

OUTDOOR WALKING ACCESS

CONSULTATION DOCUMENT

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»» Foreword

It is now three years since I was asked by the then Minister for Rural Affairs to chair the Land Access Ministerial Reference Group. The report made by the Reference Group in August 2003 reflected the consultations it had with a wide range of organisations and individuals concerned about walking access to the New Zealand outdoors, and the concerns of those involved in the ownership and management of land. Our report tried to enunciate a vision for the future that reflected the traditions and aspirations of most New Zealanders. In particular, we were concerned to balance the preservation of the right of the public to enjoy the benefits of recreation in the great outdoors against the rights of landowners to use and manage their land.

The Government policy proposals that were developed following the Reference Group's report proved to be controversial and the proposed legislation did not proceed.

The land access issues have not gone away. In July last year I was invited by the then Associate Minister for Rural Affairs to chair the present Walking Access Consultation Panel, which has been charged with the task of attempting to reach a consensus with the contending parties over the access issues. The new Minister for Rural Affairs (Hon Damien O'Connor) has endorsed the terms of reference for the Panel, and confirmed that this is not a revival of the footway proposal that was abandoned last year. It is certainly not about an unconstrained right for the public to wander at will over private farmland or through private forests. This was never advocated by the former Reference Group, and was never promoted as a possible Government policy.

The focus of the Panel's work is on the potential of the existing rights of public access along water margins to meet future needs, how these rights may be better understood and managed, and establishing the extent to which this existing water margin access falls short of the reasonable expectations of the public for access along and to water margins and other public land. What we are seeking is consensus, taking into account the rights and expectations of the various interested parties. It may well be that any extension of existing access will be a matter of negotiation on behalf of the public.

The Panel has identified the key concerns raised in the submissions that were made by the public following the release of the Reference Group's report, and suggested possible measures that might address these concerns. It has then posed questions that are designed to focus the discussions with interest groups and the public.

This is the opportunity for interested organisations and the public to think again about the access issues and to come up with options for solutions that are likely to meet with wide acceptance in the community.

John Acland

Chair of the Walking Access Consultation Panel
Mount Peel
Peel Forest
April 2006



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»» Introduction

Following Cabinet approval of the policy for a walking access bill, the Associate Minister for Rural Affairs made substantial progress towards drafting legislation that would give effect to these decisions. However, some of the provisions to be included in the proposed bill were highly controversial. A decision was made to postpone the introduction of a bill to allow time for further consultation with concerned interest groups.

The wider objective of the walking access policy remains unaltered. Cabinet confirmed that the policy objective is to complete the Queen's Chain so that "as far as practicable the public will have access on foot around the coast of New Zealand, along rivers and around lakes". The means of achieving this objective require further consideration and consultation.

New Zealanders value access to the great outdoors for recreation, but landholders and outdoor enthusiasts often disagree about what land is open to the public and who should control access to it.

As ownership of land, use of land and informal access arrangements to land change over time, New Zealanders' access to the outdoors, both now and in the future, is facing new challenges.

To ensure that appropriate access to land is guaranteed for current and future generations, the Walking Access Consultation Panel (the Panel) is seeking to create a consensus about solutions for formal access to land for recreational purposes.

The consultation

The then Associate Minister for Rural Affairs asked the Panel to carry out thorough consultation with interest groups and the public with the objective of reaching agreement, as far as possible, on walking access along the coast, significant rivers and lakes, and to public land that is surrounded by private land.

The Panel takes as its starting point the views expressed at consultation meetings with stakeholder representatives, Māori and the public as well as in the many written submissions received in response to *Walking Access in the New Zealand Outdoors*, a report by the Land Access Ministerial Reference Group (the Reference Group) in 2003.

In this consultation document, the Panel proposes an aim and principles for walking access to land in New Zealand. It then presents the issues arising from the 2003 consultation under four headings.

Each issue is summarised and options for solutions are proposed. The Panel then poses questions relating to the solutions.

The Panel is seeking solutions that are practical and cost effective, but recognises that their implementation may take several years. This is a long-term issue that is concerned not just with the needs of today, but of future generations.

The Panel is keen to receive your views and comments on the solutions, and your answers to its questions. It is also interested in any further concerns about access to land and any other solutions. In addition to meeting with and listening to stakeholder representatives and the public, the Panel welcomes written submissions.

Summary of issues

Taking account of the consultation undertaken by the Reference Group and MAF in 2003, the walking access issues discussed in this consultation document fall into four categories:

- 1 Issues on which landholders and users largely agree:
 - Location and status of existing access rights to water margin land
 - Code of responsible conduct
 - National leadership and policy co-ordination
- 2 Issues on which agreement needs to be sought:
 - Refusal of access by landholders
 - The intersection of private and public property rights
 - Impact of erosion and accretion on water margin access
 - Establishing new access
 - Use of unformed legal roads
- 3 Access-related issues that require clarification and evaluation:
 - Health and safety liability of landholders
 - Fire risk and liability
 - Biosecurity risks
 - Rural crime and security
- 4 Issues in respect of Māori land and Māori issues in respect of non-Māori land
 - Treaty of Waitangi concerns, access rights to Māori land, and wāhi tapu and rāhui

Consultation process

The Panel will pursue an open and transparent process, with the objective of arriving at common-sense solutions, preferably agreed to by all concerned. These solutions will focus both on today's access problems and on providing for the needs of future generations.

The Panel is holding consultation meetings throughout the country. The meetings are an opportunity for you to talk to the panel about the issues and solutions discussed in this document.

The Panel is also inviting written submissions in response to this consultation document.¹ Submissions can be sent to the Walking Access Consultation Panel, PO Box 2526, Wellington, no later than 30 June 2006.

The Panel will report to the Minister for Rural Affairs on the outcome of the consultation process, along with recommendations that reflect, as far as possible, a consensus on how to address the access concerns identified.

Background to the consultation

In 2003 the then Minister for Rural Affairs appointed the Land Access Ministerial Reference Group to enquire into and report on:

- access to the foreshore of lakes and the sea, and along rivers;
- access to public land across private land;
- access onto private rural land to better facilitate public access to and enjoyment of New Zealand's natural environment.

The Reference Group consulted informally with a wide range of interest groups and reported its findings to the Associate Minister for Rural Affairs in August 2003. In parallel with this process, a member of the Reference Group, Mr Brian Hayes, reported separately on the law on public access along water margins.

Following the publication of these two reports, the Ministry of Agriculture and Forestry undertook a series of meetings with interest groups, Māori and the public. Written submissions were invited on the issues raised in the Reference Group's report. An analysis of the written submissions was published by the Ministry in June 2004.

¹ All submissions are subject to the Official Information Act 1982, which specifies that information is to be made available unless there are grounds for withholding it. If you wish your submission or any part of it to be withheld, please indicate the grounds in the Official Information Act that apply. The Ministry of Agriculture and Forestry, which will hold the submissions on behalf of the Panel, will take your request into account when determining whether or not to release information. Please note that any decision by the Ministry of Agriculture and Forestry to withhold information is reviewable by the Ombudsman.

In December 2004, on the basis of the Reference Group's report and the subsequent consultation and submissions, the Government proposed legislation that would have provided for the creation of footways along the coast, around lakes and along rivers. These footways were to give public walking access along specified water margins. In June 2005 the Government announced that it would not be proceeding with this legislation. Rather, it would consult further with major stakeholders and seek greater consensus on a way forward in enhancing public access.

In August 2005 the Associate Minister for Rural Affairs announced the appointment of a panel to carry out the further consultation. Details of the Panel's members and its terms of reference are in Appendices 3 and 4.

»» Aim for walking access to land

The Panel proposes that the aim is for New Zealanders to have fair and reasonable access on foot along the coastline and significant rivers, and around lakes.



Question Aim

- 1 Does the aim capture the two, often conflicting, values that many New Zealanders hold dear: access to our many natural recreational resources and having our very own piece of dirt? If not, how could the aim be improved?

»» Principles for walking access to land

The Panel proposes that a framework and solutions for walking access be guided by a set of principles that are applicable generally and reflect the aspirations and values of both users and landholders.

The proposed principles encompass quality of access, information and maps, reinstating lost access, establishing new access and respect for property and the environment.

The Panel recognises that:

- the public generally have the right to be on public land;
- landholders generally have the right to manage who may enter private land and what they may do on it.

Principles

Quality of access

Access should be:

- *Free* – that is, the public should be able to access for recreational purposes without charge those areas that are designated as being open to access.
- *Certain* – both the public and landholders expect legal certainty over the ability of the public to access water margin land, and the right of landholders to exclude the public from privately owned land.
- *Enduring* – the legal right of access should be enduring over time. As well as responding to the current access concerns expressed by the public, access remedies should take account of potential problems resulting from changing patterns of land ownership and owner attitudes, and the impact of these on future generations.

Respect for property and the environment

Persons exercising a right of access to land should take proper care of the environment and not interfere with private property or activities.

Information and maps

The public and landholders should be able to access information, including maps, about land that is open to recreational use by the public. This information should be easy to obtain and useful.

Land open to the public includes esplanade and other reserves administered by local authorities, Crown land in respect of which the Crown has no reason to exclude the public and unformed legal roads (paper roads).

Reinstating lost access

Restoring reservations to water margins should be pursued, provided that it can be done in a way that is fair to all parties.

Often public access – by a road, marginal strip, esplanade reserve or some other means – was originally established to adjoin a water margin, but has become separated from that margin as a result of natural erosion or accretion. In these circumstances the public access may be difficult to locate and may be submerged by the sea or a river.

New access

New access along and to water margins and other public land is to be established preferably by negotiation and agreement.

Where possible this should be done using existing legal mechanisms. Any new access to a water margin need not strictly follow a water margin if an alternative route is more practical and can be readily identified.



Question Principles

- 2 Do you agree with the proposed principles? If not, please be specific and suggest any alternatives.

»» Issues on which landholders and users largely agree

Location and status of existing access rights to water margin land

Views of submitters

Most submitters on the Reference Group's report, both landholders and recreational users, considered that there was a need to clarify existing legal access rights. In particular, there is currently no readily accessible, complete and authoritative source of information on the location of water margin reserves or public access ways to water margins. Many recreation groups and individuals considered that there is a need for this information to be identified on topographical maps.

Members of recreation groups and other outdoor enthusiasts expressed persistent concerns over the lack of readily available information on public access. These concerns include: problems in finding information about the location of unformed legal roads and other public access reserves; a lack of mapping; and absent, inconsistent or misleading signage.

Access rights such as surveyed and paper roads are being lost through inaction and loss of information that used to be available on cadastral maps.

(Submission to the Reference Group)

The reasons given for the lack of readily available information on access include the following.

- Public access is not mapped in a readily accessible manner. Cadastral maps are no longer published and are therefore difficult to obtain, and are, in some cases, indicative only. Some access arrangements are only found on individual property titles and not on cadastral maps.
- Most elements of public access can be found on Landonline, a database containing cadastral data (that is, information about legal boundaries and legal rights over land) held by Land Information New Zealand (LINZ). However, some submitters considered that Landonline data is difficult for the layperson to access and interpret, and noted that the data is only available to those who pay for a subscription.

- Some of the maps that are accessible are out of date.
- There is no authoritative public database overlaying cadastral data with topographical and photographic data. Therefore, even if the location of the public access is known, available maps do not show whether this provides practical access along a waterway.
- Signage on public rights of access varies between territorial authorities, and often depends on the amount of tourism in the area.

Both landholder and recreational user submitters on the Reference Group's report sought better information on the location of legal access. Most submitters considered that accurate, regularly updated access information should be available free of charge. For recreational users, the lack of information can constrain opportunities to use public access reserves. Some landholders were unsure of whether they had legal public access ways through, or adjacent to, their land. They noted that this lack of certainty meant that people could inadvertently stray onto private property and that landholders could unreasonably deny access.

Options for solutions

Information about access rights

Mapping of existing access rights is proceeding using departmental resources and existing funding. There will be consultation with the Panel, so that mapping work aligns with that of the Panel.

The mapping will need to identify the access rights running with particular categories of water margin land.

Signposting

Signposting may be a useful means of providing the public with more information about rights of access to land. Signposting could, for example, indicate the existence of public access where rivers intersect with formed public roads. Issues that need to be considered are the extent of such signposting and who should bear the costs of erecting and maintaining the signs.

Marginal strips

In general, marginal strips created on the sale or disposal of Crown land since 1987 have not been geographically located in the LINZ database, but merely subject to a notation on the survey and title records. The identification of the geographical location of these strips would enable the mapping of access to be complete and authoritative. LINZ is considering how this problem might be overcome.



Questions

Information about access rights

- 3 What information should be included in a mapping database?
- 4 What is an appropriate balance or mix between the provision of paper maps and dependence on internet access?
- 5 What map scale is necessary to make the maps useful?
- 6 What other matters do you believe are relevant to making information about access rights useful?

Signposting

- 7 Is signposting necessary at all?
- 8 How extensive should signposting be? (For example, is it more appropriate or desirable to signpost places where people are allowed or not allowed?)
- 9 Who should be responsible for signposting?
- 10 Who should bear the cost of signposting?

Code of responsible conduct

Views of submitters

Both recreational user and landholder submitters on the Reference Group's report considered that the majority of users act responsibly, but a small percentage of users abuse their rights of access,² which can erode goodwill between landholders and users and lead to reduced access opportunities for all. Many landholders stated that they already experienced problems stemming from poor behaviour by recreational users, such as damage to property, gates left open, litter, cannabis cultivation and vandalism.

² There is a degree of ambiguity in these comments, as it is not clear if landowners distinguish between the abuse of access on private land by permission and the behaviour of those using legal access rights.

This sector of the public [percentage that act irresponsibly and damage property] is, in our experience, the prime reason for controls on access to private land.

(Submission to the Reference Group)

Many landholder submitters believed that increased public access would lead to more problems and could compromise or disrupt rural economic activity, such as farming or forestry operations.

Those particularly concerned about the poor behaviour of recreational visitors included many private farmers, as well as representatives of larger farming stations. These concerns were also expressed by some industry stakeholders, especially from the forestry sector.

A common theme raised by landholders is the lack of knowledge of farming and rural practices on the part of many urban-dwelling recreational visitors. The urban public's understanding of rural New Zealand has been lost as the urban population base grows, according to some landholder submitters. The rural area may be seen as a place for recreation only, rather than a working environment, and the public today does not always belong to recreational groups that maintain formal or informal codes of conduct.

Options for solutions

It is widely accepted that a code of responsible conduct is desirable for the guidance of both landholders and users. Such a code could be published and promoted by an access agency without any legislative backing. A voluntary code was proposed by Federated Farmers in 2004.

An issue is whether a code should apply only to access over private land, or only to public land, or to both.

A code of responsible conduct could address problems that result from a lack of public knowledge about acceptable conduct in rural areas, and clarify the rights and responsibilities of all parties. Many aspects of poor conduct are already covered by existing laws and by-laws, for example, littering, vandalism and excessive noise. Disturbing domestic animals, setting traps, shutting an open gate and opening a closed gate on private land are all offences under the Trespass Act 1980. These provisions in the Trespass Act do not, of course, apply to land that is subject to public access rights.



Questions

Code of responsible conduct

- 11 Should a code of responsible conduct apply only to access over private land, or only to public land, or to both?
- 12 Should a code of responsible conduct be legally enforceable (such as a regulatory or statutory code)? If so, what do you think are the main things that need to be included in such a code?
- 13 Should a code of responsible conduct be non-regulatory, focusing on promoting good behaviour through education, clarifying existing laws and recommending best practice? If so, what do you think the code should include?

National leadership and policy co-ordination

Views of submitters

A substantial number of people with interests in access commented on the lack of national leadership on access, and a perceived lack of interest in access issues on the part of agencies with existing responsibilities. Some submitters felt that public interest in recreational access was not dealt with well because of the ad hoc management of access by a variety of agencies, including the Department of Conservation, LINZ and local authorities.

The lack of clear leadership on access has resulted in poor availability of information and a sense of frustration for some recreational users, who find it difficult to get help and advice when experiencing difficulty in using existing access rights. Many considered that access rights (particularly to unformed legal roads) are being lost by the inaction of local authorities.

Unfortunately, [territorial authorities] often seem unwilling to take action to enforce public rights on roads that have the same status as Lambton Quay or Fenton Street ... We also suggest that [territorial authorities] be required to act to remove obstructions, illegal signs and un-signposted gates on petition of, say, seven residents.

(Submission to the Reference Group)

Options for solutions

Establishing an agency for access

The principles for walking access (see page 6) as a whole will not be realised without strongly focused leadership. This is especially so in the absence of general access legislation, as options will depend for their effectiveness on leadership, co-operation and persuasion.

For example, an access agency could be created by Ministerial direction (in practice, in response to a Cabinet decision). One option would be a branded function within an existing government department. The advantage of creating an agency in this way is that it can be put in place quickly and use existing departmental resources.

An analysis of organisational options and their characteristics is set out in Appendix 5.



Questions Access agency

- 14 What, in your opinion, should be the purposes of an agency, and what should be its main functions?
- 15 Taking into account your view of the purposes and functions of an agency, what organisational form should it take, and why?
For example:
 - a branded unit within an existing government department;
 - a trust, similar to the Queen Elizabeth II National Trust;
 - a Crown entity;
 - a Commissioner accountable to Parliament.

»» Issues on which agreement needs to be sought

Refusal of access by landholders

Views of submitters

Many recreational submitters on the Reference Group's report acknowledged that there are, at times, genuine and necessary reasons for access to be restricted. However, they also felt that sometimes landholders deny access on unreasonable or inappropriate grounds.

A significant number felt that it was becoming harder to gain permission for access, including access to places that they had long visited. Different reasons were suggested for this, including the increased number of absentee or multiple owners (which makes it difficult to request permission), land use change, concerns over health and safety or fire risk, the growing number of smaller lifestyle blocks, and the practical difficulty of finding the landholder on the day. Changes in land ownership were considered by many submitters to be causing access issues for all New Zealanders.

Commercial pressures on land usage and natural resources are creating increasing conflict between landholders and outdoors recreationists.

(Submission to the Reference Group)

This perceived increase in denial of access by landholders links in with other areas of recreational users' concerns, such as claimed misuse of the Trespass Act and the lack of secure legal access described in earlier sections.

Whatever access arrangements are agreed to or promoted, there are still likely to be disputes about exactly where access is permitted and about the behaviour of persons exercising access rights or arrangements. For example, the information about the existing Queen's Chain, however provided, will be subject to a margin of error that will depend on the accuracy of the source information. There may also be uncertainties about the application of the information in practice.

Options for solutions

Better information and better access to information on access rights and boundaries of private land

Better information and improved access to information would clarify whether or not landowners are entitled to refuse access to land. See pages 8-10 for further discussion and questions about this solution.

Better information on the limits of landholder liability to the public

Better information on the limits of landholder liability to the public would clarify whether or not landowners are justified in refusing access because of concerns over health and safety or fire risk. See pages 26-28 for further discussion and questions about this solution.

Code of responsible conduct

A code of responsible conduct would clarify appropriate behaviour in respect of the access being exercised and reduce landholders' concerns about disturbance to stock and damage to property. See pages 10-12 for further discussion and questions about this solution.

Statutory limit on liability

Statutory limits on liability could be considered to alleviate landholders' concerns. See pages 26-27 for further discussion and questions about this solution.

Provision of a means of dispute resolution

There may be merit in providing a means of mediating or resolving disputes where there is uncertainty about rights or responsibilities. Whatever access arrangements are agreed to or promoted there are still likely to be disputes over exactly where access is permitted and about the behaviour of persons granting or exercising access. For example, the information about the existing Queen's Chain, however provided, will be subject to a margin of error which will depend on the accuracy of the source information. There may also be uncertainties about the application of the information in practice.



Questions

Dispute resolution

- 16 How can disputes between landowners and recreational users be resolved? Some possibilities are:
- reliance on the Trespass Act;
 - mediation (non-binding) by:
 - > an access agency
 - > a government department
 - > local authorities
 - > someone else.
- 17 How can intractable situations, where a landholder refuses to negotiate, be resolved?

Intersection of private and public property rights

Views of submitters

Landholders and farmers expressed strong sentiments regarding the sanctity of private property rights in response to both the Reference Group's investigation and the announcement of legislative proposals in December 2004.

A particular concern was that the proposals were seen as a taking of an interest in land without compensation, although the Government later announced (in mid-2005) that it would make provision for compensation in exceptional circumstances.

These sentiments were largely a response to the concept of a deemed access right over private land. The Government has abandoned the legislation that it had proposed to give effect to this concept.

Options for solutions

Use of existing statutory mechanisms

The only statutory mechanism for creating new access over private land is the creation of esplanade reserves and strips under the Resource Management Act 1991.

Esplanade reserves and strips are mandatory only in the case of subdivision to lots of four hectares or less, where the benefits accruing to the subdivider from the subdivision can be seen as compensation for the reserve or strip that is taken.

Negotiated access

Reliance on negotiation for new access will protect the property rights of the landowner. (For further discussion see pages 18-22.)



Question

Property rights

- 18 Please comment on any other property rights issues that may be of concern.

Impact of erosion and accretion on water margin access

Views of submitters

Many recreational users were concerned that the natural movement of waterways and coastal erosion means that fixed, surveyed access reserves, such as legal roads, often no longer fulfil their original objective of bordering water margins. This means that the legal access ways may no longer provide the access that was originally intended. Submitters to the Reference Group's report frequently suggested that water margin access be made "moveable" – it could follow the margin of the water rather than a fixed position on the ground.

Options for solutions

Realignment of displaced water margin access

A significant portion, possibly up to 50 percent, of water margin reserves (the Queen's Chain) has been affected by erosion so that it no longer adjoins the water margin as it did at the time of establishment. Realignment of these reserves with the water margin is technically difficult. Under existing legislation this may require the agreement of the affected landholders and the accommodation of any objections from the public if the stopping of any road was involved. Legislation may be required to achieve realignment on a significant scale. This is a legally complex area. The Panel is exploring the legal issues, possible solutions and implications in more depth.



Questions

Realignment of displaced water margin access

- 19 Do you support the realignment of water margin reserves where these have been displaced?
- 20 Is there an alternative that would make these reserves practically usable?

Establishing new access

Views of submitters

Many recreational users were concerned that water margin access is “incomplete”. That is, for various reasons some major rivers, lakes and areas of the coast are not subject to public access reserves of any kind. It has often been suggested that the provision of access by way of esplanade reserve or strip on subdivision is an inadequate way to extend public access along water margins, as it is a slow and intermittent process. This provision is triggered only by subdivision to lots of four hectares and less and cannot, on its own, complete access to water margins. Submitters considered that local authorities have too much discretion to waive the requirements. This can mean a property is subdivided with no reservation taken at all, and the opportunity to provide for public access is lost.

We need improved river and lake access – creation and expansion of the Queen’s Chain concept – with a binding legal status ... We need secure access to our countryside assured for ever!

(Submission to the Reference Group)

I would like to see the Queen’s Chain extended to cover (apart from exemptions) as much as possible of all water margins not at present included. I feel strongly that this is part of my heritage as a New Zealander in which I have firmly believed all my life and that its validity should be solidly affirmed. I believe that when property is sold, as well as when subdivision occurs, provision for the extension of the Queen’s Chain should be part of the transaction.

(Submission to the Reference Group)

Concerns have also been raised about access across private land to water margins and to other public land, such as national parks and other land administered by the Department of Conservation. This lack of access may occur because public land is, in some instances, “landlocked” by private land, or an area to which access is sought is only otherwise accessible by a long trek along a water margin.

Submitters noted that although 30 percent of New Zealand is public land, open to the public, parts of this are underutilised because there is no access to it.

Options for solutions

The use of RMA mechanisms on the subdivision of land

The creation of esplanade reserves and esplanade strips on subdivision is the only existing statutory mechanism for requiring new public access to be created over private land. There is a need for a comprehensive review of the provisions in regional and district plans for the establishment of esplanade reserves and strips.

There may be scope for an access agency to influence the provisions in plans so that there is a more comprehensive and consistent approach throughout New Zealand. This may be able to be achieved informally through dialogue with local government, or use could be made of national policy statements under the Resource Management Act 1991 (RMA).

New Zealand Coastal Policy Statement

A New Zealand Coastal Policy Statement (NZCPS) is a mandatory requirement under the RMA. The present statement is being reviewed, and an extensive process involving officials and external consultation has begun, under the co-ordination of the Department of Conservation, which is responsible for this aspect of the RMA. The NZCPS must be taken into account by local authorities in discharging their duties under the RMA. One aspect of the NZCPS is the provision of recreational access to land, especially in respect of the conditions attached to coastal subdivisions.

National Policy Statements

National Policy Statements are made under Part 5 of the RMA, and could potentially influence local government decisions under that statute. The process for making such statements can involve setting up a board of inquiry and organising public submissions and hearings.

This may be a useful supplement to section 6 of the RMA, which declares “the maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers” to be a matter of national importance.

Some regional and district councils are developing access strategies. It is not clear whether a National Policy Statement is worthy of more consideration.

Overseas Investment Act 2005

The enactment of the Overseas Investment Act 2005 has provided a mechanism whereby consent to certain acquisitions of land by overseas persons is subject to consideration of 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.

This is but one of a range of considerations required to be considered in respect of transactions which are subject to this legislation. It is unclear at this early stage if this requirement will provide significant new walking access.

Negotiated access

Possible options for negotiating access include:

- the creation of walkways under the New Zealand Walkways Act 1990;
- the use of the Queen Elizabeth the Second National Trust Act 1977 as a mechanism to create a perpetual right of access;
- the provision of funding to local authorities to negotiate access;
- the negotiation of access by an access agency.

These options are not mutually exclusive, but, to be effective on a national scale, they would all require a degree of planning and co-ordination at a national level. They would also need a significant amount of finance, especially to create permanent access by such means as easements or covenants. Consideration will be given to the transfer of the administration of the New Zealand Walkways Act to an access agency (see pages 12-13). This Act contains an existing statutory mechanism for the negotiation of new access. Its transfer to an agency focused on walking access has the potential to give impetus to the creation of new walkways.



Questions

Gaps in water margin access

21 There are gaps in public access to water margins. How do you think these gaps might be remedied?

Possibilities include:

- voluntary agreement on a case-by-case basis between landholders and users;
- an arrangement whereby landholders agree that the land is to be held in a trust for access purposes, in a manner similar to that provided for in the Queen Elizabeth the Second National Trust Act 1977;
- establishment of esplanade reserves or strips on subdivision;
- the acquisition of the land or easements over the land by or on behalf of the Crown;
- the scrutiny of acquisitions of land by overseas persons as provided by the Overseas Investment Act 2005;
- any other process or mechanism you believe is appropriate.

Negotiated access

22 What would encourage landholders to agree to formal, certain and enduring legal access?

Possibilities include:

- monetary payment;
- rates relief;
- provision of fencing, signage and/or maintenance;
- provision of facilities such as toilets and car parking;
- ability to close or restrict access at certain times;
- ability to shift the route if necessary;
- removal of any liability to persons exercising access;
- the ability to “trial” the right of access before deciding;
- indemnity for damage caused by a user;
- the establishment of a code of responsible conduct;
- other (please describe).

Resource Management Act

23 Local authorities administer the esplanade reserve and associated provisions of the RMA. The provision of esplanade reserves and esplanade strips on subdivision is one of the most significant current mechanisms for creating new water margin access (the other process is creating marginal strips on the sale of Crown land). Is this mechanism still appropriate?

If no, does the current process for creating esplanade reserves and strips on subdivision need to be changed if access is to be increased?

24 Do you think the following measures would be appropriate for establishing new access:

- a review of how well local government has reflected the purpose in section 6 of the RMA in its decision making, especially in the creation of esplanade reserves;
- assistance to local authorities where lack of resources is a barrier either to the creation of esplanade reserves and strips and/or their maintenance (how could assistance be given?);
- removal of the requirement to compensate if taking reserve or strip on subdivision into lots over four hectares;
- assistance to local authorities to produce “access strategies” to guide applications for resource consent and in proposing road stopping (how could assistance be given?);
- provision of more central government guidance via the New Zealand Coastal Policy Statement or a National Policy Statement on access under the RMA;
- change to the local authority discretion to waive or reduce reserve and strip requirements?

Access to water margins and other public land

25 How could access across private land to water margin reserves and to other public land be improved?

Possibilities include:

- voluntary agreement on a case-by-case basis between landholders and users;
- an arrangement whereby landholders agree for the land to be protected or covenanted in a manner similar to that provided for in the Queen Elizabeth the Second National Trust Act 1977;
- the establishment of access strips by local authorities;
- the use of unformed legal roads;
- other (please describe).

Priorities

- 26 The provision of new access opportunities and rationalisation of existing access will generally need to be done on a case-by-case basis, and will be time-consuming and costly. Resources will need to be prioritised. What are the priorities to be addressed first?
- 27 Who should provide the funding for new access and to what level?
- 28 To what extent can your organisation assist in setting priorities?

Use of unformed legal roads

Views of submitters

Submitters, recreational groups and many individuals showed a keen interest in the nature and use of unformed legal roads³ (or “paper roads”) for access. Most considered them a valuable access tool. However, unformed legal roads are often not able to provide access because of difficulties in establishing their precise location and, in some cases, the use or obstruction of these roads by neighbouring landholders.

Many submitters, especially recreational groups, mentioned the difficulty of locating unformed legal roads on maps and the absence of signage on the ground. Many believed that the network of unformed legal roads should be identified and publicised, and felt that this would greatly improve access opportunities.

There are significant concerns surrounding the obstruction of unformed legal roads. Obstruction may occur when landholders erect fences or absorb the roads into their own property by grazing cattle or planting crops. In addition, a common concern relates to the practical difficulties involved in getting local authorities to enforce public access to unformed legal roads. Some submitters reported experiencing council reluctance to require the removal of these obstructions, despite an apparent legal obligation to do so.

³ Unformed legal roads, sometimes known as paper roads, are no different in law from formed roads. That is, the public have the right to pass and re-pass on foot, on horse or in vehicles without hindrance from the adjacent landowner or anyone else. The general rules of the road apply, as well as the specific provisions in part 21 of the Local Government Act 1974 concerning the conditions under which swing gates may be placed across unfenced roads.

Countless acres of land have been commandeered by private owners in the name of grazing rights, which includes locking gates, fencing without gates and even blending of this public land into private lawns and gardens.

(Submission to the Reference Group)

Most of the problems I have come across have involved paper roads. It is common practice for farmers to arbitrarily fence across paper roads and to include the road reserve as part of their farming operations.

(Submission to the Reference Group)

Some submitters thought that the idea of “swapping” inappropriately located unformed legal roads for access ways alongside water margins had merit. They suggested that this trade-off could form part of negotiations for access with landholders. Other submitters – four-wheel-drive enthusiasts in particular – were suspicious of this suggestion, fearing that the road might be traded for access of lesser value, such as a walking path, to the detriment of vehicular access rights.

Options for solutions

Better use of suitable unformed legal roads

Unformed legal roads are extensive and form the largest single component of the existing Queen’s Chain. In principle, they can be mapped easily and, if necessary, be signposted. The issues to be addressed are:

- separation from water margins caused by erosion;
- unlawful obstructions, such as fences or gates;
- adjacent landowners may regard themselves as having use rights;
- non-enforcement of public rights by territorial authorities (in whom most unformed roads are vested);
- concerns by territorial authorities about inappropriate use of unformed roads, especially by off-road vehicles;
- management of weeds, pests and environmental damage.

The stopping of unformed legal roads and relocating them or exchanging them for more appropriate forms of access poses legal and procedural challenges. It is possible for these to be overcome in some circumstances if the interested parties co-operate.

At least some of the issues are potentially able to be alleviated by establishing some form of dialogue with the territorial authorities. A precondition for this is the establishment of an access agency.



Questions

Unformed legal roads

- 29 If unformed legal roads traversing farm or forest land are marked on maps and/or signposted, what issues are likely to arise and how might they be addressed:
 - for users
 - for adjacent landholders
 - for local government?
- 30 How might obstructions to walking access, such as deer fences, on unformed legal roads be dealt with?
- 31 How can weeds, pests and environmental damage in respect of the use of unformed legal roads for walking be managed?
- 32 Do you consider that there is scope for stopping unformed legal roads in exchange for alternative walking access?

»» Access-related issues that require clarification and evaluation

Health and safety liability of landholders

Views of submitters

Many landholders and farmers were concerned about the health and safety implications of increased public access to their land. A large number of landholder submitters felt that public access, particularly if unconstrained, poses safety risks to both members of the recreating public, and those living or working on rural properties. Many submitters mentioned the dangers associated with livestock such as bulls or deer, heavy equipment, activities such as tree felling or the spraying of chemicals, as well as natural hazards such as bluffs and rivers. It was felt that these dangers are not well understood by many urban people. Farmers and other rural business people were worried about the impacts of additional safety concerns on their activities.

A large number of submitters felt that landholders' liability for injuries to others on their land needs to be clarified. Most submitters were concerned about duties under the Health and Safety in Employment Act 1992, with a few submitters also mentioning the Occupiers' Liability Act 1962. These concerns lead some landholders to restrict access. Some submitters argued that landholders should have no liability at all for members of the public accessing their land.

These concerns were common among farmers, the forestry sector and energy and airport companies.

Options for solutions

Education

There seems to be a widespread misunderstanding on the part of landholders as to their obligations under the Health and Safety in Employment Act 1992 in respect of persons on or adjacent to their land for the purposes of recreation. This is in spite of the publication of a *Farm Bulletin* from the Department of Labour in 1999, the contents of which had been agreed with Federated Farmers. Further efforts to provide landholders with accurate information on the limited extent of their obligations to recreational visitors would help to relieve some of the concerns. A copy of the Department of Labour bulletin is provided in Appendix 6.

Code of responsible conduct

An agreed code of responsible conduct could include guidance to both landholders and users on health and safety issues. See pages 10-12 for a discussion and questions about a code of responsible conduct.



Question

Possible health and safety liability of landholders

33 As a farmer, are you familiar with the *Farm Bulletin*, published by the Department of Labour, “If visitors to my farm are injured, am I liable?” (see pages 58-61).

If yes, are you still concerned about your liabilities to visitors under the Health and Safety in Employment Act 1992, and what are your specific concerns?

Fire risk and liability

Views of submitters

The Reference Group’s report, and subsequent submissions on the report, showed that the perceived risks associated with fire often led rural landholders to deny recreational access to the public and were a cause of opposition to proposals to improve walking access.

Many forestry companies were particularly concerned about the risk of a fire caused by a member of the recreating public. Submissions from forestry companies all emphasised the risk of fire stemming from uncontrolled use by recreational visitors. There were also comments on associated topics, such as the cost of insurance and the need for recompense to be made available for any fire damages caused.

Maybe all outdoors people need cover for fire as is available through organisations like Deerstalkers.

(Submission to the Reference Group)

Landholders were also uncertain over the extent of their financial liability under the Forest and Rural Fires Act 1977. Some landholders believed that they would be held liable for fire suppression costs if a fire were started on their property by a recreational user, who then could not be located to be held accountable.

I would hope that the Government recognises the urgent need for review and demonstrated good faith early on by ... absolving land occupiers from any liability for rural fires caused by persons using their land for recreation.

(Submission to the Reference Group)

Options for solutions

Code of responsible conduct

Little, if any, evidence exists that recreational users of land pose a significant fire risk. Land clearances by farmers are a significant cause of fire. In the 2001/02 year, land clearances were responsible for 64 percent of the total area burnt, and 54 percent in 2002/03. Figures representing the proportion of fires specifically attributed to recreational use are not specifically recorded. The National Rural Fire Authority has advised that, although activities associated with recreation, such as hunting or lighting campfires, do pose a risk, recreational users and the public are not the cause of most rural fires. Any risk that such visitors pose could be alleviated by provisions in a code of responsible conduct on avoiding fire risk.

Pending review of legislation

The Department of Internal Affairs commenced a review of fire management legislation in late 2003, with a view to rationalising some ambiguities, inconsistencies and inequities between rural and urban fire management regimes. The review is considering, among other things, removing personal liability for fire suppression from rural dwellers, so that rural and urban residents face similar liability. The outcomes of this review may be relevant to the concerns and issues surrounding fire risk, liability and recreational access to rural areas.



Question Fire risk

34 The Panel has no specific questions on the issue of fire risk, but any comments would be welcome.

Biosecurity risks

Views of submitters

In their submissions, many landholders were concerned that the effects of allowing greater public access **without their consent** would create biosecurity risks.

The main concerns raised were that greater public access would cause the spread of:

- diseases of people and animals, such as foot rot, beef measles, foot-and-mouth disease, giardia and cryptosporidium;
- weeds, such as ragwort;

- plant diseases, such as pitch pine canker;
- invasive organisms, such as didymo.

Submitters also mentioned the possibility of honey being removed during biosecurity restrictions and of visitors feeding meat sandwiches to cattle, in breach of the law.

Landholders appeared to regard the issue of consent as related to the degree of risk; that is, they could control the risks so long as they could restrict access on a case-by-case basis.

Options for solutions

Better understanding of risks

The Ministry of Agriculture and Forestry has reviewed the possible biosecurity risks of extending recreational walking access to land. The conclusion is that the risks are minimal at present, but that there is a need for continuing vigilance because new risks may emerge (such as didymo). A solution may be the provision of better information and education about the risks.

Code of responsible conduct

The proposed code of responsible conduct could include guidance on ways to minimise biosecurity risks.

Existing legislation

There are extensive powers under the Biosecurity Act 1993 to deal with biosecurity risks including, when justified, restricting access to specific areas.



Question Biosecurity

- 35 Please provide details of any specific biosecurity risk that you consider may be exacerbated by persons exercising walking access to land.

Rural crime and security

Views of submitters

Many rural landholders reported having experienced crime or security problems in their areas. They attributed crimes, such as burglary, theft of stock and farm equipment, threats and intimidation, cannabis

cultivation and petty offences such as vandalism and littering, to the presence of strangers or “undesirable types” entering rural areas.

We have never denied access to those people who have asked permission, but we have found a great increase in illegal activity ... poaching and theft and the lighting of fires in our native bush by tourists ignorant of our New Zealand unwritten laws of the land.

(Submission to the Reference Group)

These landholders often stated the belief that rural crime is increasing rapidly. They feel that improving or increasing public access to the countryside would further allow the undesirable or criminal element into their areas, resulting in more rural crime.

Other submitters noted that increasing legal access had the potential to bring onto the land more “honest eyes” that would discourage criminals.

Options for solutions

Better information on incidence and causes of rural crime

There are clearly concerns about rural crime, but there is no evidence of a causal link between recreational access to land and the incidence of rural crime. Nor is the stated belief that rural crime is increasing rapidly borne out by crime statistics.

Some of the concern seems to have arisen from a perception that the policy was about a right to roam over private farm land, or that the water margin access proposed would lead to a de facto right to roam. This was never the policy objective. It is anticipated that the present approach of seeking consensus on improving the existing water margin access while respecting private property rights will allay these concerns.



Questions

Rural crime and security

- 36 How could the community help to combat rural crime?
- 37 Any other comments on rural crime and access are welcome.

»» Issues in respect of Māori land and Māori issues in respect of non-Māori land

Treaty of Waitangi concerns, access rights to Māori land, and wāhi tapu and rāhui

Views of submitters

Most Māori submitters and those who attended consultation believed that the Crown, as a Treaty partner, has an obligation to protect the property interests of Māori land. They opposed the idea of legislated access across Māori land, but did not oppose access by permission of the landholder. Māori submitters stated that permission to enter Māori land is seldom refused.

Property rights of Māori have already been eroded through the confiscation of land and legislation in particular the Public Works Act. Māori have also gifted land for national parks. To further take away these property rights from Māori ... is a flagrant disregard of the principles of the Treaty, in particular “to act in the utmost good faith”.

(Submission to the Reference Group)

Māori submitters sought to protect the exercise of customary rights and the safety of customary sites and resources. They also raised concerns similar to other landholder submitters’ concerns, such as the possibility of increased health and safety, fire, security or biosecurity risks. They favoured a code of responsible conduct to educate people on responsible access, which might address issues specific to Māori such as suitable respect for wāhi tapu (if their location were known to the person exercising access).

With owners or managers of some Māori land not necessarily resident on their land, it is difficult for them to know whether any illegal activity is taking place. Several Māori-owned forestry companies expressed concerns about the difficulty in managing risks to their enterprises if new legal access was imposed.

Other submitters observed that charging for access to Māori land may be the only economic use of the land, and they would not like to see this prevented. In general, Māori submitters favoured the provision of access by negotiation carried out at a local level.

Options for solutions

Reliance on existing legislation

The Government is no longer pursuing a legislated right of access to land. This should relieve most of the concerns expressed by Māori, including possible concerns based on article two of the Treaty of Waitangi.

Negotiated access

Reliance on negotiation (see pages 18-23) for any new access across Māori land should meet the concerns expressed about the potential of legislated access to undermine potential economic benefits from access.

Code of responsible conduct

A code of responsible conduct (see pages 10-12) could include provisions to meet particular concerns of Māori, including guidance on respect for wāhi tapu and land subject to rāhui.



Questions

Treaty of Waitangi concerns, access rights to Māori land, and wāhi tapu and rāhui.

- 38 The Panel would welcome comment on Treaty of Waitangi concerns, access rights to Māori land, and wāhi tapu and rāhui.

»» Submission form

You can use this form to make a submission to the Walking Access Consultation Panel. This form can also be downloaded from www.walkingaccess.org.nz

Send your submission to:
Walking Access Consultation Panel
PO Box 2526
Wellington

Email: info@walkingaccess.org.nz

Fax: (04) 819 0745

Submissions close on **30 June 2006**, so please make sure your submission reaches the Panel by then.

All submissions are subject to the Official Information Act 1982, which specifies that information is to be made available unless there are grounds for withholding it. If you wish your submission or any part of it to be withheld, please indicate the grounds in the Official Information Act that apply. The Ministry of Agriculture and Forestry, which will hold the submissions on behalf of the Panel, will take your request into account when determining whether or not to release information. Please note that any decision by the Ministry of Agriculture and Forestry to withhold information is reviewable by the Ombudsman.

Your details

Name: _____

Position: _____

Organisation: _____

Address: _____

Email: _____



Questions

Aim

- 1 Does the aim capture the two, often conflicting, values that many New Zealanders hold dear: access to our many natural recreational resources and having our very own piece of dirt? If not, how could the aim be improved?

Principles

- 2 Do you agree with the proposed principles? If not, please be specific and suggest any alternatives.

Information about access rights

- 3 What information should be included in a mapping database?

4 What is an appropriate balance or mix between the provision of paper maps and dependence on internet access?

5 What map scale is necessary to make the maps useful?

6 What other matters do you believe are relevant to making information about access rights useful?

Signposting

7 Is signposting necessary at all?

8 How extensive should signposting be? (For example, is it more appropriate or desirable to signpost places where people are allowed or not allowed?)

9 Who should be responsible for signposting?

10 Who should bear the cost of signposting?

Code of responsible conduct

11 Should a code of responsible conduct apply only to access over private land, or only to public land, or to both?

- 12 Should a code of responsible conduct be legally enforceable (such as a regulatory or statutory code)? If so, what do you think are the main things that need to be included in such a code?

- 13 Should a code of responsible conduct be non-regulatory, focusing on promoting good behaviour through education, clarifying existing laws and recommending best practice? If so, what do you think the code should include?

Access agency

- 14 What, in your opinion, should be the purposes of an agency, and what should be its main functions?

- 15 Taking into account your view of the purposes and functions of an agency, what organisational form should it take, and why? For example:

- a branded unit within an existing government department;
- a trust, similar to the Queen Elizabeth II National Trust;

- a Crown entity;
- a Commissioner accountable to Parliament.

Dispute resolution

16 How can disputes between landowners and recreational users be resolved? Some possibilities are:

- reliance on the Trespass Act;
- mediation (non-binding) by:
 - > an access agency
 - > a government department
 - > local authorities
 - > someone else.

17 How can intractable situations, where a landholder refuses to negotiate, be resolved?

Property rights

- 18 Please comment on any other property rights issues that may be of concern.

Realignment of displaced water margin access

- 19 Do you support the realignment of water margin reserves where these have been displaced?

- 20 Is there an alternative that would make these reserves practically usable?

Gaps in water margin access

21 There are gaps in public access to water margins. How do you think these gaps might be remedied?

Possibilities include:

- voluntary agreement on a case-by-case basis between landholders and users;
- an arrangement whereby landholders agree that the land is to be held in a trust for access purposes, in a manner similar to that provided for in the Queen Elizabeth the Second National Trust Act 1977;
- establishment of esplanade reserves or strips on subdivision;
- the acquisition of the land or easements over the land by or on behalf of the Crown;
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- any other process or mechanism you believe is appropriate.

Negotiated access

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- provision of facilities such as toilets and car parking;
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- indemnity for damage caused by a user;
- the establishment of a code of responsible conduct;
- other (please describe).

Resource Management Act

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Yes No

If no, does the current process for creating esplanade reserves and strips on subdivision need to be changed if access is to be increased?

24 Do you think the following measures would be appropriate for establishing new access:

- a review of how well local government has reflected the purpose in section 6 of the RMA in its decision making, especially in the creation of esplanade reserves;
- assistance to local authorities where lack of resources is a barrier either to the creation of esplanade reserves and strips and/or their maintenance (how could assistance be given?);
- removal of the requirement to compensate if taking reserve or strip on subdivision into lots over four hectares;
- assistance to local authorities to produce “access strategies” to guide applications for resource consent and in proposing road stopping (how could assistance be given?);
- provision of more central government guidance via the New Zealand Coastal Policy Statement or a National Policy Statement on access under the RMA;
- change to the local authority discretion to waive or reduce reserve and strip requirements?

Access to water margins and other public land

25 How could access to water margin reserves and to other public land by crossing private land be improved?

Possibilities include:

- voluntary agreement on a case-by-case basis between landholders and walkers;
- an arrangement whereby landholders agree for the land to be protected or covenanted in a manner similar to that provided for in the Queen Elizabeth the Second National Trust Act 1977;

- the establishment of access strips by local authorities;
- the use of unformed legal roads;
- other (please describe).

Priorities

- 26 The provision of new access opportunities and rationalisation of existing access will generally need to be done on a case-by-case basis, and will be time-consuming and costly. Resources will need to be prioritised. What are the priorities to be addressed first?

- 27 Who should provide the funding for new access and to what level?

- 28 To what extent can your organisation assist in setting priorities?

Unformed legal roads

29 If unformed legal roads traversing farm or forest land are marked on maps and/or signposted, what issues are likely to arise and how might they be addressed:

- for users
- for adjacent landholders
- for local government?

30 How might obstructions to walking access, such as deer fences, on unformed legal roads be dealt with?

31 How can weeds, pests and environmental damage in respect of the use of unformed legal roads for walking be managed?

- 32 Do you consider that there is scope for stopping unformed legal roads in exchange for alternative walking access?

Possible health and safety liability of landholders

- 33 As a farmer, are you familiar with the *Farm Bulletin* published by the Department of Labour, “If visitors to my farm are injured, am I liable?” (see pages 58-61).

Yes No

If yes, are you still concerned about your liabilities to visitors under the Health and Safety in Employment Act 1992, and what are your specific concerns?

Fire risk

- 34 The Panel has no specific questions on the issue of fire risk, but any comment would be welcome.

Biosecurity

35 Please provide details of any specific biosecurity risk that you consider may be exacerbated by persons exercising walking access to land.

Rural crime and security

36 How could the community help to combat rural crime?

37 Any other comments on rural crime and access are welcome.

Treaty of Waitangi concerns, access rights to Māori land, and wāhi tapu and rāhui.

38 The Panel would welcome comment on Treaty of Waitangi concerns, access rights to Māori land, and wāhi tapu and rāhui.

»» Appendix 1: List of abbreviations

HSE Act	Health and Safety in Employment Act 1992
LINZ	Land Information New Zealand
NZCPS	New Zealand Coastal Policy Statement
Panel	Walking Access Consultation Panel
Reference Group	Land Access Ministerial Reference Group
Reference Group's report	<i>Walking Access in the New Zealand Outdoors</i>
RMA	Resource Management Act 1991

»» Appendix 2: Glossary

Accretion: The process by which soil, sediments and other matter accumulate, increasing the area of land. This process is the reverse of erosion. The term accretion is usually applied to deposits formed in river valleys and deltas.

Biosecurity: The protection of a territory from the invasion of unwanted plants, animals, micro-organisms or diseases.

Cadastral data: Information defining the legal dimensions of land, including property boundaries.

Cadastral maps: Maps representing cadastral data in graphical form.

Crown land: Land vested in Her Majesty the Queen in right of New Zealand which is not set aside for any public purpose (such as a national park or conservation land) and not held in private title.

Erosion: The process of gradually wearing away land, commonly by the action of water.

Paper road: A commonly used expression for an unformed legal road. See “unformed legal road”.

Queen’s chain: A commonly used expression for a strip of land (usually 20 metres wide) reserved for public use alongside a water margin, including the sea shore, lakes and rivers.

Rāhui: A declaration by a Māori person with authority to do so that a specific area of land is tapu. See also “tapu”.

Tapu: Restricted; forbidden; set apart; sacred.

Territorial authority: A city council or a district council recognised as such under the Local Government Act 2002.

Topographic map: A map that shows a limited set of features, but including at the minimum information about elevations or landforms. Topographic maps are common for navigation and for use as reference maps. They have a specified scale.

Unformed legal road: Land legally set aside as being road, but not formed as road. That is, it may be unsurfaced, unfenced and often indistinguishable from the surrounding land but it is still subject to all the legal rights and obligations that apply to formed roads, including the right to pass and re-pass with or without vehicles and animals.

Wāhi tapu: A particular category of ancestral land or water that is held in the highest regard by Māori. It can include places, sites, areas or objects that are tapu, sacred and special to an Iwi.

Water margin: A general term referring to the point at which the water in a sea, lake or river adjoins dry land. For legal purposes more specific terms are used, such as mean high water mark or mean high water springs.

»» Appendix 3: Walking access consultation terms of reference

The Panel will attempt to establish more clearly the concerns of interest groups and the extent to which agreement may be reached on measures to:

- clarify existing public access rights along water margins (i.e. the location of the Queen’s Chain);
- establish the location of “gaps” in the Queen’s Chain, their significance and how they might be remedied;
- signpost access rights to water margin land so that the public will be better informed on where they may walk;
- establish a code of responsible conduct applying to persons walking on private land or on land adjacent to private land;
- protect the security of landholders where this is seen to be an issue;
- deal with issues which may arise in respect of walking access from a Māori perspective;
- provide access along rivers and lakes which may have no Queen’s Chain at all;
- negotiate access across private land to the Queen’s Chain or to public land where there is no other reasonable or convenient means to access this land;
- explore with interest groups and organisations how suitable unformed legal roads might be better used to provide walking access to the Queen’s Chain or to public land.

The Consultation Panel should also explore the nature of the proposed Access Commission, and how a Commission might provide the necessary leadership on access-related issues.

The Panel may report on any other matters related to access policy that appear to require the Minister’s consideration.

Process

The Walking Access Consultation Panel will hold working meetings in Wellington. It will meet on an “as needs” basis, expected to be of the order of five or six one- or two-day meetings, at regular intervals.

There will be two components to the consultation process. Firstly, the Minister will release a synopsis of the access work to date, and key issues, and invite submissions from the public. The role of the

Panel will be to receive and consider these submissions. The second component will be a process whereby the Panel hears the concerns of, and discusses areas of common ground with, identified interest groups and organisations. The above terms of reference will form the basis for these discussions.

Officials from the Ministry of Agriculture and Forestry (MAF) will prepare working papers, where required, for the Panel before each meeting. Where appropriate, those papers will be prepared in consultation with other agencies.

Individual members of the Panel will be free to put up any paper for the Panel to consider or provide other input they feel appropriate.

MAF will service the Panel, and will assist the Panel in its report to the Minister.

MAF will obtain legal advice as the need arises, and may make this advice available to the Panel.

Members of the Panel are expected to work co-operatively, to look for points of agreement between differing views, and to help construct a report and recommendations that can be accepted by the Panel as a whole. Members of the Panel have been appointed for their background and experience relating to walking access issues, rather than as advocates for particular interests. They are, however, free to put forward the views of interest groups for discussion. Where the Panel cannot reach agreement, it must record the options for consideration by the Minister.

The Minister reserves the right to disband the Panel or change its membership at any stage in the process.

The report

The Consultation Panel will report back to the Minister by December 2005.⁴

The report will:

- summarise public submissions received;
- summarise the views and concerns of each of the groups or organisations met with;
- record the level of agreement on each of the issues in the terms of reference;
- advise areas of disagreement, and recommend possible solutions;
- describe any other matters which the Panel considers to be relevant to walking access, taking into account the stated policy objective.

⁴ Subsequent to drafting the Terms of Reference, the Minister and the Panel have agreed to a reporting date of late 2006.

»» Appendix 4: Members of the Walking Access Consultation Panel

John Acland (chair)

John Acland has a long association with the primary sector through various appointments to Meat New Zealand, Federated Farmers and private companies. He was the chair of the former Land Access Ministerial Reference Group.

John Aspinall

Former Federated Farmers Board member and spokesperson on land, environment and resource management issues, John Aspinall is a third-generation high country farmer.

Bryce Johnson

Bryce Johnson was one of the initiators of the New Zealand Landcare Trust, and is the current Director of Fish and Game New Zealand.

Claire Mulcock

Claire Mulcock is a resource management consultant and a member of the Waitaki Water Allocation Board, with a strong policy background in environmental and rural issues.

Maggie Bayfield

Maggie Bayfield is a former Director of Rural Women New Zealand. She is also a reviewer for the East Coast Forestry Project Review.

Professor Tom Brooking

Tom Brooking, of Otago University's history department, has expertise in the history of rural society, land use and environmental change. He is an eminent authority on the origins of the Queen's Chain.

Parekawhia McLean

Resigned February 2006 because of other work commitments.

John Forbes

John Forbes was a committee chairman of a rural council for 18 years, and is currently the Mayor of Opotiki District Council and the Chairman of the Rural Sector Group of the Local Government New Zealand National Council.

»» Appendix 5: Possible organisational forms for an access agency

This appendix summarises some issues that the Panel suggests would need to be considered in respect of the organisational form of an access agency.

The usual adage in respect of organisational structure is that form follows function. The exact functions of a future access agency have yet to be determined, and will no doubt be influenced by the outcome of the process. Nevertheless a reasonable guess can be made as to the most likely functions.

It is also necessary to consider the characteristics considered to be desirable in the organisation. While to some extent these characteristics may readily flow from its functions, they also may relate to the social, governmental and political environment in which the organisation is established. For example, there is a perception by access advocates that the existing government departments that have a role in respect of land access (LINZ and the Department of Conservation) have failed to meet advocates' expectations, and would be inappropriate vehicles for any future access policy, in that they would not give the priority or leadership that advocates are seeking.

Possible functions

The need for and the functions of an access agency have yet to be determined, and are unlikely to be addressed by the Government until the Walking Access Consultative Panel has reported. This is not expected until late 2006. However, it is possible to make some reasonable assumptions about what the functions might be, based on the report of the Land Access Ministerial Reference Group and subsequent consultation and policy work. The range of possible functions includes:

- **Leadership over access issues:** A key finding of the Land Access Ministerial Reference Group was that there was a need to strengthen leadership and to provide direction for, and co-ordination of, access arrangements nationwide.
- **Co-ordination and provision of information about access rights:** The Reference Group emphasised the need to provide greater clarity and certainty of access by locating and publishing what is acceptable and where it may occur.

- **Dispute resolution over access rights:** One of the concerns expressed by access advocates was that the law of trespass was weighed against those seeking to exercise access rights in favour of property owners seeking to enforce their property rights. This concern was never fully developed by access advocates nor was it the subject of detailed policy analysis, because much of the policy work was focused on the establishment of statutory access over privately owned water margin land (i.e. the footway). Now that the footway concept has been abandoned, there needs to be more focus on the use of existing public access rights. This may require a change in the law, and administrative back up if the access advocates' concern can be demonstrated to be valid.
- **Negotiation and acquisition of new access rights:** In the absence of a new statutory right of access over private water margin land, this, along with the creation of esplanade reserves and strips on subdivision and marginal strips on the sale of Crown land, is likely to be the means of establishing new water margin access. These negotiations may be carried out by an access agency, or may be done by local government or community groups. However the negotiations are carried out, consideration will have to be given to the basis for completion of the legal processes and the holding of the negotiated rights.
- **New Zealand Walkways Act 1990:** There is potential for this legislation to be used more actively, especially if funding is available to facilitate the negotiation of access over private land. An agency could take over responsibility for promoting and establishing walkways under this Act. This would require some changes to the legislation.
- **Administration of a contestable fund:** The negotiation of new access rights will generally require monetary compensation, either paid directly by the agency, or provided through contractual arrangements with local government or community groups. Funding may also be provided for signage and track improvement. An appropriate organisational structure and sound legal, administrative and accountability systems will be needed for a contestable fund.
- **The holding of interests in land:** Negotiated interests (such as easements or leases for access over private land) may be held on behalf of the Crown or by a trust, by local government or by the agency. If the agency is established as a body corporate it will have the capacity to hold assets in its own name.

- **Monitoring of and reporting on the activities of central and local government organisations that have an access-related role:** In the absence of a statutory access right over private land, the activities and policies of local government in respect of esplanade reserves and strips and the administration of unformed roads will take on heightened importance, as will the related policies of such departments as the Department of Conservation, the Ministry for the Environment and the Department of Internal Affairs. Monitoring these policies from an access perspective will be important.
- **Provision of advice to Ministers on access:** Whatever form the agency takes there will be a need for specialist advice on access.

Desirable characteristics

Desirable characteristics of an access agency include:

- visibility;
- independence;
- accountability;
- focus;
- capacity for leadership.

»» Organisational form

Form	Pros	Cons
Departmental function	<p>Low-cost option as no new structures or infrastructure required</p> <p>Easy to establish (no legislation required)⁵</p> <p>Can benefit from existing departmental resources</p> <p>There may be synergies with existing departmental functions</p>	<p>Not visible</p> <p>Lack of credibility</p> <p>Can be seen as captive of existing departmental policies</p> <p>May be starved of effective resources by departmental priorities</p> <p>Easy to disestablish</p> <p>Cannot hold assets other than on behalf of the Crown</p>
Branded unit within a department	<p>As above, but with more visibility and a greater appearance of independence if there is direct reporting to a separate Minister</p>	<p>Subject to departmental priorities</p> <p>Lack of credibility unless it has independent reporting to a Minister (such as Consumer Affairs)</p> <p>Cannot hold assets in own name</p> <p>Easy to disestablish</p>
Statutory officer within a department	<p>Low cost</p> <p>Appearance of independence</p> <p>Visibility depends on administrative arrangements</p> <p>Can benefit from existing departmental resources</p> <p>Established or disestablished by statute</p>	<p>Independence and visibility depend on administrative arrangements within the department. There is a trend in departments to hold such statutory functions at a high level along with other responsibilities, then delegate</p> <p>This can compromise independence</p> <p>Can be seen as compromising the position of the chief executive</p> <p>Cannot hold assets in own name</p>

⁵ The desirability of ease of establishment and disestablishment depends on perspective. Those with doubts about the merits of the policy will favour ease of disestablishment.

Form	Pros	Cons
Statutory commission serviced by a department	<p>Avoids setting up a Crown entity</p> <p>Independence and visibility</p> <p>May benefit from departmental resources</p> <p>Established or disestablished by statute</p>	<p>Effectiveness and accountability can be compromised by departmental resourcing</p> <p>Cannot hold assets in its own name</p> <p>Not a currently favoured organisational form</p>
Crown entity	<p>Independence (to the extent defined by statute) and visibility</p> <p>Clarity of accountability</p> <p>Uses standardised statutory model</p> <p>Has control over its resources</p> <p>Can hold assets in its own name</p> <p>Established or disestablished by statute</p>	<p>Relatively costly and may replicate functions of other agencies unless carefully managed</p>
Parliamentary commissioner	<p>Highly independent</p> <p>Visible</p>	<p>Not suitable for an operational function</p> <p>May have resourcing issues</p> <p>Accountability to a Minister is probably more desirable</p>
Access trust	<p>Suitable as a vehicle for voluntary access covenants over private land</p> <p>Queen Elizabeth II National Trust could be used as a model</p> <p>Could operate alongside an access agency as a component of the overall policy</p>	<p>Not a complete solution</p> <p>Unlikely to be a suitable vehicle for dealing with public land and overall information policy</p> <p>Could be dominated by landowning interests</p> <p>May not be a suitable vehicle for negotiating access</p>

»» Appendix 6: If visitors to my farm are injured, am I liable?

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Section 16 of the Health and Safety Employment Act 1992 (HSE Act) was amended in March 1998. Now people who control workplaces, including farmers, have only a simple duty to warn visitors, who have permission to be on their properties, of any work-related, out-of-the-ordinary hazards that may cause them serious harm.

This bulletin answers questions you may have about this change to the law.

Why was the law changed?

Farmers were worried about their liability under the HSE Act if visitors to their farm, including recreational visitors, were harmed.

The amendment makes it clear that you cannot be held liable, as long as you warn authorised visitors of any out-of-the-ordinary hazards arising from work on the farm which you know could harm that person.

Now, under Section 16 of the Act, you have two types of duties:

- A duty to warn authorised visitors.
- A full duty to employees, contractors, and people who are paying customers (this is explained later).

You are not liable if anyone comes on to your land without your permission and suffers harm, whether from a work-related hazard or for any other reason.

Duty to warn

You have a duty to warn authorised visitors of work-related, out-of-the-ordinary hazards.

What is meant by an authorised visitor?

This is anyone who comes on to your farm with your express permission. It includes people who come for leisure or recreational activities. It also includes people on your property who are doing work that is unrelated to your work, such as research workers and electrical workers.

What about workers who have legal authority to go on to my property?

Your duty to warn extends to people who are legally authorised to be on your property, but only where they have given you oral notice of their visit. People in this situation include employees of TransPower, DOC and local authorities.

What is meant by a work-related, out-of-the-ordinary hazard?

This is a hazard that:

- Arises from some work activity on the farm;
- Wouldn't normally be expected by a visitor; and
- Could cause a person serious harm.

Examples might be:

- Trees being felled;
- Blasting;
- Earthmoving machinery operating; or
- Where pest control operators are working.

Natural hazards are excluded. You are not liable for warning visitors of natural hazards on your farm, such as: bluffs, tomos, landslides, rivers, swamps, wasp nests, and so on.

What sort of warning should I give and when?

You need only give a verbal warning about the hazard. You need to do this at the time you give that person express permission to go on to your land. If a group of people are involved, it's sufficient to give the warning to a representative of that group.

The warning can be given by your farm manager if he or she is the person giving permission.

Full duty

The relationship changes if people pay to use your land for any purpose. In this case the people become your customers, and you have a full duty to take “all practicable steps” to ensure that they are not harmed by any hazard arising on the farm.

This would include situations where people pay to use your land for camping; horse trekking; “pick your own” fruit or berries, or where a tour operator pays for tourists to visit a scenic site on your land.

You also have a full duty to the other groups below:

- All employees who work for you (e.g. farmhands, fruit pickers).
- All contractors you engage (e.g. for shearing, fencing, tree felling).
- All people buying or inspecting goods offered for sale (e.g. farm produce, craft items).
- All people in the vicinity of a place of work (e.g. driving on a road alongside a paddock where you are working).

What is meant by “all practicable steps”?

It means things that can reasonably be done to ensure people are not harmed, such as fitting guards to your power takeoffs. It might also mean restricting access to certain areas of your farm, e.g. where chemical spraying is being done, or setting weight limits on bridges.

But, remember, you are only responsible for hazards within your control.

When do I have a duty to warn people about hazards?

