



Report on the Findings of the Review of the Walking Access Act 2008

September 2019



WALKING ACCESS TO WAIMAKARIRI RIVER

Act responsibly – access is on private land and through a working farm;

- NO VEHICLES, NO DOGS, NO GUNS

Please:

- Don't block the gate
- Keep to marked route

Contact Fish & Game (0800 304 7733) with any concerns

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Foreword

The Walking Access Act was enacted in 2008 with the purpose of improving walking access to the outdoors in New Zealand. The motivation for the Act was that enjoyment of the outdoors is of benefit to all New Zealanders. At the same time, the Act established a small New Zealand Walking Access Commission to promote access and help negotiate access arrangements.

The development of the legislation between 2006 and 2008, and its passage through Parliament engendered strong, at times passionate, debate. Some were suspicious the Act would result in an assault on property rights. Others suspected it would be insufficient to enhance more sweeping public access across private land. The politics of that debate resulted in a provision being inserted in the legislation (section 80) requiring a review after 10 years to assess how the Act and the Commission were performing after 10 years. Hence this review.

The Ministry for Primary Industries (MPI) led the review, appointing a panel of three to provide external perspectives. The panel members have participated in the public meetings and one-on-one discussions with a wide range of stakeholders. We have met with the board of the Commission and with the Commission's staff. In addition, we have assisted MPI staff with their public feedback paper, and with this final report.

Our participation in the review has led us to two primary conclusions. These sit above a range of other significant recommendations for improvements to the Act (and other Acts), to the work of the Commission and for some other agencies whose work affects walking access.

Our first primary conclusion is that the Act has been (and continues to be) effective and of public benefit. We support its continuance.

Our second primary conclusion is that the Commission's work is valued by most stakeholders, acknowledging, however, that engagement with Māori has not been extensive. Stakeholders often hold very different views from each other on other issues, but collectively agree on the Commission's value. The two most important things that are valued are:

- the network of regional field advisors working to resolve walking access issues through direct discussion and negotiation; and,
- the outdoor access mapping system (WAMS), and its easy online availability.

As a group, we wholeheartedly support the recommendations of this review, with one exception explained below. There are several recommendations which we would like to highlight, however. These are:

- the Act should include skills criteria for members of the board;
- the Commission must produce and publish the priorities for its work, on at least a five yearly basis;
- the Commission should partner with Māori across the breadth of its work, to better align the application of the Act with the aspirations of Māori;
- other government agencies should be required to work with the Commission (rather than passing work on to the Commission or leaving it to the Commission to approach them). These agencies are Land Information New Zealand, the Overseas Investment Office, the Department of Conservation, the Ministry of Business, Innovation and Employment (through its tourism role) and Tourism New Zealand;
- the Commission's funding is miniscule. We support it being increased, for two purposes in particular:
 - continuously improving the outdoor access mapping system (WAMS); and
 - greater support for the system of regional field advisors, at a minimum so that they can increase the hours they are paid for (at present they work far beyond what they are paid for).

Recommendation 26 finds that the current range of between five and eight board members should remain. This is the one review recommendation on which we hold a different view to the Review. A board of eight is very large for such a small entity. We feel it could operate quite effectively with a board of five provided the right mix of skills are held by appointees. Our view is that the Act should be amended so that the number of Commission board members is five only.

Finally, we would like to thank all those who have participated in this review. We have been impressed with the overall positivity that they brought to the process. And especially we would like to thank the MPI officials for their hard work in bringing all the work together in this final report.

Dr. Hugh Logan, Sandra Faulkner, Leith Comer QSO

Message from Hon Damien O'Connor

I am pleased to present this report on the findings of the review of the Walking Access Act 2008 (the Act).

Being able to access the outdoors is an important part of the wellbeing of all New Zealanders. We know there are wide-ranging benefits from using tracks and trails on the edges of our cities and in our iconic rural landscapes.

Accessing these environments improves our health, supports our cultural connection with the land, and provides an opportunity to share experiences with our friends and family and build memories.

Our international and domestic visitors alike seek out New Zealand's natural beauty, which creates economic and regional development opportunities for communities across the country, which in turn strengthens our economy.

We also know that the benefits of the outdoors are not always shared equally. The review of the Act found that certain groups experience barriers to access. We need to work to overcome as many of these barriers as we can and make sure there is greater equity of access.

When the *Reviewing the Walking Access Act 2008: Public feedback paper* was published in May this year, I urged you to provide feedback on strengthening both the Act and the way it works. Thank you to everyone who took the time to provide feedback and attend public meetings and hui. Your views have been considered in the preparation of this report. It is heartening to see that during the formal engagement period there were 517 completed responses received through the online

feedback form and 121 submissions received by post or email. This is a clear demonstration of the importance people place on public access to the outdoors and on the role of the Act in supporting this.

This report contains thirty recommendations and six technical changes, aimed at informing the subsequent formal policy process, which will include consultation on proposals for change. After this is completed the Government will then decide on any changes to be made to the Act and to the work of the New Zealand Walking Access Commission (the Commission).

Thank you to the Walking Access Act 2008 Review Panel of Dr Hugh Logan (Chair), Leith Comer QSO, and Sandra Faulkner, who have ably guided Ministry for Primary Industries' officials throughout this review. You have each brought valuable skills and experience to this work.

Thank you also to the Commission's staff and board for participating fully and positively in the review of the Act. I know your assistance in providing information and explaining technical and operational aspects of public access in New Zealand has been invaluable to the review.

I look forward to seeing the Act and the Commission continue to support public access in our beautiful country.

Hon Damien O'Connor
Minister of Agriculture
Minister for Rural Communities



Executive Summary

A review of the Walking Access Act 2008 (the Act) is required under section 80, which requires it to be undertaken within ten years of the Act's commencement. A report on the findings of the review is due to the House of Representatives within eleven years of the Act's commencement – by the end of September 2019.

The review is required to consider the need for the Act, its operation and effectiveness, and whether any amendments are necessary or desirable.

This report outlines the findings of the review, undertaken between November 2018 and August 2019.

Below is a summary of the most significant findings and recommendations for each of the major themes that emerged from the review.

Key Theme 1: Necessity of the Act

The review recommends retaining the Act, with changes made to it. It found resounding support for the ongoing necessity of the Act and of the New Zealand Walking Access Commission (the Commission), which it establishes. The Commission's role as an honest broker between parties, its Regional Field Advisors (RFAs), its Walking Access Mapping System (WAMS), and its regional strategic project work are particularly valued.

Key Theme 2: Purpose, objective & priorities

The review found that the Act's scope and the Commission's activities are not accurately reflected in either the name of the Act or the Commission. The Act has always been concerned with public access for a range of activities, not just for walking. The report recommends that the name of the Act be changed to the Outdoor Access Act, and that the Commission's name be changed to the New Zealand Outdoor Access Commission.

The report recommends changing the current purpose of the Act, which only captures 'enjoyment' as a benefit of access. The broader health, social, cultural, and economic benefits of access should also be acknowledged in the purpose section.

The review also recommends that Section 11 of the Act, which outlines priorities for negotiating access over private land, be replaced with a strategic planning process. Through this process, priorities would be set every three to five years, allowing them to adapt to changing circumstances and emerging access needs.

Key Theme 3: Challenges and future requirements

The review found there are many challenges and emerging needs in relation to establishing and maintaining access to the outdoors. Major challenges were: barriers to private landowners providing access; growing visitor numbers; lack of adequate infrastructure like carparks, toilets, and signage; equity of access; and the inflexibility of the current 'walkways' mechanism under Part 3 of the Act. The report identifies potential changes to the Act and work of the Commission to address these challenges and meet future requirements for access, including: continuing and expanding strategic, regionally-focused project work; the Commission considering equity of access for different population groups and types of access users; and further investigation into a relaxation of survey requirements for public access ways.

Key Theme 4: Functions of the Commission

This report recommends combining some existing functions (listed in section 10 of the Act) and framing them in broader terms. Three new functions are recommended for the Commission: partnering with Māori across the breadth of its work; contributing to policy work on access, such as providing advice to councils and involvement in Destination Management Planning being carried out by the Ministry of Business, Innovation and Employment (MBIE); and coordinating and building the capacity of volunteers. It also recommends the advice function specify public access advice is provided about applications to the Overseas Investment Office in Land Information New Zealand (LINZ), to the Office for Māori Crown Relations – Te Arawhiti, and to LINZ for the management of Crown Pastoral Land.

Key Theme 5: Partnerships

The review found that the Commission and central government agencies need to work together more on public access. Similar findings were made in relation to the Commission's work with territorial authorities, with unformed legal roads noted as a key area in which greater collaboration would be useful. The report recommends options for improving policy-level collaboration across central government, and that further investigation be carried out into options for formalising the Commission's role in processes to stop unformed legal roads. Further investigation is also recommended into options for integrating the responsibilities and functions of the Commission, Te Araroa Trust, and New Zealand Cycle Trail Incorporated (the national body responsible for governance of Ngā Haerenga – the New Zealand Cycle Trail).

Key Theme 6: Māori interests

To date the Act has had a limited impact on, and relevance for Māori. A key recommendation responding to this is that the Act include a statutory function for the Commission to partner with Māori across the breadth of its work, and set out explicit principles for this partnership (to be translated into its strategies and practices).

Key Theme 7: Controlling authorities

The report recommends investigating whether non-public bodies, such as community groups and Māori groups, could be appointed as controlling authorities to promote, maintain and manage access ways. This acknowledges the significant role these groups already play in maintaining tracks and

trails, encourages local buy in, and reduces the pressure on public bodies to carry out this role.

Key Theme 8: Governance

The report recommends that the Ministry for Primary Industries (MPI) remains the administrator of the Act, that the Commission remains a Crown entity (Crown agent), and that the required number of board members remains at between five and eight. However, it recommends a change in relation to the board requirements, so that the Act specifies that the board will collectively need to have skills, experience and knowledge relevant to outdoor recreation, landowner and rural interests, tikanga Māori, local government and central government. Currently, the only skill specified in the Act is knowledge of tikanga Māori.

Key Theme 9: Resourcing

There was consistent feedback that the Government funding received by the Commission is inadequate. The report recommends that the Commission's baseline funding be increased, at a minimum, to keep up with the pace of inflation. Further, the report recommends that any changes made to the scope or quantum of the Commission's work will need to be accompanied by appropriate additional funding.

Key Theme 10: Specific legislative changes

A number of specific, technical changes to the Act have also been identified. Although not dealt with as formal recommendations, they are detailed later in this report.



Introduction

It is widely acknowledged that New Zealanders are a people who place significant value in spending time in the natural environment. This attitude reflects the wide ranging benefits of access to the outdoors, whether in rural parts of our country or in our urban greenspaces. We know that accessing the outdoors brings enjoyment to many people, improves our physical and mental health, facilitates social and cultural connections, and strengthens our communities and economy. Access to the outdoors can also help deliver environmental outcomes by allowing for re-vegetation and pest control work to take place.

Despite the significant benefits of access to the outdoors, such access can also have impacts on private landowner, business, environmental and cultural interests, which must equally be respected and protected. The role of the Act over the past decade, has been to strike a fair balance between these interests, with the overarching purpose of providing ‘free, certain, enduring and practical’ access to the outdoors.

This report outlines the findings, and accompanying recommendations, of the review of the Act, which took place between November 2018 and August 2019.

Section 80 of the Act requires a review of the Act to take place ten years after its commencement, with a report to be presented to the House of Representatives within the following year. The Act specifies that the review consider the need for the Act, its operation and effectiveness, and whether any amendments are necessary or desirable. Terms of Reference (TOR) for the review were approved by Cabinet in November 2018. The TOR were prepared after consultation with the Commission, pursuant to sub-section 80(1)(a). These are included at **Appendix A**.

The review was led by MPI (as the agency responsible for the administration of the Act), with the support of a three person panel of experts. The panel was made up of Dr Hugh Logan (Chair), Leith Comer QSO, and Sandra Faulkner. Panel members were appointed because of their knowledge about

public access to the outdoors, how government works, Māori cultural values and landowner issues.

The review was informed by an extensive public engagement process, which took place between 17 May 2019 and 2 July 2019. The engagement process was supported by the release of the *Reviewing the Walking Access Act 2008: Public Feedback Paper* (Public Feedback Paper). The Public Feedback Paper included a series of discussion questions, intended to shape feedback to ensure it addressed the TOR. The Public Feedback Paper discussion questions are included at **Appendix B**.

Informed by the outcomes of the engagement process, this report includes recommendations for both legislative and non-legislative changes to the Act and the work of the Commission. It also identifies possible changes to other legislation where relevant intersections have been identified. The list of recommendations is included at **Summary of report recommendations**.

Options for legislative and non-legislative change proposed in this report will be subject to public consultation as part of a formal policy process. The timing for this process will be determined following the presentation of this report to the House of Representatives.

Summary of report recommendations

A list of the recommendations included in this report, organised by key theme (see **Key themes**), are included in the table below. The table indicates whether recommendations require legislative amendments to the Act, or whether changes can be made within the existing Act. Recommendations have been endorsed by all members of the review panel, except for Recommendation 26 where the review panel holds a different view. This review recommends that the number of Commission board members remain at between five and eight, but the review panel considers section 8 of the Act should be amended so that the board will have five members only. See the review panel's **Foreword** for the review panel's reasoning.

A number of specific, technical changes to the Act have also been identified in this report. Although not dealt with as formal recommendations, these are also included in the table below.

Key theme	Recommendation	Legislative change
Necessity of the Act	Recommendation 1: That the House of Representatives notes this review finds there is resounding support for the ongoing need for the Walking Access Act 2008, and that the New Zealand Walking Access Commission is performing an important and valued role in the public access system.	Not required
Purpose, objective and priorities	Recommendation 2: That: <ol style="list-style-type: none"> the name of the Walking Access Act 2008 be changed to the Outdoor Access Act; and the name of the New Zealand Walking Access Commission be changed to the New Zealand Outdoor Access Commission; and the New Zealand Walking Access Commission be given a new Māori name that has a similar meaning to 'New Zealand Outdoor Access Commission', and that the Māori name be included in the Walking Access Act 2008; and amendments be made to wording throughout the Walking Access Act 2008 to replace all references to 'walking access' and 'types of access that may be associated with walking access', with 'public access to the outdoors'. This includes defining 'public access to the outdoors' in section 4 of the Walking Access Act 2008, and amendments to wording reflecting 'walking access', such as the term 'walkway.' 	Required
	Recommendation 3: That the purpose in section 3 of the Walking Access Act 2008 be amended to capture the benefits of access wider than 'enjoyment', including health, social, cultural, and economic benefits.	Required
	Recommendation 4: That section 11 of the Walking Access Act 2008, which outlines priorities for walking access over private land, be replaced with a requirement for the Commission to set priorities through a strategic planning process. This new process will determine the priorities for the Commission's work as a whole, over a three to five year period. Input on the suggested priorities would be sought from the relevant Minister before they are finalised and made public in a strategy document. Every three to five years, the priorities would be reconsidered.	Required
Challenges and future requirements	Recommendation 5: That consideration be given to additional resourcing for the Commission to enable it to continue and expand strategic, regionally-focused project work. This work would facilitate coordinated responses to access needs, and could have a particular focus on regions with identified or anticipated tourism pressure.	Not required
	Recommendation 6: That consideration be given to additional resourcing for the Commission to help alleviate areas under pressure from high visitor numbers, by: <ol style="list-style-type: none"> identifying and facilitating new public access opportunities, away from areas experiencing pressure; and developing and coordinating solutions to inadequate infrastructure in areas experiencing pressure. 	Not required

	<p>Recommendation 7: That the Commission considers equity of access:</p> <ul style="list-style-type: none"> a) when identifying and establishing access, including for different population groups (ages, ethnicities, abilities, income, and urban and rural populations), and types of recreational and other access users; and b) when promoting and marketing access to the outdoors. 	Not required
	<p>Recommendation 8: That further investigation is undertaken, working with the Commission and Land Information New Zealand, into whether a relaxation of the survey requirements for public access ways would be feasible, to ensure the needs of all relevant parties are met now and into the future.</p>	Not required
	<p>Recommendation 9: That consideration be given to additional resourcing for the Commission to increase promotion and distribution of the New Zealand Outdoor Access Code, including making the Code available in a greater range of languages.</p>	Not required
	<p>Recommendation 10: That cross-government collaboration between the Commission, the Department of Conservation, Tourism New Zealand and territorial authorities be formalised, to focus on developing consistency in content and messaging for visitor behaviour guidance.</p>	Not required
Functions of the Commission	<p>Recommendation 11: That amendments be made to section 10 of the Walking Access Act 2008, to:</p> <ul style="list-style-type: none"> a) combine, where appropriate, existing functions and frame them in broader terms. While existing functions have served the Commission well, consolidation will allow greater flexibility for the Commission in carrying them out; and b) include a statement acknowledging that the listed functions do not prevent the Commission carrying out any other work in line with its objective as set out in section 9 of the Walking Access Act 2008. 	Required
	<p>Recommendation 12: That:</p> <ul style="list-style-type: none"> a) given the acknowledged success of the Walking Access Mapping System, the Commission, the Department of Conservation, Land Information New Zealand and territorial authorities work together to consolidate and improve the consistency of information on access, including agreeing on data standards for access information; and b) consideration be given to additional resourcing for Commission to lead and coordinate a national, standardised approach for physical signage on tracks and trails. 	Not required
	<p>Recommendation 13: That consideration be given to additional resourcing for the Commission to undertake the below listed functions, and that amendments be made to section 10 of the Walking Access Act 2008 to include:</p> <ul style="list-style-type: none"> a) a new function for the Commission to partner with Māori in the context of carrying out all of its functions listed in section 10; and b) a new function for the Commission to work with central and local government at a policy level to promote and support public access to the outdoors; and c) a new function for the Commission to coordinate and build the capacity of volunteers and community groups; and d) as part of subsection 10(1)(d), the provision of advice on public access issues to the Overseas Investment Office (Land Information New Zealand) in relation to applications for purchases of land under the Overseas Investment Act 2005; and e) as part of subsection 10(1)(d), the provision of advice on public access issues to the Office for Māori Crown Relations - Te Arawhiti, in relation to Treaty settlement processes; and f) as part of subsection 10(1)(d), the provision of advice to Land Information New Zealand on public access issues, in relation to Crown Pastoral Land. 	Required

Partnerships	<p>Recommendation 14: That consideration be given to the following options to strengthen the Commission’s ability to be involved in cross-government work relevant to public access:</p> <ul style="list-style-type: none"> a) the Ministry for Primary Industries taking on a greater role in connecting the Commission to central government work and processes; and/or b) the development of memorandums of understanding between the Commission and relevant government agencies, which would include a requirement to consult on policy and other work relevant to public access; and/or c) amending other relevant legislation to require government agencies to consult with the Commission on policy and other work relevant to public access to the outdoors, noting this option would require further consultation to determine operational and resourcing impacts on other agencies. 	May be required
	<p>Recommendation 15: That further investigation be undertaken, in consultation with the Commission and territorial authorities, on options for formalising the Commission’s role in processes to stop unformed legal roads, including:</p> <ul style="list-style-type: none"> a) legislative amendments to the Walking Access Act 2008, the Local Government Act 1974 and Public Works Act 1981, to establish a single statutory process dealing with unformed legal road stopping and the establishment of alternative public access; and/or b) legislative amendments to the Walking Access Act 2008, Local Government Act 1974 and Public Works Act 1981, to enable a formal role for the Commission in decisions to stop unformed legal roads, including being notified of closures, consulting with the public on access needs, and advising on alternative access options; and/or c) the development of memorandums of understanding with territorial authorities, setting out how the Commission and territorial authorities will work together to manage requests to stop legal roads. These agreements could capture collaboration in other areas of shared interest, such as planning and development processes. 	May be required
	<p>Recommendation 16: That amendments be made to the Walking Access Act 2008, to enable the current walkway mechanism under Part 3 of the Act to extend over unformed legal roads, without detracting from the existing legal access rights on unformed legal roads.</p>	Required
	<p>Recommendation 17: That further investigation be undertaken on options for integrating the responsibilities and functions of the Commission, Te Araroa Trust, and New Zealand Cycle Trail Incorporated, with the Commission taking a leadership and coordination role in the development, promotion and management of outdoor recreational access.</p>	Not required
	<p>Recommendation 18: That consideration be given to additional resourcing for the Commission to enable it to better utilise volunteer groups, including through the provision of advice, track promotion and marketing, and capacity building support.</p>	Not required
Māori interests	<p>Recommendation 19: That amendments be made to the Walking Access Act 2008 to acknowledge the Māori-Crown relationship under the Treaty of Waitangi and better reflect Māori interests, by including:</p> <ul style="list-style-type: none"> a) explicit principles of a partnership approach between the Commission and Māori across the breadth of the Commission’s work, with a requirement that these principles be translated by the Commission into its organisation strategies and practices; and b) a new access mechanism that allows access to sites of cultural significance for Māori to be limited to relevant Māori groups, and, as far as possible, preserves Māori ownership and control over their land where public access is provided; and c) a requirement for Controlling Authorities to partner and engage with relevant Māori groups on management of public access areas on Māori land, or where public access is negotiated to sites of cultural significance. 	Required
	<p>Recommendation 20: That the Commission continue to work with Māori to understand and address barriers to providing public access, including revisiting content in the New Zealand Outdoor Access Code about behaviour on culturally sensitive or significant land.</p>	Not required
	<p>Recommendation 21: That the Commission work more closely with relevant Māori groups where Treaty settlements include reference to the Walking Access Act 2008, to explore, and where appropriate, establish access opportunities.</p>	Not required

Controlling Authorities	<p>Recommendation 22: That further investigation be undertaken on:</p> <ul style="list-style-type: none"> a) amendments being made to section 35 of the Walking Access Act 2008 to expand Controlling Authorities to include non-public bodies, such as community and Māori groups; and b) standards or requirements being developed by the Commission, which must be met by non-public bodies before appointment as a Controlling Authority. These standards or requirements are for the purpose of ensuring that non-public bodies have the capability to take on the role of Controlling Authority. 	May be required
	<p>Recommendation 23: That further investigation be undertaken on:</p> <ul style="list-style-type: none"> a) how the Commission could partner with non-public bodies to undertake the role of Controlling Authority; and b) the scope of a monitoring role for the Commission where non-public bodies are appointed as a Controlling Authority. 	Not required
Governance	<p>Recommendation 24: That responsibility for administration of the Walking Access Act 2008 remain with the Ministry for Primary Industries.</p>	Not required
	<p>Recommendation 25: That the Commission remain a Crown entity (Crown agent).</p>	Not required
	<p>Recommendation 26: That the current range of between five and eight Commission board members indicated in section 8 of the Walking Access Act 2008 be retained.</p>	Not required
	<p>Recommendation 27: That amendments be made to section 8 of the Walking Access Act 2008 to include a list of core skills, experience and knowledge that the board as a collective would need to encompass. At a minimum, these should include skills, experience and knowledge relevant to outdoor recreation, landowner and rural interests, tikanga Māori, local government, and central government, noting further consultation should be undertaken to determine the appropriate level of Māori representation on the board.</p>	Required
	<p>Recommendation 28: That:</p> <ul style="list-style-type: none"> a) the Ministry for Primary Industries widen its current consultation process when preparing a shortlist of potential Commission board members for decision by the responsible Minister; and b) consistency and continuity in membership is considered when deciding appointment terms for Commission board members; and c) further investigation is undertaken on how appointment processes could most appropriately ensure adequate representation of Māori interests. 	Not required
Resourcing	<p>Recommendation 29: That:</p> <ul style="list-style-type: none"> a) given the core work of the Commission, specifically the Walking Access Mapping System and the work of Regional Field Advisers, is highly valued, the Commission's baseline funding be increased to, at a minimum, keep up with the pace of inflation; and b) any changes to the scope or quantum of the Commission's work as a result of this review be accompanied by appropriate additional funding. 	Not required
	<p>Recommendation 30: That further investigation be undertaken, in consultation with the Commission and Land Information New Zealand, on enabling the Commission to recover the costs of its role in Overseas Investment Act processes, including determining the outputs and costs involved.</p>	Not required

<p>Specific legislative changes</p>	<p>Technical change 1: That amendments be made to the provisions relating to walkways in the Walking Access Act 2008, to reflect the legal arrangements of leasehold land under the Land Act 1948, specifically to require walkways to be agreed to by both the leaseholder and the Commissioner of Crown Lands.</p> <p>Technical change 2: That amendments be made to subsection 10(a)(ii) of the Walking Access Act 2008 to remove reference to ‘Sport and Recreation New Zealand’.</p> <p>Technical change 3: That amendments be made to section 19 of the Walking Access Act 2008, to specify that the Commission provides the New Zealand Outdoor Access Code free of charge.</p> <p>Technical change 4: That amendments be made to section 38 of the Walking Access Act 2008 to require controlling authorities to notify the Commission within 48 hours of closing a walkway, and to provide quarterly updates on progress towards re-opening access.</p> <p>Technical change 5: That amendments be made to the Walking Access Act 2008 to remove section 80.</p> <p>Technical change 6: That amendments be made to the Walking Access Act 2008 to remove section 75.</p>	<p>Required</p>
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Photo: Jacqui Lane

Background

The Walking Access Act 2008

The Act is about providing free, certain, enduring and practical access to the outdoors for walking and for types of access associated with walking, such as access with firearms, dogs, motor cycles or motor vehicles.

The Act also establishes the Commission¹, with responsibility for leading and supporting the negotiation, establishment, maintenance and improvement of access over public and private land.

Key sections of the Act, including its purpose, the objective and functions of the Commission, and the priorities for negotiating walking access over private land, are included at **Appendix C**.

The Act and the Commission are one part of a wider system which supports the development of public access to the outdoors. The Department of Conservation (DOC), LINZ, Heritage New Zealand Pouhere Taonga, the New Zealand Transport Agency (NZTA), and territorial authorities are other significant contributors to the public outdoor access system. Non-government organisations also play a vital role in promoting, establishing and maintaining access to the outdoors. This includes communities, Māori, businesses, landowners, recreation and environmental groups, and individuals.

The New Zealand Walking Access Commission

Objective and functions

The Commission began operating in 2009, with the objective to:

‘lead and support the negotiation, establishment, maintenance, and improvement of walking access and types of access that may be associated with walking access, such as access with firearms, dogs, bicycles, or motor vehicles.’²

To meet its objective, the Commission has a wide range of statutory functions including: providing national, regional and local leadership on co-ordinating access with relevant stakeholders; publishing maps and information about public access over land; facilitating resolution of disputes about access; and negotiating with landholders to obtain access.³ When considering the priorities for negotiating access over private land, the work of the Commission must take into account the desirability of walking access to certain areas such as the coast, rivers, lakes, conservation areas,⁴ areas of scenic or recreational value, and areas for sports fishing.



¹ Walking Access Act 2008, section 6.

² Walking Access Act 2008, section 9.

³ The list of functions of the Commission is outlined in the Walking Access Act 2008, section 10.

⁴ The list of priorities that must be considered for access over private land is outlined in the Walking Access Act 2008, section 11.

Under Part 3 of the Act, the Commission can establish walkways over public and private land, which are surveyed (in accordance with the relevant rules under the Cadastral Survey Act 2002), and published in the *Gazette*. For access over private land, a gazetted walkway may take the form of an easement or lease over the land, or may occur through the purchase of land by the Commission.⁵ However, the work of the Commission to secure access opportunities is not limited to using the gazetted walkway mechanism. Instead, the work ranges widely from legally enduring easements and formed tracks, to informal access agreements across private land with the permission of the landowner. Resolving disputes over existing access and supporting territorial authorities and community groups to establish tracks and trails, are other ways the Commission secures access opportunities.

In addition to the Act, the Commission works across other legislation when negotiating with private land owners and working with public landholders to establish access. This includes the Overseas Investment Act 2005, Resource Management Act 1991, Conservation Act 1987, Land Transfer Act 1952, Local Government Act 2002, Te Ture Whenua Māori Act 1993 and Treaty of Waitangi Settlement legislation.

Funding and governance

The Commission is funded by an annual appropriation of \$1.789 million from the Crown, as part of Vote Primary Industries. As part of this appropriation, the Commission administers the Enhanced Access Fund (EAF), which aims to provide a resource for community organisations to develop their own projects to provide enhanced access to outdoor recreational spaces. The EAF is a contestable fund, with the total amount of funding available set annually as part of the Commission's standard budget planning processes. Over the past two years, a sum of \$100,000 has been made available.

The Commission comprises a board, senior management and operations teams, RFAs, corporate services, and a communications and partnerships team. The Commission is mainly based in Wellington, with 12 part-time RFAs based from Northland to Otago. The RFAs play an important part of the Commission's engagement with and reputation among

local stakeholders, including territorial authorities. Total staff resourcing equates to 10.1 full-time equivalents (FTEs) - with 7.6 FTE permanent staff and 2.5 FTE fixed-term staff in Wellington. The RFAs, all contractors, comprise an additional 3.7 FTE total.

A recent Statement of Performance Expectations (2019/2020) sets out the Commission's overarching vision: that New Zealanders have free, certain, and enduring practical access to the outdoors. To achieve this, it aims to ensure that all stakeholders are involved in generating public access opportunities to support healthy and prosperous communities. The Commission is working towards this by delivering three key outcomes:

- managed access is available where and when it will add most value to communities;
- people know how to find access; and
- people access the outdoors responsibly.

The Commission sees its main role as being about leadership. It works alongside other organisations and individuals to ensure access to the outdoors is valued, enduring and understood. It relies heavily on achieving its outcomes through engagement, influencing others and facilitation.

In 2017/18 the Commission published and began to embed its new strategy for 2017-2022. The most significant change affecting its work was an increased focus on proactive planning, undertaken in partnership with a range of key stakeholders. In contrast, previous strategies and statements of performance expectations had a stronger focus on maintaining and creating access opportunities, providing information and advice, and responsiveness to access enquiries.

⁵ Walking Access Act 2008, section 26.

Commission achievements and progress to date

Achievements since the Commission's establishment in 2008 have been wide ranging. Since 2010, it has created 17 new gazetted walkways, with a number currently in various stages of progress. These in-progress walkways include more than 20 additional walkways for foot, and mountain bike access on Coronet Peak and Glencoe Stations near Wanaka. These tracks have been a joint effort between the Commission, Soho Property Ltd (who hold the Crown Pastoral Leases), QEII National Trust, and Queenstown Lakes District Council, and are a significant local drawcard for tourists.

Since 2012/2013, the Commission has negotiated a total of 300 access opportunities, of which 48 have involved formal access. The Commission has also resolved 2,715 enquiries and 329 disputes. Under the EAF, the Commission has 114 projects across New Zealand, awarding a total of \$999,233 since the first funding round in 2010.

Examples of the Commission's major achievements over the last 10 years are detailed below.

Major achievements

Walkways established

The Dry Acheron Track in Canterbury was the first walkway established under the Act after its enactment in 2008. This track created access along parts of the Dry Acheron Stream to the Big Ben Range in the Korowai/Torlesse Tussocklands Park.

In 2014, the Commission gazetted the Westmere Walkway near Whanganui, traversing rolling countryside and providing views over Whanganui City and the Whanganui River.

The Castledowns Wetland Walkway was gazetted in 2017. Located near Dipton in Southland, it passes through a Rural Women New Zealand forestry block, links with an existing walkway to nearby limestone cliffs, and connects up to one of the few remaining flax wetlands in the region. The area was previously very difficult to access.

Disputes resolved

In 2010 to 2011, a Commission RFA worked with Ruapehu District Council and a landowner on Stone Jug Road (south-east of Taumarunui). Many anglers were neglecting an existing river track (it was heavily overgrown) and cutting across private land without permission. The landowner agreed to construction of a stile over a fence, along with a string of access signs marking out an agreed route.

In 2016, the Commission helped restore access to public conservation land, including the Kaimai-Mamaku Forest Park. Locked gates were preventing the public from using the only access that ran through to blocks of public conservation land. A Commission investigation concluded that one of the gates was illegally blocking a legal road. It was subsequently removed.

Provision of information on public access

In 2010, the Commission released WAMS, an online mapping tool that draws from a range of sources to show nationwide public access rights. The tool has been continually upgraded and altered to improve usability and functionality for stakeholders. WAMS was accessed by 20,405 unique visitors in its first year, increasing to 65,806 in 2017-2018. A user survey (completed in 2016) found that **98 percent** of users surveyed found the information provided useful, and **97 percent** would continue to use the system. This represented an increase since 2015 from **93 percent** and **95 percent** respectively.

In response to calls for a 'one stop shop' for information on access, the Commission developed and launched Find My Adventure in 2018. This allows users to search for trails by region, activity type or by trail types (for example, hard walks, short trails or loop tracks). It also includes information about what trails are like, how to locate them and any conditions for walkers to beware of, such as closures for lambing. This resource includes all walks that comprise Te Araroa, all of DOC's great walks, day walks and short walks, the rides that comprise Ngā Haerenga (New Zealand Cycle Trail) and all of the Commission's tracks and trails. The Commission is also working alongside territorial authorities nationwide to include tracks that they manage. From the launch of Find My Adventure on 26 November 2018 to 14 August 2019, it received 9,418 unique visitors.

The Commission has also played a significant role in developing resources to manage and guide behaviour of users of public access areas. In 2010, it published the *New Zealand Outdoor Access Code* (the Code), developed collaboratively by organisations representing landholders, local government and users. The Code outlines responsible behaviour for the public when accessing private land in rural environments. In addition, it sets out the rights and responsibilities for both recreational users and landholders.

As well as the Code, the Commission has developed a number of educational resources and programmes for teachers. These aim to help build awareness and knowledge of how to behave responsibly in the outdoors from a young age. Examples include PowerPoint resources to assist teachers to talk about walking the dog, being fire safe or general behaviour in the country, and animated videos with scenario cards to educate students about day walks, accessing public land and how to behave on land with cultural or spiritual significance.

Projects funded

In 2017, the Te Wairere Waterfall track (from the Stone Store in Kerikeri to the Wairoa Stream and a very impressive waterfall) was opened. This track was developed through the effort of several community groups, particularly Rotary New Zealand and Vision Kerikeri, and two funding contributions through the EAF.

Funding from the EAF has also been used to help improve existing tracks. A good example is the \$5,000 grant given to build signs and track markers to help

people walk local bush trails in Manawa Karioi. Further, in 2018, the Hikuai District Trust received \$11,000 to help complete stage two of the 25km Pauanui-Tairua Cycle and Walkway. When completed, the trail will allow residents and tourists to walk and cycle safely between Pauanui and Tairua.

In 2015, the EAF was reviewed. This process revealed that in addition to the 72 projects enabled through the fund (as at April 2015), the EAF served as a relationship building tool between interested community groups and the RFAs. This has a positive impact on the reputation of the Commission, and helped broaden public awareness of both it and the Act. Other key findings included:

- community projects supported by the EAF had outcomes that were well-aligned to the organisational goals of the Commission;
- overall there was a high level of satisfaction with the application process from successful grantees; and
- the EAF had been successful in leveraging community funds from third parties and utilising volunteer time.

The review also made recommendations for improvements to the EAF, including that the Commission:

- use both examples, and clear and understandable priority wording, to ensure prospective applicants understand the type of projects the Commission is looking to fund;
- address instances where grant recipients have failed to acknowledge the Commission on material generated through the fund (such as signage and media reports); and



- formalise a process or monitoring system for collecting and analysing outcomes level data from funded EAF projects.

Strategic regional projects

In recent years, the Commission has also driven a number of strategic regional projects. These include:

- improving and coordinating public access needs in Taranaki through development of the *Taranaki Tracks and Trails Strategy 2040*;
- connecting fast growing towns in the area north and south of the Waikato River;
- planning for, and promoting public access in, the rapidly growing Auckland peri-urban environment; and
- evaluating public access in the South Island high country to help plan for access in 50 to 100 years.

Opening public access to priority areas

One of the TOR questions for the review asks whether the Act been effective in opening up public access to the priority areas identified in section 11.

It is not clear from the Commission's reporting on achievements to date, how these priorities have been applied to access opportunities that have been created. However, many of the new walkways established and owned by the Commission successfully connect people to those priority areas. Examples include the Tunnel Beach walkway in Otago, the Stony River (Hangatahua) Walkway in Taranaki, the Huka Falls Aratiatia Walk in Waikato, and the Mangawhai Cliffs Walkway in Northland. Each connects people with parts of the coast, rivers or lakes, and to areas of scenic or recreational value.⁶

Areas for improvement

Many concerns about the Commission's performance and functioning relate to the amount of funding it receives. The Commission has stated that due to lack of resources, it is unable to engage in:

- ongoing management of new or existing walkways;
- acquisition of easements or other legal rights of access over private land to extend the scope of access;
- funding of track construction;
- regular and major upgrades to WAMS;
- proactively seeking out priority areas for work; and

- responding within a reasonable timeframe to all enquiries and requests received.

Concerns about the Commission's responsiveness has been a dominant and reoccurring theme in previous stakeholder surveys. In the 2016 *WAMS and Responsiveness Survey*, **26 percent** of respondents said their reason for making contact remained unresolved. Another review indicated that while respondents felt the Commission was responsive, they noted its limited resources. Other concerns included that responses were not always comprehensive, and at times were very slow, and that the Commission's approach was, at times, inconsistent.

Another area for improvement linked to limited resources was that stakeholders sometimes felt the Commission did not represent or understand regional differences. This was more often in areas without an RFA nearby. This has led to a perception that the Commission is a 'Wellington based' entity, or at times is too South Island focused.

Despite the Code being published in 2010, a survey in 2015 found considerable demand for more information about responsible behaviour in the outdoors. This included calls for information to be located at the sites of access, to help remind both local and international tourists how to behave on private and public land. The survey found that **61 percent** of people felt there was not enough information available. The Commission's role in guiding and managing visitor behaviour is addressed in greater detail under **Challenges and future requirements**.

The 2016 survey also highlighted a common perception that the Commission has too few powers to enforce access where it legally exists, but is not being provided. This can occur when walking access includes the use of unformed legal roads. While the Commission has no responsibility or statutory function for securing or managing access on legal roads, it does encourage local government to comply with and enforce the right to public access on unformed legal roads. Wider issues about unformed legal roads that emerged throughout the review process are dealt with under **Partnerships**.

⁶ Walking Access Act 2008, sub-sections 11(a)-(c) and (f).

Overview of engagement process for this review

In designing the engagement process, the review team considered the wide range of interests in public access to the outdoors. The following key stakeholder groups were identified:

- the New Zealand public, including individual access users, landowners, Crown land lessees, farmers, recreation groups, community organisations, and tracks and trails trusts;
- Māori individuals, groups and organisations, including those with existing relationships with the Commission;
- territorial authorities;
- central government agencies, particularly those with portfolio responsibilities that intersect with the Act and work of Commission;
- health, education and social service providers; and
- non-government organisations with a particular relationship or relevance to the Act and work of the Commission (for example, Te Araroa Trust and New Zealand Cycle Trail Incorporated, and recreation peak bodies).

In late 2018, early engagement was undertaken with a number of the above listed groups. This sought to identify issues to inform the formal engagement process that commenced in May 2019. It also included engagement with territorial authorities in March 2019 to explore the intersection between local government responsibilities and the work of the Commission.

The formal public engagement period for the review opened on 17 May 2019, and ran until 2 July 2019. The launch was marked by the publication of the Public Feedback Paper, which captured the issues raised through the early engagement process and contained a series of discussion questions to guide feedback. A summary version of the Public Feedback Paper was also published, along with a Frequently Asked Questions document, and a promotional poster.

The review's engagement process was advertised widely. In addition to a media release and promotion on MPI's website and social media platforms, information about the review was distributed to a range of organisations and peak bodies, capturing:

recreational groups; the agricultural, forestry and fishing sectors; tourism-related businesses; iwi; environmental groups; ethnic communities; rural women and other women's groups; young people; senior citizens; health providers; disability advocacy groups; social service providers; education groups, from early childhood to tertiary level; urban advocacy groups; and territorial authorities.

Public engagement took place in a range of ways, including:

- a series of open, public meetings, which sought to capture a wide variety of stakeholders across the general public. These meetings were held in late July 2019 in Wellington, Auckland and Christchurch. To maximise reach, these meetings were advertised online, via email, on MPI social media platforms, and through various sector networks. For example, the meetings were promoted on recreation and other interest groups' Facebook pages, and included in newsletters and magazines such as Wilderness Magazine;
- an online feedback process that allowed the review to reach stakeholders across the country and capture the views of those unable to attend public meetings. Submitters were invited to provide their feedback via an online feedback form (survey) or via email or post;
- in addition to the public meetings and online feedback process, a specific Māori engagement process was undertaken to allow for exploration of issues unique to Māori. This also allowed the review team to provide a culturally appropriate means of engagement, which may not have been achieved through the public meetings alone. This process included open hui across the country – in Auckland, Taupo, and Gisborne – and targeted conversations with Māori groups and individuals in Christchurch, Nelson, Waikato and the Wairarapa;
- comprehensive cross-agency engagement, including with central and non-central agencies. These discussions explored policy and operational relationships with the Act and the Commission's work;
- a series of targeted meetings with non-government organisations with a particular

relationship or relevance to the Act and the work of the Commission; and

- promotion at events such as Recreation Aotearoa's Green Pavlova conference and the Federated Farmers' High Country Conference, to increase awareness of the review among stakeholder groups. Promotion was done via a presentation delivered by MPI or a member of the panel, followed by a question and answer session.

The review team also undertook its own research to supplement, and provide context to, the feedback received through the engagement process.

Results and analysis of feedback

A large amount of feedback was received through the engagement process. A total of 517 completed⁷ responses were received through the online feedback form. Just under **90 percent** of responders provided feedback as individuals, with the remaining **10 percent** providing feedback on behalf of an organisation, including Māori groups, territorial authorities, recreation groups, and advocacy groups. Almost **80 percent** identified as an 'access user', while approximately **25 percent** identified as a 'landowner' (noting that there were cross-overs in this data as some responders identified as both). Responses were received across all regions, including:

- Northland Region: **4.13 percent**;
- Auckland Region (includes the area from the Bombay Hills up to Wellsford): **10.34 percent**;
- Waikato Region: **12.14 percent**;
- Bay of Plenty Region: **7.49 percent**;
- Gisborne Region: **1.29 percent**;
- Hawke's Bay Region: **1.29 percent**;
- Taranaki Region: **1.29 percent**;
- Manawatu-Wanganui Region: **4.39 percent**;
- Wellington Region (includes Kāpiti and the Wairarapa): **9.56 percent**;
- Tasman Region: **3.10 percent**;
- Nelson Region: **1.55 percent**;
- Marlborough Region: **6.72 percent**;
- West Coast Region: **1.55 percent**;
- Canterbury Region: **15.25 percent**;

- Otago Region: **13.95 percent**;
- Southland Region: **2.58 percent**; and
- Areas outside of these regions: **3.36 percent**.

Approximately **80 percent** of responders identified as 'New Zealand European' while **6 percent** identified as New Zealand Māori. There were a small number of responses from other ethnic groups.

In addition to the online feedback form responses, the review team received 121 submissions via post or email. A further 57 email submissions were received prior to the formal engagement period, which were also analysed as part of preparing this report. The emailed and posted submissions included feedback from individuals, peak bodies, territorial authorities, health agencies, Māori groups, and non-government groups.

Three public meetings were held in Wellington, Auckland and Christchurch, attended by 19, 16, 35 people respectively (not including Panel members or MPI staff). Attendance at the public meetings was often followed up with written feedback via email.

As part of the Māori engagement process, three hui were held in Auckland, Taupo and Gisborne. Attendees represented iwi, hāpu, Māori farmers, and health organisations. The review team also met with Ngāi Tahu in Christchurch. Nine iwi and one Ahu Whenua Trust provided written submissions. Discussions, mostly via phone, were also held with four iwi or hāpu. Lastly, Te Puni Kōkiri, Commission RFAs who have worked with iwi, and the Ngā Whenua Rāhui team within DOC provided perspectives on Māori and access.

While many efforts were made to reach Māori stakeholders, engagement was limited. Māori stakeholders noted a general lack of awareness of the Act and the work of the Commission, primarily as a result of the Act's limited impact on, and relevance for Māori to date. This issue is discussed in greater detail in **Māori interests**.

The review team held cross-government discussions with the Treasury, Department of the Prime Minister and Cabinet (DPMC), the State Services Commission, LINZ (various areas), DOC, NZTA, Tourism New Zealand, MBIE, Ministry of Justice (Te Arawhiti),

⁷ There was approximately, a 50 percent completed response rate through the online feedback form. Responses deemed 'incomplete' were survey entries that were entirely blank. Even where only small amounts of data were included in the survey responses, the Review team included these as 'completed' responses and analysed them as part of preparing the Review report.

Te Puni Kōkiri, Ministry for Culture and Heritage (MCH), Heritage New Zealand Pouhere Taonga, Ministry for the Environment (MfE), Ministry of Health (MoH), Ministry of Social Development (MSD), Ministry of Education (MoE), Ministry for Pacific Peoples, Sport New Zealand, and Kiwirail.

Lastly, the review team held four targeted discussions with relevant non-government stakeholders including Te Araroa, New Zealand Cycle Trail Incorporated, QEII National Trust, and the New Zealand Conservation Authority.

All feedback received was considered and recorded. However, it was necessary to apply the agreed scope of the review (as set out in the TOR) to filter some

feedback for the purposes of this report and its recommendations. Feedback was then categorised into themes and linked back to the questions posed in the TOR. Ten key themes were identified, which have formed the basis of this report (see **Key themes**). Each key theme was analysed in depth to determine whether legislative amendments to the Act, or other changes to the work of the Commission, were necessary or desirable. Recommendations were made accordingly.

All feedback was weighted equally, whether provided through formal written submissions or verbally at public meetings and hui.



Key themes

Overview

Ten key themes were identified through the review process, relating to the need for the Act, and its ongoing operation and effectiveness. These include:

1. Necessity of the Act;
2. Purpose, objective and priorities;
3. Challenges and future requirements;
4. Functions of the Commission;
5. Partnerships;
6. Māori interests;
7. Controlling Authorities;
8. Governance;
9. Resourcing; and
10. Technical changes.

Each key theme is addressed in detail below and accompanied by recommendations, covering both legislative and non-legislative changes to the Act and work of the Commission.

1. Necessity of the Act

Across all engagement feedback, there was resounding support for the ongoing necessity of the Act and the work done by the Commission. Although feedback identified areas for improvement, it was strongly believed that the Act and the Commission should continue. At forums such as public meetings in Wellington, Auckland and Christchurch, there was unanimous agreement on this point. Support for the Act and the Commission was spread across individual access users, landowners, community organisations, and major stakeholder and peak bodies.

Many Māori stakeholders who provided feedback did not explicitly address the question of the necessity of the Act or the Commission. Some Māori noted that to date, neither have been particularly relevant or proactive in addressing issues relevant to Māori. However, Māori stakeholders were positive about the potential of the Act to better meet their needs, and supported its continuation in this

context. This is addressed in greater detail at **Māori interests**.

Submitters highlighted a range of reasons for the ongoing necessity of the Act and the work done by the Commission. Many linked this to the importance of public access to the outdoors more broadly, citing the economic, social, health and wellbeing (including physical, mental and spiritual), educational and environmental benefits that this brings. Territorial authorities also pointed to the relationship between safe and well-connected public access routes (particularly in urban areas) and increased use of public transport, due to the connections provided for these services. This results in health benefits for those using active forms of transport, while also contributing to environmental and urban planning outcomes.

Feedback suggested that improved and well-defined networks of public access not only provide a tourism incentive, which benefits the economy, but also helps transfer wealth from rich urban hubs to rural areas. For example, territorial authorities in regional areas emphasised the economic opportunities and benefits for local business generated by tourists seeking to experience the region's outdoor spaces. Economic benefits were also noted in that active communities draw fewer resources from other government portfolios (for example, Health).

Many submitters noted that outdoors access is fundamental to New Zealand culture and identity.

The sentiments described above were echoed in feedback about the scope of the Act's purpose and objective (see **Purpose, objective and priorities**).

Another key issue identified was the ongoing existence of public access gaps and barriers. One submitter noted that '[s]mall parcels of private land continue to exclude New Zealanders from vast tracts of public land.' Similar comments were made in the context of ongoing barriers to public access across, or to, certain sites on private land. The Act and the Commission were identified as vital tools to continue addressing these issues. Territorial authorities, in particular, cited examples of the Commission's work to date to resolve public access issues in their areas. For example, one territorial authority described:

‘The Commission has supported parties locally and we believe the assistance of the Commission as an objective third party with specific knowledge of the legislation, and experience in dealing with these matters, was instrumental in agreeing a path forward.’

All feedback from territorial authorities underlined general support for the Act and Commission, even where their interaction with the Commission had been limited or non-existent.

Looking ahead, submitters also highlighted that factors such as growing urbanisation, increasing tourism and population numbers, greater commercialisation of farming, overseas investment in land, and increasing pressures on the natural environment, meant that the Act and the Commission were more important than ever. Greater and more defined public access was specifically noted as a solution for preventing overcrowding in certain areas, and increasing people’s value for the environment and conservation.

Some submitters cautioned that the necessity of the Act depended upon the resourcing and capacity of the Commission. It was thought that the Act’s effectiveness would diminish if the Commission was not capable of providing outdoor accessibility beyond what council and community groups could achieve on their own.

What’s working well

The Public Feedback Paper, that supported the review’s public engagement process, prompted consideration of what has worked well over the past decade. Submitters identified a range of examples in response, as well as in the context of answers to other questions posed in the paper. These included:

- WAMS, the Commission’s mapping system. This highly valued resource is the key source of information on access for many access users, both individuals and organisations. However, the incompleteness of the data contained in WAMS was also highlighted, with submitters calling for a more coordinated, ‘one-stop-shop’ approach. This issue is dealt with in greater detail at **Functions of the Commission**;
- public access opportunities successfully negotiated by the Commission over the last ten years. Many submitters also acknowledged the success of the Commission in establishing itself as the ‘go-to’ organisation on public access issues.

One farming peak body submitted:

‘At a high level, the Walking Access Act and the Walking Access Commission have been a story of success. The Commission has managed its tasks efficiently and effectively. It has fostered continuing access to the outdoors across private land for responsible recreationalists and visitors, and promoted respect for the rights of property owners to the benefit of all New Zealanders’;

- the Commission’s RFAs. Many submitters noted the importance of these staff as a first point of contact to assist them in establishing access, holding knowledge of access in local areas and being a neutral negotiator with landowners;
- the Commission’s role as an independent broker, with the ability to represent the interests of all affected parties. Submitters in many cases combined this with an acknowledgement of the Commission’s willingness to collaborate and form strong partnerships across government, communities, landowners and access users. Further, both central government agencies and territorial authorities noted that their relationships with the Commission (in some cases through formal Memorandums of Understanding) were working well;
- greater awareness of public access, and rights and responsibilities associated with public access, as a result of the Act and the work done by the Commission; and
- funding available through the Commission’s EAF was also noted as a valuable resource for communities and others seeking to establish public access.

In considering any changes to the Act and work of the Commission, the value placed by submitters on the above elements of the current system should be taken into account.

Recommendation 1: That the House of Representatives notes this review finds there is resounding support for the ongoing need for the Walking Access Act 2008, and that the New Zealand Walking Access Commission is performing an important and valued role in the public access system.

2. Purpose, objective and priorities

Reflecting the scope of access in the wording of the Act

Strong support was expressed for changing wording in the Act to clarify the scope of access. Submitters called for references to ‘walking’ access to be broadened to ‘outdoors’ or ‘public’ access. Submitters argued that the current titles of the Act and the Commission are misleading, as they have always been concerned with public access for a range of activities, not just for walking. The Commission also indicated that changing both titles would be beneficial, as it is regularly required to explain that its focus is broader than walking.

The clearest, most inclusive wording, would be ‘public access to the outdoors’. This could replace all combined references to ‘walking access’ and ‘types of access that may be associated with walking access’. This would require amendment to the name of the Act and the Commission, and amendments to wording throughout the Act, for example, to the term ‘walkway’ in Part 3 of the Act, which could become ‘access way’. ‘Public access to the outdoors’ would also need to be defined in the section 4 of the Act, and replace the definition of ‘walking access’. It is important to note

that ‘public access to the outdoors’ would still capture the variety of landscapes over which public access needs exist, whether in rural New Zealand or in urban centres.

In the Act, ‘walking access’ is currently defined as the right of any member of the public to gain access to the New Zealand outdoors, by passing or repassing on foot over a walkway or other land over which the public has rights of access. The definition also includes performing any ‘reasonably incidental’ activity. In defining ‘public access to the outdoors’, specific consideration would need to be given to Māori interests. Where access relates to culturally significant sites, engagement feedback emphasised that public access may not be appropriate, and should instead be limited to relevant Māori groups. This issue is dealt with in detail at **Māori interests**, which includes a recommendation that this type of access be addressed separately within the Act. However, the definition of ‘public access to the outdoors’ may need to reflect the right of any member of the public, *or the right of certain groups such as relevant Māori groups*, to access the New Zealand outdoors.

Submitters identified a number of potential new names for the Commission. The most frequently cited were ‘Public Access Commission’, ‘Outdoor Access Commission’ and ‘Recreational Access Commission’.



Other suggestions include ‘Access Commission’, ‘Enjoy Outdoor New Zealand’, ‘Re-Creating New Zealand’, ‘Connecting New Zealand’, ‘Pathways New Zealand’, ‘Aotearoa Access’, ‘New Zealand Active Access Commission’, and ‘Cross Country Access Commission’.

Changing the Commission’s name to the ‘Outdoor Access Commission’ or ‘Outdoor Access New Zealand’ would clarify that its focus is broader than walking.

This would also align with the title of its key publication, the *New Zealand Outdoor Access Code*.

Another organisation named Public Access New Zealand Incorporated already exists, precluding the suggested name change to Public Access New Zealand. Further, ‘Recreational Access Commission’ suggests that access may be desired only for recreation purposes, and fails to recognise wider cultural or environmental purposes.

Retaining the word ‘Commission’ would provide useful continuity between the current and new name. The Commission agrees, noting that the term ‘Commission’ can add a sense of weight to the advice provided. However, a potential disadvantage is that it could suggest that ‘the Commission is less focused on partnerships and working alongside stakeholders’. The review finds that the advantages of retaining ‘Commission’ in the title outweigh the disadvantages.

Recommendation 2: That:

- a) *the name of the Walking Access Act 2008 be changed to the Outdoor Access Act; and*
- b) *the name of the New Zealand Walking Access Commission be changed to the New Zealand Outdoor Access Commission; and*
- c) *the New Zealand Walking Access Commission be given a new Māori name that has a similar meaning to ‘New Zealand Outdoor Access Commission’, and that the Māori name be included in the Walking Access Act 2008; and*
- d) *amendments be made to wording throughout the Walking Access Act 2008 to replace all references to ‘walking access’ and ‘types of access that may be associated with walking access’, with ‘public access to the outdoors’. This includes defining ‘public access to the outdoors’ in section 4 of the Walking Access Act 2008, and amendments to wording reflecting ‘walking access’, such as the term ‘walkway.’*

Currently, the Act only confers an English name on the Commission. However, the Commission does use the Māori name ‘Ara Hīkoi Aotearoa’ as an operating name. As ‘Hīkoi’ has a walking-related meaning, changes to the Commission’s Māori name should also be considered to reflect broader outdoor access. To provide greater recognition and status to both names, consideration should also be given to including the Commission’s Māori name in the Act.

Purpose of the Act

Section 3(a) of the Act states that its purpose is:

‘to provide the New Zealand public with free, certain, enduring, and practical walking access to the outdoors (including around the coast and lakes, along rivers, and to public resources) so that the public can enjoy the outdoors.’

There were a number of calls for the Act’s purpose to be amended, so that it captures benefits wider than ‘enjoyment’, for example health, social, cultural, environmental and economic. Many of the wider benefits of access to the outdoors are highlighted at **Necessity of the Act**. One submitter stated ‘[i]mproved public access to the outdoors is in the national interest at an economic, social and health



and well-being level. It's really a no brainer.' Several health organisations emphasised that the health benefits of access should be explicitly recognised in the Act, with one stating:

'[w]e believe that encouraging access to the outdoors can be a successful way to increase physical activity. Health benefits associated with physical activity include lower mortality, less coronary heart disease, less type 2 diabetes, and reduced rates of breast and colon cancers'.

According to a MoH publication, 'international research suggests that exposure to natural outdoor spaces is beneficial to health.'⁸ Further, a Mental Health Foundation publication states that research 'shows a strong correlation between physical activity and increased wellbeing, as well as lower rates of depression and anxiety... It [physical activity] can also have the benefit of encouraging social interactions.'⁹ Several Māori stakeholders also noted the health benefits of outdoors access, as well as the importance of outdoors access to strengthening ties to culture and building community resilience.

The economic benefits of access to the outdoors can also be significant. For example, MBIE has estimated that the economic contribution of the Ngā Haerenga cycle trails alone was \$37.4 million in 2015. It added that 'the cycle trails helped revitalise small communities, including historic hubs, increased and expanded the number of local businesses, and created jobs close to the locality of the trails.'¹⁰ The increasing demand for accessible tourism was also raised through feedback. This growing industry offers further economic opportunities for tourism businesses to provide services to people with disabilities who want to get out into the outdoors.

Statutory acknowledgement of these other benefits of access, in addition to enjoyment, is likely to help the Commission promote its work. Further, the inclusion of the health, social and cultural benefits of access to the outdoors in the purpose of the Act, would align with Treasury's Living Standards Framework. The Framework acknowledges that living standards cannot just be measured in economic terms,¹¹ and includes

health, social connections and cultural identity as three of twelve domains of wellbeing.

Submitters did not seek changes to other parts of the purpose, namely that the Act is about providing New Zealanders with 'free, certain, enduring, and practical' access. One recreational organisation mentioned that the 'continued operation of [the Commission] is crucial to ensuring free and enduring public access in New Zealand, something the country prides itself on'. Ensuring access remains 'free' was also raised in the context of equity of access, and the importance of ensuring that low socio-economic groups were not excluded. The importance of enduring access was also emphasised, especially during the review's public meetings.

Recommendation 3: That the purpose in section 3 of the Walking Access Act 2008 be amended to capture the benefits of access wider than 'enjoyment', including health, social, cultural, and economic benefits.

Objective of the Commission

The objective of the Commission, as set out in section 9 of the Act, is to:

'lead and support the negotiation, establishment, maintenance, and improvement of walking access and types of access that may be associated with walking access, such as access with firearms, dogs, bicycles or motor vehicles.'

Feedback received about the objective of the Commission focused on the need to replace reference to 'walking access' with broader wording (to reflect 'public access to the outdoors') and the inclusion of 'advocacy' as a listed area of work.

Replacing references to 'walking access' is consistent with recommendations made above. This review finds, however, that if the current objective was expanded to include advocating for access, there is a risk that the Commission's reputation as an honest broker between landholders and access users could be undermined. Independence and impartiality was consistently identified as one of its key strengths.

⁸ Ministry of Health, 2017, Sit Less, Move More, Sleep Well: Active play guidelines for under-fives. Wellington, p.15, accessible at: <https://www.health.govt.nz/system/files/documents/publications/active-play-guidelines-for-under-fives-may17.pdf>

⁹ Mental Health Foundation of New Zealand, *Five Ways to Wellbeing: A best practice guide*. Accessible at: <https://www.mentalhealth.org.nz/assets/Five-Ways-downloads/mentalhealth-5waysBP-web-single-2015.pdf>

¹⁰ Ministry of Business, Innovation & Employment, *Ngā Haerenga NZ Cycle Trail Evaluation Report 2016*, retrieved from <https://www.mbie.govt.nz/dmsdocument/1248-nz-cycle-trail-evaluation-report-2016-pdf>, p.5.

¹¹ See <https://treasury.govt.nz/information-and-services/nz-economy/living-standards>.

Other suggestions for amendments to the objective included the inclusion of equal access rights for all recreation types, and referring to ‘responsible’ access to better capture that the Commission has a duty to ensure that the rights and interests of landowners are protected. These issues are dealt with in **Challenges and future requirements**.

Recommendation 2 captures wording changes throughout the Act to reflect a broader scope of access, replacing ‘walking access’ and ‘types of access that may be associated with walking access’ with ‘public access to the outdoors’. As such, no further recommendations are made about section 9 of the Act.

Priorities for negotiating access

Section 11 of the Act currently lists priorities for negotiating walking access over private land. This review sought to identify if these are the right priority areas, now and in the future.

There was strong support for changing the existing priorities in section 11. Of the 193 responses received through the online feedback form to the question ‘what changes, if any, are needed to the priorities in the Act?’, **83 percent** agreed changes were required.

The Public Feedback Paper specifically asked whether negotiating access to the following should be made priorities:

- wāhi tapu, traditional sites and other areas of cultural significance to Māori;
- land in or near urban areas; and
- replacement access for public access which has been closed.

Feedback on the issue of negotiating access to wāhi tapu, traditional sites and areas of cultural significance for Māori was mixed. Of the responses received through the online feedback form to the question of whether this should be a priority in the Act, **43 percent** answered ‘yes’, **18 percent** answered ‘no’ and **39 percent** answered ‘maybe’ or ‘don’t know’. However, a number of submitters expressed that ‘the Commission should not be involved in negotiating access to wāhi tapu unless it has the full support of the relevant Māori’. The question of access to sites of cultural significance to Māori is a complex topic and needs to be understood in the context of broader feedback received from Māori stakeholders. As such, this issue is dealt with in detail in **Māori interests**.

There was clear support for including the latter two options (access to land in or near urban areas, and replacement access for public access which has been closed) in the list of priorities in the Act. Of the responses received through the online feedback form relating to prioritising land in or near urban areas, **60 percent** answered ‘yes’, **16 percent** answered ‘no’ and **24 percent** answered ‘maybe’ or ‘don’t know’. One submitter called for urban developments to ensure ‘a realistic percentage of land dedicated to providing parks, playgrounds and open spaces’. Further, of the responses received through the online feedback form relating to replacement access, **76 percent** answered ‘yes’, **10 percent** answered ‘no’ and **14 percent** answered ‘maybe’ or ‘don’t know’. Replacement access was seen as desirable due to problems such as erosion, changing courses of river beds, sea level rise as a result of climate change, and biosecurity incursions, for example, kauri dieback disease.

Other suggested additions included calls to prioritise specific recreational activities, for example horse riding and dog walking, multi-use areas (see **Challenges and future requirements**) and increased access to unformed legal roads (see **Partnerships**).

Clear support was also expressed for extending priorities for negotiating access over private land to cover public land, with **76 percent** of responses to the online feedback form answering ‘yes’, **13 percent** answering ‘no’ and **10 percent** answering ‘don’t know’.

The above issues were also supported in feedback received outside of the online feedback form.

Replacement of section 11

While there was wide support for including a number of additional priorities in section 11 of the Act, submitters also noted the limited value in an extensive, exhaustive list. Also, such a list may no longer be useful as it would essentially indicate that negotiating access to all areas is a priority. One submitter suggested that this could be addressed by moving towards a more generalised approach, for example by simply prioritising access ‘where there is a significant need’.

The Public Feedback Paper noted the possibility of not having a list of priorities for negotiating access in the Act, and instead allowing the Commission to identify priorities in medium-term strategy documents or work

programmes. Submitters noted that inclusion of a consultation process to inform priorities listed in the Commission’s strategy documents would be particularly valuable.

The option of removing the list of priorities for negotiating access from the Act, and replacing it with a requirement for the Commission to set priorities through a strategic planning process provides transparency and would ensure that priorities are adaptable and can remain relevant. For example, the Commission submitted that addressing priorities at an organisational strategy level would allow them to ‘be regularly revisited and refreshed to allow them to change with the changing needs of users of the outdoors’.

As part of its reporting requirements, the Commission currently produces a Statement of Intent, which is a five-year strategy document setting out what the Commission intends to achieve or contribute to within that period. Setting of priorities for the Commission’s work as a whole, not just for negotiating access, could be included as part of this existing process to avoid creating further administrative burden.

As this option was not explicitly tested through the engagement process (which focused primarily on amendments to the current list in section 11), it would be beneficial to undertake further consultation on the replacement of section 11 with an outline of a strategic planning process to determine priorities. Consideration may also need to be given to whether any changes are required to section 3(a) which includes a summary of the current priorities.

Recommendation 4: That section 11 of the Walking Access Act 2008, which outlines priorities for walking access over private land, be replaced with a requirement for the Commission to set priorities through a strategic planning process. This new process will determine the priorities for the Commission’s work as a whole, over a three to five year period. Input on the suggested priorities would be sought from the relevant Minister before they are finalised and made public in a strategy document. Every three to five years, the priorities would be reconsidered.

3. Challenges and future requirements

Barriers for landowners

Submitters identified a number of barriers to private landowners providing public access. The most significant included:

- poor visitor behaviour, including damage to land, littering, toileting in inappropriate areas, straying from tracks, fires, vandalism, and theft;
- disruption and damage to farming activities, including disrupting lambing, scaring livestock, failure to close (or leave open) gates, and poaching. This was often tied to concerns about visitor’s ignorance of rural and farming practices, particularly people coming from urban areas;
- concerns about landowner health and safety liability;



- loss of privacy, including concerns about people photographing and sharing images of private land through social media;
- safety and security, particularly firearms being brought onto private property;
- biosecurity risks through the spread of pests and diseases, particularly by dogs and pigs (in the context of hunting activities); and
- lack of suitable infrastructure, for example, carparks, toilets, signage, and appropriately maintained tracks.

Other barriers noted were landowners' loss of control over their land, concerns about growing visitor and tourism numbers (whether realised or anticipated), and a lack of understanding of rights and responsibilities associated with unformed legal roads. A small number also noted concerns about access being misused for illegal activities, specifically drug cultivation.

Specific concerns were also raised about safety and liability risks for public access through forestry land. These focused on risks associated with fire and logging operations.

It was evident that private landowners continue to hold strong concerns around the misuse of access on their land, and the devastating consequences this can have on their personal lives and livelihood. The detrimental physical and mental health impacts for landowners in this context were also raised.

This issue was captured neatly by a farming peak body, which submitted:

'While a very high proportion of landholders will permit public access onto their properties, the problems associated with catering for some elements of the public, remain... it must be remembered that landholders have significant investment in and emotional ties to their properties. People seeking access rarely have anything more than passing ties.'

The central message underpinning these ongoing concerns was that the Act, and the Commission, should ensure landowner rights and concerns are well understood and prioritised in the context of negotiating and establishing public access on their land.

Addressing barriers and incentivising access

A number of submitters emphasised the need to incentivise the provision of public access for private landowners. One noted '[c]urrently there is no incentive for landowners to take these risks and provide access, other than doing a public good.' Submitters provided a wide range of suggestions for potential incentives, of which the major categories are captured below.

It is important to note that generally submitters acknowledged that addressing barriers came down to effective negotiation, landowner will and the relationships between the relevant parties. In this context, many noted that the Act could best address barriers for landowners by continuing to facilitate the Commission to undertake its role as an honest broker in negotiating and establishing access. However, it was also generally acknowledged that the various incentives suggested could provide a useful 'toolbox' of solutions that the Commission utilise when entering negotiations.

A number of submitters also noted that the Act and Commission should have greater powers to enforce access where landowners fail to agree. However, any suggestion to move beyond the Act's central premise that access over private land is by negotiation only, falls outside the scope of this review (see **Issues outside of review scope**).

Economic incentives

Submitters focussed on the need for economic incentives for landowners to provide access. This included local rates relief in recognition of the portion of land over which public access extends, supporting economic opportunities for landowners such as farm stays or farming workshops, and providing compensation for damage or other costs incurred from providing access.

The ability of landowners to provide services and experiences at a price, incidental to public access over their land, is not prohibited under the current Act. While the access itself must remain free of charge, the Commission could discuss the possibility of such economic opportunities with landowners as a 'tool' to incentivise the provision of public access.

Assisting with any costs incurred by landowners as a result of providing access could be done through

changes to the Act. However, providing compensation or assisting landowners with costs incurred as a result of access could not be done within the Commission's current funding. Such a scheme should also be subject to further investigation to ensure appropriate design, scope and management. As such, this report does not make any recommendations on this.

Rates are the responsibility of territorial authorities. Further, engagement feedback indicated that the application of rates relief (for any reason) is not nationally consistent. While legislative or other changes are not recommended in this context, consideration could be given to working with territorial authorities to explore the possibility of a consistent rates relief scheme for landowners providing public access under the Act.

Access conditions, information and behavioural guidance

Some of the key incentives identified included ensuring appropriate conditions were placed on access. Examples included closing access during lambing or excluding certain types of access where they are incompatible with land use, or as a result of safety concerns. It was also identified that there can be cultural reasons for closing or controlling access on Māori land or sites of cultural significance. This was often tied to an identified need to improve the provision of information about access and its conditions, and guidance for visitor behaviour. Many submitters also emphasised the need for effective enforcement mechanisms, in instances of poor visitor behaviour, to provide a holistic approach to protecting landowner interests and allaying fears.

The ability to place conditions on access usage is currently provided for in the Act,¹² and is regularly used by the Commission in access negotiations. While legislative or other changes are not recommended in this context, the Commission should continue to utilise access conditions as part of its 'toolbox' to address barriers for landowners.

Areas for improvement in the provision of access information have been identified in this report and are dealt with in more detail below (see **Functions of the Commission**). The issue of managing and guiding visitor behaviour is also addressed later in this section (see **Guidance and management of access user behaviour**). The recommendations made in this context will assist to overcome barriers identified

above, and better incentivise the provision of public access by landowners.

Health and safety obligations

A number of concerns were raised through the engagement feedback about landowners' liability under the Health and Safety at Work Act 2015. While the Commission and Worksafe New Zealand have issued a number of resources to clarify health and safety responsibilities (including a recent policy clarification issued by Worksafe New Zealand in mid-2019), this feedback indicates there is still a high level of uncertainty, fear and misunderstanding among landowners and land managers about liability for access users.

Currently, farm owners or managers whose land is being accessed for recreation are only responsible for risks arising from the work or workplace, and are not responsible for the risks associated with the recreational activities. Further, section 66 of the Act explicitly limits the liability of landowners under the Occupiers' Liability Act 1962 and under common law.

Detailed information on the scope of these responsibilities, including those of access users, can be found on the Commission's website: <https://www.walkingaccess.govt.nz/knowledge-base/tag/Health-and-safety>.

While legislative or other changes are not recommended in this context, the Commission should ensure that negotiations with landowners continue to involve the provision of information about responsibilities and liabilities.

Infrastructure

A number of submitters highlighted that the Commission would be more successful in negotiating access across private land if it had the resourcing to support adequate infrastructure, for example carparks, toilets, signage, and appropriately maintained tracks. For walkways established under the Act, the provision of infrastructure is the responsibility of Controlling Authorities appointed under sections 35 and 36 of the Act. The Commission can be a Controlling Authority under the Act, but as a result of resourcing constraints cannot currently undertake this role.

Broader issues about inadequate infrastructure and gaps in management of access routes are dealt with in

¹² Walking Access Act, Part 3 – Establishment of Walkways.

more detail later in this section (see **Growing visitor numbers**). The recommendations made about this will assist to overcome the barriers identified above.

Growing visitor numbers

The impacts of growing visitor numbers were consistently raised throughout the engagement process. This included detrimental impacts on landowners, damage to the environment, biosecurity concerns and inability of infrastructure to provide for visitor needs. At the same time, submitters acknowledged the positive impacts this could have if managed properly, particularly regional economic and development opportunities created by tourism.

It was widely acknowledged that management of growing visitor numbers was not a role for the Commission. Rather, this is an issue that requires significant collaboration across government, to ensure that:

- infrastructure is in place and can cope with demand;
- guidance about appropriate visitor behaviour is readily available (see **Guidance and management of access user behaviour** later in this section); and
- tourist drawcards (including tracks and trails) are distributed across the country to alleviate pressure in certain areas.

However, submitters did identify a number of roles that could be played by the Commission to support the management of visitor numbers. Feedback identified three key areas, outlined below: coordinated approaches to access; distribution of access; and infrastructure. It is important to note here that feedback was limited to the Commission's role in managing visitor numbers on access routes (tracks and trails), not in relation to tourist destinations or activities more broadly.

Facilitating coordinated approaches to access

A large number of submitters highlighted the

coordination role that could be played by the Commission, by working with central and local government, communities and industry to facilitate responses to access needs and solutions resulting from tourism pressures. As one submitter noted, the 'Commission is well placed to play a key co-ordinating role in bringing all parties together to seek holistic solutions to this situation'. This idea was supported by territorial authorities, many of whom made calls for greater planning support and advice from the Commission.

The Commission has previously led strategic projects to address access challenges and opportunities at a regional level. This included its 2018 publication *South Island High Country Access Report*,¹³ which focused on the impacts of growing tourist numbers and populations in the central and southern South Island. This was prompted by reports received via the Commission's work on the ground in the region, about the potential withdrawal of access by private landowners due to problems and pressures created by growing access user numbers. As part of working towards solutions, the Commission conducted an extensive engagement process with stakeholders in the region. The findings from this process demonstrate the complex range of challenges and opportunities that need to be considered, for example:

- the rapid nature of increases in tourism. One landowner described the numbers of people crossing a walkway on their property as increasing from approximately 30,000 per year in 2013 to an expected 70-100,000 people in 2017;
- impacts of social media and online marketing. Stakeholders said that the Internet was making it harder to predict which walks or areas will become popular. For example, one viral Instagram post or YouTube video can result in thousands more people coming to a place previously only known to locals; and
- economic opportunities. Benefits from increased numbers were noted, including more money flowing into regions, and more opportunities for



¹³ <https://www.walkingaccess.govt.nz/assets/Publication/Files/aa1f3af600/South-Island-High-Country-Access-Report-web.pdf>

farmers to diversify their income streams to help subsidise bad years in their core operation (for example, through accommodation on trails or offering services such as guided tours).

Another example of a strategic regional project, although not focused on tourism numbers, is the Commission's work on developing a tracks and trails strategy in Taranaki. The strategy outlines a potential network of pathways, biodiversity trails, tourist trails, cycle trails, coastal trails, river crossings and historic trails, aimed at informing future planning, funding and development.

Further strategic, regionally-focused work by the Commission would be beneficial in facilitating coordinated responses to the range of access challenges and opportunities associated with growing tourism. Such projects have the potential not only to bring relevant regional stakeholders together, to improve planning and coordinated funding, but could also inform and guide central government decisions about where funding may need to be directed. It is important to note that further strategic work could not be undertaken by the Commission without additional resourcing. Current projects have been funded by cash reserves or one-off injections (for example from the acquisition of land on which a walkway was located for the purpose of road construction), which are unlikely to reoccur.

Recommendation 5: That consideration be given to additional resourcing for the Commission to enable it to continue and expand strategic, regionally-focused project work. This work would facilitate coordinated responses to access needs, and could have a particular focus on regions with identified or anticipated tourism pressure.

Distribution of access to alleviate pressure points

A number of submitters called for the Commission to consider the distribution of access across the country when identifying or establishing access, as a means to alleviate pressure on certain areas. Territorial authorities were particularly supportive of this, noting both the need to alleviate pressure on some regions but also the need to create economic and development opportunities for other regions through new tourism drawcards.

Pro-actively identifying access opportunities to ensure distribution across the country could form part of the

recommended policy function to be included in the Act (see **Functions of the Commission**). Additional resourcing would be required for the Commission to undertake this new work.

Infrastructure

A large number of submitters, including the Commission, acknowledged that coping with high visitor numbers is primarily an infrastructure issue, and that infrastructure, in turn, is primarily a resourcing issue. A lack of adequate infrastructure impacts visitor enjoyment, potentially diminishing tourism. It can also result in damage to landowners' properties and businesses, and the natural environment. It may also present safety risks, such as where appropriate signage, car parking, shelters or accommodation are not available.

This is not an issue limited to increasing tourism. Engagement feedback indicated that infrastructure was also a key issue for landowners providing public access, as well as for equal access, particularly for people with a disability and older populations.

The challenges of resourcing and responsibility in relation to providing infrastructure is described in the Commission's *South Island High Country Access Report*:

'Who is responsible for providing infrastructure is also difficult to determine. Where a trail is on private land, or crosses multiple land tenures, there is often an assumption that the Department of Conservation will take responsibility, however the Department struggles to find money for this purpose and has no statutory responsibility for tracks and trails on private land. Similarly, local authorities can be wary of investing in infrastructure that may be entirely used by tourists rather than the locals who pay rates that fund them. Volunteer groups willing to undertake maintenance on tracks and trails can still find it difficult to fund this. While fundraising for small-scale capital expenditure (e.g. signage, equipment) can be done, the ongoing costs are typically trickier to find sponsorship for.'

Another challenge for infrastructure planning is the funding models used by central and local government agencies. These models often require showing existing need prior to building of new or expanded infrastructure. When combined with

rapid growth and the time-lag of consenting and building processes, this can mean capacity forever playing catch-up to need.’

Resoundingly, submitters agreed that the costs of infrastructure, in the context of coping with high visitor numbers, were most appropriately borne by tourists themselves. Submitters specifically called for the International Visitor Conservation and Tourism Levy (IVL) to be directed towards meeting infrastructure needs.

Funding priorities for the IVL, introduced in July 2019, are set according to an Investment Plan, due to be finalised later in 2019. Infrastructure is already included as one of three key focus areas for this funding. Ensuring that decisions about the IVL are connected, at a policy level, to the work done by the Commission would allow infrastructure needs on access routes, resulting from tourism pressure, to be appropriately considered and addressed. A similar connection between funding decisions under the Tourism Infrastructure Fund (TIF) and Provincial Growth Fund (PGF) and the work done by the Commission would also be beneficial.

There is also an opportunity for the Commission to be involved at a policy level with the Destination Management Planning (DMP) work being done by MBIE to inform infrastructure planning and funding. This could include providing advice to MBIE on infrastructure needs for public access in current ‘priority regions’ and informing decisions on future ‘priority regions’.

As the Commission has no current policy or planning function, additional resourcing would be required for it to play any policy-level role in funding decisions about the IVL, TIF and PGF, or in DMP work undertaken by MBIE.

A number of submitters also called for the Commission to provide and fund infrastructure directly, or to provide greater funding support to Controlling Authorities, community groups, Māori and landowners. This would not require legislative change as the Commission can take on the role of Controlling Authority under section 36 of the Act, and it also administers the EAF, which can provide funding support for the establishment and maintenance (including infrastructure) of public access. However, its ability to take on a greater funding role in this context would depend on additional resourcing.

Historically, infrastructure has been a lower priority for applications under the EAF primarily as result of funding constraints. As noted earlier in this report, the Commission is also unable to take on the responsibilities of a Controlling Authority within its current funding.

Lastly, a number of submitters called for the Commission to undertake greater monitoring of infrastructure needs for public access. This could include stronger channels of communication between the Commission, RFAs, territorial authorities and landowners to ensure the Commission is kept abreast of existing or emerging issues. The Commission could then use this information to develop holistic solutions to the needs of certain regions. This could include direct funding support to meet infrastructure needs (as discussed in the paragraph above), assisting relevant stakeholders to seek funding from alternative sources across government, such as the TIF or PGF, or prompting further regional strategic projects. Again, this role could not be undertaken within its existing resources.

Any expansion of the Commission’s role in supporting appropriate infrastructure should also consider the potential overlap with work done by DOC and territorial authorities to maintain tracks and trails around the country.

Recommendation 6: That consideration be given to additional resourcing for the Commission to help alleviate areas under pressure from high visitor numbers, by:

- a) identifying and facilitating new public access opportunities, away from areas experiencing pressure; and*
- b) developing and coordinating solutions to inadequate infrastructure in areas experiencing pressure.*

Equity of access

A significant number of submissions addressed equity of access, and agreed it was a key issue that needed to be addressed through the work of the Commission. Greater consideration of equity of access for people with a disability would also contribute to Outcome 3 of the New Zealand Disability Strategy.

Submitters framed the issue of equity of access in the context of user types (walkers, cyclists, horse-riders,

dog-walkers, hunters and others) as well as equity of access across demographic groups (age, gender, ethnicity, socio-economic status, and disability). Submitters identified that the outdoors could be particularly inaccessible for groups such as:

- people with disabilities or mobility requirements;
- aging populations;
- lower socio-economic groups;
- urban populations; and
- particular access user groups including horse riders, dog walkers and hunters (although noting that feedback covered the spectrum of recreational activities, with climbers, four-wheel-drivers, and kayakers also calling for equity of access for their recreations).

Submitters noted that Commission could play a role in ensuring equity of access in two key areas: development of access routes that better cater for the diversity of access; and promotion of inclusive access.

Developing access routes catering for diverse needs

In developing access that caters for diverse needs, there was a general acknowledgement that not all tracks should cater for all access users. Instead, submitters emphasised that there should be a variety of access options. Submitters noted that where access could be made accessible, or for multiple uses, the Commission should ensure this happens, for example by: considering accessible track widths when planning access routes; prioritising access in urban and peri-urban areas to overcome transport barriers for people with a disability, ageing populations, and lower socio-economic groups; and continuing to negotiate access for recreators other than walkers with both public and private landowners.



Submitters also noted the importance of accessible and adequate infrastructure on access routes to ensuring equity of access. Relatively simple adjustments to infrastructure were suggested, including ensuring signage is placed in accessible locations and at an accessible height (for example, so that it can be seen from a mobility vehicle), and ensuring gates and other slow points or barriers are appropriately sized for mobility vehicles.

It is important to note that the construction of tracks and trails, and provision of infrastructure, is currently the responsibility of Controlling Authorities. The Commission does not have the power or resourcing to enforce the construction of tracks or infrastructure that are accessible or appropriate for multi-use. Additional resourcing would be needed to enable the Commission to fund, or support Controlling Authorities to fund, the development of accessible tracks.

Lastly, many submitters called for accurate, up-to-date information about tracks, their condition and the range of access uses for which they are suitable. While much of this information can be found on WAMS, submitters noted this could be expanded.

Promotion of inclusive access

Submitters identified that the Commission could also play a role in in this context by promoting and advocating for inclusive access. This was tied to existing perceptions of the outdoors being unsafe or out-of-bounds for some user groups, in particular women, older people, people with disabilities, and migrant communities. The Commission could help address this issue by ensuring its promotion and communication work is inclusive, and markets the outdoors as a place for everyone.



Recommendation 7: That the Commission considers equity of access:

- a) *when identifying and establishing access, including for different population groups (ages, ethnicities, abilities, income, and urban and rural populations), and types of recreational and other access users; and*
- b) *when promoting and marketing access to the outdoors.*

Walkway mechanism

A consistent message was the need for a simplified, more flexible way to define a public access way than that currently provided by the gazetted walkway mechanism. Reasons here included reducing the cost and time associated with surveying walkways, and allowing flexibility in their location, for example, by allowing them to shift at certain times of year to suit farming operations, or allowing alternative tracks to be formed in the case of erosion or other reason for closure.

The Commission also noted a more flexible approach was vital to its ability to maintain access, particularly as impacts of climate change become more pronounced. While there were a number of submitters who raised concerns about greater uncertainty for landowners and access users, it was largely acknowledged that this could be addressed by providing adequate access information and signage.

LINZ was engaged as part of this review to explore these issues. Two options were identified as potential solutions to the inflexibility of the current mechanism.

First, the Commission could negotiate a larger, 'easement corridor' to allow for a track to move anywhere within it. Depending on the width of the corridor, the easement could also include conditions describing the location or changing locations of the track. This could be done under the current Act and is a practice that the Commission has previously applied. However, the utility of this approach is restricted to cases where alternative tracks can exist in relatively close quarters, as landowners are unlikely to agree to easements covering significant portions of land.

Second, a similar approach to section 233 of the Resource Management Act 1991, relating to changing boundaries of esplanade strips, could be taken. This would require legislative changes to the Act, so that it

allows for public access ways to be defined relative to moveable boundaries. However, it was noted that this approach was also likely to increase uncertainty for landowners and access users. Further, it would only be applicable where a public access way could be located alongside some form of existing (albeit, moveable) boundary or definable landmark, such as a waterway. This would not capture all of the landscapes over which public access ways may be required.

Despite providing more flexibility, neither of these options is a complete solution. A number of benefits are associated with the certainty provided by surveyed, and spatially recorded, public access ways. They include the legal certainty provided for landowners and access users, as well as the ability of the Commission and others to accurately map their location. As such, consideration could be given to whether relaxation of survey requirements, administered by LINZ, for defining tracks and trails would be feasible. This may address concerns regarding the cost and time required to meet survey requirements, thereby minimising the current burden associated with shifting track locations.

However, this review notes that this is a complex issue and acknowledges the potential impact of relaxing survey requirements on LINZ's ability to accurately define boundary positions. This could become highly problematic in the event of a dispute between landowners and access users as to the location of the public access ways.

Recommendation 8: That further investigation is undertaken, working with the Commission and Land Information New Zealand, into whether a relaxation of the survey requirements for public access ways would be feasible, to ensure the needs of all relevant parties are met now and into the future.

Guidance and management of access user behaviour

In its *South Island High Country Access Report*, the Commission points out that 'most people are well behaved in the outdoors, but a small minority are not, whether through ignorance or a lack of caring about how their behaviour impacts on others.' This was the general sentiment expressed across the engagement feedback.

While instances of poor behaviour make up the minority of access experiences, they can have devastating consequences for landowners and the land. Submitters agreed that the Commission had a role to play in managing visitor behaviour, primarily through the provision of education and guidance on visitor behaviour.

The Commission is already actively involved in this area, providing the *New Zealand Outdoor Access Code* (the Code), which sets out the rights and responsibilities of recreational users and landholders. Other resources guiding responsible behaviour in the outdoors are also available on the Commission's website: <https://www.walkingaccess.govt.nz/knowledge-base/tag/Responsible-behaviour>. Further, the Commission has developed a number of educational resources, including animated scenarios, for students to discuss and consider issues about responsible behaviour in the outdoors, in particular on private land. These scenarios are supplemented by resources for teachers to help plan lessons as part of the New Zealand Curriculum.

Although submitters largely agreed that Commission resources of this kind were valuable and necessary, areas for improvement were identified.

First, submitters emphasised that behaviour guidance material needed to be better promoted and provided in a range of languages (currently, a summarised version of the Code is available in Simplified Chinese). Other opportunities for greater promotion of the Code identified by submitters included: marketing the Code at airports and through in-flight broadcasts; television advertising; social media campaigns; distributing copies of the Code through visa application processes, car hire transactions and purchases of hut passes; and local co-promotion of the Code through the Commission's work with territorial authorities and community groups.

Second, submitters emphasised the need for greater consistency across government for messaging and branding of material promoting good behaviour in the outdoors. This is not a role for the Commission alone, but requires collaboration across government, in particular with DOC, Tourism New Zealand and territorial authorities. Establishment of a cross-government working group and/or a joint project looking at consolidating existing material, and developing approaches to ensure consistent

messaging in the future could assist. A number of submitters pointed to the potential benefit in using Tourism New Zealand's Tiaki Promise campaign as umbrella messaging, with other behavioural guidance to complement it. Despite the emphasis placed on international visitors, the majority of tourism in New Zealand remains domestic. Any collaborative approach to promoting good behaviour therefore needs to reflect this.

While not dealt with in detail in this section, it was also widely acknowledged that visitor behaviour is often a function of poor infrastructure. For example, the availability of rubbish bins and toilets makes it less likely that people will litter or toilet on or near tracks and trails. The provision of adequate infrastructure is dealt earlier in this section, at **Growing visitor numbers**. Equally, improved signage, including multi-lingual signage, was noted as an important way to educate visitors about appropriate behaviour. A Commission-led project to develop consistent national signage would be highly valuable in addressing this issue (see **Functions of the Commission**).

Recommendation 9: That consideration be given to additional resourcing for the Commission to increase promotion and distribution of the New Zealand Outdoor Access Code, including making the Code available in a greater range of languages.

Recommendation 10: That cross-government collaboration between the Commission, the Department of Conservation, Tourism New Zealand and territorial authorities be formalised, to focus on developing consistency in content and messaging for visitor behaviour guidance.

4. Functions of the Commission

Broadening, combining and consolidating functions

Feedback was mixed about whether changes are needed to the functions of the Commission. Of the 396 responses received through the online feedback form to the question 'are changes needed to objective and functions of the Commission?', **29 percent** answered 'yes', **29 percent** answered 'no' and **42 percent** answered 'don't know'. However, many submitters

who provided feedback outside the online feedback form thought new functions were required in the Act.

The functions in Section 10 of the Act are currently expressed as an exhaustive list. There are positive and negative aspects to this. The positive aspect is that it may serve to prevent the Commission from taking on extra work for which it is not resourced. On the other hand, an inflexible list leaves little scope for adapting the work of the Commission to meet changing needs or priorities.

Amending this section of the Act to include a function allowing the Commission to carry out any other function that is consistent with its objective in section 9 of the Act, is one way to provide more flexibility. An organisation to which the Commission is sometimes compared, the QEII National Trust, has in the functions section of its Act a list of particular functions. However, this is prefaced with 'but without limiting the general functions' that are outlined in a general functions statement. The general functions statement in that Act is worded in a similar way to the Commission's objective in section 9.

A number of submitters also highlighted the need to combine and consolidate the list of current functions, to make it shorter and easier to digest. The Commission agreed that a shorter, broader list would be beneficial. A combination and consolidation of current functions could also allow them to be worded in a broader sense. This could be an alternative way to address the issue described above by providing a broader, more flexible set of functions. For example, subsection 10 (1)(a) about providing national leadership and coordination could be combined with 10(1)(b), which is about providing local and regional leadership and coordination. Further, subsection 10(1)(f) about negotiating to obtain walking access

Recommendation 11: That amendments be made to section 10 of the Walking Access Act 2008, to:

- a) *combine, where appropriate, existing functions and frame them in broader terms. While existing functions have served the Commission well, consolidation will allow greater flexibility for the Commission in carrying them out; and*
- b) *include a statement acknowledging that the listed functions do not prevent the Commission carrying out any other work in line with its objective as set out in section 9 of the Walking Access Act 2008.*

could be combined with 10(1)(g), which is about negotiating other forms of access. And finally, subsection 10(1)(l) about administering walkways could be combined with 10(1)(m), which deals with compliance and enforcement for walkways.

Existing functions to be expanded

Leadership of access at a national and regional level

Feedback supported the Commission's current national and regional leadership role on access, included in section 10 of the Act. One submitter said:

'[w]e believe that the Commission and its regional representatives are in a good position to identify regional needs and opportunities and to encourage groups and [territorial authorities] to work together to provide inter-connected walkways and recreation routes'.

As outlined in **Commission achievements and progress to date**, in recent years the Commission has undertaken a number of strategic, regional projects. Through this work, the Commission has provided a leadership and coordination role in particular regions, for example in Taranaki and the South Island high country, to plan for future approaches to access and the impact of emerging issues such as increasing tourism. Many submitters identified the significant value in the Commission continuing and expanding its work in this context. However, as noted earlier in this report, further strategic work could not be undertaken by the Commission without additional resourcing. This is because current projects have been funded by cash reserves or one-off injections (from the acquisition of land on which a walkway was located for the purpose of road construction), which are unlikely to reoccur.

Recommendation 5 proposes that consideration be given to additional resourcing for the Commission to enable it to continue and expand this strategic, regionally-focused project work. As such, no further recommendations are made here.

Provision of information about access

Feedback was clear that the Commission's existing function of providing maps and information about access is particularly valued by the public. For example, when people were asked what's working well, one of the most common answers was that the

Commission's mapping system, WAMS, is an excellent resource. This sentiment was consistent across all engagement feedback.

However, areas for improvement of WAMS were also identified. These included the need to:

- increase promotion and public awareness of WAMS;
- incorporate all tracks and trails across the country, to provide a 'one stop shop' for access information;
- differentiate between formed and unformed legal roads;
- show access agreements made through Overseas Investment Office processes;
- provide more information on the condition and accessibility of tracks and trails for people with a disability; and
- include landowners' contact information to support access users asking for permission or checking access conditions where required (noting the Commission is unable to do this due to obligations under the Privacy Act 1993).

Many of the issues about the completeness of data on WAMS is a result of access information being owned and published across a range of government agencies. This report finds it would be beneficial for such agencies, including the Commission, DOC, LINZ and territorial authorities, to work together to ensure all access information is consistent and readily available. This could comprise a series of interagency projects to agree data standards and potentially bring together sources of information into a single platform.

Feedback also noted the importance of clear and consistent information at the point of access through physical signage. A number of submitters noted the inconsistent approach to signage across the country, which is dependent on the agency or group responsible for a particular track or trail. This report finds that the Commission would also be well-placed to lead and coordinate a consistent, national approach to physical signage. While requiring additional resourcing, this would supplement the inter-agency work, proposed above, to standardise the collection and publication of digital access information.

Recommendation 12: That:

- a) given the acknowledged success of the Walking Access Mapping System, the Commission, the Department of Conservation, Land Information New Zealand and territorial authorities work together to consolidate and improve the consistency of information on access, including agreeing on data standards for access information; and*
- b) consideration be given to additional resourcing for the Commission to lead and coordinate a national, standardised approach for physical signage on tracks and trails.*

New functions

A number of submitters, as well as the Commission, identified new functions that could be added. These included:

- partnering with Māori across the breadth of work done by the Commission;
- coordinating and building the capacity of volunteers;
- working with other agencies at a policy level to promote public access to the outdoors;
- providing advice to the Overseas Investment Office (LINZ) about the walking access 'benefit' of applications for purchases under the Overseas Investment Act;
- providing advice on public access for Treaty of Waitangi settlement processes to the Office for Māori Crown Relations – Te Arawhiti;
- providing advice to LINZ on public access across or to certain sites on Crown Pastoral Land; and
- playing a formal role in relation to unformed legal roads, particularly in relation to the stopping of such roads.

All of these proposed new functions, with the exception of the first two, seek to formalise a role for the Commission in advising on public access across central and local government. Including them as statutory functions would provide a greater mandate for the Commission's involvement in relevant cross-government processes.

It is important to note that any new functions, or the expansion of existing functions in section 10 of the Act, will require additional resourcing for the Commission.

Partnering with Māori

The Commission indicated support for a function in the Act of partnering with Māori ‘to allow access that enhances their status as kaitiaki of their rohe’. Strong feedback was also received from Māori stakeholders about the need for the Commission to partner with Māori across all of its work. **Recommendation 13** proposes a new statutory function for the Commission to partner with Māori across the breadth of its work. However, this should be considered hand in hand with **Recommendation 19** under **Māori interests**, which proposes principles that should underpin a partnership approach, for inclusion in the Act.

Coordinating and building the capacity of volunteers

A number of submitters, including the Commission, raised the possibility of a function enabling it to better use volunteers and community groups. This is dealt with in detail in **Partnerships**. **Recommendation 13** proposes a new statutory function be included for the Commission to coordinate and build the capacity of volunteers and community groups. However, this should be considered hand in hand with **Recommendation 18** under **Partnerships**, which calls for consideration to be given to additional resourcing for the Commission to undertake this role.

Policy function

A small amount of feedback suggested that the Commission should have a specific, statutory policy function. It was envisioned that this would include the Commission being involved in work across government relevant to public access, as well as playing a role in local government planning and development work.

The Commission has previously provided input into relevant cross-government policy work and submissions on key pieces of legislation. However, this has occurred in the absence of a formal policy function. Further, the Commission has acknowledged that it does not have the resources to do this consistently. Additional resourcing is required for the Commission to take on the more substantial role suggested through engagement feedback. Sport New Zealand is a Crown agent like the Commission and has a statutory function to:

‘work with health, education, and other agencies to promote greater participation in physical recreation and sport through policy development, advocacy and support, in line

with the objectives of the New Zealand health strategy.’¹⁴

The Commission could be given a similar function of working with other agencies at a policy level, to promote and support access to the outdoors.

Overseas Investment Act processes

A ‘new’ function suggested was providing advice to the Overseas Investment Office (in LINZ) about access on certain land subject to overseas purchase applications. Section 17 of the Overseas Investment Act 2005 outlines the factors that must be considered by Ministers when assessing the benefit of overseas investments in sensitive land, which includes ‘whether there are or will be adequate mechanisms in place for providing, protecting, or improving walking access over the relevant land or a relevant part of that land by the public or any section of the public’. It is important to note that the Commission currently carries out this function, under section 10(1)(d) which refers to ‘providing advice on walking access to the Minister or any other person’. However, seeking advice from the Commission on the walking access ‘benefit’ is currently dealt with at an agency-process level, rather than being required or set out in statute. As noted above, inclusion of a specific function in this context would provide the Commission with a greater mandate to provide this advice. For clarity, this would not necessitate an expansion of Commission’s involvement in overseas purchases of land. The provision of advice would continue to be provided in relation to overseas purchases of land where access is appropriate and possible.

Treaty settlement processes

A number of submitters suggested that the Commission could also play a role in providing advice to the Office for Māori Crown Relations - Te Arawhiti, on public access issues in the context of Treaty settlement processes. This was largely based on concerns about access to public land being lost through these processes. While submitters acknowledged that in some cases, access to sites on returned land would not be appropriate, they identified benefit in the Commission’s involvement in this process.

Currently, when conservation properties subject to a reserve status with public access are vested as cultural redress in Treaty settlement process, the reserve status, along with the associated public

¹⁴ See section 8 (k) of the Sport and Recreation New Zealand Act 2002.

access, is preserved through settlement legislation. Te Arawhiti also currently engages with the Commission, and other relevant stakeholders, when a negotiation involves questions of public access. However, as is the case with the other advice functions proposed above, inclusion of a specific function in this context would provide the Commission with a greater mandate to provide this advice.

Management of Crown Pastoral Land

Several submitters highlighted the value of the Commission playing a role in advising on public access across or to sites on Crown Pastoral Land. The Commission has at times undertaken this role at an agency-process level. However, formalising the provision of advice to LINZ, as a statutory function, was again identified as a way to give the Commission a greater mandate to provide this advice.

Unformed legal roads

Feedback indicated that access via unformed legal roads remains a significant, nationwide challenge. Formalising the Commission's role in the context of unformed legal roads is dealt with **Partnerships**, and through **Recommendation 15**. As such, no further recommendations are made here.

Recommendation 13: That consideration be given to additional resourcing for the Commission to undertake the below listed functions, and that amendments be made to section 10 of the Walking Access Act 2008 to include:

- a) *a new function for the Commission to partner with Māori in the context of carrying out all of its functions listed in section 10; and*
- b) *a new function for the Commission to work with central and local government at a policy level to promote and support public access to the outdoors; and*
- c) *a new function for the Commission to coordinate and build the capacity of volunteers and community groups; and*
- d) *as part of subsection 10(1)(d), the provision of advice on public access issues to the Overseas Investment Office (Land Information New Zealand) in relation to applications for purchases of land under the Overseas Investment Act 2005; and*

- e) *as part of subsection 10(1)(d), the provision of advice on public access issues to the Office for Māori Crown Relations - Te Arawhiti, in relation to Treaty settlement processes; and*
- f) *as part of subsection 10(1)(d), the provision of advice to Land Information New Zealand on public access issues, in relation to Crown Pastoral Land.*

Consideration of giving greater powers to the Commission

A small number of submitters called for greater powers to be given to the Commission to deal with poor visitor behaviour, going beyond the current offences and penalties in the Act relating to gazetted walkways. Suggestions included banning people from land for a period of time if they broke the rules, requiring people to obtain a free outdoor access licence or permit to indicate they have read the Code, and introducing penalties (fines and deportation notices) for breaching the Code. However, this report finds that the current offences and penalties in the Act are sufficient and that a greater enforcement regime would not only be costly, but unnecessary given the relatively small number of poorly behaved visitors.

5. Partnerships

Relationships across central government

Addressing factors blocking access

A number of submitters provided examples of poor coordination across government in the context of public access. These ranged from unwillingness to provide or prioritise access on public land, track management issues, incomplete access information, inconsistent visitor behaviour guidance, and failure to include the Commission in cross-government work impacting on public access.

Most of these issues could be resolved through improved, formalised collaboration between the Commission and other government agencies. As one submitter noted, one of the key factors limiting the Commission's effectiveness is poor recognition of it by key authorities.

Missed opportunities for collaboration across government seem to be a result of both a lack of

awareness of the Commission and its work, as well as a lack of process and mandate for the Commission to play a role within central government. As a result, many of the good examples of collaborative work that emerged through engagement feedback were largely a result of the Commission's initiative and relationships forged by current staff. Examples included work with NZTA on safe roads projects, regional networks (such as in Waikato), and the strategic planning project between the Commission, Sport Taranaki, local authorities and local trails groups in Taranaki.

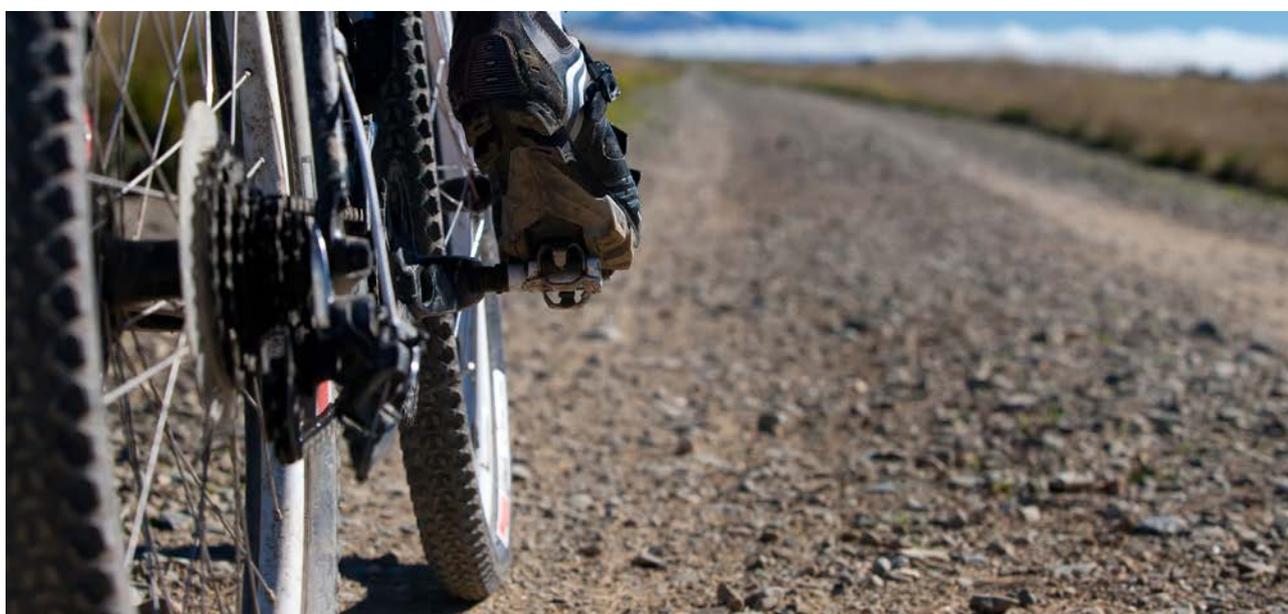
The lack of a formal, consistent approach to involving the Commission in relevant cross-government work impacts the effectiveness of both it and the Act. Ultimately, the result is diminished public access opportunities. Recent work considering changes to management of Crown Pastoral Land (led by LINZ) and the Overseas Investment Act (led by the Treasury) are good examples. Both processes have tangible impacts for public access. The timing of this review, as a central government process, prompted thorough consultation with the Commission in these instances. However, historically this level of consultation has not occurred.

A number of options to address this issue were considered and discussed with central government agencies throughout the review process. These include:

- MPI taking a more proactive role in connecting the Commission to central government work and processes. Currently MPI's involvement with the

Commission is limited to a monitoring role. There is no policy or operational function in relation to the Act that sits with MPI. However, this would not preclude MPI from being a point of contact for central government consultation opportunities, where they relate to public access, and ensuring these opportunities are passed on to the Commission. However, this would require greater ownership and awareness of MPI's responsibility for administering the Act;

- memorandums of understanding (MOU) being developed between the Commission and other key agencies. These agreements could identify shared interests and opportunities, as well as a requirement to consult with the Commission on policies relevant to public access. The Commission currently has MOUs in place with agencies such as LINZ and DOC; and
- some recommendations made in **Functions of the Commission**, which give statutory recognition to the role of the Commission in certain cross-government work. Statutory requirements to consult with the Commission on policies relevant to public access could also be included in other key pieces of legislation. However, this would not cover the spectrum of relevant policy work, as not all would be covered by specific legislation. Further, some feedback questioned the appropriateness of collaboration as a legislative requirement, rather than a matter of good practice between agencies. This option would also require further consultation with relevant agencies to determine operational and resourcing impacts of a statutory requirement to consult.



It is important to note that any of the above changes would also require development of a permanent policy function within the Commission. As this does not currently exist, additional resourcing would be required to establish it.

Recommendation 14: That consideration be given to the following options to strengthen the Commission's ability to be involved in cross-government work relevant to public access:

- a) *the Ministry for Primary Industries taking on a greater role in connecting the Commission to central government work and processes; and/or*
- b) *the development of memorandums of understanding between the Commission and relevant government agencies, which would include a requirement to consult on policy and other work relevant to public access; and/or*
- c) *amending other relevant legislation to require government agencies to consult with the Commission on policy and other work relevant to public access to the outdoors, noting this option would require further consultation to determine operational and resourcing impacts on other agencies.*

Opportunities for collaboration

Discussions across government as part of the engagement process also revealed a number of opportunities for improved collaboration to support public access. While no legislative or other changes are recommended here, the length of the list below demonstrates the importance of the Commission's ability to be involved in cross-government work.

Opportunities for collaboration identified through the engagement process included:

- LINZ:
 - Cross-government work to consolidate and improve the consistency of information on access (see **Functions of the Commission**).
- MBIE:
 - Collaboration between the Commission and MBIE on Destination Management Planning (see **Challenges and future requirements**).
 - Commission involvement in funding decisions about tourism funds including the IVL, TIF and PGF (see **Challenges and future requirements**).
- Tourism New Zealand:
 - The Commission could leverage the extensive



market research done by Tourism New Zealand to inform regional access opportunities and priorities, and visitor behaviour guidance materials.

- Cross-government work to consolidate existing visitor behaviour guidance and ensure consistency in future content and messaging (see **Challenges and future requirements**).
- DOC:
 - In addition to the significant existing collaboration between the Commission and DOC, new opportunities for collaboration included involvement of the Commission in spatial planning work being undertaken by DOC.
- NZTA:
 - Commission involvement in national and regional projects related to off-road cycle and walking networks or active transport.
 - Greater collaboration on connecting public transport to outdoor access. Throughout the engagement process, public transport was identified as key for certain groups to be able to access the outdoors, in particular people with disabilities, ageing populations and people with low incomes.
- Sport New Zealand:
 - The Commission could support and leverage projects relating to young people and recreation, as well as the growing work being done by Sport New Zealand to foster greater inclusion of Māori, Pacific and other ethnic communities in sport and recreation initiatives.
- Heritage New Zealand Pouhere Taonga:
 - Collaboration and joint work on projects relating to Tohu Whenua (a partnership between Manatū Taonga - Ministry for Culture and Heritage, DOC, Heritage New Zealand Pouhere Taonga, and MBIE). This work aims to link significant places through a series of regional trails that showcase their importance, while capturing defining moments in New Zealand's story.
 - Working together to maximise visitor experience by showcasing and providing interpretation for historic heritage sites on or near public access routes.

Potential opportunities for collaboration with the new Ministry of Housing and Urban Development (MHUD) were also identified.



Collaborative opportunities were also discussed with Kiwirail, particularly about concerns raised through engagement feedback about access along rail corridors. Specifically, submitters noted that the costs (annual charges through a licence to occupy) and non-enduring nature of access were significant barriers to the work of the Commission. It was noted that addressing the non-enduring nature of access in rail corridors could protect significant, existing government investment in various cycle and walkways.

This review acknowledges the balance that must be struck between access needs and the preservation of land for New Zealand's current and future rail operations. Kiwirail has a number of existing agreements for shared paths, walkways and cycleways within the rail corridor. It was noted that such agreements could effectively provide enduring access, so long as the land was not required for rail operations. While legislative or other changes are not recommended in this context, there would be benefit in further collaboration between the Commission and Kiwirail to explore solutions to ongoing concerns about the cost associated with establishing public access ways in rail corridors. Other opportunities for collaboration include consideration of access rights and safety information for rail corridors in the Code.

Relationship with local government

Submitters identified a number of areas in which the work of the Commission and territorial authorities intersect. This included resource management, planning and development, and responsibility for local recreation areas, tracks and parks.

Many submitters cited examples of good working relationships between the Commission and territorial authorities. For example, one territorial authority acknowledged the instrumental role played by the Commission in establishing and progressing multi-agency projects in its region.

Overwhelmingly, the issue most raised about the Commission's relationship with local government, concerned management of unformed legal roads.

Unformed legal roads

The issue of unformed legal roads and rights of public access is not new. It has been raised as a significant areas of concern since consultations preceding the development of the Walking Access Act in 2008.

Unformed legal roads are widespread nationally, with an estimated 56,000 kilometres of road recorded in survey records held by LINZ. The term generally refers to roads that:

- have not been formed as recognisable, surfaced roads. They may be just a strip marked on a map, ruts in the ground or indistinguishable from the surrounding countryside;
- are formed roads that are no longer maintained by the responsible local government authority, and have, in effect, reverted to being unformed.

As well as intersecting farmland and bush, unformed legal roads form much of the reserved land around the coast and alongside waterways. They have the same legal status as any public road and remain open to public access.

Feedback indicated strong demand for greater access to unformed legal roads and clarity around access rights. Lack of understanding of the rights and responsibilities associated with these roads was also noted as a key barrier to landowners providing public access. For example, one submitter noted the damaging impacts of vehicle use on an unformed legal road on farming land, including scaring and causing the death of stock, poaching and spread of pests and diseases.

The Commission has already undertaken work to clarify rights and responsibilities in this area. In 2011, Government asked it to produce best practice guidelines to support city and district councils in relation to:

- administration of unformed legal roads, with the aim of removing possible impediments for their use for walking access; and
- legislation and administrative practices on the stopping of unformed legal roads.

The resulting publication, *Guidelines for the Management of Unformed Legal Roads*, is available on the Commission's website.¹⁵ The Guidelines have been widely distributed to territorial authorities. However, ensuring that the guidance is adopted and translated into territorial authorities' policies is beyond the role of the Commission.

There was almost unanimous support for the Commission playing some formal role in the management of unformed legal roads, particularly in road stopping processes. There was also wide support for an expansion of the current walkway mechanism,

¹⁵ <https://www.walkingaccess.govt.nz/assets/Publication/Files/33467acf5f/ULR-Guidelinesfor-web-v2.pdf>

to allow it to extend over unformed legal roads. These two issues are addressed in detail below.

Stopping unformed legal roads

Unformed legal roads provide potential for access across the country, but may be closed, or 'stopped'.

The courts have ruled that land included in official survey plans as road is legally a road even if it has not been pegged out on the ground and not formed in any way. In short, from a legal perspective, they are as good as any other road.

The essential pre-condition for any road stopping procedure is that the council must be satisfied that the road is not needed for use as a road by the public now or in the foreseeable future; nor for access to coastal marine areas. There are two ways of stopping a road:

- under the Local Government Act 1974, sections 319 and 342. Proposals to stop a road must be publicly notified and requires the prior consent of the Minister for Land Information where it relates to a road or part of a road in a rural area; and
- under section 116 of the Public Works Act 1981. This provision provides for stopping of a road by declaration of the Minister for Land Information with no public notification, although local authority consent is required.

Under the Local Government Act, the public notification process provides an opportunity for the public to lodge objections to road stopping proposals. Such objections can be taken to the Environmental Court. The court has held that when proposing to stop a road, councils must consider the public interest rather than the private interest of adjoining landowners.

Many unformed legal roads provide impractical, or even unsafe access. Some are part of farmland, while others are muddy tracks. Some are too rough to cross and some traverse the side of sheer cliffs. There are also challenges arising from limitations of early survey and mapping techniques, meaning there can be a significant margin of error in the location of unformed legal roads in rural areas, as shown in cadastral records held by LINZ. In more remote areas, this could be up 50 metres either way in terms of their lateral location. The poor condition of many unformed legal roads is exacerbated by fact that territorial authorities are not bound to maintain or repair them, nor are they

liable for injuries caused by defects in such roads to people who use them.¹⁶

As pointed out by submitters, these issues often justify or necessitate the stopping of legal roads. Current processes, however, provide limited opportunity to preserve the public access right, such as by facilitating or requiring alternative road locations. Many submitters therefore called for the ability to 'redraw' unformed legal roads.

To ensure access rights are protected, submitters identified a number of roles for the Commission in road stopping processes. These included:

- legislative changes to the Act, Local Government Act and Public Works Act, to provide a single process dealing with unformed legal road stopping and the establishment of alternative access. This would be particularly beneficial in cases where access via an existing unformed legal road is impractical or inappropriate, and the landowner is willing to provide more suitable access. Wellington City Council provided a useful example of this scenario:

'In Wellington access around the south coast from Owhiro Bay to Makara Beach cannot be widely promoted because access is along the Queen's Chain, and the terrain and weather risks mean it is not a safe route to promote to most recreational users, families and tourists.

However there are a number of unformed legal roads in the area that serve little purpose and the landowner has asked if they could be uplifted [i.e. stopped]. If the legislation facilitated the uplifting [i.e. stopping] of the unformed legal roads in exchange for more accessible routes for walkers and cyclists we would have a better opportunity to develop a new world class coastal track for the Wellington region.'

- the Commission playing a formal role in decisions to stop unformed legal roads, including being notified of closures, consulting with the public on access needs, and advising on alternative access options. This could be done through:
 - legislative amendments to the Act, Local Government Act and Public Works Act to reflect the Commission's role as described above; or
 - MOUs with territorial authorities, setting out how the Commission and territorial authorities

¹⁶Hayes B. E. (2008) *Roads, Water Margins and Riverbeds: The Law on Public Access* contains a full analysis of the rights attaching to unformed legal roads. Faculty of Law University of Otago, New Zealand in conjunction with The Ministry of Agriculture and Forestry.

will work together to manage road stopping proposals. Territorial authorities with existing MOUs with the Commission emphasised that this had been a successful way to work together to resolve issues. There is also potential for MOUs to cover other areas of shared interest, such as a role for the Commission in advising on access in planning and development processes (including subdivision). However, this report acknowledges that the significant scale of work involved in developing MOUs with all territorial authorities may outweigh the benefits.

It is important to note that without a formalised process, the Commission's role is limited to monitoring advertised proposals for road stopping and making objections through the general statutory process. While this avoids additional regulation, the Commission would be unable to monitor all relevant road stopping proposals within its current resourcing. Further, additional resourcing for monitoring such proposals would offer less value for money than a formalising collaboration between territorial authorities and the Commission.

There are specific issues that arise in relation to unformed legal roads on Māori land. Feedback received through a recent review of the Te Ture Whenua Māori Act 1993 included strongly-expressed negative views on unformed legal roads. This was for a number of reasons, including:

- concerns that they interfere with the use of the land; and
- as a consequence of the history and circumstances of how the roads came to be there, views that the access provided by unformed legal roads is inconsistent with the principle of rangatiratanga and is contrary to the guarantee of full, exclusive and undisturbed possession of lands in Article 2 of the Treaty of Waitangi.

It is critical that the Commission include these cultural and Treaty considerations as part of any formal role it plays in the context of unformed legal roads. The partnership approach proposed through **Recommendation 13** and **Recommendation 19** will support this. These issues also should be investigated further as part of any policy process that follows this report.

It should also be noted that the Māori Land Court has jurisdiction for creating, stopping and re-vesting of roads. For clarity, consideration of the options in **Recommendation 15** should ensure that the jurisdiction of the Māori Land Court under section 14 of the Te Ture Whenua Māori Act 1993 is preserved.

Recommendation 15: That further investigation be undertaken, in consultation with the Commission and territorial authorities, on options for formalising the Commission's role in processes to stop unformed legal roads, including:

- a) legislative amendments to the Walking Access Act 2008, the Local Government Act 1974 and Public Works Act 1981, to establish a single statutory process dealing with unformed legal road stopping and the establishment of alternative public access; and/or*
- b) legislative amendments to the Walking Access Act 2008, Local Government Act 1974 and Public Works Act 1981, to enable a formal role for the Commission in decisions to stop unformed legal roads, including being notified of closures, consulting with the public on access needs, and advising on alternative access options; and/or*
- c) the development of memorandums of understanding with territorial authorities, setting out how the Commission and territorial authorities will work together to manage requests to stop legal roads. These agreements could capture collaboration in other areas of shared interest, such as planning and development processes.*

Walkways over unformed legal roads

Many submitters called for an expansion of the walkway mechanism to allow it to extend over unformed legal roads. This suggestion was supported by the Commission and a number of territorial authorities.

While there were concerns associated with the potential restriction on certain forms of access (such as vehicles), some submitters noted the possibility of walkways extending over part of the unformed legal road only, thereby allowing other forms of access to continue on the remaining road area. Others acknowledged that demand for certain access would

need to be dealt with on a case by case basis, depending on local demand and priorities.

There was provision under the then New Zealand Walkways Act 1990 for walkways to be made on unformed legal roads. However, this is not possible under the current Act. Legislative amendments would be required to the definitions of ‘public land’ and ‘private land’ under the Act to ensure that roads are no longer excluded.

As noted in the section above, the Commission should ensure it addresses the unique concerns of Māori in relation to unformed legal roads when considering extending walkways over unformed legal roads on Māori land.

Recommendation 16: That amendments be made to the Walking Access Act 2008, to enable the current walkway mechanism under Part 3 of the Act to extend over unformed legal roads, without detracting from the existing legal access rights on unformed legal roads.

Relationships across the outdoors access sector

The Public Feedback Paper prompted consideration of the relationship the Commission should have with Te Araroa and Ngā Haerenga (the New Zealand Cycle Trail). Overwhelmingly, responses to this question emphasised the need for a closer relationship, whether through collaboration and partnership, joint strategy, or greater integration and merging of functions. While each organisation has its own distinctive branding and identity, submitters identified cross-overs in both function and overarching purpose of recreational track and trail development across New Zealand.

As one submitter noted:

‘All three parties have significant cross-over and dependencies, so a formal relationship and/or joint strategy for effecting access across public and private land would appear beneficial to the community.’

In particular, central and local government feedback noted the benefits of using the Commission’s expertise and functions to address vulnerable areas of Te Araroa (where access is not legally secured) and establish new access to reduce the amount of on-road

sections of the track. Territorial authorities acknowledged that the coordination of Te Araroa and Ngā Haerenga would fit well with the Commission’s national and regional leadership roles (as provided for in section 10 of the Act).

In its submission, Te Araroa Trust noted its good working relationship with the Commission, including with both Wellington staff and RFAs. In this context, it proposed a level of organisational integration through shared technical, legal and administrative functions. This could be achieved through a partnership approach or a formal MOU. The Commission also noted the value of a shared services arrangement with the Trust, acknowledging that its ability to take on this function depended upon additional funding. Both organisations emphasised the importance of maintaining Te Araroa’s distinct and independent identity.

Ngā Haerenga (the New Zealand Cycle Trail), is managed by the national organisation New Zealand Cycle Trail Incorporated (NZCT Inc). NZCT Inc, partially funded by MBIE, provides network promotion, overarching governance structure, and additional support and funding for local governing bodies, which are responsible for the individual rides.

In its submission, the Commission noted the value in considering greater integration of functions held by NZCT Inc, MBIE and NZTA into the work of the Commission. Other submitters similarly noted the benefit in such integration, adding, however, that the local governance approach to individual rides should remain in place.

Discussions were held with NZCT Inc as part of the engagement process, which also captured the views of some trail local governance bodies. While NZCT Inc was highly supportive of a strong relationship or partnership with the Commission, structural integration was not identified as necessary or beneficial.

Setting aside the degree of integration between the Commission and other organisations responsible for recreational tracks and trails, significant opportunities exist for government to achieve funding efficiencies by better connecting these responsibilities. Such connections will also have significant benefits for domestic and international recreators, by providing a consistent network of outdoor walking and cycling options.

Recommendation 17: That further investigation be undertaken on options for integrating the responsibilities and functions of the Commission, Te Araroa Trust, and New Zealand Cycle Trail Incorporated, with the Commission taking a leadership and coordination role in the development, promotion and management of outdoor recreational access.

Broader need for a coordinated approach to tracks and trails

Engagement feedback also identified the broader need for a coordinated, national approach to track and trail development in New Zealand.

Currently, funding, resources and leadership responsibilities are shared between the Commission, DOC, MBIE, NZTA, and local authorities. On the ground, the result is a complex network of tracks and trails comprising:

- walkways created by the Commission and its predecessor agencies;
- DOC's Great Walks;
- Te Araroa Trail;
- Ngā Haerenga (New Zealand Cycle Trail) Great Rides, some of which are shared by Te Araroa, including Timber Trail and Alps to Ocean;
- the DOC track network, some of which are shared by Te Araroa, for example trails in the Richmond Ranges;
- local authority tracks, catering for walking, cycling and some equestrian use. Te Araroa also shares some of these tracks;
- urban paths, including dedicated walking and cycling paths, shared paths and even main footpaths, some of which also form part of Te Araroa;
- community-driven track development;
- mountain biking trails developed by enthusiasts and active clubs;
- tracks on private land, provided voluntarily by landowners through informal and formal mechanisms; and
- private tracks and trails, which are commercial operations targeted at domestic and international tourism.

Physical cross-overs exist between the various tracks listed above (for example, a number of the tracks

above are shared with Te Araroa). There are also synergies between their wider contribution to outdoor recreation, tourism, active transport and community connectivity (particularly in urban areas), community health and wellbeing, access to distinctive areas, and regional economic development.

A more coordinated approach could address a number of other issues arising from track and trail responsibilities being split over various organisations. For example, it could address the ad hoc nature of track and trail development, which is largely dependent on local demand and the specific objectives of the responsible organisations. It could also provide a more financially secure approach to ongoing management, maintenance and promotion, essential for the sustainability of tracks and trails. Lastly, it could offer a consistent standard of development across tracks and trails, ensuring they are appropriate for the level and type of usage.

Engagement feedback noted that a strategic national approach to track and trail development could avoid



the potential that different organisations and facilities have to compete for the same target user market, resulting in poor utilisation.

It was frequently suggested that the Commission could become the leader in the outdoors access sector, with responsibility for setting a national strategic direction for track and trail development. However, this review finds that substantial additional resourcing, and the potential integration of the Commission in central government, would be required for it to take on this role. Given the substantial departure this would represent from the Commission's current scope of work, this report does not make any recommendations in this context.

Relationships with community groups and volunteers

Submitters emphasised both the current and future value in greater utilisation of volunteers and community groups. It was widely acknowledged that many tracks are built and maintained by volunteers on the basis of goodwill and enjoyment of the outdoors. The Commission similarly noted the significant work done by these groups, who create and protect access 'far over and above what the Commission could ever do by itself'. In light of this contribution, some submitters called for the Act to formally recognise these groups and their contribution to public access.

The potential return on investment achieved through the use of volunteers is significant. The Commission already provides a range of support to volunteer groups including:

- providing support for negotiating with private landholders;
- helping groups to navigate central and local government processes;
- providing advice on easements, land and other relevant law;
- providing funding through the EAF;
- sharing best practice between community groups, including organising workshops and conferences and paying for travel and venue costs;
- creating maps for use in discussions with other parties; and
- promoting completed trails through Find My Adventure and other channels.

However, the Commission has noted that this role is limited by its resourcing. Additional resourcing would allow the Commission to expand the number of groups it supports, as well as the range of support it provides. In particular, support could be provided for the creation and hosting of simple websites for community groups, on which Find My Adventure could be used to display their tracks. The Commission could also provide governance capacity building support, including supporting the development of policies such as asset management, health and safety, and codes of conduct. This could be further supported by the Commission's purchasing of a centralised asset management software solution, which could be offered to groups. Lastly, the Commission noted that its Geographic Information System (GIS) team is well placed to provide support to groups to better analyse appropriate routes for new access.

Largely, submitters acknowledged that additional resourcing was required to ensure volunteers could be appropriately utilised (managed and supported) by the Commission. However, it was also acknowledged that there was a positive benefit to cost ratio in this approach.

Consideration of a new function for the Commission to coordinate volunteers and build their capacity is addressed through **Recommendation 13** under **Functions**. This could be considered hand in hand with **Recommendation 18**.

Recommendation 18: That consideration be given to additional resourcing for the Commission to enable it to better utilise volunteer groups, including through the provision of advice, track promotion and marketing, and capacity building support.

6. Māori interests

Current relevance of the Act for Māori

The review garnered relatively limited engagement across Māoridom, despite efforts to ensure all iwi and major national groups were informed about it. Māori stakeholders noted a general lack of awareness of the Act and the work of the Commission, primarily as a result of the Act's limited impact on, and relevance for Māori to date.

Most Māori who engaged with the review said it is important to have the Act, although changes should

be made to capture Māori interests. Further, a number of Māori stakeholders noted the importance of having the Commission's skills in negotiating as an honest broker. The Commission has achieved this in some instances with Māori, for example in relation to access in Cape Kidnappers.

However, there was also some criticism of the Act and Commission, with one submitter noting that the Commission had been not been sufficiently neutral or effective in establishing access in its rohe, so that it could act as kaitiaki for the land. A small number of submitters also noted that they had used other means of developing access, for example, by working with territorial authorities (with processes in place for working with Māori), DOC and local landowners. However, Māori also noted that their relationship with local landowners could take a significant time to develop – even up to 25 years.

Māori responders were concerned to get access to sites important to them, and several said they were open to providing wider public access in some cases. However, this would be dependent upon two key issues being addressed. These were first, that iwi would lead and/or partner with the Commission in identifying, developing and managing public access; and second, that visitor behaviour, specifically in

relation to culturally significant and sensitive sites, was appropriately guided and managed.

Some stakeholders also called for the Act and Commission to support economic opportunities for Māori associated with public access. These included opportunities to provide interpretation services, language and cultural education, and guide services.

Reflecting Māori interests in the Act

The Act is silent on many issues relevant to Māori in the context of access. The only 'touch points' currently included relate to the naming of walkways, a requirement to consider the appropriateness of publishing a map or information indicating the location of a known culturally sensitive site, a requirement to provide information about tikanga Māori guidance in the *New Zealand Outdoor Access Code*, a requirement that the board have a member who understands tikanga Māori, and requirements about whom the Commission must negotiate with for access on Māori freehold land.

A number of submitters commented on the absence in the Act of any reference to meeting Treaty obligations. One submitter captured this shared sentiment in the following comment:



‘There has been no engagement with the Crown who have legislated and delegated their responsibilities as Treaty partners to a Commission that they have selected.’

A wide range of issues and suggested amendments to the Act arose from engagement with Māori, ranging from the need for an overarching partnership approach with the Commission on access issues, to the development of a separate tool for negotiating access to culturally significant sites (that would not necessarily involve wider public access). Given the intersecting nature of these issues, this review finds that they would most appropriately be dealt with in a separate section in the Act dealing specifically with Māori interests. A separate section would give prominence to these issues and ensure the Commission prioritises its work with Māori. It would also provide clarity to Māori on the relevance of the Act and how the Commission can work with them. This section would be supplemented by references to Māori, and the cultural benefits of access, in the purpose of the Act (see **Purpose, objectives and priorities**) and functions of the Commission (see **Functions of the Commission**).

Proposed Māori interests section in the Act

Reflecting engagement feedback, a separate section in the Act addressing Māori interests should cover the following:

- interests in access to culturally significant sites for Māori;
- interests in developing public access over Māori land; and
- a requirement for the Commission to partner with Māori across the breadth of their work.

Interest in access to culturally significant sites for Māori

Feedback from Māori focused strongly on the desire to access sites important to them, including wāhi tapu. Many noted that they would want exclusive access to such sites, as public access was not appropriate in many cases. It was also acknowledged that access in this context could relate to culturally significant sites on privately or publicly owned land, or to sites on land-locked Māori land. There was a sense that Māori prioritised organising access to culturally significant sites first, before considering opportunities for developing public access over Māori land.



Māori noted the current challenges to securing access to sites important to them. For example, one group described how it had to work over a long period to gain access to wāhi tapu, but emphasised the value of this access:

‘a relationship with the settler and landowner families to be able to have continued access to our sacred sites/wāhi tapu, heritage sites, our puna and our lakes... has given us an opportunity to re-establish our relationship with our ancestral lands again.’

The general consensus drawn from engagement with Māori was that support from the Commission to establish access to sites of importance would be beneficial. However, access should be limited in some cases to relevant Māori groups and not offered or advertised (for example on WAMS) to the general public.

Interest in developing public access over Māori land

Māori feedback indicated there would be interest in working with the Commission to develop public access over Māori land. One group acknowledged ‘the need to get people out into our beautiful country’. Others acknowledged the economic opportunities for Māori that could accompany public access.

Some non-Māori submitters expressed frustration at a perceived lack of public access over Māori land, in particular where they identified land as well-suited for recreational pursuits or containing iconic landmarks. This review finds that many of these comments pointed to a lack of appreciation of the cultural importance and sensitivity of Māori land. Further, as noted by the Commission, there appears to be a lack of understanding that Māori land is private land and therefore access is subject to negotiation and agreement with its owners – as is the case with all privately owned land.

Māori groups identified a number of barriers that would need to be addressed for them to feel comfortable offering public access over Māori land. The paramount concern expressed by nearly all submitters was protection of the land – both land belonging to them, and wider land important to them such as their rohe. These barriers included:

- concerns that non-Māori New Zealanders often believe they are entitled to roam over Māori land. One submitter noted ‘[p]eople incorrectly view Māori land as public land – because it’s

communally owned... not necessarily have someone living on it. This is frustrating for the owners of that land’;

- concerns that public access would result in Māori being alienated from their land; and
- experiences of poor visitor behaviour. Some submitters described being met with aggression when explaining that visitors were trespassing, with this behaviour at times frightening whānau, tamariki and older people on the land at the time. Submitters also reported damage to their land, including desecration of urupa, removal of taonga, defecation and urination in waterways, damage to property, theft of farm equipment and destruction of infrastructure such as signs.

Other Māori landowner concerns relating to the provision of public access aligned with those raised by non-Māori landowners (see **Challenges and future requirements**), including:

- concerns about the time and cost associated with developing and maintaining access;
- impacts on privacy and ‘quiet enjoyment’ of their land; and
- concerns about the health and safety of visitors on their land. For example, one submitter described ‘overseas young tourists who would not take advice on a mountain that they needed to wear more than bare feet, shorts and tee shirts... later required rescuing and iwi member working with emergency services’.

A likely requirement to address these barriers is the inclusion of provisions in the Act that ensure Māori can retain control of the land over which public access is granted. This could be achieved through further investigation of an access mechanism (other than the current walkway mechanism) that preserves Māori rights over public access areas on their land. A potential model is the covenant/management agreement used by DOC under its Ngā Whenua Rāhui programme. This model seeks to facilitate the voluntary protection of indigenous biodiversity on Māori owned land, while leaving the land in Māori ownership and control.

This could also be achieved by expanding Controlling Authorities under the Act to include non-public bodies, to capture relevant Māori groups (see **Controlling Authorities**). This option could also be beneficial in the case of public access being granted to culturally significant sites, rather than being limited

to certain Māori groups as discussed in the preceding section. Māori feedback supported this idea, indicating that the role of Māori groups would be to act as kaitiaki over any public access areas. It was emphasised, that even in cases where Māori were not willing to take on the role of Controlling Authority, there should be a partnership and ongoing engagement with relevant Māori groups on the management of public access areas.

Another way these barriers could be addressed is to place appropriate conditions on public access, including limiting types of access. Under the Act, the Commission has a wide scope to apply conditions to public access. As such, legislative amendments would not be required to enable this. Conditions on access could be supplemented by ensuring visitor guidance provided by the Commission sufficiently captures appropriate behaviour when accessing culturally significant sites. The New Zealand Outdoor Access Code includes information about tikanga Māori and Māori relationships with land. However, it would be beneficial for this information to be revisited, in partnership with Māori, to ensure it addresses the gamut of concerns raised through engagement feedback.

Even with changes to the Act, some Māori will not be interested in working with the Commission. One Māori group voiced their strong opposition to having their land used for public access, just as some non-Māori private landowners do not want to provide public access:

‘[our] hāpu ... do not support walkways being constructed on our lands to allow strangers to access places that were guaranteed to our ancestors over 179 years ago... The lands we inherited are what remains from the thousands of acres that were once ours. It is the turangawaewae of our people and our future generations.’

Partnering with Māori across breadth of Commission’s work

Engagement feedback identified a number of key elements, or ‘principles’, that should underpin the Commission’s approach to partnering with Māori. These elements or ‘principles’ could be captured in the Act to emphasise their importance and set high level guidance for the Commission, which can then filter down into organisation strategy and practice. Proposed principles are:

- any access to Māori land must be driven by Māori. This aligns with the Act’s fundamental principle that access to or across private land must be negotiated and agreed with landowners. Māori frequently raised concerns that the Act would require them to give up land coercively. As such, it is important that this principle is clearly reflected, and given prominence, as part of any partnership approach;
- the Commission should consult on, and take into account, the cultural sensitivity and significance of any proposed public access areas as identified by Māori;
- partnership with Māori should extend across all stages of access, including the provision of advice, establishment of access, and its ongoing management. This includes in the context of providing advice to other government agencies, such as the Overseas Investment Office (LINZ), where confidentiality requirements or application timeframes do not prohibit this. Some Māori stakeholders raised specific concerns about the lack of consideration given to rohe-wide matters when advising on access opportunities;
- The Commission should encourage fellow stakeholders it is working with to establish and manage access, to consult with relevant Māori groups;
- priority should be given to relevant Māori groups taking on the role of Controlling Authority for public access over Māori land, or where public access is provided to sites of cultural significance. Where this is not possible, appointed Controlling Authorities should partner and engage with relevant Māori groups on the management of access;
- the complexity of Māori land ownership, often involving several hundred or more owners, must be acknowledged in the work of the Commission. Any negotiation of public access over Māori Land must accommodate the diversity of interests and values that comes with this form of land ownership; and
- in negotiating public access over land subject to a Treaty settlement, the Commission should consider the maintenance of the integrity and durability of settlements.

Recommendation 19: That amendments be made to the Walking Access Act 2008 to acknowledge the Māori-Crown relationship under the Treaty of Waitangi and better reflect Māori interests, by including:

- a) *explicit principles of a partnership approach between the Commission and Māori across the breadth of the Commission's work, with a requirement that these principles be translated by the Commission into its organisation strategies and practices; and*
- b) *a new access mechanism that allows access to sites of cultural significance for Māori to be limited to relevant Māori groups, and, as far as possible, preserves Māori ownership and control over their land where public access is provided; and*
- c) *a requirement for Controlling Authorities to partner and engage with relevant Māori groups on management of public access areas on Māori land, or where public access is negotiated to sites of cultural significance.*

Recommendation 20: That the Commission continue to work with Māori to understand and address barriers to providing public access, including revisiting content in the New Zealand Outdoor Access Code about behaviour on culturally sensitive or significant land.

Other changes to reflect Māori interests

Māori and the purpose of the Act

Māori identified improving cultural, health, social and economic outcomes as key benefits of access to sites culturally important to them. There is mounting evidence that connection to culture improves other wellbeing outcomes and several submitters emphasised the cultural connection that would be achieved by obtaining access. Some Māori groups noted access is especially important in urban areas where disconnection from land can be acutely felt. It was acknowledged that many tamariki and rangatahi stand to benefit from the Commission's Connecting Franklin-North Waikato Project, as they can walk and bike to get to school, to events or to see friends.

Māori were also interested in developing access to increase knowledge of Māori culture in their area. One

example of where public access has been combined with cultural education is the resource produced by Ara. This resource uses augmented reality and mixed reality technologies to share traditional knowledge (mātauranga) relevant to the local area, as individuals walk around the physical sites. Another example is the work undertaken by Ngāi Tahu with Outward Bound, Aoraki Bound, which provides a personal and cultural experience for both Māori and others. This work not only strengthens Māori cultural identity, particularly for rangatahi, but also enhances the profile of mana whenua in the eyes of both domestic and international tourists.

Recommendation 3 under **Purpose, objective and priorities** proposes that the purpose of the Act be amended to capture wider benefits of access, including cultural benefits. As such, no further recommendations are made here.

Working with Māori where Treaty settlements refer to the Act

Engagement feedback noted that it would be beneficial for the Commission to work more closely with Māori groups where Treaty settlements include reference to the Walking Access Act 2008. This would align with the wider partnership approach between the Commission and Māori, and could improve the Commission's ability to identify and establish access opportunities.

Māori noted they often receive abuse as a result of closing access when land had been returned to them through Treaty settlements, even where they are entitled to close such access. Māori suggested that where access is not established, the Commission could also play a role in educating people about the reasons for this, helping reduce the level of anger and misunderstanding.

While a number of current Treaty settlements include reference to the Act, the Commission noted it is often unaware of them. It would be beneficial for the Commission and the Office for Māori Crown Relations – Te Arawhiti to work together to ensure the Commission is informed about Treaty settlements including reference to the Act.

Recommendation 21: That the Commission work more closely with relevant Māori groups where Treaty settlements include reference to the Walking Access Act 2008, to explore, and where appropriate, establish access opportunities.

7. Controlling Authorities

Controlling Authorities are appointed under sections 35 and 36 of the Act. They are responsible for general promotion and maintenance, including erecting poles or markers, stiles, fences or other necessary structures, providing for the proper control and use of the walkway, and establishing required facilities and amenities (for which charges for use can be imposed).¹⁷

Under section 35, a department, local authority, public body, or the Commissioner of Crown Lands can be appointed as a Controlling Authority. The Commission can also be a Controlling Authority, in the case of another body not being appointed under sections 35 or 36. Current provisions in the Act do not allow for a non-public body, such as community groups or iwi, to take on this role.

Nearly all controlling authorities at the moment are DOC or council bodies. However, it is increasingly challenging to find a public body willing to take on the Controlling Authority role as a result of the time and costs associated with development, infrastructure and maintenance. Further, access is increasingly being managed and maintained by community trusts, iwi and local access groups, albeit not in a formal

capacity. To address this issue, the Public Feedback Paper asked whether the types of organisations that can be Controlling Authorities should be expanded to include non-public bodies.

Feedback conveyed general support for community and Māori groups being able to take on this role. However, this support was often tied to the need for greater resourcing being made available to ensure such groups could meet the costs of track management and maintenance. The role of the Commission in providing greater support to meet infrastructure needs is addressed in detail in under **Challenges and future requirements**.

Submitters identified a range of benefits from expanding Controlling Authorities to include non-public bodies, as well as a number of risks to be addressed.

Benefits from including non-public bodies

Submitters identified the following benefits from expanding Controlling Authorities to include non-public bodies such as community groups and iwi or other relevant Māori groups:



¹⁷ Functions and powers of controlling authorities are listed in the Walking Access Act 2008, Section 37.

- such groups have greater local knowledge, including about access needs and priorities. This would allow them to make informed decisions about the types of access needed on public access ways, as well as to advise on or impose appropriate access conditions according to the local context;
- allowing Māori groups to take on the role of Controlling Authority could improve and reflect the value of kaitiakitanga for Māori;
- local buy-in and empowerment to manage access in their community would be strengthened; and
- pressure on public agencies would reduce, and there would be potential for more effective, responsive maintenance.

Potential risks and solutions

A number of risks were identified that would need to be addressed to enable non-public bodies to take on the role of Controlling Authority. These risks, along with potential solutions, are listed below:

- non-public groups may not be enduring, with the exception of Māori groups. This could be addressed by Controlling Authority responsibilities reverting to the Commission in the case of a non-public body no longer being capable of fulfilling this role (for instance, it ceases to exist). This would not require legislative amendments as under the current provisions the Commission has the power to revoke a body's Controlling Authority status, taking on the role in its place;
- non-public bodies might lack the capability to undertake the functions of a Controlling Authority. To resolve this, it was suggested there be specific criteria that groups must meet before they could be appointed, such as appropriate governance structures. Other submitters suggested a partnership model with the Commission, with the two bodies sharing Controlling Authority responsibilities. However, additional resourcing would be required for the Commission to take on the role of Controlling Authority in partnership with non-public groups;
- non-public bodies may not have the resourcing to take on this role. Funding support could address this, with submitters suggesting that the Commission play a greater role in providing funding for necessary infrastructure or supporting groups to access funding from other sources such as the TIF (see **Challenges and future requirements**);

- there could be bias in favour of specific access user groups or activities. This did not include where there are cultural reasons for limiting access, as addressed in detail under **Māori Interests**. Many submitters noted this could be addressed by requirements for transparency and accountability in decisions made about public access way management, supplemented by Commission monitoring. However, additional resourcing would be required for the Commission to take on a monitoring role;
- the risk of profiteering was raised. However, as the purpose of the Act includes 'free' access, non-public bodies would not be able to impose charges, except for the use of facilities and amenities as currently provided for under section 37 of the Act;
- non-public bodies may not have the capacity, will, or understanding to provide for diverse access needs, including for people with a disability. The Commission could address this through greater promotion of equity of access, as addressed through **Recommendation 7** under **Challenges and future requirements**; and
- multiple types of Controlling Authorities could result in access management inconsistency and confusion. However, this has not been a problem under the current Act which allows for a variety of public bodies to carry out this role. Further, the functions of Controlling Authorities are clearly set out in section 37 to provide guidance and consistency in management of walkways.

'Controlling Authority' title

Feedback suggested that the title 'Controlling Authority' has a negative connotation, and that having a name that conveys Māori inclusivity would be beneficial. The most frequent suggestions were 'kaitiaki' or 'guardians'. Other suggestions included Active Access Rangers, and New Zealand Pathways Group.

However, this review finds that the title 'Controlling Authority' should remain in the Act as it is a recognised legal term. For example the Land Transport Management Act 2003 contains the term 'road controlling authority' to define the authority that controls a road. Retaining this title in the Act would not prevent a Controlling Authority from using a different operating name, such as kaitiaki.

Recommendation 22: That further investigation be undertaken on:

- a) *amendments being made to section 35 of the Walking Access Act 2008 to expand Controlling Authorities to include non-public bodies, such as community and Māori groups; and*
- b) *standards or requirements being developed by the Commission, which must be met by non-public bodies before appointment as a Controlling Authority. These standards or requirements are for the purpose of ensuring that non-public bodies have the capability to take on the role of Controlling Authority.*

Recommendation 23: That further investigation be undertaken on:

- a) *how the Commission could partner with non-public bodies to undertake the role of Controlling Authority; and*
- b) *the scope of a monitoring role for the Commission where non-public bodies are appointed as a Controlling Authority.*

8. Governance

Administration of the Act

Feedback indicated a lack of certain or strong views about administration of the Act. Largely, submitters agreed that MPI was not an obvious fit. However, it was also widely acknowledged that there is no complete or neat fit in terms of portfolio responsibilities, functions (policy or operational focus), and experience or capacity to monitor Crown entities.

This uncertainty was reflected in the responses received through the online feedback form to the question ‘do you think MPI should remain the administrator of the Act?’. Of the 278 responses, **35 percent** answered ‘yes’, **23 percent** answered ‘no’ and the majority, **42 percent**, answered ‘don’t know’.

Potential alternative administrators of the Act included DOC, LINZ, MBIE, MCH, MfE, MoT, and the Department of Internal Affairs. Some submitters also noted that the Commission should be connected to sport and recreation portfolio responsibilities, or that a new ministry could be created with responsibility for walking, cycling and outdoor recreation. This was

countered by a smaller number of submitters who noted that MPI was a neutral choice in terms of its representation of interests relevant to public access, and remains a good option for administration of the Act.

A key message was that wherever the Commission is finally located, its independence and impartiality, including its ability to represent all interests in public access disputes, must be maintained. Submitters noted that administration of the Act by DOC in particular could jeopardise this.

Feedback also urged the review to carefully consider what would be achieved by moving administration of the Act away from MPI, for example, the relationships that would be established, or the portfolio responsibility efficiencies and links that could be made.

Discussions with the Commission and across government canvassed opportunities to generally improve the ways in which the Commission is involved with relevant cross-government work. Regardless of the Commission’s final resting place within government, this issue needs to be addressed (see **Partnerships**).

Recommendation 24: That responsibility for administration of the Walking Access Act 2008 remain with the Ministry for Primary Industries.

Commission entity type

Little feedback was received on the appropriateness of the Commission’s status as a Crown entity (Crown agent). A small number of submitters called for greater independence for the Commission, by moving away from Government administration and towards a trust model (similar to QEII National Trust). This was countered by submitters who emphasised that government responsibility and funding for public access was appropriate, given its significant national benefits.

A similarly small number of submitters called for the Commission to remain a Crown entity but to become an autonomous Crown entity, or independent Crown entity. This was largely proposed as a means of giving more gravitas to the advice and recommendations provided by the Commission, particularly in cross-government processes.

As noted in the preceding section, feedback largely reflected the wider issue of the processes and opportunities through which the Commission is involved with relevant cross-government work. While entity type may play some role in addressing this, the issue may be sufficiently addressed by: providing statutory acknowledgement of the Commission's role across government (see **Functions of the Commission**); improving processes for the Commission's involvement across government (see **Partnerships**); and increasing the profile of the Commission, which is likely to be a flow on effect from many of the recommendations made in this report. Further, it is unlikely that a change to entity type alone would resolve the issues identified.

Recommendation 25: That the Commission remain a Crown entity (Crown agent).

Board requirements

Board numbers

Limited feedback was received on the appropriateness of the current number of Commission board members allowed by the Act. This was reflected in responses received through the online feedback form to the question 'is the required number of board members (5-8) for the Walking Access Commission right?'. Of the 268 responses, **47 percent** answered 'yes', **9 percent** answered 'no' and **44 percent** answered 'don't know'.

However, a number of submitters, across government and the general public, flagged the benefits of a small increase to the number of board members. On average, the suggestion was that six to ten members would be a good number, with less than five being too small. The primary reasons cited were that a larger board would allow for a greater range of skills, experience and knowledge, as well as greater representation of different interest groups and geographic locations.

While generally, engagement feedback supported an increase in the number of board members, this review finds that such an increase is inappropriate given the size of the Commission. Instead, it is recommended that the current range of five to eight members be retained. It is considered that having five to eight members is sufficient to encompass the skills, experience and knowledge identified later in this section (see **Board skills, experience and knowledge**). The review panel holds a different view, and considers

that the number of board members should be limited to five only. See the review panel's **Foreword** for the reasoning behind this view.

Recommendation 26: That the current range of between five and eight Commission board members indicated in section 8 of the Walking Access Act 2008 be retained.

Board skills, experience and knowledge

Submitters held stronger views on the skills, experience and knowledge required of board members. Further, responses received through the online feedback form indicated submitters' clear support for specifying these within the Act. Of the 275 responses received through the online feedback form to the question 'should the Act specify the spread of background, skills and knowledge that board members should have?', **67 percent** answered 'yes', **13 percent** answering 'no' and **21 percent** answered 'don't know'.

A number of submitters noted concerns with the collective skills, experience and knowledge of the current Commission board. In particular, submitters felt that members did not adequately represent diversity of access users, or public interests in access more broadly.

Submitters identified a broad range of skills, experience and knowledge as important to be reflected in the Commission's board members. The primary categories identified were:

- recreation – an understanding of the diversity of access user groups, knowledge of or experience with the tourism sector, and experience with outdoors recreation;
- landowners – experience with and knowledge of the farming sector and rural issues;
- Māori representation;
- local government – experience with resource management and urban planning (supported in territorial authority submissions); and
- central government – knowledge of government processes, and senior public service experience.

Other categories of valuable skills, experience and knowledge identified by submitters included conservation and environmental knowledge, and legal and surveying experience. Some feedback emphasised the importance of broader management,

leadership and government experience, as well as problem solving and negotiation skills.

Whatever the requirements of board members, submitters noted that maintenance of the Commission's independence was key, and that its governance arrangements should support it to be well connected and networked, including across government. Submitters also noted the importance of sufficient resourcing to the effective functioning of the board and the Commission.

Currently, the Act requires the Minister, after consultation with the Minister of Māori Affairs, to appoint at least one board member with knowledge of tikanga Māori. However, the need for greater Māori representation was a central issue raised in feedback. To address this, suggestions were made not only in terms of the board member skills, experience and knowledge, but also in the context of board member appointment processes (see **Board appointment process** later in this section). However, given the limited nature of engagement with Māori through the review process, it is difficult to determine the appropriate level of Māori representation on the Commission board at this stage. Further consultation is required before any changes to section 8(3) could be recommended.

Inclusion of a short but broad list of board member requirements in the Act would ensure core skills, experience and knowledge were captured while also allowing sufficient flexibility to appoint members based on emerging needs. This could include, for example, changing access needs or particular regional focuses being taken by the Commission.

Recommendation 27: That amendments be made to section 8 of the Walking Access Act 2008 to include a list of core skills, experience and knowledge that the board as a collective would need to encompass. At a minimum, these should include skills, experience and knowledge relevant to outdoor recreation, landowner and rural interests, tikanga Māori, local government, and central government, noting further consultation should be undertaken to determine the appropriate level of Māori representation on the board.

Board appointment process

Currently, the appointment process for the board is that set out under the *Crown Entities Act 2004*. Members are appointed by the responsible Minister

and may only be appointed if, in the responsible Minister's opinion, they have the appropriate knowledge, skills and experience to assist the statutory entity to achieve its objectives and perform its functions. The responsible Minister must also take into account the desirability of promoting diversity in board membership. Members are appointed for a term of three years, or less where specified in the notice of appointment, and can be reappointed.

There was a small amount of engagement feedback relating to the board appointment process, focusing on three key areas.

The first was the need to align appointment terms to ensure consistency and continuity between new and old members. Submitters noted that an increase in the number of members would go some way towards achieving this, allowing new members to be appointed while retaining a sufficient amount of the existing experience and corporate knowledge. However, including this as a part of the appointment process would ensure terms were aligned to facilitate smooth transitions between old and new members.

Second, submitters called for greater scope for public nomination. This suggestion ranged from nominations from the general public or individuals, to nominations from a defined list of organisations directly involved in outdoor recreation or public access issues. Submitters argued that this would ensure sufficient representation of the diversity of public access interests and forge 'tangible paths back into the community'. While members are appointed by the responsible Minister, current practice includes the preparation of a shortlist by MPI, in consultation with the Commission. The Act, as it currently stands, does not prohibit this consultation process being widened and could incorporate public nominations as part of the shortlist. The responsible Minister would continue to make appointments based on the shortlist provided.

Third, some submitters called for changes to the appointment process to ensure greater representation of Māori interests. Given the limited nature of engagement with Māori through the review process, it is difficult to determine what would be the most appropriate mechanism to achieve adequate representation of Māori interests on the board.

Recommendation 28: That:

- a) *the Ministry for Primary Industries widen its current consultation process when preparing a shortlist of potential Commission board members for decision by the responsible Minister; and*
- b) *consistency and continuity in membership is considered when deciding appointment terms for Commission board members; and*
- c) *further investigation is undertaken on how appointment processes could most appropriately ensure adequate representation of Māori interests.*

9. Resourcing

A key issue raised through engagement feedback was that the amount of Government funding received by the Commission is inadequate. Submitters noted that the Commission's achievements:

'have been restricted significantly by low resourcing by successive governments. While the political creation of an access agency is laudable, it must be accompanied by realistic funding for the Commission to legally establish, manage, and defend legitimate recreational access. Currently this is not possible.'

Two areas in particular were identified as requiring additional funding. The first was the Commission's RFAs, with the aim of funding both more hours and more staff. This recognised the important role played by these staff in providing a local point of contact and advice on access, as well as linking in with local government and community groups on broader work relating to access.

Second, submitters highlighted the need for WAMS to be maintained and improved. There has been significant investment to establish WAMS. However, ongoing maintenance and future upgrades are required to ensure it remains highly valued by access users. Without maintenance and necessary upgrades, the considerable investment in WAMS to date may be wasted.

The Commission receives \$1.789 million per annum of Government funding, a figure which has not changed since the Commission's inception in 2008, despite inflation. In its submission, the Commission stressed it is spending down existing cash reserves to enable it to do its current level of core work. In order to maintain

current service levels, the Commission stated it requires an additional \$1.2 million of base funding per annum by late 2021, when existing cash reserves are forecast to run out. The Commission also noted that without this additional funding, current staffing and activity will need to be cut by **40-50 percent**.

Any changes to the scope or quantum of its work recommended by this review must come with additional funding, otherwise the Commission will not be able to undertake it.

Recommendation 29: That:

- a) *given the core work of the Commission, specifically the Walking Access Mapping System and the work of Regional Field Advisers, is highly valued, the Commission's baseline funding be increased to, at a minimum, keep up with the pace of inflation; and*
- b) *any changes to the scope or quantum of the Commission's work as a result of this review be accompanied by appropriate additional funding.*

Supplementing Government funding with private funding and/or cost recovery

Opinions were divided on whether the Commission should supplement its Government funding with private funding and/or cost recovery. Of those who answered this question in online feedback form, **45 percent** supported supplementing with private funding, **29 percent** did not support supplementing with private funding, and **26 percent** answered 'don't know'. Further, **49 percent** supported supplementing with cost recovery, **25 percent** did not support supplementing with cost recovery, and **26 percent** answered 'don't know'.

Unsurprisingly, in online feedback form responses, the most frequently identified 'pro' of supplementing the Commission's public funding with private funding and/or cost recovery, was that this would result in an increase in the Commission's resources. The most identified 'con' of supplementing with private funding and/or cost recovery, was a concern about issues of accountability and private funders having expectations of controlling how donated money would be spent.

The Commission emphasised in its submission that any funding from private funding or cost recovery

must be in addition to Government funding, particularly given the potentially variable nature of these funding sources.

Private funding

Subsection 10(1)(i) of the Act currently provides for ‘receiving and managing private funding, contributions, or sponsorship for the promotion of walking access’. The Commission received advice in 2011 that establishing a fundraising system would take three to five years, and its board decided at that time that such efforts would diminish its ability to achieve its statutory objective, and that three to five years was too long in the context of its initial statutory life of ten years (bearing in mind the review of the Act commencing in 2018). This review recognises that the Act and the Commission are needed, and that the Commission should continue to operate into the future. It therefore suggests that the Commission’s board re-consider the issue of whether the Commission pursue private funding to top up its majority Government funding.

Additional resourcing would be required for the Commission to both establish and manage the sourcing and receipt of private funding, particularly in the short to medium term (prior to fundraising efforts being realised in the Commission’s cash reserves).

Cost recovery

The Commission has indicated its preference to cost recover for one of the current services it provides – preparing advice on public access issues in relation to overseas investment applications.

Guidelines for setting charges in the public sector, produced by the Treasury and the Auditor General, need to be considered here. However, cost recovery regimes are often justified where the benefits of the public sector goods or services provided, accrue primarily to the party from which the costs are being recovered. There is a good argument for the Commission being able to cost recover for this service as meeting the walking access aspect of the ‘benefits’ test in section 17 of the Overseas Investment Act 2005 (OIA), may increase an applicant’s chances of having their application approved. The Overseas Investment Office (LINZ) already charges purchase application fees in line with 23(1)(f) of the OIA.

It is likely that amendments would be required to both of the Walking Access Act and the OIA to enable cost recovery to occur.

Recommendation 30: That further investigation be undertaken, in consultation with the Commission and Land Information New Zealand, on enabling the Commission to recover the costs of its role in Overseas Investment Act processes, including determining the outputs and costs involved.

10. Specific legislative changes

A number of suggestions for specific legislative changes, which emerged through engagement, are considered below. As these are relatively technical in nature, these have been included as ‘technical changes’ rather than formal recommendations.

Amendments to reflect legal arrangements for leasehold land

Amendments are required to provisions relating to negotiating walkways over private land, to reflect the legal arrangements for leasehold land under the Land Act 1948. The Commission’s practice in relation to leasehold land is to seek agreement from both the leaseholder and the Commissioner of Crown Lands (as the underlying landowner). However, this should be reflected in the Act to ensure:

- the Act is consistent with the Land Act 1948, and the power it bestows on the Commissioner to grant easements, and
- that walkway (or access way) easements are enduring, as there is a risk that easements negotiated with the leaseholder may only last as long as the lease.

Technical change 1: That amendments be made to the provisions relating to walkways in the Walking Access Act 2008, to reflect the legal arrangements of leasehold land under the Land Act 1948, specifically to require walkways to be agreed to by both the leaseholder and the Commissioner of Crown Lands.

References in section 10 of the Act to other stakeholders

A number of amendments to section 10 of the Act were suggested in relation to references made to other stakeholders. For example, one suggested amendment was to update the reference to ‘Sport and Recreation New Zealand’ in subsection 10(1)(a)(ii) to ‘Sport New Zealand’. Another was to include reference to

volunteer groups, Te Araroa Trust, and territorial authorities.

While this review acknowledges the importance of these stakeholder groups, a number of others could be named. Inclusion of some, but not all of these would seem to privilege certain stakeholders without real justification. It is therefore recommended that section 10 not refer explicitly to any stakeholders. This includes removing the current reference to ‘Sport and Recreation New Zealand’. This would leave the general reference to ‘relevant stakeholders, and central and local government organisations’. This safeguards against organisational name changes and the emergence of new organisations, and avoids any suggestion of preference extended to a single Commission stakeholder.

Technical change 2: That amendments be made to subsection 10(a)(ii) of the Walking Access Act 2008 to remove reference to ‘Sport and Recreation New Zealand’.

Reference to purchasing the Outdoor Access Code

The Commission suggested that section 19 of the Act be amended, as it states that the Commission must ensure copies of the New Zealand Outdoor Access Code are available ‘for purchase at a reasonable price’. This provision does not reflect current practice, as the Commission provides the Code free, both digitally and in print. It is important that this remains the case as the Code is likely to have more impact on behaviour if people do not have to pay for it.

Technical change 3: That amendments be made to section 19 of the Walking Access Act 2008, to specify that the Commission provides the New Zealand Outdoor Access Code free of charge.

Closing walkways

The Commission noted that requirements for closing walkways could be amended, so it could have greater oversight of closures and re-opening. Specifically, the Act could require Controlling Authorities to notify the Commission within 48 hours of a closure, and provide quarterly updates on progress towards re-opening. Currently the Act only states that the Controlling Authority must notify the Commission ‘in advance of the closure’ or ‘immediately after the closure’.

Technical change 4: That amendments be made to section 38 of the Walking Access Act 2008 to require controlling authorities to notify the Commission within 48 hours of closing a walkway, and to provide quarterly updates on progress towards re-opening access.

Review of the Act

Section 80 of the Act provides for its review as soon as is reasonably practicable after the expiry of the period of 10 years from its commencement. As this review has been completed, this provision should be removed from the Act. Any future review of the Act does not need to be set out in the legislation itself.

Technical change 5: That amendments be made to the Walking Access Act 2008 to remove section 80.

Granted or gifted funds under the New Zealand Walkways Act 1990

Section 75 deals with granted or gifted funds under the New Zealand Walkways Act 1990 held by DOC at the time of the commencement of the Walking Access Act 2008. The Commission has advised that remaining funds held under this provision are being spent in a manner agreed between the Commission and DOC. As such, this provision can be removed.

Technical change 6: That amendments be made to the Walking Access Act 2008 to remove section 75.

Issues outside of review scope

The importance of access over private land being by negotiation only was raised. This sentiment was captured neatly by one submitter who stated that ‘[a]ny variation to the Act **must not** erode landholders’ right to allow or deny access, nor to determine the conditions under which access may be granted’.

However, some respondents called for the Commission to be given greater powers to establish access and resolve access disputes. In particular, submitters called for the Act to be strengthened ‘to allow compulsory acquisition of access’ and ‘greater powers should negotiation fail’. Others called for a right to roam to be introduced in New Zealand, or a framework for public access closer to this model.

The TOR for this review state that changing the premise that the Commission must negotiate access

with landowners is not to be considered. As such, this feedback has not been addressed or considered further in this review.

Impact of concurrent reforms

There are a number of other reforms being considered across Government that may impact on how well the Act and the Commission can develop and maintain public access. These include reforms to the management of Crown Pastoral Land, the review of the Overseas Investment Act 2005, and the review of the Resource Management Act 1991.

Both MPI and the Commission have been working with LINZ and the Treasury in considering and commenting on proposed changes. However, no interaction has taken place to date in relation to the review of the Resource Management Act 1991.

Changes proposed under these processes are subject to Government decision. As such, this report acknowledges it would be premature to comment on the specific impact they may have on the Act and the work of the Commission. However, this report emphasises that changes under each of these processes have the potential to impact on public access, including through the creation or loss of opportunities to identify and establish access opportunities. As such, any further consultation undertaken at the conclusion of this review, should consider changes proposed through these related processes.

Conclusion and next steps

It has been nearly 11 years since the commencement of the Walking Access Act 2008 and the establishment of the New Zealand Walking Access Commission. Together, the Act and Commission seek to provide free, enduring and practical access to the outdoors. Enshrining a system for negotiated public access in legislation attests to the significant value of access to the outdoors, including as a fundamental part of New Zealand culture. This sentiment was affirmed through the Act's review.

Those who engaged in the review overwhelmingly felt the Act has achieved good results, and is still highly valued and necessary.

While the Act and Commission are still needed, there are actions that need to be taken to meet current and

future challenges. This report has proposed a number of legislative and non-legislative changes that could address these.

Equity of access, as a focus of the Commission, will mean that New Zealanders and international visitors of different ages, backgrounds, and abilities will be able to share in the benefits of accessing the outdoors. Equity will likely be a key matter for the Commission to consider when it determines its priorities every three to five years.

More collaborative ways of working, between the Commission and central and local government, will help develop a more coherent approach to public access. This includes addressing the frequently raised issue of the management of unformed legal roads. Greater collaboration will also assist in addressing poor visitor behaviour, which can be a major barrier to private landowners providing access, and in addressing increasing infrastructure demands as a result of the pressure created by growing tourism.

It is also clear that the Act can better reflect the interests of Māori, including acknowledging the Māori-Crown relationship under the Treaty of Waitangi. While Māori have engaged in some areas with the Commission, an Act that explicitly sets out the commitment of the Commission to partner with Māori is likely to attract more Māori to use its services – whether this is in seeking access to sites important to them, or in providing public access over Māori land. Significant cultural and health benefits will flow from greater inclusion of Māori in the Act, as detailed earlier in this report.

Pursuant to section 80 of the Act, this report will be presented to the House of Representatives by the end of September 2019. A formal policy process, including consultation, will then take place, prior to Government's decision on what changes will be made to the Act and work of the Commission.

The review team acknowledges those who took the time to provide feedback on the review and helped shape the opportunities, identified in this report, to improve public access to New Zealand's unique and magnificent outdoor resources.

Appendix A – Terms of reference questions

Terms of Reference for a Review of the Walking Access Act 2008

Overview

The Walking Access Act 2008 (the Act), which established the New Zealand Walking Access Commission (the Commission), is due for review after 30 September 2018. The review of the Act must consider the need for the Act, its operation and effectiveness, and whether any amendments to the Act are necessary or desirable. A report on the findings of the review needs to be completed and presented to the House of Representatives by the end of September 2019.

Consideration will be given to the following matters:

The need for the Act

1. Is the Act still required?
2. Are the provisions of the Act the most appropriate means of dealing with public access matters and is a Crown entity still the most appropriate organisational/governance arrangement for dealing with public access?

The operation and effectiveness of the Act

Objective and functions of the Commission

3. Is the objective of the Commission appropriate?
4. Are the functions of the Commission as outlined in section 10 of the Act still appropriate?
5. What are the current challenges and foreseeable future requirements for public access and are amendments to the Act required to allow for these?
6. Does the Act's wording appropriately reflect the scope of the Act and of the Commission's work (e.g. the Act currently refers to walking access as opposed to public access)?

Effectiveness in opening up public access to priority areas

7. Does the Act focus on the right priority areas for now and the future?

8. Has the Act been effective in the last ten years in opening up public access to the priority areas which are identified in section 11 of the Act as being desirable to have public access?
9. Are there any factors which have blocked the opening up of public access to the current priority areas?

Administration and funding

10. Is the Ministry for Primary Industries still the appropriate central government department to administer the Act?
11. Are the appointment criteria in the Act resulting in the appropriate number and mix of appointees to the board?
12. Are the funding provisions in the Act still appropriate?
13. Does the Act provide sufficient scope for the Commission to obtain funding from multiple sources and allow for cost recovery for services provided if appropriate (e.g. Overseas Investment Office reports)?

Access for Māori and Tikanga Māori

14. Does the Act provide sufficient powers to enable Māori to access wāhi tapu and traditional sites? In particular, consideration should be given as to whether section 11 of the Act should be amended to allow for wāhi tapu and sites of cultural significance to be made priorities for public access negotiation, where culturally appropriate.
15. Does the Act (and the code of responsible conduct produced as a result of the Act: the New Zealand Outdoor Access Code) provide sufficient guidance on responsible behaviour at wāhi tapu and sites of cultural significance, and does the Act provide suitable protection for the location of and access to culturally sensitive sites?

Management of public access

16. Should the provisions in sections 35 to 37 of the Act about the management of walkways be modified, in particular to allow for more

involvement of tangata whenua and community groups in this role?

17. Are the provisions in the Act to guide and manage the behaviour of users of public access still needed, and if so, are they adequate considering the rapidly increasing number of overseas and domestic users of public access?

Miscellaneous matters

18. Are there any other matters that should be considered?

The findings of the Review

19. Do the findings of the review indicate that any amendments to the Act are necessary or desirable?

Matter to be excluded from consideration in the review

Consideration of the 'right to roam' over private property or changing the premise that the New Zealand Walking Access Commission must negotiate access with landholders is specifically excluded from this terms of reference.

Review Process and Type

The review will be carried out by the Ministry of Primary Industries, with the support of a small panel of experts with experience in public access matters, Māori access issues and the public sector.

The report on the findings of the review, including any recommendations on amendments to the Act, will be presented to the House of Representatives by the end of September 2019.

Appendix B – Public Feedback Paper

discussion questions

Are the Walking Access Act 2008 and the New Zealand Walking Access Commission needed?

What's working well in your view? Can you provide evidence to support your view?

Are the purpose, priorities, objective and functions in the Act right?

- Do you think the purpose of the Act should be changed? To what, and why?
- Do you think the New Zealand Walking Access Commission's name should be changed? To what?
- What changes, if any, are needed to the priorities in the Act? Should negotiating access to the following be made priorities:
 - wāhi tapu, traditional sites and areas of cultural significance to Māori
 - land in or near urban areas
 - replacement access for public access which has been closed?
- Should the priorities for negotiating access apply to public land as well as private land in the Walking Access Act?
- Are changes needed to the objective and functions of the Commission?

Working towards equal access

- Do you see the outdoors being less accessible for some groups? If so, who? Can you tell us of any experiences you've had?
- What role do you see the Commission playing in relation to equity of access?

Coping with very high numbers of visitors

- What should the Commission's role be in managing the impact of high visitor numbers?

Addressing barriers to landowners providing access

- What are the barriers to landowners providing public access?
- Can you provide any evidence of which barriers are the most significant?
- What should the Walking Access Act and/or the Commission's role be in addressing these barriers?

Encouraging positive visitor behaviours

- Do you have any information that could help us understand the scale of good and poor visitor behaviour on tracks and trails on private land?
- What's the Commission's role in improving visitor behaviour? For example, provide the *New Zealand Outdoor Access Code* in different languages, link this Code to other guidance?
- What do you think about the information in the Act and the *New Zealand Outdoor Access Code* on responsible behaviour at wāhi tapu and other sites of cultural significance?

Organisations working together

- Do you have examples where a lack of coordination between government agencies and/or different pieces of legislation have got in the way of maintaining and improving public access?
- Should the Commission have a role in assessing unformed legal road closures?
- Is information about public access to the outdoors comprehensive and easy to use?
- Would a more flexible means of defining a public access way under the Act, in addition to the gazetted walkway instrument, be a useful addition to the Commission's tool box? What are the risks of this approach?
- How could we ensure adequate infrastructure, like toilets, bins and carparks?

- What relationship should the Commission have with Nga Haerenga Cycle Trust and with Te Araroa?
- Should the types of organisations that can be controlling authorities be extended, for example to trusts, iwi, hapū or other community groups? What might be some of the positives and negatives of having a non-public body as a controlling authority?
- What should controlling authorities be called?

Governance for the Act and Commission

- Do you think the Ministry for Primary Industries should remain the administrator of the Act? If yes, why?
- If no, do you think this role should be carried out by another government agency (please say which, and why)?

Requirements for the board of the New Zealand Walking Access Commission

- Is the required number of board members right?
- Should the Act specify the spread of background, skills and knowledge that board members should have? If so, what should these be?

Funding

- Should the Commission supplement its Government funding with private funding and/or cost recovery? What are the pros and cons of these?

Appendix C – Relevant provisions of the Walking Access Act 2008

Purpose

Excerpt from Section 3 of the Walking Access Act 2008:

3 Purpose

The purpose of this Act is —

- (a) to provide the New Zealand public with free, certain, enduring, and practical walking access to the outdoors (including around the coast and lakes, along rivers, and to public resources) so that the public can enjoy the outdoors; and
- (b) to establish the New Zealand Walking Access Commission with responsibility for leading and supporting the negotiation, establishment, maintenance, and improvement of —
 - (i) walking access (including walkways, which are one form of walking access) over public and private land; and
 - (ii) types of access that may be associated with walking access, such as access with firearms, dogs, bicycles, or motor vehicles.

Objective of Commission

Excerpt from Section 9 of the Walking Access Act 2008:

9 Objective of Commission

The objective of the Commission is to lead and support the negotiation, establishment, maintenance, and improvement of walking access and types of access that may be associated with walking access, such as access with firearms, dogs, bicycles, or motor vehicles.

Functions of Commission

Excerpt from Section 10 of the Walking Access Act 2008:

10 Functions of Commission

(1) In meeting its objective under section 9, the Commission has the following functions:

- (a) providing national leadership on walking access by —
 - (i) preparing and administering a national strategy; and
 - (ii) co-ordinating walking access among relevant stakeholders and central and local government organisations, including Sport and Recreation New Zealand:
- (b) providing local and regional leadership on, and co-ordination of, walking access in collaboration with local authorities:
- (c) compiling, holding, and publishing maps and information about land over which members of the public have walking access:
- (d) providing advice on walking access to the Minister or any other person:
- (e) facilitating resolution of disputes about walking access, including initiating negotiations about disputed issues, mediating disputes, and referring disputes to a court, tribunal, or other dispute resolution body:
- (f) negotiating with landholders to obtain walking access (including walkways, which are one form of walking access) over public or private land:
- (g) negotiating rights in addition to any walking access that is obtained, such as the right of access with firearms, dogs, bicycles, or motor vehicles:

(h) administering a fund to finance the activities of the Commission, or any other person, in obtaining, developing, improving, maintaining, administering, and signposting walking access over any land:

(i) receiving and managing private funding, contributions, or sponsorship for the promotion of walking access:

(j) researching, educating the public about, and participating in topics and programmes related to walking access:

(k) developing, promoting, and maintaining the code of responsible conduct:

(l) administering walkways under this Act, with planning and supervision focused at a local level:

(m) monitoring the compliance with, and enforcement of, this Act in relation to walkways.

(2) If the Commission is aware that a site is culturally sensitive, it must consider whether it is appropriate to publish a map or information indicating the location of the site before doing so.

Consideration of priorities for walking access over private land

Excerpt from Section 11 of the Walking Access Act 2008:

11 Consideration of priorities for walking access over private land

In considering its priorities for negotiating walking access over private land, the Commission must take into account the desirability of walking access —

- (a) over land on the coast where there is not already walking access over the foreshore or the land adjoining the foreshore on its landward side:
- (b) over land adjoining rivers or lakes where there is not already walking access over the land:
- (c) to parts of the coast, rivers, or lakes to which there is not already walking access:
- (d) being continuous over land adjoining the coast, rivers, or lakes (for example, by replacing walking access that has become obstructed by being submerged beneath a body of water):
- (e) to conservation areas (within the meaning of section 2(1) of the Conservation Act 1987):
- (f) to areas of scenic or recreational value:
- (g) to sports fish (within the meaning of section 2(1) of the Conservation Act 1987) and game (within the meaning of section 2(1) of the Wildlife Act 1953).

Appendix D – Glossary of Acronyms

Act	Walking Access Act 2008
Code	<i>New Zealand Outdoor Access Code</i>
Commission	New Zealand Walking Access Commission
DMP	Destination Management Planning (led by the Ministry of Business, Innovation and Employment)
DOC	Department of Conservation
EAF	Enhanced Access Fund
IVL	International Visitor Levy
LINZ	Land Information New Zealand
MBIE	Ministry of Business, Innovation and Employment
MfE	Ministry for the Environment
MHUD	Ministry of Housing and Urban Development
MoE	Ministry of Education
MoH	Ministry of Health
MOU	Memorandum of understanding
MPI	Ministry for Primary Industries
MSD	Ministry of Social Development
NZCT Inc	New Zealand Cycle Trail Incorporated
NZTA	New Zealand Transport Agency
PGF	Provincial Growth Fund
RFAs	Regional Field Advisors for the New Zealand Walking Access Commission
TIF	Tourism Infrastructure Fund
TOR	Terms of Reference for the review of the Walking Access Act
WAMS	Walking Access Mapping System







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