

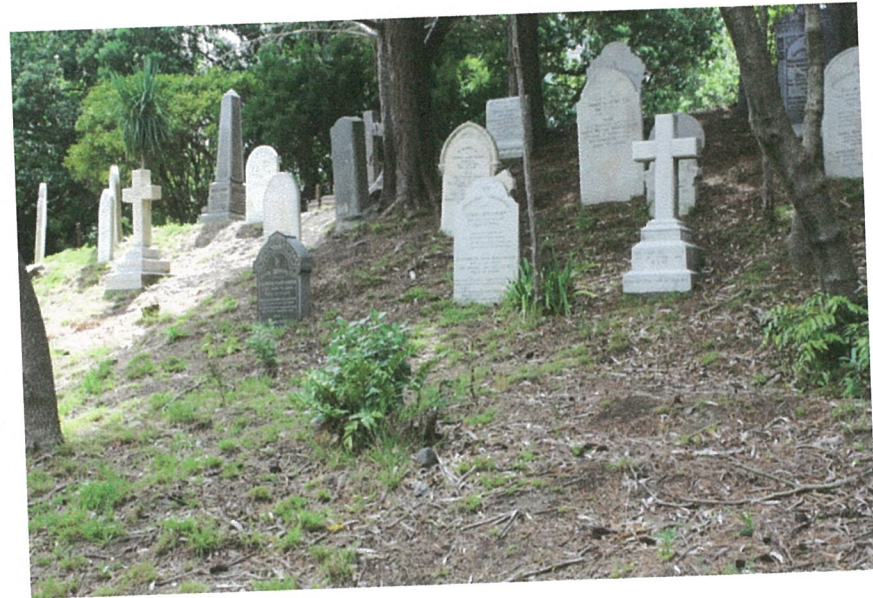
Clifton Terrace

Interconnection with Bolton St
Cemetery, Tokyo way and Botanic
Gardens

Connects via Wesley Rd to upper Botanic gardens



Aurora Terrace connection to lower Bolton Cemetery with foot bridge.



Street view and track to Bolton St and Terrace



Flat Upper section



Large mature trees on site



Lower part of Clifton Terrace site



Tourist from cruise ship in Town in Clifton Terrace looking for Butterflies



Tourists from Cruise ship in Clifton area



Protest at sale 1995

**Peter Harcourt and Joan Quinn
1994 Protest**



Protest 1995



*TOWN BELT LAND
CLIFTON TERRACE SITE*

Those interested in retaining, or reclaiming land that is or was part of the Town Belt have been given a reprieve by the SOE Minister as a result of representations made on 20th June.

A reprieve was obtained approximately a year ago, but unfortunately through lack of co-ordination the various parties working to preserve the integrity of the Town Belt did not succeed in advancing their claims in the intervening year. This could have lead to a loss of this site. The writer thinks it essential that all those involved in protecting this, and other land, co-ordinate their activities, endeavour to ascertain the facts and provide mutually supporting arguments based on these facts.

The meeting of 20th June highlighted differences of approach, a divergence of views as to the history or facts and as to the relevance of what occurred at different stages. I will therefore set out various points that I think are agreed by all parties, those over which there is disagreement and some of the arguments that have been raised.

1. Original ownership

- (a) It seems common ground that the Town Belt land was provided by the New Zealand Company as part of the Wellington Settlement.
- (b) It has been argued by Treasury that it became Crown land as initially all Reserves are supposed to have become. In support of this, it was argued that early administration and/or policy was laid down by Government and that the initial title originated in the form of a Crown Grant.
- (c) The above arguments are misleading. There was no entity to hold a title as we would understand it, in existence in 1839, when the New Zealand Company Scheme was put together. Equally, in the 1840's and 1850's the Crown was the entity that often dealt with management of lands and acted as custodians for land that was not privately held. The Crown appeared to acknowledge that it was holding the land on the terms on which it had been set apart by the New Zealand Company by issuing public notices enforcing the restrictions placed on the land in the original Wellington Settlement Scheme. On the question of the original title deriving from a Crown Grant, this was also the common source of all titles for the land in

the Wellington Settlement, whether commercial, residential or rural. The Crown Grant was the method of creating a title under the then existing Scheme for the ownership of land, and did not signify beneficial ownership by the Crown. The mechanism by which the citizens of Wellington obtained title was to buy the land from the New Zealand Company and acquire the equivalent legal title through Crown Grants.

2. *The New Zealand Company*

- (a) The New Zealand Company had a very enlightened or "scientific" view of how settlements should be planned and implemented. The directors correspondence with their surveyor indicates that they were far ahead of their time in their concepts and very few other towns were established with this degree of forethought at that time, or indeed, at any later time.
- (b) This is reinforced by a letter from Mr Wakefield, one of the Directors, published in the New Zealand Gazette in 1843, objecting to proposals that might have lead to loss of land and/or derogation from the purpose for which the Town Belt was established.
- (c) The Wellington Settlement promoted by the New Zealand Company was effectively a contractual arrangement between the purchasers of land from the Company and the Company itself. The purchasers of land in Wellington and those who emigrated to Wellington to form part of the Settlement, had not only a moral but it can be argued, a legal expectation that the plan would be carried out in its entirety, at least insofar as it related to the provision of public amenities, such as the Town Belt.
- (d) Both the fledgling New Zealand Government and the British Parliament appears to have endorsed the New Zealand Company's proposal, as shown by proclamations and public notices issued in New Zealand and documentation produced in and endorsed by the House of Commons in Britain relating to the Settlement Plan and in particular, the Town Belt marked on that Survey Plan forming part of the overall scheme of settlement.
- (e) Crown Law and Treasury note that the New Zealand Company effectively was liquidated in 1850 and the Government acquired its assets apparently at 5 shillings per acre.
- (f) The Government was not in a position to acquire land which, if the Company was actually still registered as proprietor, was nevertheless held

in trust as part of the original scheme whereby the land was held for the people of Wellington for all time. The Government had previously recognised this trust as shown by the proclamations and notices issued by This is further confirmed in the subsequent transactions to which the Government was a party, expressly noting the existence of this trust. The Government in 1850 was not therefore in a position to “buy” the Town Belt and reference by Crown Law and Treasury to the transaction where land was acquired from the New Zealand Company is irrelevant to the history of any land ever forming part of the Town Belt.

3. *Reserve Status of Land*

- (a) It has been suggested that many lands were set aside on different plans for different parts of New Zealand and marked as “Reserves” or regional plans, but did not acquire the legal status of Reserves by any governmental or Provincial Council action.
- (b) The above is conceded, but overlooks two points. There is various Government Legislation such as the Acts of 1854, 1871, 1872 and 1974 all dealing with Town Belt lands and/or the Basin Reserve and referring to these lands as reserves, either in the heading of the Act or the body of the Act. There seems to have been acceptance at all times that the Town Belt at least had the status of a reserve in a legal sense. More importantly, the question of whether it was officially a reserve in terms of any generic Reserves Act is irrelevant. Once the land was held in trust for some entity, in this case the people of Wellington, then only a variation of that trust, normally requiring the consent of the beneficiaries, could have changed the status of the land. The status was not so much that of a reserve but of that of land held in trust for a particular entity, the people of Wellington for all time, for particular purposes as laid down by the New Zealand Company which set up the trust.

4. *Public Utility*

- (a) Various acts and deeds in the middle of the 19th Century refer to the Town Belt lands (and other Reserve lands) as being set aside or vested in some entity for purposes of public utility.
- (b) It is argued by Treasury that in respect of Town Belt vested in the Town or City of Wellington, the vesting was for the purposes of a public utility or

utilities meaning provision of services such as water supply, drainage, power etc. In other words, a public utility of an industrial character.

- (c) This is a misunderstanding of the use of the term "public utility" at that time. These words referred to public welfare or community welfare or benefit, and were widely used to the extent that a semi-political group of people arguing for public benefits and welfare were known as "utilitarians". The particular references to public utility in respect of Town Belt land are often found with a repetition of the original condition imposed by the New Zealand Company "*that no building be ever erected upon it*". This makes it quite clear that no physical construction or development was intended by the use of the words "public utility".

5. *Conditions of Use*

- (a) At different times the Government of New Zealand and/or of the Province of Wellington laid down varying conditions to apply to the use of the Town Belt. These included:
- (i) that it was not to be developed in any way and that no person was to cut or take wood from the Belt.
 - (ii) that parts could be used for quarrying.
 - (iii) that such income as was derived from its use would be applied half to beautifying the Town Belt and the other half to the construction of roads, but only for the purpose of connecting the town sections with the country sections.
 - (iv) that some beautification money could go to the Botanic Gardens, and road money to Oriental Terrace to provide access to the Town Belt.
 - (v) that parts could be divided into allotments which could be leased for up to 42 years, but not otherwise disposed of.
 - (vi) that houses could be built but at the rate of no more than one per allotment (and possibly only for the period of the lease).
- (b) Wellington City Council became involved in discussions at various times over building hospitals to meet particular needs on the Town Belt in the

1880's and ultimately became involved in building a Hospital in 1900. At one point, local citizens apparently obtained an injunction to prevent Town Belt being utilised for a Council promoted Hospital, though at a later date it appears that the Council did succeed in building a Hospital on Town Belt.

6. *Early Dealings*

- (a) In 1861 the Central Government, by Deed lodged in the Deeds Registry (the modern Land Transfer Office), vested the Town Belt as it then existed in the Superintendent for the Province of Wellington in trust for the people of Wellington. Effectively, the Superintendent became the custodian of the Town Belt, but as Trustee for the people of Wellington as a result of this Deed. Equally, the Central Government acknowledged that it had previously been holding the Town Belt in trust for the people of Wellington. The Deed makes no suggestion that the Central Government created the Trust at that time, as opposed to confirming that it effectively had become the Trustee of the original New Zealand Company grant.
- (b) The Deed acknowledges the original restriction relating to building on the Town Belt.

7. *Major appropriations - 1870's*

- (a) Various acts of the New Zealand Government and/or the Provincial Government in the 1870's had a significant effect on the Town Belt. The lands that are or will soon be in issue between the Council as current custodian and various public agencies were removed at this time.
- (b) In 1871 the Superintendent was authorised by the Government to transfer the Town Belt to the Town or City of Wellington on the trusts on which he held it. For some reason, the provisions of this Act were not carried into effect at that time.
- (c) In 1872, in a further Act, dealing with the management of Wellington reserves, the Superintendent was authorised to transfer to Trustees for a general Hospital various Town Belt lands including the Clifton Terrace site. Clause 5 of this Act nevertheless provided that any such transfer would be made subject to the vested rights of any persons or bodies having interests in that Town Belt land.

Tabled Information - Reference 004/13PT(g)

6

- (d) It has been suggested that Section 5 of the 1872 Act may have been intended to preserve the position of any lessees of the 18 acres, which included the Clifton Terrace site but it does not say this. Section 6 does provide for protecting the rights of existing lessees which suggests that Section 5 was not referring to lessees. There is nothing recorded in the then equivalent of Hansard to suggest that this proviso had any restricted meaning rather than its ordinary legal meaning. Hansard records that the then Hospital site had become too valuable and to enable the Government to realise this value, a further site was sought for the Hospital. The only other speech recorded suggested this was a most unfortunate affair and should not be regarded as a precedent (for misappropriating the Town Belt!) However worthy the cause.
- (e) Following the passing of the 1872 Act, the Superintendent did transfer 18 acres to the Trustees for a general Hospital by a Deed which is silent on the question of the status of the land as Town Belt (other than describing it as Town Belt) and of the effect of Section 5 of the 1872 Act reserving vested rights.
- (f) Treasury argue that this transfer was not for the benefit of the people of Wellington but the people of a wider area and therefore it effectively became Government land. This may well be true, but insofar as it was not transferred to Trustees for a hospital exclusively for the benefit of the people of Wellington, it means that the latter people as beneficial owners were at that point, deprived of their ultimate legal ownership of this land.
- (g) The question that arises of course is that as the people of Wellington were the beneficial owners of the land prior to the transfer, did the land continue to be subject to an underlying Trust in favour of them, as suggested in Section 5.
- (h) The bulk of the land transferred under the 1872 Deed was ultimately subdivided into smaller and smaller lots becoming eventually the residential lots fronting the streets laid out to the north of Kelburn Park (i.e. Clifton Terrace, Talavera Terrace, Claremont Terrace etc.).
- (i) The intention seems to have been to lease the bulk of the land to provide an income to endow the Hospital that was to be built. There was no express power to sell any of this land mentioned in either the Act or the Deed, and subsequent Acts refer to a power to lease which suggest that there may not have been a power to sell.

Tabled Information - Reference 004/13PT(g)

7

- (j) In 1877 the Trustees sold land which probably included the Clifton Terrace site to the then Wellington Education Board. That Board and its subsequent successors through the years, acquired legal title to the land, but it is not clear whether they in fact also acquired beneficial ownership. This depends on an interpretation of the effect of the appropriation of the land from the Town Belt in the first place. Equally it is arguable that the Trustee of the General Hospital did not in fact have a power to sell. Their actions may not only have been in breach of trust, but may also have been void or voidable.
- (k) There is no evidence of whether the payment made for the land at the time eventually came into the hands of the Wellington City Council or any other entity representing the people of Wellington. One can only presume that the proceeds were utilised by the Trustees for the purposes of the Hospital which they were the Trustees of. The Hospital was ultimately erected not on the Clifton Terrace site, where it may have originally been intended to erect it, but on the eastern slopes of Mt Victoria.
- (l) The remaining land in the 1872 Deed (that was subdivided for residential purposes) came into the hands of the Wellington Hospital Board who leased it for residential purposes. For years the Board would not permit the freeholding of these sections and various Acts and Deeds through the 19th Century dealing with former Town Belt lands speak only of authority to lease.
- (m) The writer understands that the policy of the Hospital Board was temporarily changed and that a few sections were freeholded in the 1980's. The Board then reverted to the policy of refusing to freehold.
- (n) The Crown Health Enterprise for Wellington obtained title to the land north of Kelburn Park as successor to the Hospital Board and over the last two years or so, has not only permitted but encouraged freeholding to the extent that it may no longer have any legal title to any sections in this area. The proceeds of sale, which must have amounted to several million dollars, appear to have disappeared into the CHE's capital assets.
- (o) At about the same time, the 1870's, land was also taken for different but related purposes including a lunatic asylum an orphanage, and home for the aged needy, and educational institutions, all on the eastern slopes of Mt Victoria. The Governor General's Wellington residence is on part of this land. Much of the land is undeveloped or not needed for the institutions now nominally owning it.

Tabled Information - Reference 004/13PT(g)

8

- (p) Further Acts after the 1870's regulated the use of the lands on Mt Victoria repeating references to leasing and containing prohibitions on sale. An Act in the 1880's repeals the 1872 Act which had authorised the (mis)appropriation of the Clifton Terrace, and other land, from the Town Belt.
- (q) The bulk of the remaining Town Belt vested in the Superintendent at that time was transferred to the City of Wellington in 1874, and subsequent dealings with the land transferred in this manner were initiated by the Wellington City Council.

8. *Trusteeship*

- (a) Once an asset is vested in a Trustee for ascertainable beneficiaries, the rights of the beneficiaries are protected by the law, more or less irrespective of whatever dealings the Trustees may purport to enter into in respect of that asset even though such dealings are incompatible with the Trust. Effectively the law follows the assets where they have changed from their original form and endeavours to ensure that the assets in whatever form they end up in are held under the same trusts as the original assets. Trustees are held to account for their actions, assets are traced with a view to reclaiming the original, or substituted asset.
- (b) The New Zealand Government both authorised the transfer of the land in 1872, and became the successor to the Superintendent following the abolition of the provinces. It is therefore the defaulting party if the actions of 1872 were a breach of trust. It may also have a voidable title if "acquired" where no legal power to sell existed, and the current "registered" owner did not acquire the land for valuable consideration.

Conclusions

- (1) There is no evidence that I am aware of suggesting that the Trust on which the Clifton Terrace site was held has been explicitly broken. Section 5 of the 1872 Wellington City Reserves Act dealing specifically with the Clifton Terrace site strongly suggests that the underlying rights of the Citizens of Wellington were preserved.

Tabled Information - Reference 004/13PT(g)

9

- (2) There is no explicit power to sell vested in the Hospital Trustees. There are several Acts which refer to "ex" Town Belt land being held by various sets of trustees, boards etc. (all of a Charitable nature) which give limited powers to lease, and by necessary implication deny a power of sale.
- (3) There is no evidence that the inhabitants of Wellington benefited directly (i.e. as beneficiaries of the Town Belt Trust) in respect of any subsequent "sale" or transfer of the Clifton Terrace land (the 18 acres 1 rood 8 perches described in the Deed of 1872 and the preceding Act).
- (4) There is no evidence that at any time the inhabitants of Wellington have given to the Crown their interest in the Town Belt land that they undoubtedly had when the land was transferred to the Superintendent in 1861.