The Wellington Civic Trust
PO Box 10183 Wellington 6140

The Secretary
Local Government and Environment Select Committee
Parliament Buildings
WELLINGTON

WELLINGTON TOWN BELT BILL

INTRODUCTION

1. The Civic Trust views the proposed statute as a milestone in the long history of Wellington's Town Belt. Most of its provisions should serve to protect and enhance this major feature of the Capital City for generations to come.

2. We do, however, wish to make a few suggestions as to ring fencing some powers, and to make it explicit that the inhabitants of the city continue as Trustees. On the other hand, at no time do we wish to have the passage of the Bill delayed by contentions on what should be added or withdrawn. It is our fervent hope that the Bill will be enacted within the term of the present Parliament.

3. As Trustees, the citizens of Wellington must have open access to all decision making processes beyond those prescribed in the management plan. While appointed Councillors may be responsible for the mediation of such processes in accordance with the TBB (Act) provisions it is the Trust's view that the citizens of Wellington should be invited to engage in all decision-making.

PRINCIPLES [section 4]
<u>Suggestions</u>

4. It is suggested that a further provisions be added here, which would read:
New 4(3) When considering the nature and extent of an effect on the Wellington Town Belt under sections 15(1)(a), 18(1) and 20(2), the Council must consider and take into account the effects on any relevant part, characteristic or quality of the Wellington Town Belt.

<u>Commentary</u>

5. Key decisions need to be made in terms of consultation and the use of parts of the Wellington Town Belt for business and public service purposes in terms of the effects on the Wellington Town Belt. The Civic Trust considers this wording to be very loose and readily able to be interpreted as an effect on the Wellington Town Belt as a whole. This carries considerable risk, as the Wellington Town Belt is extensive and quite major effects in one

part of the total area may not reach the threshold of having an effect that is more than minor on the Wellington Town Belt, if it is considered as a whole. The addition we propose would be an effective way of enabling more focus. However, there may be other ways of achieving the intention of this modification and the Trust would be open to alternatives.

LEGAL STATUS [section 8]

Suggestions

6. It is suggested that the following subclause be included:
New 8(3) The inhabitants of the City of Wellington shall enjoy legal standing as Trustees. For the purposes of defining inhabitant, the geographic boundaries of the city are those existing at the commencement of this Act.
[Proposed s 8.3 becomes s 8.4].

Commentary

7. The present provisions of the Bill have the effect of annulling the Joint Trustee status that the city's inhabitants enjoy under the 1873 Town Belt Deed. The Deed in its initial headings states, inter alia, "*The Mayor, Councillors and Citizens of the City of Wellington*". This appears to establish all three as Joint Trustees (clause 7 of the preamble to the proposed Bill).

8. Accordingly, should the Bill fail to explicitly affirm the legal standing of citizens it will be blemished in that it will be seen as taking away pre-existing rights. This may result in those wishing to question or challenge decisions of the City Council and its employees being required to prove legal standing case by case.

9. The second sentence of the suggested s 8.3 will be of particular significance should there be local government boundary changes. The setting of geographic boundaries will lessen the possibility of the special status of the Town Belt being diminished by there being a much broader and potentially indifferent constituency.

10. Moreover, elected representatives from a much wider territory when acting as Trustees may be lacking in an understanding of the historical significance and superior status of these inner city forests and playing fields; the Town Belt is of greatest significance to those in whom it was originally entrusted- citizens who enjoy the many benefits the Town Belt provides on a day to day basis.

11. Considering that the proposed statute needs to endure across the passing of many generations, the Civic Trust suggests that these strengthening elements be woven into the Bill.

MANAGEMENT PLAN [section 10]

Suggestion

12. To ensure the highest standards of transparency, we suggest that without exception all amendments to the Management Plan must be publicly notified and consulted upon.

13. This involves the following deletions to the Bill:

    (a) Clause 10(5) covering minor and technical amendments

    (b) Clause 29(2) covering changes to the Management Plan consequential to the commencement of the Act.

Commentary

14. There appears to be an undertone in the Bill favouring managerial processes. Substance could thereby be at risk of being sacrificed to process. For the public to have long lasting trust and confidence in the City Council, we suggest that the principle of complete transparency be embedded in the Bill.

15. Minor and technical changes could be addressed in a biennial omnibus that would be subject to public notification and consultation.

16. Changes to the Management Plan resulting from the passing of the Act would be assisted by public scrutiny. Such scrutiny will militate against overlooked consequences and unintended re-interpretations.

Suggestion

17. A new section could be added as follows:

    New s.10(6)
    The Management Plan is also to be incorporated into the relevant open spaces section of Wellington City's District Plan or any succeeding statutory planning regime

Commentary

18. This provision would provide greater clarity to the review process available to the City's inhabitants.

19. Having status as a statutory document would enable the Environment Court to review both the substance of a decision and the legitimacy of the legal processes followed. Without such provisions the only avenues available for reviewing decisions would be by a Judicial Review.

Such reviews are confined to legal process and points of law. The cost of seeking a review in the High Court is outside the reach of most citizens and voluntary groups.

20. The Civic Trust views access to the law as being of paramount importance in underpinning the robustness of the Bill as well as fostering trust and confidence in its administrators.

21. The Capital City's Town Belt is of sufficient national stature to warrant it being protected by a legal framework that fosters vigilance on the part of decision makers.

22. An alternative means of achieving recognition could be to provide the management plan for the Wellington Town Belt with the equivalent status to iwi management plans, which must be taken into account and recognised and provided for within relevant regional policy statements and regional and district plans in terms of sections 61, 66 and 74 of the Resource Management Act (RMA).

23. A further alternative method would be to add clauses which specifically make submissions on the Wellington Town Belt subject to the same procedures on appeal as are available to submitters on regional policy statements and regional and district plans through the RMA. As this Bill has specifically disconnected the Wellington Town Belt from the Reserves Act, it would seem a simple addition to make it subject to RMA processes.

BUSINESS ACTIVITIES [section 18]

<u>Submission</u>

24. This is seen as one of the more flawed provisions of the Bill. It is the Civic Trust's view that any legislation in this area needs to be explicit and confine as much as possible any discretionary decision making powers.

25. An alternative provision is:

Clause 18(1)(a)
The activity is temporary, and any effect of the activity on the Wellington Town Belt will be <u>both temporary</u> and no more than minor.

26. This alternative wording would be further reinforced by the definitions of "temporary" in clause 5 covering Interpretation as it now stands.

27. Clause 18(1)(b) would be amended by the addition of 'and temporary' after 'no more than minor'.

28. Clause 18(2) could be amended to read:

Subject to subsection (1), the Council may authorise temporary business activities on the Wellington Town Belt on any conditions that it considers necessary to mitigate and remove all temporary effects.

Commentary

29. The proposed clause 18(1)(b) is too general in its wording and has the potential to inflict commercial pressures on elected Councillors and Council employees. The inclusion of the word "any" is a cause for particular concern and intimates an undertone of favouring managerial convenience.

PUBLIC SERVICES [section 20]

30. This is another clause that appears to call for very close scrutiny. Combined with the definition of "public services" within clause 5 – *Interpretation* it appears to give carte blanche to all infrastructural development, both public, corporate, and private. This could potentially include corporate and privately owned, controlled and managed infrastructure such as water collection and reticulation installations, cell phone towers, electricity transmission pylons, sewerage facilities, and roads.

Suggestion

31. It is seen as essential that there be full public notification, consultation, and rights of appeal over the granting of any property rights under this all embracing provision.

32. Two legal requirements could be considered:

(a) statutory amendment of this proposed Bill;
(b) a mandatory reference to the Environment Court for works which are considered other than minor; and/or
(c) the ability to reject proposals when other alternatives are available.

33. Clauses 20(2)(a) and (b) could be amended to read:

…The Council must consider
(a) the effects on the Wellington Town Belt of the proposed public service; and
(b) whether alternative sites, routes, or other methods for achieving the objectives of the proposed public service, including alternatives outside the boundary of the Wellington Town Belt, are available and would better achieve the principles of this Act".

Commentary

34. This is seen as a further realm that could have the potential to inflict commercial pressures on elected Councillors and also upon Council employees. Various safeguards are considered necessary, particularly more clarity under 20(2) about alternatives.

ADDITIONS … TO THE WELLINGTON TOWN BELT [section 21]

Suggestion

35. An additional clause could be added:

s. 21(*x*) Should any former Town Belt land be no longer used for the purpose for which it was required by the Crown, that land shall automatically be offered to the Wellington City Council for re-incorporation into the Town Belt.

36. Alternatively the proposed Bill could state:

Unless there be exceptional circumstances, agreed to after public consultation, any Town Belt land no longer …

APPLICATION OF THE PUBLIC WORKS ACT 1981 [section 23]

Commentary

37. We understand this section is proposed to be substantially amended at the behest of the Minister of Lands, acting on advice from NZTA. We oppose any amendment which would allow this long-protected and treasured land to be carved up as part of an ill-considered, uncertain, and short-term roading plan (Ruahine Street is the elephant in the room).

38. The Civic Trust supports the original drafting of this provision. The only improvement on the original drafting is the now proposed addition of a time limit (six months) for agreeing compensation, although the steps that would follow an impasse after that time are not well defined.

39. The proposed amendment of section 23(3) which at present states:
"*The Council and the inhabitants of Wellington each have standing to object under section 23(3) of the Public Works Act 1981 to the taking of any part of the Town Belt"* [the correct legal position in the Civic Trust's view]
and new section 23(3):
"*Nothing in this Act or the Town Belt Deed obliges the Council to object under s 23(3) of the Public Works Act 1981 to the taking of any part of the Wellington Town Belt"*

is utterly breath-taking in its:

a) erosion of the present rights of inhabitants of the City; and
b) its implication that the Council will abandon its Trustee role entirely and agree to back room deals rather than objecting to the erosion of this taonga.

Suggestion

40. The Civic Trust refers the Committee to the Christchurch City (Reserves) Empowering Act 1971 (amended and reprinted 1989) exempting Hagley Park from the Public Works Act. The specific reference is section 5(4) which states:
No part of Hagley Park may be taken or set apart under the Public Works Act 1928 for any public work whatsoever.
S 5(5) Subsection (4) shall bind the Crown.
It is the Civic Trust's belief that a similar provision should and would protect the Town Belt in perpetuity.

40. If this is deemed by the Committee to be not acceptable, then the Civic Trust urges the Select Committee to reject the suggested redrafting of the proposed provisions relating to the Public Works Act in its entirety, and, at the very least, revert to the original wording. This is not any piece of ordinary land which the proposed Bill is designed to protect and enhance, it is our Town Belt.

Toni Izzard
Chair
Wellington Civic Trust

Email: tizdawiz@gmail.com
Phone: 027 5480 989