

# Submission on the Reform of the Overseas Investment Act 2005

**Name of organisation:** NZ Walking Access Commission

Contact person: Ric Cullinane

Contact person's position in organisation: Chief Executive

Contact number: 027 477 5042

Contact email: [ric.cullinane@walkingaccess.govt.nz](mailto:ric.cullinane@walkingaccess.govt.nz)

Region/country: New Zealand

## Introduction

1. The New Zealand Walking Access Commission Ara Hīkoi Aotearoa (the Commission) is the crown agent mandated to provide leadership on outdoor access issues. It administers a national strategy on outdoor access, including tracks and trails. It also maps outdoor access, provides information to the public and to Government, oversees a code of responsible conduct in the outdoors, helps to resolve access disputes and negotiates new access.
2. The Commission has an office in Wellington and a network of regional field advisors. An independent board governs its work, as set out in the *Walking Access Act 2008*.
3. The Commission's involvement in the Overseas Investment Act process is through providing advice and recommendations to both the Overseas Investment Office and applicants on potential benefits to New Zealand under s17(2)(e) of the *Overseas Investment Act 2005*.
4. The Commission has assessed, and made access recommendations, on 335 Overseas Investment Act (OIA) applications since 2010. Access was recommended in 41% of cases.
5. The types of access secured through the OIA consent process varies and examples include:
  - a. An extensive network of high-value walking, mountain biking and horseback tracks has been secured on Coronet Peak and Glencoe Stations in the hugely popular Queenstown/Arrowtown area.
  - b. Two very short walkway easements (a few hundred metres) on private land enabled walkers to bypass bluffs, linked two parcels of Public Conservation Land (PCL), and provided practical access over a two-kilometre coastal track from the Hurunui River mouth.
  - c. The establishment of an esplanade strip provides walking access along four kilometres of the Rangitata River in an area popular with anglers.

### **Access for a variety of modes**

6. The Commission works to establish, maintain and improve a range of access opportunities, including walking, cycling and mountain biking, motorised vehicles, on horseback, with firearms and accompanied by dogs. There is increasing interest in, and use of, electric vehicles; especially e-bikes, but also including e-scooters and mobility scooters.

### **Value of Outdoor Access**

7. Outdoor recreation provides a range of direct and indirect benefits to communities and the country.
8. Outdoor recreation is both a means to an end (health, fitness, therapy, regional development, pest control and tree planting), and an end in itself (fun, satisfaction, connection to nature). Participation in outdoor recreation occurs across our lifetime. It contributes to regional economies, community and social wellbeing, and understanding of conservation and biodiversity outcomes. Regional economic benefits arising from enhanced access is covered in a recent media release from Te Araroa Trust attached to this submission.
8. Research also shows positive links between mental health and outdoor recreation and access to green space. (e.g. Active NZ - Recreational Physical Activity and Mental Wellbeing, Sport NZ 2018; Residential green space in childhood is associated with lower risk of psychiatric disorders from adolescence into adulthood, K Engemann et al, Proceedings of the National Academy of Sciences of the USA).
9. Free, secure and practical public access is the crucial component that enables outdoor recreation. Without legally secured, free and practical access to the outdoors, it is impossible for people to recreate in it.

### **Managing public access**

10. In some cases, it is necessary to manage public access in order to mitigate potential adverse impacts on the environment and other uses of that land. Public access may be managed to regulate the types of activities, the time of year that people can access land, when they can access the land and the number of people who can access the land.
11. Walkway easements under the *Walking Access Act 2008* provide for granulated management and can mitigate adverse impacts (for example, during lambing, at times of high fire danger, or without dogs).

### **The Commission's engagement in the OIA process**

12. The Commission recognises that within the wider matters addressed in the consultation document, and within the mix of overseas investors' obligation, public access is a small segment. By the same token, where new or improved access would provide substantial benefits to New Zealand, the cost and impact on the investor of doing so is minimal.

13. The Commission's key interest is in sensitive land (non-urban land over five hectares and land adjoining lakes, rivers, foreshore and/or land managed by the Department of Conservation) and special land. There are two broad categories of access sought on sensitive land and in relation to special land:
  - a. Access to and along waterways and the coast.  
In many cases, riparian access is sought to replace other types of access that have been lost through erosion or movement of rivers. Sometimes this access is 'landlocked' and has no immediate or short-term practical benefit, but the Commission has a long-term view and considers an incremental increase in secure riparian access is valuable and will eventually provide an unbroken chain of access 'links'.
  - b. Access to satisfy identified demands  
This category includes situations where historical informal agreements to access waterways, foreshore or PCL have lapsed, and where there are existing demands of specific access routes. The latter may include longstanding public demands to improve access to PCL (such as Kawakawa Station, where consent for purchase was granted under the OIA in 2015), and access for existing projects (such as Te Araroa Tail, cycleways, and community driven active transport projects).

## **Responses to Consultation questions**

### Question 1 Sensitive adjoining land (pp 20 -24 Consultation Document April 2019)

14. The Commission is clear that the provision of access to sensitive adjoining land is important and provides significant benefits.
15. The problems with the current law and practice are acknowledged in that applications to acquire must be assessed against a range of factors that do not relate to environmental, historic, cultural or access concerns, and 'Table 2' land is defined very broadly.
16. 'Table 2' land includes the foreshore and lake beds but does not include rivers. Ownership of lake and rivers beds is an important factor in determining the public's ability to recreate on or in these waterbodies, but to do so public access to and along these waterways must also be provided. This matter is iterated in the discussion and submission in the section under *Question 13 Special Land Provisions*.

### Commission recommendation

17. The Commission proposes a modified Option 2 to resolve the current problems.
  - a. Remove the section 37 list from Table 2; and
  - b. Add to Table 2 "Any qualifying water body" (as defined at s24(1) *Conservation Act 1987* [in reference to marginal strips] and s230(4) *Resource Management Act 1991* [in reference to esplanade strips]).

Question 2 Leases of sensitive land (pp 25 - 27 Consultation Document April 2019)

Commission recommendation

18. For the avoidance of doubt, the Commission recommends that Crown pastoral leases must be screened.

Question 9 Screening the impacts of investment (in sensitive land) (pp 60 - 75 Consultation Document April 2019)

19. The current OIA provides for decision makers to consider the investment's likely effects on 21 factors, including, "...whether there will be adequate mechanisms in place for providing, protecting or improving walking access." The Commission maintains that the provision of public access through the consenting process is an important and significant local and national benefit.
20. Options 2 and 3 include a simplified benefit to New Zealand test that includes ensuring adequate mechanisms to provide, protect or enhance public access to or across the relevant land.
21. Option Four fundamentally changes the Act's consent framework and would see the benefit to New Zealand test replaced by a national interest test. The national interest test should be designed in a similar way to Option 3 and include the access provisions under the benefit to New Zealand test.
22. Whichever option is employed to screen an investment's likely effects, it is important that decision makers ensure there are adequate mechanisms to provide, protect or enhance public access to or across the relevant land.

Commission recommendation

23. The Commission recommends the reformed Act:
  - a. requires a mandatory condition for the establishment of access to and along lakes, rivers and the coast, and to land managed by the Department of Conservation, where this does not currently exist; and
  - b. Whichever option to screen the impacts of investments in sensitive land is selected, the decision makers ensure there are adequate mechanisms to provide, protect or enhance public access to or across the relevant land.

Question 13 Special Land Provisions (pp 91-94 Consultation Document April 2019)

24. Special land is any qualifying waterway being foreshore, seabed, or bed of a river or lake (as per their definitions in s6 of the Act). The Commission notes that special land currently only relates to the beds of the waterways and does not include the water or any area for access along the waterway.
25. The Consultation Documents states "The special land provisions do not secure public access to the special land. This means that the public may not be able to access special land acquired by the Crown, and may make it difficult for the Crown to manage the special land for the public to enjoy it."

26. The special land provisions currently apply to both the benefits test and the special test relating to forestry. These provisions require the overseas investor to offer to the Crown any special land (the beds of qualifying waterways) within the land they are intending to acquire. If there is special land present in an application going through the special test relating to forestry, it is mandatory for it to be offered to the Crown.
27. The consultation document in relation to special land offers four options in relation to special land. These options are not interlinked and are each in turn a different proposal to an individual issue rather than an alternative to one another.
28. Option 1 relates to when the special land provisions are triggered. Currently there is some grey area about when these apply, this option seeks to clarify that it only applies to acquisitions of freehold interests and can include companies when they acquire shares.
29. Option 2 seeks to align the benefits pathway with the new special forestry test in relation to how special land is treated. This option provides clarification that the offer of special land to the Crown is a mandatory criterion for the benefits pathway.
30. Option 3 would extend the special land provisions to provide access to the special land. As noted above special land is a mandatory criterion in the special forestry test. This means if an applicant wishes to acquire a forestry block through the special forestry test that contains a qualifying riverbed, lakebed or are of foreshore and seabed, this waterway must be offered to the Crown in line with the special land provisions and would also require the overseas investor to provide access to the waterway. If this option is adopted, it would result in access to all qualifying waterways as a criterion of consent for applications in the special forestry test and for the benefits pathway (should Option 2 be adopted). At this stage it is unclear what form the access will take. The Commission submits that this access must be free, certain and enduring (albeit with management restrictions as appropriate such as during times of extreme fire danger).
31. Option 4 seeks to improve the current special land process to make it more efficient and workable for the OIO, overseas investors and their advisors. The Commission does not oppose the processes at Option 4 so long as they do not compromise the establishment of access to and along special land.
32. The Commission interpret Option 3 to mean that access to special land would only be established if that special land (the beds of lakes and rivers) was acquired by the Crown. If the Crown rejects the offer for the bed(s) of qualifying waterbody(s), the access provisions may not apply. The Commission suggests the provision of access to special land should be required even where the Crown chooses not to acquire the special land.
33. If the Crown does not acquire the special land, provision for access to and along this land should be still be a requirement. Further, private ownership of river and lake beds could result in public access being provided to and along waterways, but use of the waterway itself (for example angling, swimming, and kayaking) prohibited by the private owner.

Commission recommendation

34. The Commission recommends:

- a. The special land provisions are treated consistently within the Act by making them requirements for consent, not merely a factor in the benefit to New Zealand test;
- b. The investor is required to provide access to and along special land that is acquired by the Crown or put into common marine and coastal area (MACA);
- c. The investor is required to provide access to and along special land even if that special land is not acquired by the Crown or put into MACA; and
- d. Agreement with the applicant on access arrangements is required as part of the offer negotiation.

Nga mihi nui,

A handwritten signature in black ink, appearing to be 'Ric Cullinane', written in a cursive style.

Ric Cullinane  
Chief Executive

Attached:

Te Araroa Trust media release 23 May 2019, *Kiwi businesses benefiting from growth in Te Araroa walker numbers*

MEDIA RELEASE  
23 May 2019



## **Kiwi businesses benefiting from growth in Te Araroa walker numbers**

The growing number of walkers exploring the national Te Araroa trail is helping to sustain many of the businesses and small communities along its length.

The 3,000km walking trail passes through more than 20 towns and cities as it winds its way from Cape Reinga to Bluff. More than 1,100 people walked the full length of the trail over the 2018/2019 walking season and many thousands more explored individual sections.

Te Araroa Chief Executive Mark Weatherall said the average through-walker spent between \$7,000 and \$10,000 during their three- to five-month journey, and millions more was spent by the tens of thousands of other walkers who hiked sections of the trail throughout the year.

“The volunteers who have worked for decades to create Te Araroa would be delighted to see so many people getting outdoors, connecting with the environment, and breathing new life into businesses and rural communities along the way.”

Pakiri Beach Holiday Park Manager Rachel Macfarlane said her business was one of many in Northland that benefited from people walking the trail. More than 200 walkers had overnighted at the holiday park on the Matakana Coast this season, making a positive contribution to her business and others.

“It’s really cool when they come through because a lot of them slot in around the traditional busy season. Those heading south often arrive in Spring and many the walkers walking north arrive in Autumn.”

Many walkers bought supplies from the shop at Pakiri Beach Holiday Park before continuing their journey, and the diversity of visitors from overseas and other parts of New Zealand created a lot of energy and goodwill, she said.

Another of the many businesses benefiting from the trail is BeSpoke Bike Tours, based in Tekapo. Some trail walkers decide to cycle the Alps 2 Ocean section of the trail between Tekapo and Lake Ohau, and many that do so hire their bikes from BeSpoke Bike Tours.

Owner Annie O’Sullivan said trail walkers were a diverse group and some of them enjoyed the variety of trying a different mode of transport after walking for weeks.

“This was our first year in business and the impact of trail walkers was very unexpected. Te Araroa walkers made up the bulk of my business this year – probably around 70 per cent.”

The popularity meant BeSpoke Bike Tours would purchase more bikes and expand its operation for the year ahead, she said.

Many local authorities are also positive about the trail’s impact. Palmerston North City Council Leisure Assets Officer Brian Way said Te Araroa walkers had been “very visible” in Palmerston North over the past year, particularly along the Manawatū River Pathway and in the town square.

“Te Araroa helps put Palmerston North on the tourist map. Visiting walkers provide an opportunity for locals to meet people from other countries and Te Araroa walkers all stay

somewhere and have to eat, so our supermarkets, restaurants, outdoor stores, and accommodation providers all benefit," he said.

Mr Weatherall said the economic benefits provided by trail walkers were just one facet of what Te Araroa was contributing to New Zealand. It also provided physical and mental health benefits for walkers, built a passion for the outdoors among children and young people, and connected Kiwis and others walking the trail with the people and landscapes that make up New Zealand.

He said the challenge for the Trust in future was ensuring the growing number of visitors were managed for the benefit of trail walkers, as well as the environment, businesses and many communities it touched.

"We know the trail's popularity places pressure on infrastructure, so one of our major focuses in future will be on working with local and central government agencies, iwi, private landholders and others to ensure future growth in walker numbers is managed effectively."

Mr Weatherall said Te Araroa Trust was working on a new strategy that would prioritise the trail walking experience, along with the sustainability of the trail and the environments and communities that support it. That strategy would be available on the Trust's website in the coming weeks.

**ENDS**