

1. Walking access in the outdoors

Frequently Asked Questions



What is the New Zealand Walking Access Commission?

The New Zealand Walking Access Commission is a Crown entity, created in 2008, to lead and support, negotiate, establish, retain and improve walking access and associated types of access. It aims to enhance free, certain, enduring and practical walking access to the outdoors in a way that respects everyone's rights and the natural environment.

A key principle behind the Walking Access Act 2008 is that walking access over private land is a matter of negotiation and agreement with the landowner.

Negotiating access over private land is just one of the Commission's functions. The Commission is also promoting a code of responsible conduct, compiling a mapping system showing the location of public land open to walking access, and providing leadership and coordinating walking access.

What is the Outdoor Access Code?

The Outdoor Access Code is a New Zealand Walking Access Commission publication, which sets out the rights and responsibilities of recreational users and landholders.

Our society is increasingly urban, and despite our strong rural cultural identity and economic reliance on agricultural products, people may not be aware of rural customs and local practice, or understand the adverse impacts their actions can have. The Code spells out the need for people to behave properly and to take responsibility for their actions in the outdoors. It also asks landholders to continue the long-held New Zealand tradition of landholders giving access to people wanting to cross their land.

The Code is available on the Commission's website: www.walkingaccess.govt.nz/page/17/OutdoorAccessCode.html

Why has the Commission developed an outdoor access mapping system?

Respect for property rights is important. So are the public rights of access over various forms of public land. Our society relies on property rights being respected, and this depends on knowing and understanding property boundaries and the rights attached to different land parcels. The Commission's mapping system, online at www.wams.org.nz, shows where public land is located.

Do I have the right to walk over private land to get to public land?

No. There is no general right of public access across private land. If there is any doubt about access and there are no signs indicating access, permission from the landholder should be sought. There may be valid reasons for farmers to deny access across their land and refusals should be accepted with good grace. If you have doubts then you should check with the local authority or contact the Commission.

What access rights and privileges do I have?

Legal public access to the New Zealand outdoors is covered by a variety of statutes and provided by a variety of land classifications.

Public access to land, waterways and the coast is extensive, but often fragmented. Legal access along water margins and to other public land (such as that administered by the Department of Conservation (DOC) and regional and district councils) comes in many

forms, with differing legal obligations and restrictions.

What forms of legal public access are available in New Zealand?

There are many different types of legal public access ways. These include:

Walkways. There are about 40 gazetted Walkways in New Zealand. Any statutory Walkway is subject to constraints on behaviour set out in sections 54-58 of the Walking Access Act 2008. The Commission appoints controlling authorities to administer Walkways.

Coastal area. Public access to the coastal area (essentially beaches) is covered by the Marine and Coastal Area (Takutai Moana) Act 2011. Most of the common marine and coastal area is open to public access, except some areas that have been affected by erosion and some areas where private title extends across the foreshore.

Access around the coast, lakes and along rivers is provided by a range of reservations. These water margin reservations, popularly known as the 'Queen's Chain', are far from complete and have been affected by erosion in some cases. A public right of access around the coast above the foreshore depends on the existence of these kinds of reservations.

Public land also includes:

- esplanades and other reserves administered by local authorities;
- Crown land; and
- marginal strips and unformed legal roads (paper roads).

Access restrictions to public land are a matter for the administering authority and any statutory power they may have to regulate access.

Can I walk on any Crown-owned land?

Conservation land administered by DOC is usually open to walking access but there are some exceptions to this. For example, where an area is managed to preserve the indigenous plants and animals in it or for scientific and other similar purposes. Other

forms of access to conservation land may be restricted. DOC conservancy and area offices provide advice on specific instances. Hunting on Crown land requires a permit from DOC.

Crown land not administered by DOC may be open to public access at the discretion of the Crown. Land held by the Crown under the Land Act 1948 is subject to a trespass provision that is more restrictive than the Trespass Act 1980 (in respect of private land). Access is often allowed by implied permission, but this depends on the use of the land and any other statutory restrictions. For example, Ministry of Defence and Department of Corrections land has special provisions and public access is strictly restricted for obvious reasons.

Land that is subject to Crown pastoral lease (a large amount of the South Island high country) is in the exclusive possession of the leaseholders and is essentially the same as private land from an access perspective. Traditionally the owners or lessees of large rural holdings with recreational value have permitted public recreational access across their land.

Can a landholder stop me using an unformed legal road?

No. Landholders do not have the right to refuse access over adjoining public land. This includes unformed legal roads. These roads do not form part of the title to the adjoining land. Nevertheless, users of these roads should respect the rights of adjoining landowners and their property.

What forms of legal access across private land are available?

There is no general right of public access across private land. Owners of private land have the right of exclusive occupation and enjoyment of that land. This right is enforceable under the provisions of the Trespass Act 1980.

Particular rights of access across private land can be provided by:

- easements over private land forming part of Walkways under the Walking Access Act;
- other easements or rights of way

- providing for public access;
- esplanade strips; and
- access strips.

Landholders may provide access over private land by agreement. This could include informal or formal arrangements with individuals or groups or a sign inviting the public to use a track or route across the land.

The Tracks and Access Points layer (TAPS) in the Commission's mapping system records this information in a way that allows it to be viewed within other layers of the system. The extent of this information will depend on its availability. It will increase over time.

What is a marginal strip?

Marginal strips are strips of land adjoining the coast, lakes larger than eight hectares in area, and rivers greater than three metres in width. Marginal strips are administered by DOC.

Since 1990, marginal strips have been created under Part 4A of the Conservation Act 1987 and are deemed to be created automatically on disposal of Crown land. They always adjoin the relevant water margin; i.e. they move with any movement in the water margin. Many of those created between April 1990 and June 2007 have not been surveyed, so their existence may need to be investigated. Generally, Land Information NZ (LINZ) data does not show these marginal strips so they will not appear in the Commission's mapping system.

Marginal strips created after July 2007 have been surveyed and will appear in the mapping system.

What are esplanade reserves, esplanade strips and access strips?

These are different legal mechanisms involving access, but there may be restrictions on their use. Check with the relevant territorial authority.

- Esplanade reserves are strips of land adjoining a water margin. They are usually created when land is subdivided and are generally 20 metres wide.
- Esplanade strips are a form of easement over water margin land. They may be created when land is subdivided as an

alternative to esplanade reserves and are generally 20 metres wide. Esplanade strips remain in a landholder's title and move with the water margin.

- Access strips may also be acquired by councils by negotiated agreement with a landholder. The cost of reaching such agreement is a constraint on councils pursuing this option. Some councils prioritise their access needs and, in these cases, may pay compensation.

What status do public reserves have?

There are many types of public reserve. The extent to which the public has access depends on why the reserve was created. Mapping public access will identify those reserves that are open to the public.

Are river beds public land?

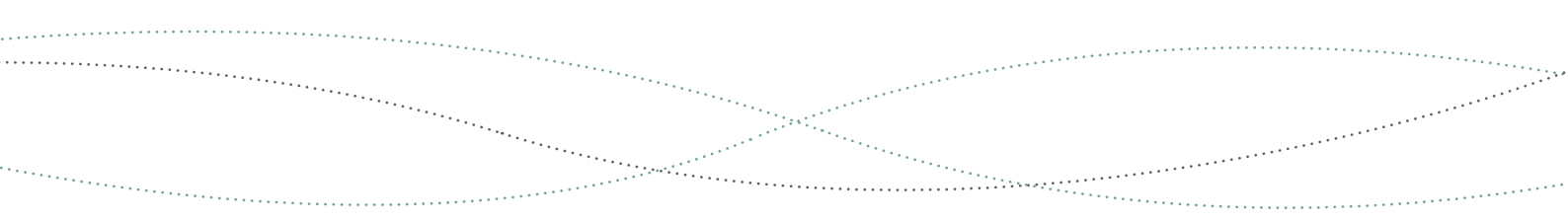
Riverbeds can be a useful form of access where water margin access is not available or not practicably usable.

Many riverbeds are bounded by some form of public land. In these cases, the bed of the river can be presumed to be owned by the Crown. Riverbeds may be publicly owned even when the land adjoining the river is privately owned. Crown ownership of riverbeds was clarified and extended by the Coal Mines Amendment Act 1903, which vested the beds of navigable rivers in the Crown.

In other circumstances, there is a Common Law presumption that the owner of the land adjoining a riverbed has ownership rights extending to the mid-point of the river (the *ad medium filum aquae* – AMF - rule).

What do I need to do to care for the environment when out walking?

The Commission recognises that our environment is an asset and needs to be treated with care. The Outdoor Access Code supports the New Zealand Environmental Care Code, *Toitu te whenua - Leave the land undisturbed*, online at www.doc.govt.nz/parks-and-recreation/plan-and-repare/care-codes/nzenvironmental-care-code/.



Can I take my dog?

The right to walk with a dog, including hunting dogs, depends on the existing rights that run with access. For example, if the access is by way of an unformed legal road, those using the road are able to do all of the things that are lawful on a public road. Other forms of access may have restrictions on whether or not dogs can be taken. Private landholders may place whatever restrictions they consider appropriate in terms of dogs on their land, including prohibiting them. The Dog Control Act 1966 applies to dogs on both public and private land.

Many landholders are concerned about dogs spreading diseases such as sheep measles. People taking dogs into sheep farms should get their dogs dosed for sheep measles. Application is by tablet from your vet – straight praziquantel tablets are sufficient.

Appropriate standards of behaviour for taking dogs into the outdoors require that they are kept under proper control. They should not be allowed to frighten other people, worry livestock or disturb wildlife and should be kept on a short lead or under close control when in a field with other animals. Dog faeces must be picked up and removed.

Can I carry a gun?

Carrying and using firearms is subject to the Arms Act 1983. Some of the relevant provisions in that Act, apart from the requirement for licensing, are in the following sections:

- s45- Carrying or possession of firearms, airguns, pistols, restricted weapons, or explosives, except for lawful, proper, and sufficient purpose.
- s48 - Discharging a firearm, airgun, pistol, or restricted weapon in or near dwelling, house or public place.
- s53 - Careless use of firearm, airgun, pistol, or restricted weapon.

Can I use a motor vehicle on walking tracks?

Generally not. Even where access with vehicles is legally allowed, such as on an unformed legal road, it is a courtesy to inform the landholder, especially where the access crosses unfenced farmland. Vehicles should keep to formed tracks, where access is allowed. Many unformed legal roads are unsuitable for the use of motor vehicles. Note that it is an offence to damage the surface of a road – this can include the turf of a paddock.

Can I light a fire when walking in the outdoors?

Fires should not be lit without permission and must be fully extinguished before leaving. At some times of the year fire bans covering all types of land and all outdoor fires may be in place.

Are there any special considerations I should know when walking?

When walking in rural areas, especially on farms, users should:

- leave gates open or closed as they are found;
- if there is no gate or stile, go through the fence wires or climb over at fence posts, preferably at a strainer post;
- not block or obstruct gateways, tracks or entrances;
- look for alternative routes before entering a paddock containing animals. Otherwise, walk in single file without disturbing or driving stock;
- not feed animals;
- walk around rather than through crops; and
- report damage or anything suspicious to the landholder or manager.