridgeline between Centennial Lookout and Mount Victoria Lookout at the rear of the properties on Robieson Street
- Building a new track between Mt Victoria Lookout and Centennial Memorial

### **5.3 Stage 3: Proposed drafting instructions for the Town Belt Bill**

#### **What will the bill do?**

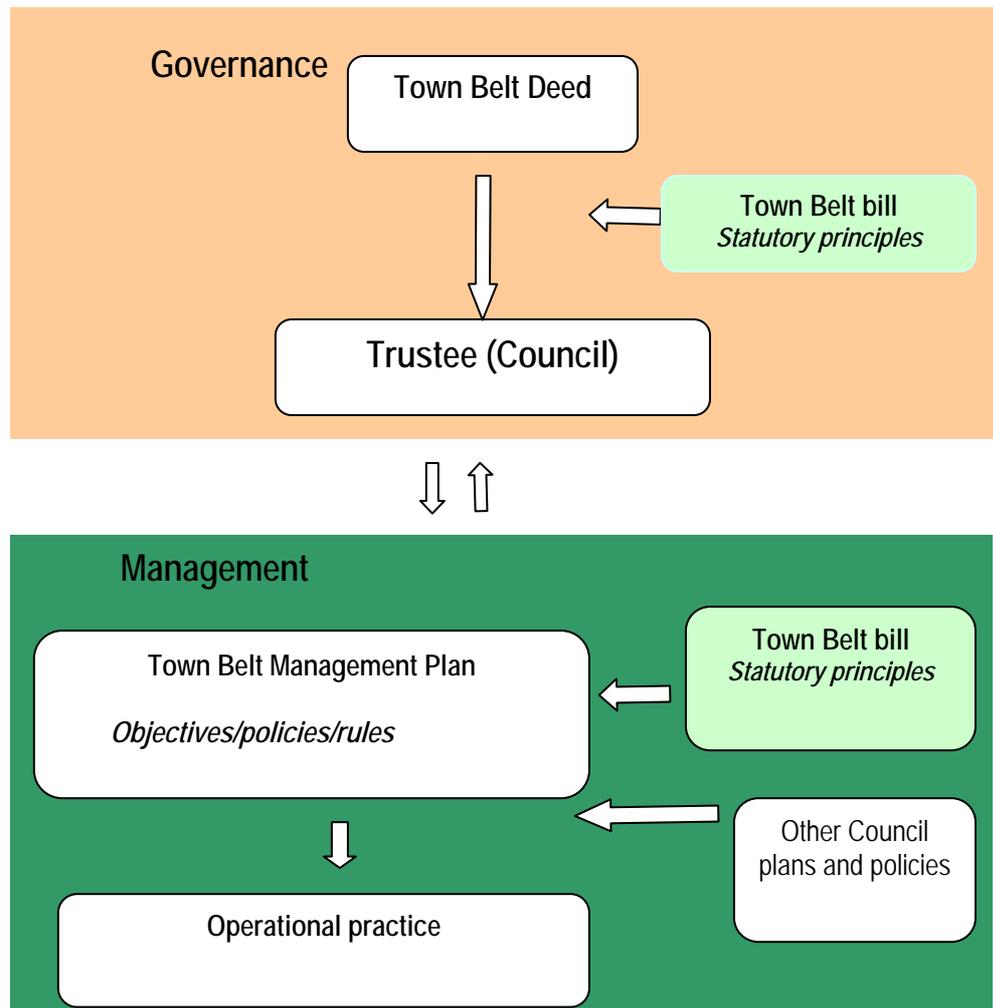
In conjunction with the 1873 Deed,

- establish a legal framework for Council's trusteeship and management of the Legal Town Belt that is self-contained and easily understood,
- be consistent with the Town Belt Guiding Principles adopted by Council in December 2011,
- recognise the history and significance of the Original Town Belt, and
- provide Council with relatively flexible powers to manage the Town Belt<sup>2</sup>, 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.

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<sup>2</sup> Legal Town Belt refers to that part of the 1873 Town Belt that has never been alienated from and is still held by Council .

The proposed governance framework is shown below.



### **What will not change?**

- The Town Belt will remain a charitable trust under the 1873 deed with the same purpose - to be forever used as a public recreation ground for the inhabitants of the City of Wellington.
- The Town Belt will continue to be managed under a management plan.

### **What will change?**

The proposed Town Belt bill will replace the Reserves Act 1977. The Town Belt is currently a recreation reserve under the Reserves Act 1977 and that statute applies to the extent that it is not in conflict with the 1873 deed. The relationship between the Reserves Act 1977, the 1873 deed and other statutes which apply to the Town Belt is complex.

Any protections provided by the Reserves Act 1977 are however unnecessary because the Town Belt is already a charitable trust for the purpose of a recreation ground. The aim of simplifying how the Town Belt is managed will require taking it outside the Reserves Act 1977 regime so that the only relevant documents become:

- The Deed
- The local bill, and
- The current management plan.

Doing this will also protect the Town Belt from any uncertainties which arise from the future amendment or repeal of the Reserves Act 1977. It is also intended that any old local statutes which are made redundant by or would be in conflict with new local legislation will be repealed.

### **5.3.1 Drafting Instructions**

The Council has prepared a set of drafting instructions that will form the basis for the preparation of a local bill. They set out the broad objectives and content of the proposed bill. The drafting instructions are included in Appendix 1. They include:

- A **Preamble** outlining the significance of the Town Belt to mana whenua and Wellingtonians and its historical context and role
- A **definition** of what is Town Belt and a mechanism for adding and removing land
- The **legal status** of the Town Belt and the charitable purpose of the Deed
- A set of **statutory principles** broadly based on the Town Belt Deed, the guiding principles, and the concept of the Original Town Belt. The Bill will require Council to have regard to and seek to apply the statutory principles.
- **Council's powers** to manage the Town Belt including the granting of leases, licences easements and so on. Most of these are consistent with the current provisions under the Reserves Act
- **Special provisions** for the Chest Hospital and the Zoo to reflect their special activities
- A process for developing, and functions of a **management plan**. The draft management plan being prepared would become the transitional management plan when the bill is enacted until its replacement with a plan prepared under the new legislation.

The Basin Reserve is subject to a different deed of trust and will be unaffected by the Bill.

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.

### **5.3.2 What is the process for drafting a local bill?**

Local bills are promoted by local authorities and deal with matters confined to a particular locality, in this case Wellington. The local member of Parliament Grant Robertson is the member in charge of this proposed bill.

Following consultation on the drafting instructions for the bill the stages will be:

1. The Council adopt a final version of the drafting instructions
2. A draft bill is prepared and approved by the Council for consultation
3. Consultation on the draft bill occurs
4. The Council approves the final version of the bill and seeks to have the bill enacted

At that stage the local MP, Grant Robertson will introduce the bill into Parliament. It will proceed through the normal process for a parliamentary bill including select committee hearings.

### **5.4 Consultation and Engagement**

The Reserves Act (1977) requires the Draft Management Plan to be publicly notified and available for comment for no less than a period of two months and states that submitters must have the opportunity to be heard in front of Committee prior to recommending the plan for approval by the Council.

Accordingly, the submission period will run from mid October 2012 until mid December 2012 and will be advertised in Our Wellington page in the Dominion Post.

This will happen in conjunction with consultation on the drafting instructions for a proposed Town Belt Bill.

Anyone who wishes to be heard in support of their submission will have the opportunity to speak to Strategy and Policy Committee. This will happen in late February 2013.

The final management plan and drafting instructions will be presented to SPC after any amendments resulting from the due consideration of submissions. The final plan and drafting instructions will be considered by the Council for approval in May 2013.

In addition to these statutory requirements, the communication plan for the Draft Town Belt Management Plan and drafting instructions includes the use of:

- Media releases
- Council website plus Facebook page
- On-site notices at major Town Belt entrances
- Direct distribution to key stakeholders and previous submitters. This will include all of the clubs with leases on Town Belt, community groups working on Town Belt, 158 individuals and organisations who submitted on the guiding principles.

- Distribution to libraries and Service Centre
- Meetings with the Council's Treaty Partners.

Public meetings are not planned but will be considered if there is the demand or need.

In addition Grant Robertson, MP for Wellington Central has offered to facilitate a meeting of all Wellington MP's to brief them on the drafting instructions and proposed bill.

### **5.5 Financial considerations**

Following consultation, officers will prepare an implementation plan for approval with the final plan and drafting instructions. This will include unbudgeted costs of survey, and legal costs associated with enacting a local Town Belt Bill. These will be included as part of the approval of the final plan in 2013.

### **5.6 Climate change impacts and considerations**

As part of the Council's climate change work programme, parts of the Town Belt have been included in the Council's forest sink work programme. This is described in section 5.3.3 of the draft plan.

### **5.7 Long-term plan considerations**

An implementation plan will be included as part of the approval of the final plan in 2013

## **6. Conclusion**

The draft Town Belt Management Plan 2012 has been produced following a review of the 1995 Management Plan and 1998 Reinstatement Policy. It will provide strategic direction for the Town Belt for the next ten years.

The drafting instructions are the first stage in the preparation of a Town Belt bill to strengthen the protection of and modernise the governance arrangements for the Town Belt under the Town Belt Deed.

It is now proposed to release both documents for public consultation.

Contact Officer: *Mike Oates, Manager Open Space and Recreation Planning*

## SUPPORTING INFORMATION

### 1) Strategic fit / Strategic outcome

*The plan supports Council's overall vision of Wellington Towards 2040: Smart Capital. In particular it supports the Eco –city and people centred city outcomes.*

### 2) LTP/Annual Plan reference and long term financial impact

The project is contained in the Council Plan A004 – Open Space Planning and its activities form part of the Community Environment Outcomes (section 2.2: provider and facilitator – green opens spaces [town belts]). There are no financial implications at this stage

### 3) Treaty of Waitangi considerations

*The policies in the plan are consistent with the Waitangi Tribunal Report. "Waitangi Tribunal, Te Wanganui ā tara me ōna Takiwā: Report on the Wellington District 2003".*

### 4) Decision-making

*This is not a significant decision.*

### 5) Consultation

#### a) General consultation

*The Council will consult with the public on the draft plan and drafting instructions. A statutory 2 month consultation is required for the management plan under the Reserves Act 1977.*

#### b) Consultation with Maori

*Mana whenua have reviewed relevant sections of the draft plan and have comments that have been incorporated into the draft plan.*

### 6) Legal implications

*Council's lawyers have been consulted during the development of the draft plan and have assisted with the development of the drafting instructions.*

### 7) Consistency with existing policy

*This is a review of existing policies and will update and replace the Wellington Town Belt Management Plan 1995 and the Wellington Town Belt Reinstatement Policy 1998. The preparation of a Town Belt bill is consistent with current Council policy.*

## Town Belt local legislation - 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.
  - 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.
- 4 It is possible that unforeseen matters of law and/or policy may arise as part of 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.
- 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).

### ***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 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. Removing any land from the Legal Town Belt would require a subsequent Act of Parliament.

### **Legal status**

- 11 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:

- 11.1 Council holds the Legal Town Belt as trustee;
  - 11.2 The trust is a charitable trust; and
  - 11.3 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.
- 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.
  - 13 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**

- 14 The Bill will include an appropriate set of statutory principles based broadly on:
  - 14.1 The 1873 deed;
  - 14.2 The Town Belt Guiding Principles adopted by Council in December 2011; and
  - 14.3 The concept of the Original Town Belt.
- 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. No statutory principle will take precedence over any other.

## **Council's powers**

### ***General***

- 16 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:
  - 16.1 Undertaking work within the Legal Town Belt which Council considers desirable (including constructing, repairing and maintaining buildings);
  - 16.2 Restricting public access to the Legal Town Belt to enable work to be carried out safely or facilitate temporary activities; and
  - 16.3 Setting conditions or rules to regulate use of the Legal Town Belt.

- 17 Council will have no power to:
  - 17.1 Voluntarily sell, exchange or use as security any part of the Legal Town Belt;
  - 17.2 Grant leases, licences or easements other than in accordance with the Bill; or
  - 17.3 Act in a way that does not comply with the management plan in force at the time (refer to paragraph 25.5 below).

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

- 18 The Bill will require Council to have regard to the principles in paragraph 14 above whenever making a decision to:
  - 18.1 Grant a lease or licence of any part of the Legal Town Belt;
  - 18.2 Authorise a sub-lease or sub-licence of any part of the Legal Town Belt; or
  - 18.3 Authorise any use of the Legal Town Belt.
- 19 Notification of and consultation with the public will be required before Council:
  - 19.1 Grants a lease or licence of any part of the Legal Town Belt;
  - 19.2 Authorises a 'for profit/commercial' sub-lease, sub-licence or use of any part of the Legal Town Belt; or
  - 19.3 Constructs, or authorises the construction of, any building on the Legal Town Belt.
- 20 For leases and licences which are granted:
  - 20.1 The maximum term will be 35 years (including any rights of renewal).
  - 20.2 Council may authorise the lessee or licensee to restrict access to facilities and/or charge for admission or membership.
  - 20.3 Council may authorise the construction or retention of buildings.
  - 20.4 The lease or licence must specify what uses of the land are permitted.
  - 20.5 Any sub-leasing, sub-licensing or unpermitted use of the land must be authorised by Council.
- 21 Appropriate transitional arrangements will be put in place for existing leases and licences.

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

- 22 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:
- 22.1 Notification of and consultation with the public is required; and
  - 22.2 Council must:
    - 22.2.1 Have regard to the principles in paragraph 14 above;
    - 22.2.2 Consider the impact that any easement or right of way would have on the Legal Town Belt; and
    - 22.2.3 Consider whether alternatives exist.

## ***Existing infrastructure***

- 23 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 on the Legal Town Belt that is owned by Council and exists at the time the Bill comes into force will:
- 23.1 Be deemed lawful; and
  - 23.2 Council will, at any time in the future, be able to register an easement in respect of such infrastructure in favour of any party entitled to the use of it.

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

- 24 The Bill will provide that, in respect of the defined areas containing the Chest Hospital and Zoo, Council will have broad powers to grant leases and licences, limited only by its obligation to comply with the management plan.

## ***Management plan***

- 25 The Bill will codify the requirement for a management plan, including:
- 25.1 Council must adopt a management plan.
  - 25.2 Appropriate notification of and consultation with the public about any proposed management plan or amendment to a management plan is required.
  - 25.3 There must be no more than 10 years between reviews of the management plan.
  - 25.4 When adopting a management plan, Council must have regard to the principles in paragraph 14 above.

- 25.5 In the exercise of its functions, Council must comply with the management plan in force at the time.
- 25.6 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.
- 26 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**

- 27 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:
  - 27.1 The Wellington City Reserves Act 1871 and the Wellington City Reserves Act 1872; and
  - 27.2 The Wellington (City) Town Belt Reserves Act 1908.