Walking Access across Private Land: Behind the Soundbites

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> ‘Labour will develop a public access strategy, including the extension of the Queen’s Chain and the provision of rural and urban walkways, to ensure New Zealanders have ready and free access to our waterways, coastline and natural areas.’
>
> From Labour’s *Conservation Policy 2002*, part of Labour’s 2002 election manifesto.

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http://homepages.vodafone.co.nz/~pete.mcd/bts/bts.pdf

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Introduction

In January 2003 the minister for rural affairs, Jim Sutton, set up the Land Access Ministerial Reference Group to study issues around access along and to New Zealand's rivers and coastal margins, to public land and across private rural land. In August 2003 the Group presented its report, Walking Access in the New Zealand Outdoors. *This report recommended the development of a New Zealand access strategy. In December 2004 the government released some details of its proposed Land Access Strategy.*

During these two years of government analysis, consultation and planning, the issue of walking access across private rural land has caused intense intermittent controversy. In this essay I will scrutinise a typical contribution to that controversy, the Federated Farmers paper, 'Mythbusters'. I write as a walker and an advocate of networks of walking tracks.

I shall remember these last two years by one headline from among hundreds: 'Farmers Upset by Sex in the Paddocks.' The newspaper quoted a Nelson farmer: 'People are having sex publicly. It is not ideal for our family, especially children, to witness.' The farmer did not wish to be named for fear it might encourage more people onto his property. When I read this story, the farmer's complaint seemed to typify a dilemma posed by many of the anti-access arguments.

The farmer's protest was not trivial. There was a plausible reason for his objection to allowing the public across his land. To that reason you could add a dozen more: leaving gates open, dropping litter, lighting fires, straying from the foot-track or agreed route, stealing farm equipment, vandalism, etc. And the quandary this presents? – should the recreational opportunities of the majority of New Zealanders be restricted because of the irresponsibility, ignorance, stupidity, or criminality of a small minority?

We have to strive for a workable balance. At the heart of the wrangle over entry to private land lies the balance between a rural landholder's property rights and the public's recreational expectations. Unless you have spent the last two years in a coma, you will already know that Federated Farmers of New Zealand (FFNZ) has a categorical and rigid view of exactly where that balance should lie.

In September 2004, Federated Farmers posted a web page headed 'Public Access across Private Land'.[1] Available from this web page is a three-page document titled 'Mythbusters'.[2] 'Mythbusters' claims to be a paper that rebuts 'many of the myths that arose during the consultation' on land access conducted in 2003 by the Land Access Ministerial Reference Group.

What myths are these? you might wonder. Fictions and falsehoods hinder informed debate. Federated Farmers is acting responsibly in exposing them.

'Mythbusters' quotes nine statements, which Federated Farmers calls 'pro-access arguments'. It follows each statement with what is meant to be a contrary contention – a rebuttal. The chief alleged mythologist is Jim Sutton, the minister for rural affairs. In comparison, John Acland, the chair of the Ministerial Reference Group, appears to have been only a minor storyteller.

'Mythbusters' is hardly a paper in the normal sense of that word. It is more like a written offspring of the television or radio soundbite: irritatingly shallow, all headline and no body. Anyone who downloads 'Mythbusters', hoping to be informed, will be disappointed. The document presents a list of standpoints to be debated; it does not present the debates.

The debates are already in print. The last two years has produced hundreds of pages of Ministry of Agriculture and Forestry reports and thousands of pages of submissions, including FFNZ's own comprehensive submission to the Ministerial Reference Group and its submission on the Acland report. My file of press stories and media releases holds just a representative collection, a small selection, yet it is an inch thick, with headlines ranging from 'Sort Public Access Now, Expert Says' to 'Farmers Slam the Gate over Access Plan'.

I will reproduce each of the pro-access statements, alleged to be fallacies, and each of the Federated Farmers comments, meant to be rebuttals. (Each Federated Farmers comment comprises a sentence in Roman type followed by two or three sentences in italic.) After each statement-and-rebuttal, I will discuss some of the arguments that lie behind the soundbites.

The order in which I will deal with issues may not be entirely logical because 'Mythbusters' dictates that order.

Many of the quotations come from newspapers and press releases. These often contain bias and inaccuracies. My using these unreliable sources is deliberate, to convey the prejudices, the provincialisms, and the misinformation of the national debate on land access.

I will use the terms 'walking track', 'foot-track' and 'walkway' in a nonlegal sense and synonymously, to include any track that is mainly or only used by people on foot. Similarly I will use 'accessway' casually, for example to denote a track that crosses private land to reach public land. The word 'footway' arrived in our land-access vocabulary in December 2004, denoting the five-metre walking strip that the government is planning to establish along some water margins and some coastline. The term 'water margin' generally means the edge of a river or lake. There can be a difference in meaning between the words 'landowner' and 'landholder' (landholders may be landowners or lessees), but in this essay I will interchange these two words loosely.

Jim Sutton remained the minister for rural affairs for most of the period that this essay covers. In late December 2004 Damien O'Connor took over that job.

1. Federated Farmers in Denial

Pro-access statement:
'The issue needs to be sorted out now before access is lost forever.' (John Acland, Radio New Zealand, September 2003.)

Federated Farmers comment:
[There is] no evidence to suggest opportunities for [the] public to access significant areas are diminishing.

- *A few highly reported incidents overshadow significant new access opportunities from High Country Tenure Review.*
- *FFNZ research shows 92% of farmers provide access to the public if first asked.*

The federation's rebuttal implies that there are few access issues of concern. On the contrary, the federation says, we should all be celebrating the new high-country conservation parks and reserves. The federation's argument seems to be 'if it ain't broke, don't fix it'. But much evidence has accumulated to suggest that New Zealand's old, traditional admission machine is suffering quite widespread rot.

To quote one example, the submission to the Ministerial Reference Group from Wellington Recreational Marine Fishers Association (WRMFA) lists forty-nine areas in the Wellington region where anglers already meet access difficulties or which may have access restrictions in the future.[3] Some of these examples involve a lack of accessways across private land bordering the foreshore. The right to enjoy public land is pointless if the public cannot reach that land. Even allowing for anglers' notorious tendency to exaggerate, there can be little doubt that the rot in the access machine is real. The web file of the WRMFA submission is called 'lostaccess.htm'.

'The right to enjoy public land is pointless if the public cannot reach that land.'

Kayaking provides another example, firmly within the walking-access terms of reference of the Ministerial Reference Group. The New Zealand Recreational Canoeing Association's submission to the Group stressed that many of the rivers in New Zealand that kayakers value highly can be accessed only over private land. Kayakers frequently walk across the private land, carrying their boats and gear. The ability to do this relies on obtaining the permission of the landholder. Kayakers generally enjoy a constructive relationship with landholders but had met snags with 'land owners who do not accept or support the culture of public access to important lands and waterbodies, for the purpose of recreation'.[4] The NZRCA wrote: 'The recommendations and outcomes that arise out of [the Reference Group's study] are potentially very important to the kayaking community.'[5]

Not all the losses of access involve water margins or coastline. The Federated Mountain Clubs of New Zealand (FMC) submission to the Ministerial Reference Group said that 'problems concerning public access have always been with us, but now increase in number and intensity'.[6] This submission detailed eighteen examples of access snags. The particulars were complex and multifarious. Roughly speaking, though, the difficulties involved

the lack of access to an area, such as in the central Kaimanawas and on Mount Hikurangi. The causes included the obstructing of public roads; the closing of (or charging for the use of) walkways; the closing of tracks because the landowners are selling hunting rights; some important connecting routes being by permission only; and a lack of accessways across private land to reach public land.

There are two New Zealands. Our long history of national parks, together with the continuing tenure reviews and the plans to strengthen the Queen's Chain and to create accessways, may be leading to a near-ideal in which legal problems in accessing the wilderness, the backcountry and the water margins will eventually become rare. But the prognosis for our urban-fringe farmland, our pastoral beauty spots, and our private countryside in general is less optimistic and more variable.

When no public road exists, obtaining the landowner's consent for a walkway across picturesque farmland can be Einsteinishly difficult. The Otago Peninsula displays a rich mix of harbourside, hilly pastureland and rugged oceanic coast. Its undulating ridge-line between Dunedin and Taiaroa Head has about nine high-points, grassy prominences that stand out in beckoning profile when you study the Peninsula from the hills above Port Chalmers. Several of these hillocks would make expansive vantage-points. Yet there is public walking admittance to only one minor bump, the Soldiers Memorial. Walkers may once have enjoyed traditional access to the other elevations along the ridge. A 1999 study of farmers' attitudes indicated a lessening of willingness to allow recreational entry, with less than 50 per cent of respondents now prepared to welcome walkers (see page 77). In practice, walking access to most of the potential viewpoints is a rare event, despite the Peninsula's proximity to a town of 114,000 people. Negotiating a short right of way to the Soldiers Memorial, across eighty metres of gentle paddock, took the city council five years of haggling.[7]

Martin Gallagher, Member of Parliament

'There is good practice amongst local government. The Waikato District Council is doing good work on walkways, paper roads etc … [But] we are not good so far at peri-urban walkways.'

From *Meeting Record of Stakeholder and Public Meetings for Walking Access in the New Zealand Outdoors Consultation (September – November 2003)* (Wellington, NZ: Ministry of Agriculture and Forestry, March 2004), p. 77.

The Acland Report and the Loss of Access

Much of the work of the Ministerial Reference Group involved studying the existing access arrangements and concerns. Reporting on these matters filled the first seven-tenths of the Group's report. In this report, the Group commented on several aspects of the loss of access. The Group considered 'there to be decreased goodwill towards giving "general access" (i.e., [to] people not known to the landowner)'.[8] The report went on to say that:

> … recreational users who are prepared to act in a responsible manner would like to have reasonable access onto private land. This expectation is increasingly rejected as some foreign owners, new owners with no family attachment to the locality, absentee owners, lifestyle blocks and other economic and land tenure changes create new barriers to access. The Group received comment that there is an increasing prevalence of refusal of access, sometimes with no reason offered or, possibly, using the uncertainty of HSEA obligations as a reason.[9]

After six months of investigations, the Group did not equivocate on the loss of access; it stated bluntly that the loss was occurring. The Group did not procrastinate on whether anything needed doing; it implied that the status quo is not an option:

> First and foremost, a strategic approach to providing for public access is needed. The gradual erosion of social conventions and changing economic and social environments have affected the way in which access occurs and the Group believe that this erosion will continue. As a nation we need to respond. This investigation shows that the ad hoc measures currently used to provide for access are not sufficient.[10]

It was hardly surprising that John Acland, on the radio sometime after publication of the report, said: 'The issue needs to be sorted out now before access is lost forever.' He was stating an informed opinion, one based on a mass of submitted particulars.

No Confidence in the Evidence

Federated Farmers, in contrast, appears to me to have no confidence in the evidence on which Acland based his opinion. According to the farmers – I am judging from 'Mythbusters', FFNZ media releases, the FFNZ submission to the Ministerial Reference Group, and newspaper stories – everything is hunky-dory. Most of the access troubles described to the Reference Group are mythical … nonexistent … mere figments of recreators' imaginations. The Group has greatly overstated the problems. The whole access debate is a storm in a teacup, stirred up by a few hunters and fishers. There's nothing amiss with that courteous New Zealand custom – arranged admission – and, furthermore, a survey has shown that 92 per cent of farmers grant entry to the public if asked. So there is no need to legislate rights of access across private land; rather, farmers must 'help the non-farming community understand why legislating rights of access is unnecessary and will only make things worse'.[11]

It is hard to imagine a more glaring case of clinical denial. In psychiatry, denial is a defence mechanism in which the existence of unpleasant realities is kept out of conscious awareness to protect oneself from emotional distress. Here, the patient – Federated Farmers – is subconsciously thinking, Solving the access difficulties might require some intrusion into farmers' property rights, but we don't want that, so let's ignore the realities.

Weakening Social Conventions and Changing Access Aspirations

Why, thirty years ago, was it thought necessary to draw up a New Zealand Walkways Act to create – or to try to create – walking tracks across private land? Why, twelve years ago, were some well-informed outdoor recreators so concerned about access to the outdoors that they set up Public Access New Zealand (PANZ)? Why, seven years ago, did several recreational organisations establish the Council of Outdoor Recreation Associations of New Zealand (CORANZ), as a lobby group for, among other things,

access? Why, two years ago, did a group of hunters register a new political party, Outdoor Recreation New Zealand (ORNZ), to campaign, in particular, for access?

These developments have taken place for many reasons. PANZ, for example, has focused far more on entry to public lands than on foot-tracks across private lands. But remember that the PANZ concentration on public land includes urgent argument for the putting to use of many of the unformed public roads that bisect private land and also includes the promotion of public recreational access to the Queen's Chain.

Regarding access across private land, two particular factors have contributed to the evolution of national access lobby groups. Firstly, the social conventions behind arranged admittance have been weakening. Federated Farmers repudiates this, yet many submitted accounts of access problems indicate that it is so. This weakening may have been happening for three decades. In 1979 John Kneebone gave the keynote address to the New Zealand Walkways Seminar. He mentioned new rural landowners who did not welcome people onto their property.[12]

Secondly, the inefficient ritual of one-off arranged access often fails to provide the certainty, flexibility, and long-term security that modern recreators and tourists expect. Many of today's recreators do still highly value entry-by-permission, a treasured and respectful New Zealand practice. It suits all their needs, they benefit from it frequently, and they cannot see its disadvantages. But many others don't particularly want a database of 45,000 landholders' phone numbers; they crave accurate maps showing permanent accessways. They consider single-occasion authorised admission to be inferior access, unable to be marked on maps for the benefit of all, here today and gone tomorrow. Access expectations are changing.

Many submitters on the Acland report mentioned the need to protect freedom of entry for future generations: 'I hope my children and grandchildren will look back and thank us for protecting their rights of access.'[13]

In August 2004, Jim Sutton's update brochure signalled a likely government response to these changing requirements. The government's proposed New Zealand Land Access Strategy would aim to develop high-quality access, which would be certain in existence, open to all, free, and enduring.

In November 2004, Professor Bob Hargreaves, the head of property studies at Massey University, commented on these changing wants. He reportedly said that the public was demanding more surety of access than assurances from farmers that, if asked, permission would be granted most of the time. He said: 'It is all right for farmers to say they don't exclude people. People want something stronger than that.'[14]

New Zealanders should not have to ask permission to walk across and view their own countryside. This unequal rural-urban relationship can certainly thrive on goodwill but it can also lead to resentment and division. The federation's much-quoted Ninety-two Per Cent figure, from the context of asking for permission, fails to recognise recreators' changing wants. The farmers' continual references to Ninety-two Per Cent miss the point of high-quality access.

'The government's proposed New Zealand Land Access Strategy would aim to develop high-quality access, which would be certain in existence, open to all, free, and enduring.'

If we are to judge from 'Mythbusters', Federated Farmers does not interpret the growth of access organisations as indicating nationwide deficiencies in the existing access arrangements. What's the problem? the farmers seem to be asking. What about tenure review?

What About Tenure Review?

Tenure reviews are creating new recreational opportunities in the high country. Nobody is disputing this. It is a fact. Further progress in the tenure reviews will open up for all New Zealanders a large area of high country that until now has been closed or restricted. But this fact, presented during a disagreement over the *real* extent of recreators' access difficulties, is the epitome of red herrings. The new conservation parks in the South Island will not cure the access headaches of the Wellington anglers. Tenure review will not create more walkways in Auckland's urban fringe. Opening up the schist mountains of Central Otago will not enhance the Otago Peninsula's patchy and disjointed network of foot-tracks.

The federation's 'Mythbusters' comment mentions 'significant areas', as if everyone agrees on the ingredients of significance. In fact, one underlying misunderstanding between the two sides of the access debate may involve people's very different perceptions of significance. I will suggest later (page 37) that much of the farmed landscape is a part of New Zealanders' outdoor heritage.

No-one should be surprised that Federated Farmers is campaigning passionately to maintain landholders' property rights. It has every right to do so. It is responding to the demands and apprehensions of the majority its members. Recreators and legislators should listen to the farmers' concerns and rigorously examine each of them.

Many walkers, hunters and anglers may be disappointed, however, that the federation can throw together a paper that denies the existence of widespread access difficulties and that fails to acknowledge changing aspirations. In politics, as in marriage, when one party cannot see the problems, it is hard to discuss the possible solutions.

The prospects of a reconciliation are not high. Federated Farmers has not shifted its position on the existence of access snags since its submission to the Ministerial Reference Group in May 2003: 'SOLUTIONS. Federated Farmers does not see that there is a problem with the amount or level of public access to public or private land, so no "solutions" are required in this respect.'[15]

Six months later, still in denial, the federation submitted on the Acland report. Its submission alleged that some of the report's recommendations – specifically those related to the demand for access – were inconsistent with the information contained in the report.[16] In making this allegation, the submission seized upon and quoted three statements from different chapters of the report. It misquoted the first of these statements. It uprooted the other two from their contexts and dumped them down, leaving explanatory branches behind. The debate had got messy. It would become messier.

***Taranaki Daily News,* 22 December 2004**

… farmers did not rush to embrace the [Acland] report. They could see that, if a problem existed at all regarding public access across private land to otherwise inaccessible mountains, forests, lakes and beaches, it was so tiny that the proposed radical revamp of common law and generations of courtesy and fair play would be a disproportionate upheaval.

2. Legislation and Goodwill

Pro-access statement:
'Access to land for recreation has also defined us as a nation.' (Hon Jim Sutton, media statement, August 2003.)

Federated Farmers comment:
Legislation will destroy the tradition of goodwill that underpins public access across private land.

- *New Zealand has a tradition of goodwill where the public is allowed access across private land at the landowner's discretion.*
- *Voluntary Access Trust could work with landowners to further develop public access opportunities across private land.*

To paraphrase Jim Sutton's statement, recreational entry to land has always been iconically important for New Zealanders. Few people would argue with the general truth of this assertion. So I don't see, here, what the myth is that Federated Farmers seeks to expose. Few people would argue either with the proposition that walking access to land should remain a defining part of the New Zealand way of life. The disagreement is over how to ensure that this happens. Federated Farmers is justifiably apprehensive about the prospect of access legislation that interferes with property rights; such intervention, Federated Farmers suggests, might erode the goodwill of some landholders and therefore be counterproductive.

The loaded phrase 'interfering with property rights' carries very different degrees of gravity to different people. For some people the phrase smacks of drastic intrusion into the entitlements of landholders. But the main changes under consideration by the government are merely the imposition of walking access along waterways (where no Queen's Chain exists) and the creation of waymarked accessways.

Beneficial Adjustment of Property Rights

We should be careful when talking about land law, tradition, and goodwill. We should also be careful when selectively quoting from media releases. The context of what Sutton said was as follows:

> Enlightened land law of the past established the family farm as the predominant form of land tenure and defined our nation, making us what we are today. In the same way, access to land for recreation has also defined us as a nation.[17]

By 'enlightened land law of the past', Sutton was referring to the radical land reforms of the 1890s, which broke up the great pastoral estates. These reforms were driven though an often hostile parliament largely by the zealous commitment and political stamina of John McKenzie – 'Honest Jock' – the Minister of Lands and Agriculture. The existence of today's family farms stems in part not from 19th-century tradition or friendly feelings but from that unthinkable evil: legislative intrusion into property rights.

In some circumstances, state meddling with property rights can, on balance, benefit the country. (Some other of McKenzie's changes to land law led to the purchase of 2.7 million acres of Maori land, but that's another story.)

Today, a century later, we are again discussing issues connected with landownership, although I doubt whether John McKenzie, if he could rejoin us, would see much connection between his compulsory repossession of 1.3 million acres of pastoral estates and our foot-tracks across farmland. Most New Zealanders want recreational access to land to remain a part of our way of life. Legislating is one of the options that a responsible government must weigh up.

The government, though, faces a dilemma. Federated Farmers of New Zealand is the country's leading rural-sector organisation, 'representing 18,500 member farmers and rural families throughout New Zealand'.[18] FFNZ argues that admission to any piece of private land, even just linear access, should be at the landholder's discretion; yet such an approach would fail to solve many of today's access difficulties and would fail to meet changing access aspirations. Most access promoters, on the other hand, see the need for some legislation, for example to end exclusive capture; but this approach would anger some landholders, thereby weakening goodwill.

The deeper you dig into this dilemma, the more tortuous it becomes. The August 2003 ministerial press release from which the 'Mythbusters' quote comes makes it clear that Sutton was well aware of the complications: 'Mr Sutton said the issues involved were extremely complex and would not be resolved quickly.'[19]

The federation is correct in pointing out that access legislation could undermine the goodwill of the landholders. But recreators could logically argue that the greatest continuing threat to rural-urban friendship is the landowners' deep-seated ultraconservative views on property rights; some people might question whether the goodwill seedling can ever thrive when planted in a bed of far-right attitudes to landownership.

Selective Goodwill

On this complexity, I would like to try a little mythbusting myself. It concerns the myth, or at least the partial myth, of goodwill. The Acland report emphasises the need for authoritative information on access.[20] For example, accessways should be accurately shown on maps. Also, those unformed public roads that are potentially useful to walkers should be waymarked. It would be helpful, in particular, if gates across public roads were labelled as 'Public Road'. There is even a law requiring the authorised gate-erectors to label them so (Section 344(2) of the Local Government Act 1974).[21] This requirement seems fair, as the benevolence of the state allows the landholder to erect a gate to serve practical farming needs. Yet in practice you are as likely to stumble across a gold nugget as a gate marked 'Public Road'. Where is the celebrated landholder public-spiritedness? Is their goodwill selective?

What's more, PANZ has frequently stressed that landholders often obstruct public roads, by locked gates, private-property signs, fencing across the roads, and deliberate diversions over

private property. In the opinion of PANZ, this amounts to a national epidemic of obstruction. PANZ considers that 'the obstruction of public roads is the largest access problem in New Zealand'.[22] If PANZ is correct and is not exaggerating this shambles – and I believe that the PANZ view is well founded – where is the socially valuable landholder friendliness that Federated Farmers is anxious to preserve?

The kindly feelings may be surviving in many corners of rural New Zealand, but they are certainly not hiding away on the Otago Peninsula. When in 1990 the Otago Peninsula Walkers sought to establish walking tracks along some unformed public roads, they met angry landholder resistance. Federated Farmers, representing many of the landocrats, supported proposals to stop (permanently close) the public roads.[23] Now, fourteen years later, the access situation on some parts of the Peninsula, further complicated by the coming of mountain-biking and the growth of tourism, could be described as a precarious truce rather than a model of cooperation.

'What is the federation's national stance on blocked public roads?'

What is the federation's national stance on blocked public roads? Does it reflect goodwill and the ability to see the other side's viewpoint? Or is it lukewarm and legalistic?

The federation's April 2003 submission to the Ministerial Reference Group, a 32-page document, did not mention public roads (except in two of the landowner anecdotes in the appendix).

In about September 2003, Federated Farmers reportedly prepared briefing information for its representatives at the land-access meetings. Its message on public roads, according to my information, was:

> Regarding unformed roads (paper roads) blocked by fences, irrigation channels, locked gates or fences, all roads (whether formed or unformed) are owned by the District Council. Any concern regarding access or use of these roads needs to be taken up with the District Council or Local Government NZ.[24]

The implication of the above advice is that landholders and walkers should pass *all* road-blockage issues to the district or local authority. Whatever you do, farmer, never say, 'Oh yeah, sorry, mate. My fence. Should've really put a gate or stile in there. I'll sort something out.' Reading between the lines of this noncommittal advice, we anticipate confrontation, not goodwill. We see avoidance of responsibility, not acceptance of it. We imagine suspicion, not trust. Opposition, not encouragement.

You do not need to contact the local authority to understand the following sentence: 'The public has the absolute right at common law to pass and repass along a road without hindrance.'[25] The Local Government Act 1974 makes it an offence for any person to obstruct a road, unless they are authorised to do so by the council. Nor can the council itself block roads except in very limited circumstances.

In August 2003 the Acland report stated that 'the Group was informed of many situations where despite it being illegal, legal roads have been obstructed (deliberately or otherwise) by the placement of fencelines, locked gates or other obstacles'.[26]

In November 2003 the federation's submission on the Acland report belatedly accepted that a problem existed: 'The issue of

unformed roads needs to be resolved, for both landowners and users. Federated Farmers agrees that in many situations more certainty on the status of these roads is required.'[27] This submission still did not specifically mention the chronic headache of blocked public roads. On the contrary, it suggested that:

> ... if [public roads] merely cross private land without providing access to public land, they serve no more purpose than any other farm track. Maintaining the status of 'road' and associated unfettered rights of public access may be inappropriate in these circumstances.[28]

The implication behind this proposition is that farmtracks, whether they happen to be public roads or private property, probably have no relevance to outdoor recreation; the public's delight in the rural landscape and its curiosity to discover more of it should be confined to public lands. To me, this suggestion is inward-looking and unimaginative; to many farmers, pickled in right-wing property credos and unable to see the farm as anything more than a factory floor, the suggestion will be sensible. (I shall return to this point later, in Section 6, 'Property Rights'.)

'The implication behind this proposition is that farmtracks, whether they happen to be public roads or private property, probably have no relevance to outdoor recreation ... '

In about June 2004, Federated Farmers released a draft access code for walking across private land. This code recognises the public's right to use public roads. If you think creatively enough about the code's phrasing, you might be able to imagine some Federated Farmers goodwill: 'All parties further agree that where walkways, access easements, marginal strips, public roads, esplanade reserves or strips exist, that public foot access is available ... '[29]

If Federated Farmers genuinely wants to preserve goodwill, it should wholeheartedly support the opening-up of New Zealand's unformed public roads. If landholder humanitarianism really does exist, the landholders could show some initiative by cooperating with recreational groups who volunteer to waymark public roads. So obvious. And yet so radical. A minority of landholders already do as I've suggested. That minority needs to become a majority.

The prevalence of landholder generosity throughout New Zealand may not be as complete as Federated Farmers claims. The attitudes of neighbouring farmers can vary greatly, especially regarding the approval of new accessways or walkways.

Farmer Type A is level-headed, tolerant, and reasonable. He or she accepts the need for change and is not antagonistic towards walkers. There may be many farmers of this sort, but their voices over the last two years have been subdued.

Two main ingredients inform the psyche of Farmer Type B, the ultraconservative sort. The first ingredient is a blunt denial of any need for change, as reportedly expressed by a spokeswoman for Rural Women New Zealand: 'The practice of asking permission from farmers to go on their land had worked well for the past 150 years and did not require changing.'[30] The second ingredient is a fierce streak of rightist property dogma, including the Doctrine of Absolute Privacy, which upholds the right of a landholder to rule over vast expanses of selfishness. The result is an unstable mix of traditional cooperative assistance and distrustful overlordship.

Signage and Public Roads: The Otago Peninsula Signs Battle, 1990–92

In 1989, after months of research Bruce Mason of Dunedin rediscovered a number of unformed public roads on the Otago Peninsula. The Otago Peninsula Walkers set about signposting these roads and clearing obstructions from them. On Sunday 10 June 1990, 450 people attended the opening day of the 'new' walking tracks. Already some of the signs had been vandalised, allegedly by landowners. On 13 June the lead story of the *Dunedin Star Midweek* was headlined 'Walkers Upset Farmers'. It might more legitimately have read 'Farmers Upset Walkers'.

The word 'upset' understated the depth of feeling. The Otago Peninsula Land War that followed lasted two and a half years and produced a Shakespearean array of intricate sub-themes: legal complications, legal disagreements, misinformation, political undercurrents, public submissions, apparent council sluggishness, red tape, road-clearing, road-blocking, the closing of concessionary tracks, prickly characters, and personality clashes. Both sides – the landowners and the walkers – accused Dunedin City Council of favouring the other side and impeding the negotiations.

In October 1991 the council passed an access plan, but emotions remained blustery. Perhaps access historians will hold the climax of the war to have taken place one day in December 1991, when an unknown warrior applied wire-cutters to an electric fence on the infamous 41-Peg Road.

The controversy simmered into mid-1992. The subject eventually dropped out of the newspapers, but not before ending as it had begun, with the vandalising of signs marking the public roads:

> *Otago Daily Times*, 25 May 1992
> **Emotions Still High over Walking Tracks**
> Emotions are running high on the Otago Peninsula in the dispute over walking tracks, with both sides involved still at loggerheads. The Otago Peninsula Walkers group recently started putting up posters advertising walking tracks along unformed roads and a spokesman, Mr John Langley, said these were being defaced by adjoining landowners … More than 50 posters had been defaced, some by being painted over, some by being scratched …

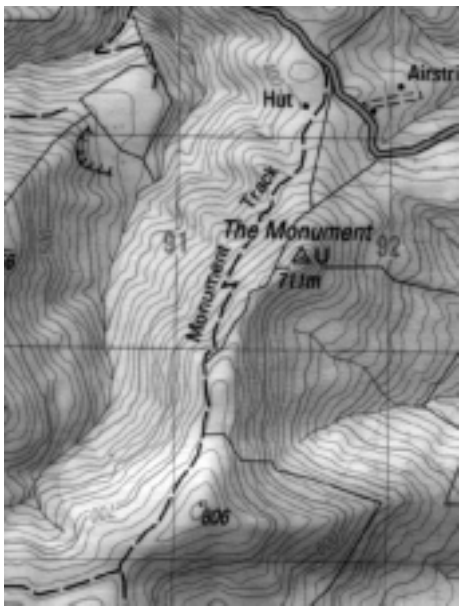
DUNEDIN STAR MIDWEEK, 13 JUNE 1990

Peninsula walker, Bruce Mason, with one of the signs which has been vandalised on Department of Conservation land. His fingers indicate where a sign pointing to Buskin Road has been snapped off. [Original caption from the *Star*, June 1990. In 1992 Mason became the researcher for Public Access New Zealand, an incorporated charitable trust.]

> A landowner, who did not want to be identified because of the 'flak' she and her family has received from the group [OPW], said she had never stopped anyone walking across her land and did not intend to. But she did not want signs advertising the tracks as she wanted privacy … She said members of the group were impossible to deal with. [Note: a public road is a strip of public land.]

The conflict seems to have ended in a distrustful truce. The Peninsula gained a fragmented network of tracks that does not provide a continuous and logical coastal walk nor access to any of the high-points of the ridge-line (except the Soldier's Memorial).

Maps, Signage, and Public Roads: Monument Track, Banks Peninsula



The northern end of Monument Track, Banks Peninsula, on the 1:50,000 Topographic Map 260, 'Akaroa', Edition 2, 1998. Long black dashes on these maps indicate a 'vehicle track'. The maps carry a warning in red: 'The representation on this map of a road or track does not necessarily indicate public right of access'.

Monument Track serves as an example of how the 1:50,000 Topographic Map 260 series fails to provide walkers with the access information that they need. The 'Akaroa' map does show Monument Track, one of several routes onto Mount Herbert, the highest point on the Banks Peninsula. But without additional information, such as a walkers' guidebook, the map-user cannot tell whether the track is public or private. Furthermore, the start of the track is unsignposted.

Five minutes of Googling through dotnz confirmed that the track is a recognised walking track. Some sources, not necessarily reliable, list it as a public road. The primary source for this access information should be the national topographic maps, not guidebooks, leaflets, and web pages of unknown dependability.

The locked gate, lacking any signage. When a gate is erected across a public road, Section 344(2) of the Local Government Act 1974 requires the person authorised to erect the gate, or at whose cost it has been agreed that the gate shall be erected and maintained, to fix a board upon each side of the gate, with the words 'Public Road' legibly painted in letters of not less than 75 millimetres in height.

A locked gate at the presumed start of Monument Track at the summit of the road from Purau to Port Levy. There are no signs indicating either a public road or a walking track.

Goodwill and Access Trusts

Goodwill, however, will continue to feature crucially in creating walking tracks across private land. Several access-related trusts are already cooperating successfully with landholders. Te Araroa Trust has been gradually extending Te Araroa – The Long Pathway. Some sections of Te Araroa follow pre-existing trails, and many other sections follow legal route (coastline, marginal strips, and unformed public roads). Quite a few other stretches did not offer existing tracks or legal routes, but by talking to dozens of land-owners, many of them private, the Trust has created hundreds of kilometres of new permanent trail.

The federation's suggestion of a national voluntary-access trust deserves consideration. A track trust supported by Federated Farmers would be well-placed to negotiate with landholders. The trouble with this idea, coming from Federated Farmers, is that it might meet derisive suspicion from recreators, after two years of their reading headlines such as 'Farmers Dig In for Access Battle'.

For much of 2003, Federated Farmers denied that New Zealand had a problem regarding the lack of walking access across private land. I will show later (page 36) that its submission on the Acland report suggested that property rights should remain unchanged and that people's access expectations should decrease, compared to the old days when arranged admittance was almost always available. Since September 2004 the federation has campaigned to convince the general public that legislating to provide public access across private land and along waterways is wrong. The federation's deepest beliefs seem to regard walking tracks across farmland not as part of the New Zealander's birthright but as trivial distractions and obvious burdens. The federation has argued that walkers will threaten not only biosecurity but national security itself (see page 26). All this hostility towards innocent country-lovers would not rule out the formation of an access trust backed by Federated Farmers, but neither would it give such a trust a flying start.

Trusts will not solve the access problems when no public-spiritedness exists. Legislating to resolve the most intractable or pressing access issues and to meet changing access expectations is inevitable. In some situations, such as exclusive capture, there may be no goodwill to destroy, because the commercial imperative has already swept altruism aside. In some other situations, such as quasi-extending the Queen's Chain by imposing walking access along riversides, there is the unattractive prospect of transforming some hospitable landholders into angry land-guards. There may be scope for avoiding such social disturbance by scrutinising the farmers' practical concerns and hence forestalling any detrimental side-effects of new public routes.

And if this snag-avoidance doesn't work? Will obliging farmers become hostile ones, overnight? That would be sad, at odds with the tradition of well-mannered decency, and harmful to the links between farmers and the public. But that harm is already occurring, due partly to a growing tendency to exclude the public from private land. Curing the access headaches and meeting changing expectations demand some legislation. Recreators will damn the government if it doesn't legislate; farmers will damn it if it does. Some farmer displeasure may be unavoidable. One or

two of the present generation of farmers may never get used to the idea of walking tracks across their land. It may take a new generation of farmers, and a new generation of Federated Farmers leaders, before public foot-tracks become a normal part of rural life. Everywhere.

Wakatipu Trails Trust

The Wakatipu Trails Trust is a nonprofit organisation dedicated to the development of a network of public trails around the Wakatipu Basin. It supports the building of trails for nonmotorised use:

> Trust Objects
> 2.1 To promote, plan, fund, develop and establish to a strategy approved by the Queenstown-Lakes District Council and the Department of Conservation Otago Conservancy and maintain (while it remains the responsibility of the Trust) a functional and high-quality interconnected network of trails for walking, hiking, cycling, mountain biking, horse riding, roller skating and any similar nonmotorised recreational leisure activities in the Queenstown Lakes District … whenever such trails will contribute to the social, cultural, environmental or economic wellbeing of residents or visitors to the District.

Fundamental to the Trust's approach are the aims of:

- involving the community in all aspects of the work of the Trust; and
- consulting closely with landowners and organisations concerned with land that may by involved with the trails.

One current project, reported by the December 2004 *Arrow Observer*, involves working with the Department of Conservation on the trail from Glendhu Bay through Roses Saddle and Macetown and then on down the Arrow to link up with a new trail to Queenstown via Lake Hayes.

3. The Information Gap

Pro-access statement:
'The reality is that there are so many wilderness areas and parts of rivers and the seashore that people cannot get access to.' (Hon Jim Sutton, media statement, November 2003.)

Federated Farmers comment:
Existing access opportunities are very poorly defined.

- *A stocktake of existing and unformed accessways is required to determine where access is and is not a problem.*
- *Improved identification of accessways across both privately and publicly owned land would help landowners and public.*
- *The reality is that there is an increasing abundance of publicly owned parks and reserves with 40% of the South Island already held in public ownership.*

The phrase 'so many' in Jim Sutton's statement means 'very many'. If you accept that his use of this phrase is accurate, which I do, there is nothing mythical or misleading in this pro-access quotation. He is emphasising the reality: the truth of the matter, the end result of a highly complicated mix of circumstances. To quote one example out of hundreds, Neil Deans, the manager of the Nelson-Marlborough regional office of Fish and Game New Zealand, reportedly pointed out that 'about 42 per cent of the banks of the Motueka River have legal access, but most of those areas are unmarked and therefore unknown to the general public'.[31] Federated Farmers is wrong to insinuate that Sutton is spreading a fiction. But I am pleased to see Federated Farmers acknowledging the information void and constructively suggesting two projects to tackle it.

The proposal to take a 'stocktake of existing and unformed accessways' comes quite close to endorsing the PANZ suggestion for a public-access topographic map series.[32] The proposal to improve the 'identification of accessways' endorses the Acland report's suggestions on signage and waymarking.[33] These encouraging Federated Farmers ideas match a section in the federation's submission on the Acland report. Titled 'Clarity and Certainty of Access', the section agreed that 'there must be clear identification of those places where the public can enjoy free access across both privately and publicly owned land without first requesting permission'.[34]

Mapping is not the only way of stocktaking public foot-tracks; you could also list them in a database. Yet a map is overwhelmingly the most useful way in which to present the information to the public. The 1:50,000 topographic maps, whether on paper or online, should be the primary source of information on tracks, including the track statuses.

Our current 1:50,000 topographic maps, of the Topographic Map 260 series, fail to provide access information, vital information that walkers need. One result of this basic deficiency of the 260 series could be that topographic maps are not a strong part of our everyday culture. My impression is that these maps do not play as important a part in the lives of New Zealanders as, say, Ordnance Survey topographic maps play in Britons' lives. In March

Maps

'Is there any point in having footpath access if it is not mapped?'

'It would be great to have a map of the walkways or accessways in the whole Waikato.'

From *Meeting Record of Stakeholder and Public Meetings for Walking Access in the New Zealand Outdoors Consultation (September – November 2003)* (Wellington, NZ: Ministry of Agriculture and Forestry, March 2004), pp. 53 and 77.

2004, Dunedin City Council reported on some recent research into Dunedin's tracks.[35] One hundred and eight track-users were interviewed, at five sites. When the interviewees were asked how they had obtained information about the track, the most frequent answers were word of mouth, guidebooks, articles, pamphlets, and signposts. The whole 192-page report does not mention topographic maps. Why was nobody using the Dunedin topographic map? Why does Joe PublicNZ not think in terms of topographic maps? I'm not sure. There are probably many answers to these questions. But one answer is that the maps do not show access rights.

Even if Federated Farmers and recreators agree on little else, the apparent accord on the need for redesigned maps is hugely significant. It signals acceptance by the farmers' leaders, at least in principal, of one of the likely five main themes of the government's proposed New Zealand Land Access Strategy: to 'provide greater clarity and certainty of access through information'.[36]

The development of maps showing existing foot-tracks open to the public and showing unformed public roads would not involve or anticipate any interference into property rights. There is every prospect, therefore, of this idea gaining cross-party support. But designing and producing such maps would be a long-term undertaking. A commitment to a public-access map series from both sides of politics would help to sustain this mission.

*

The third sentence in italics offers us a second reality, an additional perspective, reminding us that a third or more of the land in New Zealand is publicly owned. We all know this already because Federated Farmers media statements have been telling us about it for two years. We also know, however, that the two realities, Jim Sutton's and Federated Farmers's, do not contradict each other. The second does not rebut the first. Sutton's statement is true. Recreators need more accessways across private land to reach public land. Walkers in particular also want more walkways across private land to enable people to appreciate and enjoy private rural New Zealand. Putting this another way, walkers would like – and will increasingly expect – limited access to parts of *Country Calendar*, where such entry can be provided without interfering with farm management.

There is a much mentioned need for more walkways across urban-fringe New Zealand, and I mean near small country towns as well as cities:

> Environmental psychologists utilise the term 'nearby nature' to denote wild places accessible to residential areas. Much has been written on the engagement of children / adolescents with nature and [their] positive ecological behaviours in later life … With population projections scaling twelve million by 2025, the promotion of nearby nature by way of bush restoration and other local initiatives appears vital now to create corridors merging our cities, towns and communities with our bush, beaches, lakes and rivers.[37]

Regarding the generous percentage of New Zealand's total land that is in public ownership, it's about time that Federated Farmers came up with a fresher red herring.

'The development of maps showing existing foot-tracks open to the public and showing unformed public roads would not involve or anticipate any interference into property rights.'

4. Farm Management and the Right to Refuse Entry

Pro-access statement:
'There are more and more examples popping up of landholders restricting public access to previously accessible rivers, beaches and mountain land.' (Hon Jim Sutton, media statement, January 2003.)

Federated Farmers comment:
Landowners must be able to refuse access where risk to the public, livestock and property is too high.

- *Visitor ignorance of stock behaviour or potential hazards and perception that farms are a big playground is commonplace.*
- *Code of Conduct outlining access expectations would go a long way towards ensuring reasonable requests are considered.*

Jim Sutton's statement was not a myth. It was not a story that he concocted or that he mistakenly believed was true. His statement was based on years of observing the rural scene in New Zealand. It was not exaggerated, in my view; but remember, from Section 1, that Federated Farmers considers that 'a few highly reported incidents' have been blown up out of proportion to their importance, and that the real scale of the access problems is small.

I will give one example of what Sutton was talking about. The following quote comes from one of the submissions on the Acland report. The submitter was a landholder:

> I find that more and more landholders are trying to deny access through their land on these tracks and roads to areas of DOC estate. I object to locked gates on legal roads. Some landholders are stating that these roads are closed and refusing access. Most of these roads have been formed and used by the early settlers. They have since been abandoned but are still clearly visible.[38]

The Federated Farmers comment does not disprove Sutton's statement. It does though add a different angle, widening the discussion. Taken together, Sutton's pro-access statement and the Federated Farmers remarks form a variation on a familiar theme. They repeat the dilemma we met in Section 2, 'Legislation and Goodwill'.

In that earlier example, we identified a concern: the need to preserve walking access to land, as a critical element in the character of the nation. And we identified a predicament: access legislation would impinge upon property rights – slightly or greatly, depending on your perspective – and could hence weaken farmers' goodwill.

In this new example, the same concern is deepened: we are in some instances losing previously available recreational entry. But this time, Federated Farmers expands its argument against access legislation that would interfere with property rights. Instead of

merely forecasting a loss of farmer goodwill, it lists three practical reasons why that goodwill could wear thin. Removing from farmers the right to exclude walkers could:

- expose the public to danger;
- lead to livestock straying or being harmed or rustled; and
- put property – equipment, vehicles, farm buildings, and the farmhouse – in jeopardy.

Earlier (page 9) I suggested that recreators and the government should heed the farmers' concerns and meticulously examine each of them. One of the main thrusts of the Federated Farmers submission on the Acland report was a claim that the Ministerial Reference Group had underconsidered the farmers' worries:

> Attached to [the Federation's] earlier submission were comments extracted from individual farmer submission. The Federation notes with some concern that little weight appeared to be given to such comment in the committee's report. The Ministerial group is urged to reread those comments.[39]

The Group had eleven members, eight of whom had some sort of farming background. Even if one or two of these eleven members did not read the farmers' anecdotes, it is likely that a majority of the group studied them receptively and with understanding.

I am writing this in December 2004. The land-access matters have passed the Reference Group stage. The government has released some details of its proposed Land Access Strategy. Over the next six months, officials will be further developing various policies and drafting a walking-access bill. The next main consultation opportunity may be the select-committee stage attached to this bill, expected in mid-2005 or later.

Walkers, hunters and anglers might have sound reasons to question some of the farmers' apprehensions, but they should also bear in mind that hasty and half-baked measures that lead to riverside snafu would set back the cause of access. The Land Access Strategy may not pass into law until 2006. The Access Agency will then progressively introduce changes on the ground, such as the walking strips along rivers. This gradual establishing of walking access along identified parts of the coast and specified rivers and lake shores may take until 2009.

The Safety of Walkers on Farms

On the safety of the public, we live in a world where safety is a moral absolute, and where pro-safety arguments have accumulated into vast dunes that roll across the landscape burying all in their path in suffocating hummocks of regulations; farmers and recreators become entombed together in common suffering, until the only people left free to live normal, slightly risky lives are rugby-players and celebrity adventurers.

Even so, I am not advocating a return to she'll-be-right. Who wants to die underneath a tonne of Angus? Nor do I want to stray onto a hillside where some well-camouflaged hunter is sneaking around with a rifle. I do believe, though, that the safetyologists have gained too great a dominion over our lives; and I think that

in many situations it would be possible to route permanent foot-tracks in ways that are safe and that do not compromise farm management.

Many farmers in northern Europe cope with legions of walkers, who not only follow walking tracks but also wander over uncultivated private land that is classed as open country. In New Zealand we are not planning to create go-anywhere entry to private land. (Such access will continue to exist on certain farms, on specific occasions, by permission.) Our considerations, in the context of private land, are limited to linear access: walkways, accessways, and routes following riversides, lake shores and the coast. So in some respects the safety aspects ought to be relatively simple, no more complicated than on those New Zealand farms that have lived with walkways for the past twenty-five years. But some farmers may contend that the characteristics of their farms make the provision of safe foot-tracks a major hurdle. One submitter to the Acland report wrote:

> I am now less enthusiastic about inviting strangers onto our land for the following reasons: our land use has had to become more intensive and we now run bulls and grow avocados ... [40]

This sounds like a situation in which it would be complicated and possibly irresponsible for the farmer to accommodate walkers wandering haphazardly across the property. Yet providing a definite accessway through this farm could be feasible, depending on the exact circumstances.

(For the matter of a landowner's liabilities under the Health and Safety in Employment Act, see page 31.)

The Security of Livestock

On the possibility of livestock being harmed, farmers, walkers and responsible hunters share the same enduring enemy, rural pariah number one: the thoughtless or incapable dog-owner. Already the owner of a dog that attacks 'any person, stock, poultry, domestic animal, or protected wildlife' commits an offence liable to a fine of $1,500. (Dog Control Act 1996, Section 57.) But this law is no consolation to the farmer whose sheep are killed by an unseen dog. Nor do all dog-owners respect the no-dog rules that apply to many walkways. Consider the following farmer's account:

> Access to Land: Comments/Experiences from Survey Respondents.
> 025. ... DOC have been very difficult to deal with over the issue of the walkways act. We interpret the act as saying there is not supposed to be rifles or dogs on a registered walk way. This issue went on for years. We now get on better with them and they have put up no dog signs. Not that people take any heed. We offer to put their dogs in kennels, some do, some won't.[41]

'The exact rules about dogs and walkways do not lend themselves to a simple national code of access.'

The exact rules about dogs and walkways do not lend themselves to a simple national code of access. Dogs may or may not be allowed on a walkway. The New Zealand Walkways Policy states:

'Where conditions permit, other activities such as riding horses, carrying firearms (to hunting areas) and taking dogs and riding bicycles may be allowed.'[42]

Accessways across private land to reach public hunting areas do pose questions of what to do about dogs and guns. The New Zealand Fish and Game Council has suggested that leashed dogs should be allowed along such routes:

> In those situations where access is sought via a designated route across private land in order to reach public land where hunting (including with dogs) is a legitimate and accepted recreational activity it should be permissible for an unloaded firearm and a leashed dog to be taken along that marked route.[43]

Lambing-time and the question of walking access form another common concern of farmers. Walkways can already be closed over lambing-time. Having walked past fields of pregnant ewes and newborn lambs each spring for many years, I have mixed feelings about this restriction. Other people too have questioned it. One submitter to the Acland report felt that 'many of the farm management reasons for closure of all access in New Zealand (e.g. lambing) do not appear to be as much of an issue overseas, where they occur successfully in areas of open access ... '[44] The possibility of walkers disturbing lambing is remote, but if a farmer wants to close a walkway during lambing, that's his or her prerogative. Fish and Game New Zealand is supporting this entitlement: 'Fish and Game do accept the right of farmers ... to close off certain parts of their land at certain times of the year, and would accept that this would actually be enshrined in any statute on public access.'[45]

There are other animal-welfare issues, such as the possible need to close foot-tracks during outbreaks of disease. Nothing about access is ever simple. You do not have to be a veterinarian to imagine the potential nightmare of confining an outbreak of foot-and-mouth disease to one place. But what do we do about this possibility? Cease building new foot-tracks? Permanently close existing walkways? We have to achieve a sensible balance. Contingency plans to control outbreaks of disease could take into account all possible passage of the public across farms, including on any accessways that are created in the future.

*

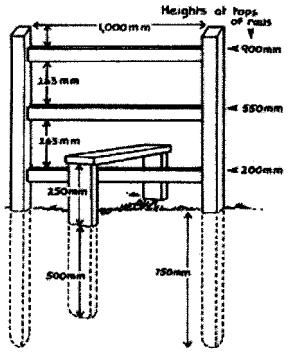
Finally, gates. Perhaps the issue of farm gates provides the quintessential example of the need to reach a sensible balance between the business of farming and the recreational use of farmland. I grew up in a town, yet by the time I was five years old I knew about closing farm gates. That was in Britain. It begs the question: is there any reason why the majority of New Zealanders could not learn, at an early age, to leave farm gates as they find them? Moreover, what will be the long-term consequences if this rural convention fails to penetrate the suburbs, where 85 per cent of New Zealanders live? And another question: how many disruptions involving gates and farm animals are occurring on those New Zealand walkways that cross private land? And another:

***Otago Daily Times*, 4 January 1992** [An editorial on the two-year-old Peninsula walking-tracks controversy.]

Peninsula Walkways.

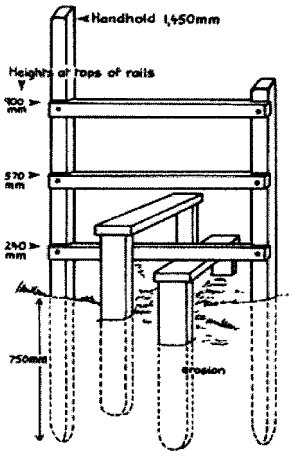
… If there is a problem about gates why not solve it by resorting to the old-fashioned stile, which will add a little picturesque touch to the outing?

could more walking tracks use the combination of a stile beside a locked gate, which eliminates the chance of the gate being left open?



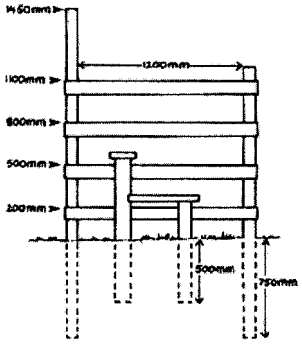
Few people seem to be asking these question. I know of no research that estimates the number of gate calamities and the number of person-visits to private countryside. I do know, however, that the Federated Farmers submission to the Ministerial Reference Group included a list of landowner anecdotes, and that fourteen of these comments mentioned gates left open. For example:

> Access to Land: Comments/Experiences from Survey Respondents.
> 037. ... Gates have been left open on the way to the coast then shut on the way home, several times a cow has wandered through the open gate leaving its calf to be then shut away from [its mother]. Often by the time we find the problem the cow has dried off and there is a motherless calf. Other times the gates are left open for us to find different classes of stock boxed up.[46]



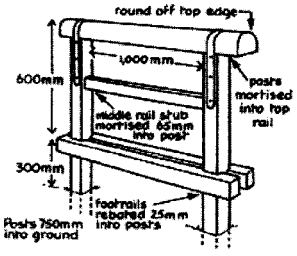
Without research specifically into gate incidents, it is hard to put the anecdotal evidence into perspective against the total number of visits to farmland. Yet hardly a week passes without our being bombarded with gate-related doom. Here is an example, from *The Nelson Mail*:

> Nelson farming leaders have raised a range of reasons in opposing greater public access to their land. There is the risk to bio-security and stock management; obviously, the cost should someone not bother to close a gate could be high ... farmers should continue to have right of refusal over who traipses over their property ... [47]



The use of the word 'traipses' typifies the embroidery that is obscuring and polarising the access debate. In the context of the sentence, the word carries a slightly distrustful, derogatory undertone. Unwelcoming. Patronising. There seems to be no acknowledgment that waymarked foot-tracks can be relatively unintrusive and trouble-free. The public are guilty before being proven innocent. We are all dickheads.

Perhaps we are. Perhaps New Zealanders are hopeless with gates. Perhaps many urban kids do not become familiar with farm-gate routine because, even after thirty years of trying to establish walkways, we have relatively few across private land, especially near some of our city suburbs and near small country towns. Public Access New Zealand has commented on this:



> There are only a handful of Walkways over private lands despite much initial goodwill [in the 1970s and 80s] from Federated Farmers and a concerted effort by all concerned. The reality is that there are very few landowners prepared to formally accommodate public use of their land, even when there are exhaustive statutory remedies against abuse of the

> privilege by the public. Twenty years of experience trying to achieve, by voluntary means, greater walking access to the private countryside has achieved very little.[48]

John Wilson, the president of Federated Mountain Clubs, touched on this in a careful and restrained letter to *Rural News*: ' ... since the abolition of the Walkways Commission and District Walkways Committees in 1990, Walkways have languished ... More opportunities for the public to walk over farmland would help to reconnect urban people with the land.'[49]

Risk to Property

The third concern mentioned in the Federated Farmers comment is risk to property. 'Mythbusters' repeats this anxiety later, so I will consider it at its next occurrence, in Section 7, 'Walking Tracks, Country-Dwellers' Privacy, and Rural Crime'.

Farm Management and the Public

Farmers and recreators need to discuss – methodically and in detail – the general issue of changing land use, intensiveness of land use, the safety of the public, the security of livestock, and the provision of permanent linear access. To say that the jury is still out on this matter would be an understatement; the trial has hardly started, even after two years of consultations, submissions and meetings.

Recreators and legislators need to meet each farm-management concern with open minds and a determination to scrutinise the possible problem, drawing on expert advice when necessary, such as for the issue of biosecurity. Federated Farmers titled one news release 'Walkers Threaten Biosecurity'. It stated that 'free and ready public access to private property ... has major implications for New Zealand's biosecurity'.[50] The Acland report phrased its response in a measured way:

> Biosecurity.
> The movement of people (and vehicles) across properties has potential repercussions for the spread of disease, pests or weeds. There is a lack of understanding of the real risks that people pose by, for instance, not dealing appropriately with toilet waste.[51]

The Acland report later commented that 'the submissions suggest that biosecurity risks may be overstated ... ' I do not know how closely the Ministerial Reference Group looked at the biosecurity issues. One member of the group, Sally Millar, is an environmental consultant.

Fish and Game, not usually a body that would downplay environmental risks, dismissed the Federated Farmers biosecurity alarm, saying that there was 'no evidence to support this claim'.[52]

Farmers may present both rational and irrational reasons for refusing entry, even for apparently straightforward linear access, such as along riversides or following farmtracks. The presence of

'Farmers may present both rational and irrational reasons for refusing entry, even for apparently straightforward linear access, such as along riversides or following farmtracks.'

an accessway might genuinely impede a landholder's freedom to use land. There again, it might definitely not. Responders to the Acland report acknowledged this:

> Many user submitters recognise that there can be genuine reasons for restricting access at certain times, but feel that access may be denied on unreasonable grounds. Some user submitters consider that reasons for preventing access, such as lambing, fire risk and commercial use are being used more frequently.[53]

One submitter to the Acland report had this to say about comparisons with Europe:

> The report emphasises the need to develop a strategy appropriate to New Zealand's particular social, cultural and traditional conventions. Therefore, we are at a loss to understand the time and attention devoted to investigating access arrangements in predominantly European countries.[54]

I agree with this submitter. New Zealand farms are very different from European farms. I walked across farms in Europe regularly for thirty years. The foot-tracks were shown on maps; I did not have to spend days researching who owned the land, and I didn't have to jump through hoops to obtain permissions. And it never occurred to me, all that time, that I might disturb the farmer, intimidate his family, scatter the cattle, steal the equipment, infect the pigs, kill the wildlife and contaminate the streams. In New Zealand, it seems that there's a high likelihood of my doing all these things.

We recreators need to understand these differences. In Scotland, people recognise that 'well-planned paths … help landowners and farmers to integrate recreational use with land management operations without compromising their businesses'.[55] In New Zealand, foot-tracks across farmland would limit the ability of farmers to control the admittance to their property. 'Their property rights are in danger of being overridden by a public "right" of access, which has the potential to put at risk individual farming enterprises, with flow-on effects to rural communities and the New Zealand economy.'[56]

Furthermore, according to Federated Farmers, walkers would clearly endanger national security:

> 10. National Security
> In the current world environment, with increased potential for bioterrorism, the role of farms as sources of food supply has assumed even greater importance. … New Zealand's ability to guarantee the security and safety of food supplies would obviously be severely compromised if the public had a statutory right of access to rural property.[57]

Behind this warning lies the United States Bioterrorism Act 2002. Federated Farmers is saying that we clearly cannot risk extending the Queen's Chain or creating more accessways across farms because terrorists could use these walking routes to reach and poison our food exports to the US and other countries.

I am not qualified to comment on national security. We have a government department, the NZ Security Intelligence Service, specially designed to neither confirm nor deny the terroristic threat to our agriculture.

Returning to the 'Mythbusters' Federated Farmers comment, and the two sentences in italics, it may be true that some urban New Zealanders ignorantly view farms as big playgrounds. If visitor ignorance is commonplace, I would have thought that this would be an urgent reason for a progressive farmers' organisation to support an increase in linear access across farms, accompanied by a well-publicised access code.

'Give us a break!' say the Feds. 'We *are* pushing an access code.' OK. The Federated Farmers support for the idea of an access code allows me the rare pleasures of seeing eye to eye with the federation and of writing about something on which there is almost universal agreement. Agreement in principle, that is. A large number of submitters to the Acland report considered that an enforceable access code should be a cornerstone of an access strategy.[58] This access code must be two-sided, and that two-sidedness should include explicit acknowledgment of the recreational, social, cultural and economic value of linear access across uncultivated farmland.

5. The Queen's Chain

Pro-access statement:
'This is about access not ownership. It affects people's recreation, not their businesses.' (Hon Jim Sutton, media statement, August 2003.)

Federated Farmers comment:
Public expectations are no more important than landowner rights to secure title.

- *Health and safety obligations for visitors engender additional impositions on private landowners.*
- *Public access threatens land-use and management.*
- *Government risks endangering the huge amount of goodwill landowners extend to the public enjoying access across their land.*

The Sutton quote comes from a government news release containing questions and answers.[59] The 'Mythbusters' version of the quote, reproduced above, omits the context and a vital fraction of a sentence. The question was: 'Why has [the confusion over the Queen's Chain] been allowed to drag on so long?' The answer was: 'It's been in the "too hard" basket.' Then, as an additional answer: 'Perhaps it's gone on so long because this is about access, not ownership. It affects people's recreation, not their businesses.'

What exactly is Sutton saying here? First, he is saying that clarifying and extending the Queen's Chain poses complex legal and political issues. He is also suggesting, I think, that this need to clarify and extend the Queen's Chain has languished in dusty corners of the parliamentary offices while governments have concentrated on matters apparently more momentous than access to the outdoors. Also he is pointing out that the Queen's Chain is a deliberate recreational provision. Or, more correctly, the eight legal categories that make up our incomplete Queen's Chain form, in the main, a deliberate recreational provision. (Some are conservational provisions.)

Queen Victoria's much quoted 1840 instructions to Governor Hobson included the directive to 'reserve … places fit to be set apart for the recreation and amusement of the inhabitants'.[60] What we've ended up with is perfectly devised for the recreation and amusement of lawyers.

Until the last fifteen years, the recreational reasons to extend the network that forms the Queen's Chain have not been strong enough to force the matter onto the political agenda. In 1989–90 the Labour government proposed marginal-strip reforms that would have weakened the Queen's Chain; public disapproval contributed towards the dropping of the worst aspects of these changes.[61] Then in 1993, Public Access New Zealand ran a Queen's Chain campaign to oppose another proposed law change that would have tarnished the Chain. Widespread public consternation led to the matter becoming an election issue. In October 1993, before the general election, the National government backed off the controversial clauses that would have undermined the Chain. In 1994, after National had won the election, the offending proposals resurfaced, only to be eventually dropped again.[62]

Our politicians have realised that strengthening and lengthening the Queen's Chain, if handled carefully, is a wise provision for future recreation and is also likely to win more votes than it loses. Many of these enlightened people are now keen on embracing its ethos. The Chain is cool. The public are fond of it. The public also would like to know where it exists and – good gracious! – they hope to be able to reach it and walk along it. Literature commonly estimates that 70 per cent of water margins are in public ownership. Great! – were it not for the fact that private property may landlock many parts of this 70 per cent. Without a helicopter to fly you there, you cannot get there. Also, substantial parts of the 70 per cent are unavailable for public access because of coastal erosion or river movement.

The Federated Farmers Perspective on the Queen's Chain

Public expectations, according to the Federated Farmers comment, are no more significant than landowners' rights to secure title. This comment implies that, among other things, enforced lengthening of the Queen's Chain could adversely affect the property rights of the landowners involved. The motivation behind the lengthening would be access, as Sutton stated, but the downside – albeit perhaps merely the creation of a foot-track along a riverside – could impact on ownership.

We expect this response. It is perfectly valid. We've heard the argument a hundred times. But, as we work through this paper, it is becoming obvious that the federation erred in titling it 'Mythbusters'. The paper does not uncover any ministerial fabrications or falsehoods; it does supply the other, conservative perspectives.

What *is* that Federated Farmers stance, on the Queen's Chain? Here is part of it, from the federation's May 2003 submission to the Ministerial Reference Group:

> … Federated Farmers does not believe that the 'Queen's Chain' should necessarily be 'enhanced', if this means an extension of the existing area. The necessity for extension has not been demonstrated, and there should be no extension where it would involve the taking or reduction of existing property rights without compensation.[63]

Here is a later statement, slightly more amenable, from the federation's submission on the Acland report:

> Federated Farmers sees no reason why the underlying ethos of the Queen's Chain should not be embraced, while at the same time maintaining property rights.[64]

What Federated Farmers means by this, in practical terms, I don't know. I expect we will find out during the next few months. If we can take the reported remark of Grant Bradfield, the president of the Otago branch of Federated Farmers, as accurately representative, many farmers are about as ready to espouse the Queen's Chain as they are to espouse the right to roam: 'The minister's

statement that he is extending the Queen's Chain is not what we would expect from someone whose job it is to advocate for the rural sector.'[65]

The politics of the Queen's Chain split people into three factions: the conservatives, such as Federated Farmers, who think the Crown already owns too much land; the gradualists, content to wait for incremental increases; and the progressives or innovators, intent on radical solutions to extend (or to quasi-extend) the Chain. But there is one aspect on which all three factions agree. Any access matter that causes an unholy alliance between Federated Farmers and Public Access New Zealand demands attention. When you have Federated Farmers supporting and quoting a PANZ viewpoint, every Member of Parliament should take notice. The following is from the federation's May 2003 submission to the Ministerial Reference Group:

> Public Access New Zealand notes that 'lack of readily accessible, reliable information is the single biggest deterrent to public use of the Queen's Chain'. This would support Federated Farmers' contention that the size and coverage of the Queen's Chain is not the primary factor restricting public access to natural recreational resources.

To return, briefly, to public expectations and private property rights. Many people recognise the fundamental challenge: it's a question of balance. But one person's balance is another's intrusion. Achieving a 'balance' that gains universal support may be impossible. The minister for rural affairs has had the courage to shoulder this rural brain-ache.

'Any access matter that causes an unholy alliance between Federated Farmers and Public Access New Zealand demands attention.'

Letter to the Editor

The Press, 1 December 2004.

Selfish Campaign.

Agriculture Minister Jim Sutton should be commended for his staunch defence of the Government's intention to create greater public access to lakes, rivers and the outdoors. As is intended for the foreshore and seabed, so it ought to be for our inland waterways.

Federated Farmers' selfish and mischievous campaign against Sutton's proposals, and the federation's arrogant preoccupation with private property rights inland, to the exclusion of the public's property right in wildlife, freshwater fisheries and natural water, is short-sighted strategic thinking.

With a declining rural population, and a growing and voting urban population, Federated Farmers ought to be thinking up ways to woo the wider public, not alienate them over matters of recreational access to waterways. Land-owning feudalism is not the Kiwi way. And it is not up to Federated Farmers to deny the public the completion of the Queen's Chain.

Federated Farmers should stop mindlessly attacking the access reforms, which are sensible and fair, and do something urgently about their nitrate poisoning of our environment.
Ian Caird, Halswell.

The Health and Safety in Employment (HSE) Act

I haven't yet answered the whole of the 'Mythbusters' Federated Farmers comment. The first sentence in italics raises a landowner concern that we haven't met in previous sections: the Health and Safety in Employment (HSE) Act. This matter really belongs under a wider heading than 'Queen's Chain', but as it is here let's cover it now.

Some farmers fret about their HSE Act liabilities for injuries to recreational users of their land. Is this a legitimate concern or is it a landowner ace, kept in reserve as a reason to deny entry when all other reasons have failed? Or is it something in between, a result of landowner uncertainty caused by misinformation?

Farmers' anxieties about their HSE Act liabilities have acquired a longevity akin to that of the Loch Ness Monster. Their worries keep on resurfacing despite arguments that they should not exist.

The Health and Safety in Employment Amendment Act 1998 clarified the responsibilities of farmers who host recreational visitors. The amendment makes it clear that farmers do not have a duty to persons using their land for noncommercial recreational or leisure purposes unless they have given express consent to those persons to be on their land.

A government questions-and-answers news release further clarified the situation:

> Question: Aren't I liable for any injuries people get on my land?
> Answer: No. Under the Health and Safety in Employment Amendment Act 1998, you are not responsible for injuries people might incur while on your land if you do not know they are there. If you do know they are going on your land, you are only obliged to warn them of extraordinary risks: for example, if trees were being harvested, you would need to warn people of that and the risk of logging trucks. You do not need to warn them of natural hazards, such as tomos or bluffs.[66]

In a perfect world, this apparently clear exposition would leave no grey areas; in the real world – one that's full of lawyers – we have not heard the last about farmers' liabilities towards visitors. The legal minds from the different sides of the access debate take contrasting views.

Even before the 1998 amendment, Occupational Safety and Health (OSH) tried to explain that farmers would not be held liable for non-work-related injuries to recreational users. But this OSH assurance did not convince the farming lobby. In 2001, Public Access New Zealand commented:

> PANZ suspects that much of the concern was politically motivated and the possibility of liability, despite official assurances that none existed, became a convenient ploy for denying public access. Most farmers, however, did not [deny access]. For those with an axe to grind, or private property rights agendas to promote, OSH and their Act became a convenient rallying point.[67]

'The legal minds from the different sides of the access debate take contrasting views.'

That rallying point still exists. The 1998 amendment seems not to have satisfied Federated Farmers, whose submission on the Acland report said:

> Federated Farmers contends that in today's increasingly litigious society, it should not be unexpected that landowners will take a precautionary approach to exposing themselves to the risk of litigation; indeed it is a perfectly rational response … Federated Farmers agrees that a solution must be found to reducing landowner liabilities towards recreational users under health and safety legislation … [68]

The monster resurfaced again in November 2004. The ripples spread to page 1 of the Farming section of the *Otago Daily Times*. At a field day near Gore, David Clapperton, the marketing manager of the rural insurer FMG, reportedly told a crowd that 'greater public traffic through farms would [possibly] heighten the risk … of landowner liability from visitors harming themselves'.[69]

In response to this claim, the national operations manager of OSH, Mike Cosman, wrote to the *Otago Daily Times*. He pointed out that the 1998 amendment to the HSE Act had narrowed the landowners' duties. Walkers, anglers and hunters who follow public walking routes across private land do so without needing or obtaining the explicit permission of the landowner or land-occupier. Therefore the landowner or land-occupier is not liable under the HSE Act for injuries to these people.[70] Yet according to the Federated Farmers submission to the Ministerial Reference Group, farm-owners, their employees and their contractors still have a duty to ensure that no action or inaction on their part causes serious harm to any person.[71] Clear as mud?

Perhaps we should put the lawyers from both sides into preventive detention until they have hammered out a compromise that removes any remaining landowner unease.

Back to 'Mythbusters' now, the second and third sentences in italic repeat issues raised in previous sections.

6. Property Rights

Pro-access statement:
'There should be no impact on ownership.' (Hon Jim Sutton, media statement, August 2003).

Federated Farmers comment:
Legislated rights of access will undermine property rights of private landowners.

- *Landowners must retain the right to manage public access for personal security, security of home and business, privacy, fire risk, food safety and animal disease and welfare reasons.*
- *Working proactively with landowners on [a] voluntary basis will achieve [a] situation that suits all.*

We are now two-thirds of the way through 'Mythbusters', and it has become apparent that the minister for rural affairs is not a liar. In the above statement on ownership, however, he may have been oversimplifying. This is the first 'Mythbusters' Sutton statement that, in a limited sense, may be slightly rebuttable. But bear in mind the context: we are not discussing new motorways across farmland, we are not envisaging the right to roam, we are talking about foot-tracks along riversides, lake shores and the coast.

The positive, neutral, or negative impact of a foot-track is in the eye of the beholder, the individual landholder. Some farmers recognise that waymarked foot-tracks can eliminate access irritations rather than stimulate them. A well-defined track, open to the public, can free a farmer from the task of dealing with requests for admittance:

> … while some farmers are expressing increased resistance to people crossing their land, others work with Fish and Game to provide an agreed-on crossing point which minimises interference to the farmer while giving good access to rivers and lakes. Craigieburn farmer Johnny Westenra allows the public full access to Lake Hawdon and Lake Meremere across his land, including use of his road. Fish and Game has erected signs clearly defining the public access route to the lakes. [Fish and Game ranger] Willis said recreational users of the lakes fully respected the land because of the trouble-free access.
>
> 'During the fishing season I go there at least once a week and have never seen rubbish left. Westenra also allows campers there and apart from the occasional illegal camp fire, I have never seen any trouble.'[72]

'The positive, neutral, or negative impact of a foot-track is in the eye of the beholder, the individual landholder.'

An increasing number of rural-constituency Members of Parliament are beginning to half acknowledge this advantage of dedicated, clear tracks. One or two of them, admittedly Jim Sutton's colleagues in government, have expressed their pro-track opinions, even at the risk of alienating their rural electors. David Parker, the Otago Member of Parliament, reportedly told members of Federated Farmers that he 'did not believe the problem [the

issue of public access across private land] would go away until proper access to rivers and lakes was fixed. He favoured fewer but guaranteed accessways.'[73]

The way I see it, waymarked linear access is relatively unintrusive and can defuse the mutual suspicion and resentment that, in some places, seem to have replaced the traditional goodwill. But many farmers have yet to accept the argument that well-defined accessways can funnel walkers efficiently through farms. In January 2003, Ivan Hurst of the South Canterbury branch of Federated Farmers commented on the setting-up of the land-access working party. He reportedly said: 'Farmers face the prospect of negotiating or freeholding land [during a tenure review] and then having people tramping willy-nilly over that land to the mountains.'[74]

Willy-nilly? You cannot tramp *willy-nilly* along a waymarked track or along a narrow strip beside a river. According to rumours that have been circulating, deliberate straying from the track or riverside may become an immediate trespass.

'... many farmers have yet to accept the argument that well-defined accessways can funnel walkers efficiently through farms.'

Standpoints Against Public Foot-tracks across Private Land

Some landholders flatly repudiate the pro-track arguments. Or they reject these arguments when applied to their particular circumstances. They value their privacy. They object to the idea of walkers crossing their land. If foot-tracks are forced upon them, they expect complications in farm management. They also say that foot-tracks will make them more vulnerable to crime. They view the potential impact on ownership as very considerable. As stated in the Federated Farmers comment above, legislated entry, even restricted to walking tracks, would slightly diminish the landholders' property rights. The seriousness of that adjustment could be great in their eyes, though less massive in the eyes of many observers.

The anti-access viewpoints have reached fulsome expression in the proclamations of Gerry Eckhoff, an ACT Member of Parliament who sometimes gives the impression of having been educated in a military academy. Eckhoff reigns over a farmdom near Roxburgh and is said to be 'full of passion for the heartland'. In August 2004 an update brochure from Jim Sutton indicated that the government might legislate to safeguard 'unrestricted access to and along our waterways'.[75] A few days later, the *Otago Daily Times* reported that:

> Landowners are being urged [by Mr Eckhoff] to march on Parliament later this year to protest [about] what is being called an attack on their property rights ... Mr Eckhoff described the proposal as 'Mugabe-style' ... Landowners should have the right to stop 'unfettered access' over their private land, Mr Eckhoff said. 'Labour cannot be permitted to steal the very rights that are at the foundation of New Zealand as a free, democratic nation.'[76]

The Mugabe comparison cropped up frequently in Eckhoff's reported comments; it had no more basis in fact than a likening of ACT New Zealand to Zanu-PF. Since then, during his campaigning against the government's development of an access policy, Eckhoff has frequently used the phrase 'unfettered access', implying that the government is planning greater access liberties on private land than merely waymarked accessways and routes along water margins and along the coast. Yet the Sutton update brochure had stated that 'the Government has agreed not to pursue further the option of a general "as of right" access or the "right to roam" '. Eckhoff's doom-mongering has misrepresented the government, disinformed gullible farmers, and impeded the accuracy of the access debate.

'The great and chief end, therefore, of men's uniting into commonwealths, and putting themselves under governments, is the preservation of their property.'

John Locke, English philosopher, *Second Treatise of Civil Government* (1690).

Federated Farmers, and the New Zealand Business Roundtable, on Property Rights

Hang on! you might say. We're supposed to be discussing the federation's views on property rights, not Gerry Eckhoff's bum steers. All right. Federated Farmers has clear opinions on the general principles of property entitlements. It laid them out at length in its submission to the Ministerial Reference Group:

> Property rights are the cornerstone of farming enterprises, indeed of society in general. They play a critical role in the functioning of modern democratic economies. Efficient, enforceable, secure property rights are of vital importance for investment and the creation of wealth ... Federated Farmers do not believe that it is going too far to assert that to erode this foundation would be to undermine the whole basis of commercial agriculture in New Zealand, with consequent severe flow-on effects on the economy.[77]

The overall thrust of the FFNZ property-rights model implies that property rights are and must remain absolute and sacrosanct. A landholder has the right to refuse entry, says FFNZ, and the state should not interfere with that right, because to do so would be to remove a basic essential of a market economy. In this respect, the federation's submission to the Ministerial Reference Group resembles the later Business Roundtable submission on the Acland report, which begins with an intriguing quotation:

> There is nothing which so generally strikes the imagination, and engages the affections of mankind, as the right of property; or that sole and despotic dominion which one man claims and exercises over external things of the world, in total exclusion of the right of any other individual in the universe. William Blackstone (1765).[78]

The writers of the Business Roundtable submission intended this quotation to eruditely buttress the sanctity of property rights. The quotation, in their eyes, emphasises the importance of the right to exclude other people from one's property.[79] In my eyes, it

has the opposite effect. For me it underlines the necessity for a balance between the rights of the citizenry and the rights of the citizen.

For anyone who balks at the Keep Out model of property rights, there is a different, middle-ground one available. Page 30 of the Acland report suggests that the European view of property rights balances a cluster of state rights against a cluster of private rights. Owning property does not grant you absolute rights over it, whether that property is a house and garden in Auckland or a farm in Otago. You are subject to national and local laws.

At the risk of getting bogged down in detail, albeit a crucial twist, I should point out that fish, wildlife and natural water do not attach to land title in New Zealand. Landowners do not own them. The sale of hunting and fishing rights is prohibited. In the past, hunters and anglers enjoyed free admittance to private countryside by tradition, provided that they asked for permission. Now, some landocrats use the Trespass Act to restrict access and effectively obtain exclusive capture of these public resources.[80] These landowners, in effect, are creating royal hunting forests and private fishing waters. Fish and Game New Zealand argues that this represents a taking of the public's right of access to fish and wildlife.[81]

The Business Roundtable submission carefully examines and faults the Acland report assertions on bundles of property rights. According to the Business Roundtable – and I expect that Federated Farmers would agree with the Roundtable on this, although I'd be happy to learn that it does not – property rights should not be 'changed involuntarily in response to lobbying by those who seek access to private property for recreational purposes'.[82]

Regarding societal change and property rights, the federation's submission on the Acland report goes in for the kill indisputably logically:

> To Federated Farmers, the report appears [to be] based clearly on the premise that public access to the outdoors must be preserved at all cost. The Group seems happy to accept that society's ideas about property rights may change over time, but does not accept that society's ideas about access may, or should, also change – these are held to be sacrosanct.
>
> Federated Farmers would argue that any societal conventions, not just property rights, are subject to change. If society changes so that the conventions on which public access has been based are no longer applicable, then it is not automatic that property rights should change, rather than people's expectations of access. While changes in land use and farming practices have affected access, so have changes in users' attitudes and behaviour. There is no compelling argument as to why it should only be the property rights that should change, rather than public expectations.

The Acland report received much praise for its common sense, clarity, and restraint; personally, I didn't read into it any feverish access-at-all-costs approach. Apart from that, Federated Farmers is perfectly correct. Bang on. The government could choose to ignore the weakening of the traditional access conventions, rather than pass any legislation that some landholders might view as an

'Property has its duties as well as its rights.'

Thomas Drummond, Scottish statesman and engineer, in a letter to the Earl of Donoughmore (1838).

impingement on their property rights. The government, in effect, would be saying to recreators: you cannot expect as reliable arranged admission as New Zealanders enjoyed in the past, and, by the way, don't get any fancy ideas about more-reliable forms of entry.

The choice is clear. You can either agree with the Acland report's basic sketch of bundles of property rights, or you can accept the die-hard FFNZ argument and the arcane jurisprudence that emerged from the padded rooms of the Business Roundtable.

'Private property is a necessary institution, at least in a fallen world; men work more and dispute less when goods are private than when they are common. But it is to be tolerated as a concession to human frailty, not applauded as desirable in itself.'

R H Tawney, British economic historian, *Religion and the Rise of Capitalism* (1926).

The Farmed Landscape: A Part of New Zealanders' Outdoor Heritage

My trouble is that I believe that walking access across uncultivated rural land should be considered to be a moral right, not a privilege. (I'm talking about following tracks, not roaming around anywhere.) All New Zealanders should have the right to walk through and admire farming scenery as well as publicly owned wilderness. At present this looking at the countryside is, in many places, restricted to the views obtainable from car windows – unless you can afford a farmstay.

On 23 January 2003, Federated Farmers released its first statement responding to the setting-up of the Land Access Ministerial Reference Group. John Aspinall, a national board member, reiterated a refrain from the depths of New Zealand's rural traditions: access to private land is a privilege, not a right.[83] In the past, that simple principle made sense and worked well. In 2004 it tells only half the story. Furthermore, as I see it, the landholders' assumptions inherent in that principle form not the solution to many of our access problems but the cause of them.

All New Zealanders are privileged to inherit the rural panorama created by generations of farmers. On the other hand, permanent public foot-tracks across that countryside can be provided only by making them legally secure; ie, by making the freedom to walk along them a legal right. In 1998 forty-eight of Dunedin's 167 tracks were vulnerable to changes in attitude of the landholders. The public's use of these forty-eight tracks was a privilege that could be withdrawn.[84] A slavish and simplistic adherence to the principle emphasised by John Aspinall would not secure the long-term future of these forty-eight tracks.

Rural land is a place of production, a recreational resource, and a tourism resource. Federated Farmers vaguely acknowledged this in its submission to the Ministerial Reference Group:

> The rural sector also makes an important and increasing contribution to tourism earnings in New Zealand. It is the abundance of our natural resources and our unique mix of modified (farmed) and largely natural landscapes that attracts many tourists to New Zealand.[85]

I agree completely. The farmed landscape – the sheep-cropped turf beside stony streams, the patchwork of greens among hills smudged with remnant bush, and even the exotic plantations – is a part of New Zealanders' heritage and a part of their outdoor ethos. We would be mad not to share it carefully with tourists

and make some money out of it in doing so. But Federated Farmers does not reach the obvious conclusion, which is that all New Zealanders should have free and efficient admittance to an adequate proportion of this scenery. Rather, the federation has implied that New Zealanders ought to be content to access solely the third of New Zealand that is public land:

> There is little evidence that there is a problem with current land access provisions with over 40% of New Zealand readily available for public access and recreation.[86]

The message from these last two quotes is clear: it is fine and proper for paying tourist to admire the modified landscape, but the New Zealand public should exercise its scenic aesthetics on public lands only.

This thinking may predominate in the New Zealand access mindset. The objectives of Public Access New Zealand, for example, do include the 'improvement of public access … throughout the New Zealand countryside in general'; yet in practice PANZ emphasises the access advantages of public ownership. This pronounced PANZ slant may have inadvertently contributed to the pastoral landscape having less prominence in the minds of access promoters than it deserves. The PANZ emphasis on the merits of public ownership may have helped to sustain an acute difference between the public's right to enjoy the preserved wilderness and its right to enjoy the fabricated countryside. This difference in rights is artificial, purely man-made. Our feeble rights to enjoy the ordinary countryside reflect outdated law and they contradict our national outdoor spirit.

So I find myself sharply disagreeing – at first glance – with the long-established and well-respected Federated Mountain Clubs (FMC), whose submission to the Ministerial Reference Group said: 'There is actually little public desire to walk over the greater part of private farmland in New Zealand, and the use of unformed legal roads would cover most situations where access is desired.'[87] A breathtaking simplification. Perhaps written by someone brutalised by an overexposure to endless beech forest? But this ambiguous statement occurred in a discussion on the right to roam. The sentence should have used the word 'roam' rather than 'walk'. Federated Mountain Clubs has always vigorously championed the cause of walkways where a demand exists, and across private land where necessary.

Nobody is suggesting that we should spend money developing walkways where no demand exists or is anticipated. On the other hand, much of the land-access uproar of the last two years has centred on real demands for reliable walking routes across private land.

On the subject of the farm as a business, Federated Farmers's search for metaphor takes it down some ludicrous paths:

> Security and privacy of home and business. No other business would be expected to provide public access to the factory floor without strict controls.[88]

***Otago Daily Times*, 14 January 1992**

Caution over Access.

By Paul Gorman. Legal roads do not always make good walking tracks, as seen on the Otago Peninsula, according to the Department of Conservation's regional conservator, Mr Jeff Connell.

In a letter to the editor of the *Otago Daily Times*, Mr Connell said people trying to justify the actions of the Otago Peninsula Walkers group in cutting fences at Highcliff were overlooking this.

'Legal road lines on the Peninsula do not usually lead along the desirable walking routes and sometimes fail to reach desirable locations. Therefore, they are not the solution. They may be a bargaining chip, but access to points of interest still has to be negotiated.'

Sheep-dotted ridges are a central part of New Zealanders' outdoor heritage; most factory floors are not. On the right day, with the right light, the artificial and manicured landscape can be sublime, the equal of any untouched wilderness. Farmers know this. It is a large part of why they are farmers. Many of them are happy to share their bit of countryside with the public. The means to enable this sharing is the issue.

*

Our property-rights climate is too far to the right for my taste. It has all New Zealanders asking permission to enjoy something that is already morally theirs. An adjustment of these property rights is overdue. I do not view property rights as intrinsically supreme and untouchable. The degree of absoluteness is only what the electorate decides it should be. Property rights are anchored firmly but have to sway back and forth in the political wind. If a government perceives a change to be in the public interest, the Crown can enlarge its own bundle and reduce the landowner's bundle. Another government may reverse the changes.

When John McKenzie broke up the great estates, his agro-economic theories about optimum farm-size were only a sample of many that were circulating. His political leanings on land tenure, too, were only a sample of the choices available; the parliament of the 1890s contained Land Nationalisers, George-ites, Moderate Leaseholders, and Diehard Freeholders. Fortunately for McKenzie – and for today's family farms – the electors chose his ideas rather than the others. This resulted in what today would be considered revolutionary interference into property rights, only surpassed by the next chapter in New Zealand's land history, which Tom Brooking called 'bursting up the greatest estate of all' (the Maori landholdings).[89]

The legislation that the government is proposing will hardly secure Sutton anything more than a footnote in the history of land law. The Sutton changes will be minor tinkerings compared to McKenzie's land reforms of the 1890s. They will be minor adjustments, also, compared to some of the legislation that has been passed in Britain, Scandinavia, and Germany. He is not creating open country on private uncultivated rural land; there will be no right to roam. He is merely proposing to quasi-extend the Queen's Chain by imposing walking access along significant water margins and coasts. Sutton will just be tidying McKenzie's loose ends. The partial finishing-off might earn him a certain standing with Federated Farmers.

I cannot think of a solution that will mollify all farmers, except victim therapy.

***The Press*, 1 February 2003**

Keeping the Gate Open.

New Zealand is tidying up one of the last contentious parts of an issue that once dominated politics and was fundamental in shaping the nation – land ownership, its status, privileges, and obligations. Today's land question will not make the headlines as frequently as the previous ones at the turn of the 19th century, but it will be hard-fought.

… Property rights have never existed in immutable form, differing markedly according to time, place, and culture. That applies even in the comparitively stable English legal tradition from which New Zealand's land laws are derived. Owners do not have absolute rights to block all access, but neither do people have the unfettered right to enter all land. The law has evolved between those two poles, swinging one way, then the other.

7. Walking Tracks, Country-Dwellers' Privacy, and Rural Crime

Pro-access statement:
'We are certainly not about to precipitate any invasion of the privacy of the family home.' (Hon Jim Sutton, media statement, January 2003.)

Federated Farmers comment:
Legislating rights of access further endangers privacy and security of persons, property and business.

- *Enforcement [is] already a serious problem for rural landowners.*
- *[There is] no reason to assume [the] situation will improve with legislation.*
- *Court fees, time away from the farm are impositions landowners should not have to deal with.*

In an August 2003 news release, Jim Sutton reiterated his assurance on the privacy of the farmhouse: 'The Government has no intention of encroaching on curtilage (area around houses).'[90] In general use, the word 'curtilage' means the enclosed area of land adjacent to a house. In legal use, curtilage may or may not be enclosed by fencing. The word comes from the Old French *cortil*, a little yard, but curtilage can be quite extensive. Planning regulations frequently control certain activities within 100 metres of the residential curtilage of any dwelling.

Privacy and Curtilage

The way I read them, Sutton's two declarations dealt with people's privacy, not with rural crime. He meant to assure farmers and other rural dwellers that the government accepted the need to route foot-tracks a reasonable distance away from houses, to avoid intruding on the occupiers' privacy.

Federated Farmers would have none of it. The Federated Farmers comment implies that an accessway or a riverside footway – even, say, fifty metres away from the farmstead – could jeopardise the occupiers' privacy. So we end up arguing over semantics. What constitutes a loss of privacy? If I can be allowed to put words into Sutton's mouth, he might reply that a walker passing by fifty metres away from your family home has a negligible effect on your privacy. He might also argue that accessways are necessary for the public good. On the other hand, you – the occupiers – might hold that a landholder's right to say no is absolute. You might reject the concept of curtilage. The enforced presence of the public anywhere on your land would invade your seclusion and your freedom from interference. The intrusion on your property rights would be inflammatory and intolerable. It would destroy your happiness.

'What constitutes a loss of privacy?'

Also the federation seems to be suggesting that an increase in the number of foot-tracks across farms will increase the occurrence of attacks on farmers, housebreaking, and theft of farm equipment.

Although I share (with reservations) the farmers' consternation about rural lawbreaking, which I will discuss later, I have less sympathy for their fretting about privacy, given Sutton's reassurance on curtilage. The government has already killed any ideas about establishing the right to roam. Routes across farmland will be confined to water margins and coastline or to negotiated waymarked tracks. The proposed access code will, I presume, include stipulations related to respecting and safeguarding the privacy of country-dwellers. This combination of measures seems to me sufficient to protect farmers' freedom from disturbance.

Maybe my perceptions are those of a person from a more crowded country, a walker and mountaineer used to sharing the open air with others. Whatever. I cannot think of a solution to the farmers' distress about privacy except in the phrase 'get a life'. Entrenched right-wing beliefs on property rights can lead to unsharing attitudes or even abject self-interest and private fiefdoms. It is possible that this has been tending to happen in New Zealand. The access notions of some of our farmers seem to be based on a creed of infinite curtilage.

Rural Crime

The rest of the Federated Farmers 'Mythbusters' comment widens the discussion beyond what Sutton was talking about. Nowhere in his press release of 23 January 2003 did Sutton discuss rural crime.[91] But Federated Farmers is distinctly worried about theft, burglary and assault and it wants to raise these concerns, so let's go along with it.

A few years ago I lived in Kaikohe, a small rural town in Northland. The surrounding area had potential for short walks and runs, yet there was little official public access. Despite this, there was one run that I had been doing regularly for five years. The route went out of town and up the main road, to Ngawha Springs; it then returned through a pine plantation. I think that the land belonged to Top Energy, Carter Holt Harvey, Grasslands Research, and Northland College. The return half, from Ngawha, was a delightful run. It provided a natural route between Ngawha and Kaikohe.

One afternoon, to my astonishment, a forestry contractor jumps down from his tractor and angrily confronts me as I am jogging past him. When I ignore him – because he's telling me to go back and I can't be buggered with that – he lunges at me, trying to grab me, but I manage to stay inches beyond his reach and I run on down a steep earthy slope. He chases me and hurls stones down at me. Screamed obscenities pursue me. I nearly shit myself, as you would in those circumstances, in running shorts and vest, miles from anywhere, being stoned to death. I am fifty years old and lightly built. My assailant is younger and heavier than me. I must not let him catch me. I hurtle down the track … into the radiata … round a few bends, ears working frantically for any

sound of a chasing vehicle … keep going, keep going. Phew. Relax. Sounds all quiet behind. *Deliverance*! Welcome to the Northland countryside, bro.

This brief skirmish might sound faintly amusing, but in reality it was a scary confrontation. I learnt later that the guy's violent anger was half-explainable: someone had stolen the expensive batteries from his logging machines. I stopped doing that route. My favourite run. Some of the local walkers stride around the sports grounds. I've seen them going purposely round and round the rugby fields. Kaikohe is surrounded by a vastness of rurality.

Walkers should set their sights higher than the local sports fields. They need to press for the right to walk through the woods, the countryside, and the bush. I mean on foot-tracks recognised as being open to the public. The lack of such tracks encourages confrontation; providing such tracks discourages confrontation.

2004 saw several high-profile violent assaults in the North Island. Television news and newspapers featured rural crime. Newspapers often quoted farmers' opinions. Few of these press stories focused on policing levels, response times, clear-up rates, or repeat offenders. Some landholders linked countryside law-breaking to walking access, forecasting an increase in crime if the government goes ahead with its plans to improve pedestrian access along water margins and coastline and across other private land. Extending the Queen's Chain, even just for walking access, would provide a permanent open day for the rural felonry. Creating more accessways would see the rise of the masked walkwayman.

Before we examine this gloomy forecast, and try to predict the unpredictable, the most fundamental question we should ask is:

- Is New Zealand suffering a rural crime wave?

When we have discussed that point, we will be able to talk about the alleged links between unlawful acts and walking access to private land. The Kaikohe incident provides a useful example. It illustrates some of the main questions being asked in the complicated debate over lawbreaking, landholder-recreator confrontations, walking tracks, and recreational needs. It contained two lawless ingredients. Firstly, a theft. Secondly, a potentially violent encounter. These two ingredients pose two questions:

- Would the creation of more walking tracks across private land lead to an increase in crime, such as theft and vandalism?
- Would the creation of more walking tracks across private land lead to more-frequent face-offs between landholders and visitors?

'Some landholders linked countryside lawbreaking to walking access, forecasting an increase in crime if the government goes ahead with its plans to improve pedestrian access … '

Is New Zealand Suffering a Rural Crime Wave?

The theft of the batteries, in the Kaikohe story, is one example of what Federated Farmers has described as 'a high incidence of theft and other crimes on farms [and on other rural land]'.[92] According to a 2003 Federated Farmers survey of its members, '56% of respondents had reported at least one on-farm crime incident to police over the previous five years. Predominantly the crimes were theft related.' Another concern of farmers is the theft of stock: 'Stock theft is a growing problem for farmers. One Otago farmer estimated he had lost up to $300,000 worth of livestock in the past 18 months.'[93] I do not know whether this claim was verified.

Rural wrongdoing is obviously disquieting, but national villainy statistics, for what they are worth, do not appear to warrant the term 'rural crime wave'. I shall return to this question later (page 46).

More Walking Tracks Will Mean More Crime, Such as Theft and Vandalism. True or False?

Nobody knows whether building more walking tracks and accessways across private land will lead to more misdeeds. Perhaps it is a fact of human life that more people generally equals more felonies. Conversely the hermit in his cave enjoys a crime-free utopia, unless visited by evil backpackers.

Some user submitters to the Acland report argued that 'more genuine users accessing a property will dissuade others from undertaking criminal action'.[94] A Fish and Game newsletter contended similarly: 'More "honest eyes" of decent, law-abiding outdoor recreationalists are likely to reduce crime in the countryside.'[95] Debatable. I guess it would depend upon the situation.

Federated Farmers doesn't seem to want any eyes out there, honest or otherwise. It is one thing to conduct a survey that collects reasonably sound statistics on rural illegalities; but it is quite another to imply that creating more foot-tracks across farms will lead to more farm break-ins and assaults. Yet this is what Federated Farmers has been indicating since its media statement of 9 April 2003, which shrilled:

> Government must sit up and take notice of these frightening statistics. Security is a crucial issue for the Government's Land Access Review team [that is] considering expanding access to private property. New Zealand farmers must not be forced to take the law into their own hands to protect their families and their properties.[96]

The appendix of the federation's submission to the Ministerial Reference Group contained fifty-eight landowner anecdotes. Poaching received a few mentions and thieving too, but ignorance and stupidity seemed to cause far more hassle than sheer lawlessness. One farmer, though, was certain that more walkers would tend to mean more stealing of farm equipment:

> Access to Land: Comments/Experiences from Survey Respondents.
> 047. ... More people on our properties tend[s] to increase [the] risk of theft if people see things that are valuable and able to be removed, security is therefore a problem.[97]

The Acland report acknowledged the landowners' apprehension about rural crime, saying that 'theft and property damage are criminal offences that provide valid reasons for property owners wanting to discourage some members of the public from accessing their property.'[98] The report acknowledged one submitter's point that 'farming families are vulnerable when dealing with unknown individuals on their properties'. But the report also suggested that:

> … the personal safety concern may be difficult to manage, no matter whether access rules change or remain the same. This concern is beyond the scope of any set of rules to manage.[99]

I agree with Federated Farmers that theft and thuggery in some parts of the heartlands are causing considerable unease. Rural crime affects its victims, it sours rural-urban relations, and it damages recreation and tourism. But I dispute whether Federated Farmers or anyone else can confidently answer the question posed in my last heading.

Perhaps a more productive question is: should we shut the countryside doors to all visitors, just to try to exclude thieves, burglars and marijuana-growers? This question repeats one part of the question I asked at the start of this essay: should the recreational opportunities of the majority of New Zealanders be restricted because of the irresponsibility, ignorance, stupidity, or criminality of a small minority? Most walkers, hunters, and anglers think no. Federated Farmers and some rural dwellers seem to think yes. By late 2004 this disagreement had become vociferously polarised.

More Walking Tracks Will Mean More-frequent Confrontations. True or False?

After the brief but menacing encounter in the pine plantation near Ngawha, I asked myself why nothing like that had happened to me while walking in rural areas of Europe. The full answer would be complex, yet one part of the answer is obvious: much of the time in Britain, France, Switzerland, Germany, Austria, and Italy I was following tracks open to the public. I had a legal right to be there, the landholders respected that right, and there was no ambiguity or confusion. The existence of waymarked public foot-tracks reduces the chance of hostilities between walkers and landholders; it does not increase that chance.

‘The existence of waymarked public foot-tracks reduces the chance of hostilities between walkers and landholders; it does not increase that chance.’

Come to think of it, I do recall one slightly similar incident, in northern England. I was leading a group of young people along a public footpath that passed through several farms. A builder renovating a cottage turned us back, claiming that the local authority had permanently ‘stopped’ the footpath. My later enquiries revealed that this enterprising man had been telling porkies. England’s system of recording public footpaths did not prevent this minor conflict, but it did keep emotion out of the clash, because I knew that the matter would be easy to resolve – which it was.

In New Zealand, confrontations on private rural land are occurring occasionally – or possibly regularly in some trouble spots – often in the absence of clear public walking accessways. The *Otago Daily Times* reported the situation of one Catlins farmer:

> At times during the year, Max Harrison has to deal daily with requests from people wanting to cross his Catlins farm to [reach] the South Otago coastline. Almost all of those will be approved, as his land adjoins the popular destinations of Cannibal Bay and Surat beach. All he asks is that people get his permission, leave their dogs at home and respect his property.

> Cut fences, stolen property and aggressive trespassers have tempered his attitude to public access and hardened his opposition to Government moves to extend the public's right to access private land.[100]

All landholders will sympathise with Max Harrison's predicament. Many are championing the landholder's right to say no. My feeling on this is that those campaigning to preserve the status quo are battling to prolong a system which often does not work any more and which actually aggravates many access troubles rather than calming them. If there were a public walking accessway across Harrison's farm, combined with a well-publicised access code, reasonable people wanting to reach the coast would be unlikely to develop any aggression towards him. But what about the cut fences and theft? Unreasonable people – the yahoos and crims – will satisfy their idiotic or lawless urges whether there is an accessway or not. As a Fish and Game newsletter put it, in an exasperated response to the Federated Farmers's scaremongering campaign, 'the countryside is no more immune to crime than the city'.[101]

September and October 2004: A War of Words

Jack Nicholas had owned his farm, near Puketitiri, fifty-eight kilometres northwest of Napier, for fifty years. At about 7am on 27 August 2004, he left the house to feed some pet sheep nearby. His wife Agnes heard three gunshots. She went looking for him, saw him lying dead on the road and ran back to the house to call the police. Her husband had been murdered by an unknown gunman.

The following day, *The New Zealand Herald* reported that the Puketitiri area was 'often hit by stock rustlers, burglars and dope-growers'. Thieves sometimes stole under the farmers' noses, confident that they could get away before the police arrived at the remote settlement. On 30 August the *Herald* reported that the police were focusing their investigation on stock thieves.

On 2 September Gerry Eckhoff raised rural crime during question time in Parliament:

> Gerrard Eckhoff:
> What is the Minister's response to the concerns expressed by the President of Federated Farmers, Tom Lambie, who said: 'Personal safety and security for family and staff is at risk with rising rural crime and violence. Families should not be forced to be exposed to strangers and inappropriate behaviour, especially with law enforcement sorely lacking in many isolated areas'?
> Hon Jim Sutton:
> All that I can say in response is that while I share the concern of rural New Zealanders that they may be exposed to criminal behaviour by some of their fellow citizens, I regret to say I cannot see that putting up notices saying ACCESS PROHIBITED will stop dope growers, murderers, stock thieves, or the like. What is more likely to stop them is the knowledge that they may come across law-abiding citizens exercising their right to walk along the Queen's Chain.[102]

About two weeks after the killing of Jack Nicholas, the *Herald* printed an article titled 'Farmer's Widow Pleads with PM'.[103] Jack Nicholas had been 'very concerned' about the government's proposed access changes; Mrs Nicholas had decided to take up the cause on his behalf. She had written to Helen Clark, begging her to abandon proposals to increase access to waterways 'for the peace of all farmers of this great country'. 'I beg you please think again, again and again,' her letter said.

*

On 6 October 2004 Benedict Collins, writing in *Rural News*, quoted a Northland farmer's prediction that 'open access to farmland will be the catalyst to problems this country can ill afford'.[104] The phrase 'open access', which people usually associate with the status 'open country', misrepresented the government's plans; on the other hand, this farmer – and many others – may have considered accessways and routes along water margins to amount to open access. Everything's relative.

Collins's article discussed rural villainy objectively, asking some relevant and overdue questions:

> ... why is fear and paranoia in rural New Zealand rife now, given that locking the farmhouse door was once deemed overly security conscious? Are farmers being targeted by criminals or is the physical isolation from neighbours and emergency services distorting the rural psyche's sense of vulnerability?
>
> If the country's national crime statistics accurately reflect the prevalence of crime in rural regions then this year's figures may suggest the latter to be true. For the year to June 30 2004, New Zealand recorded its lowest rate of offending in two decades. The data showed crime to be down 4.7% nationwide from 2002/03; the lowest level since 1983.
>
> However, crime statistics are collated regionally and no distinction is made between rural and urban locations; therefore their value for analysing rural crime trends is questionable. It is entirely possible the nation's reduced rate of crime is a result of intensive urban policing while rural crime rates are actually rising.

On 19 October *Rural News* published a follow-up article, 'Rural Crime Rate No Worse'.[105] New Zealand Police had provided *Rural News* with statistics comparing 'urban stations' with 'non-urban stations'. The urban or non-urban status of a police station is only a rough guide to the urban-ness or rurality of its surrounding areas, and so the figures had to be treated cautiously, but hesitant conclusions drawn from them suggested that:

- rural dwellers are less likely to be targeted by criminals than their urban counterparts but if they are, the offender is more likely to be caught;
- in the year to 30 June 2004, there was significantly less crime, on a per-person basis, committed in areas served by non-urban stations than in areas served by urban stations; and
- response times to serious crimes in isolated regions are quite rapid, police arriving at the majority of Priority 1 calls in non-urban areas within half an hour.

In contrast to the cautious and even-handed coverage of the rural-crime controversy in *Rural News*, other newspapers kept emotions high by publishing the alarmed comments of farmers and other country-dwellers. And rural people in some locations had every reason to be uneasy. At 6am on Saturday 23 October, fifty-four-year-old Peter Bentley disturbed two masked and armed men in the implement shed of his rural property, eighteen kilometres south of Te Puke. The thieves beat him savagely with his own crowbar, causing severe head injuries.

On 25 October a Federated Farmers media release highlighted lawlessness. It asked for more research into crime in country areas. It also re-raised the farmers' anxieties about the government's access plans (first raised in the federation's 9 April 2003 media release eighteen months earlier):

> There is also concern among rural families about the potential implications of increasing public access to private land if it means that criminals are given 'free reign' [*sic*] over personal property, machinery and livestock on farms ... [106]

Two days later, the war of words intensified when Jim Sutton, visiting Dunedin, accused Federated Farmers of campaigning against the government. 'They have put themselves on a campaign footing for the next general election,' he said. 'It precludes close cooperation.'[107]

The *Otago Daily Times* said that Sutton had accused the federation of politicising the murder of Jack Nicholas, the Puketitiri farmer, by drawing unfair comparisons between the killing and the threat of increased crime from greater public access to private land. 'That's absolute rubbish and they should be ashamed of themselves for exploiting a tragedy like that for political purposes,' Sutton said.[108]

The same edition of the *Otago Daily Times* reported the reaction of the Federated Farmers chief executive, Tony St Clair, to Sutton's allegation. St Clair had rejected the suggestion that the federation had politicised the murder. 'Tony St Clair was surprised Mr Sutton felt their relationship had deteriorated, saying he worked to remain apolitical.'

The damage, though, had been done. Later that same day, an Otago Federated Farmers media release quoted a comment of Grant Bradfield, the president of Otago Federated Farmers: 'Mr Sutton has promised a legislated public code of responsibility. But such a code is as unenforceable as forcing people to pick up dog droppings.'[109] In the weeks that were to follow, opinions on rural crime were to become ever more polarised. A new migrant to New Zealand might easily have gained the impression that rural New Zealand was some sort of anarchic bandit country. People's freedom of movement would have to take second place to the need for security.

'In the weeks that were to follow, opinions on rural crime were to become ever more polarised.'

Federated Farmers had of course not only politicised the murder but had also politicised the whole two years of debate on access. The federation's entire approach to walking access across farms stems from far-right theories on property rights. It is hard to imagine a more political apolitical organisation.

Rural Women New Zealand Joins the Overreaction

On the day after Sutton's visit to Dunedin, *The New Zealand Herald* ran a story on the Peter Bentley assault titled 'Rural Residents Feeling Vulnerable'. On the same day, Rural Women New Zealand (RWNZ) issued a press release, 'Rural Women Call for Rational Debate on Land'. The statement sought reassurance from the government that 'the security rights of rural families are properly considered in land access legislation'. RWNZ's land convenor, Patricia Gordon, believed that 'Jim Sutton's attack on Federated Farmers [the previous day] over land access shows how unsympathetic the Minister of Rural Affairs is to genuine rural concerns'. The statement continued:

> RWNZ and other rural advocacy groups have made submissions on this issue and feel that core issues are not being acknowledged. 'Rural people throughout the country are demanding a thorough consultation process before this new legislation is passed, yet all of this policy has been developed behind closed doors,' says Mrs Gordon.

Patricia Gordon was partly correct in complaining that there had been little careful, logical debate on the specific issue of the connection – if there is one – between rural crime and public walking routes across private land. Many farmers seemed to think, Crime is bad, therefore access is bad. Reported farmers' views had talked of the public wandering willy-nilly, roaming at large, traipsing around, having unfettered access, and having free rein. Most comment remained superficial. Most opinion remained entrenched. The farmer comment communicated in the mass media amounted to a collective hysteria. But in asking for rational debate, the RWNZ press release contributed no new rationalism. The press release did not ask the question: will greater public access across farmland lead to more farm burglaries and attacks on farmers?

'The farmer comment communicated in the mass media amounted to a collective hysteria.'

What did recreators think about all this? I can give only my own reaction. When I read the RWNZ press release and after I had stopped banging my head against the wall, I thought, Here we are, living in one of the safer countries of the world, living longer than ever, with our lowest rate of offending for twenty years, and our rural women are terrified. And by what? – the prospect of walking tracks across farms. I have never heard a better argument for freedom of movement across rural land.

Gordon's demand for 'a thorough consultation process' wrongly insinuated that the government had not consulted people on walking access. In the first half of 2003, the Land Access Ministerial Reference Group received 230 written submissions and listened to presentations by various groups.[110]

After the publication of the Acland report, from September to November 2003, more than fifty meetings were held nationwide, roughly half of them being public meetings and half being stakeholder meetings.[111] The written record of these meetings is 111 pages long. Like the other Ministry of Agriculture and Forestry (MAF) land-access publications, it is available from the MAF website. It shows that Federated Farmers representatives attended many of the stakeholder meetings, as well as the public meetings.

A MAF summary of the comments made at these meetings said that 'participants have expressed their appreciation at the full and lengthy consultation process and the effort made to have meetings in each region in the country'.[112]

MAF received 1,050 submissions on the Acland report.[113] Its analysis of these submissions listed landholder concerns and user concerns.[114] In quoting from submissions, it often paired landholder comments with user comments.

The government's discussions with the public on land access have been comprehensive and unhurried. The proposed New Zealand Land Access Strategy will stem from lengthy analysis. Like any other interested organisation, Rural Women New Zealand will be able to submit its views at the select-committee stage of the walking-access bill and also at several later consultation stages, such as that for the Code of Responsible Conduct.

'The government's discussions with the public on land access have been comprehensive and unhurried.'

More Misinformation, Rhetoric, and Stranger Danger

The Rural Women New Zealand's call for rational debate on land access did not raise the intelligence of the discourse. Nor did it lower its temperature. Not, that is, judging by newspaper stories and media releases.

On 29 October *The Southland Times* boosted the conspiracy of misinformation, running a piece irresponsibly titled 'Public Right to Roam Sparks Concerns Over Crime Rates'. Remember, here, that the Acland report a year earlier had said: 'This concept [a broad right of public access over private rural land], often referred to as a right to roam or wander at will, while common in European settings, does not appear to have a place in New Zealand in the foreseeable future.'[115] In June 2004, MAF's analysis of written submissions on the Acland report had shown that many landholders were jumpy about the public gaining a right to roam. It had also shown that 'support for the right to roam by users is small'.[116] Finally, Jim Sutton's update brochure of August 2004 had stated: ' … the right to roam anywhere at all over open country, which is the tradition of some countries, is not appropriate in New Zealand.'[117]

The first sentence of the *Southland Times* story compounded its title's big lie: 'Southland farmers said they feared [that] Government proposals to allow the public the right to roam over public land could lead to more crime in rural areas.' The article continued:

> The Government is considering enshrining in legislation public access to waterways that run across private land. However, Federated Farmers Southland president Don Nicholson said yesterday such a move would leave farmers and their families 'open to the whim of thugs' … Farmers were concerned the Government did not seem to understand the link between murders, people and property violations, theft and increased access to private property.

The Federated Farmers spokespeople were being consistent. The alarmism of this article echoed the mood of the federation's submission on the Acland report, which had claimed that rural crime is rising and that 'families should not be forced to be exposed to strangers and the full range of perverse human behaviour'.[118]

This demands the question: if the only access were to be access by permission, how would a farmer examine strangers to identify and weed out those who might behave perversely? Would a little koru tattoo receive a yes and a full facial moko a no? Entry by arrangement, for all its nostalgic tradition and professed merits, can be an arbitrary and potentially discriminating approach. I endorse the universal desire to retain as much as possible of it; but I will always argue for more-certain and enduring forms of access, ones that guarantee equality of opportunity. Individual landholders should not always be the ultimate authority over who can and who cannot view the farmed landscape.

Many farmers do not see it this way. On the same day as *The Southland Times* ran the article I've just discussed, North Canterbury Federated Farmers posted a media release, 'Farmers Unite - We've Had Enough'. Jeff Wilkinson, the chair of the Cheviot branch of North Canterbury Federated Farmers, had said:

> … it is not unreasonable to want our families, our staff and our visitors to feel safe when they are on our land … To provide a safe environment, we have to be able to control and manage who goes on our property. It is totally unreasonable for the Government to plan legislation removing a landowner's right to say no to strangers entering our farm.[119]

Into November now, and the rhetoric, misinformation and disinformation continue. On 1 November *The New Zealand Herald* reported that 'Canterbury farmers concerned about security are petitioning the Government against granting free public access to their land.' The *Herald* quoted a comment made by Harry Schat, the president of the North Canterbury branch of Federated Farmers:

> That's where we feel our security is going to be threatened – if everybody is able to walk willy-nilly across our property … If police are not available at the moment, who's going to look after us if everyone is walking on our properties?'

Who will patrol the farms, guarding the farmers from the walkers? Perhaps the government could appoint farm wardens? Have some of our farmers spent too long in the sticks?

A year earlier, a reflective comment in the Fish and Game submission on the Acland report had caught the essence of where the bonds between town and country had sunk to: 'The NZFGC believes the saddest outcome from this [deterioration in rural-urban relations] has been the conflict that has gradually arisen between two sectors of society that ought to have far more to bind them than to divide them – namely farmers and anglers/hunters.'[120]

On 3 November an ill-informed and somewhat one-sided editorial in *The Nelson Mail* backed up Federated Farmers's long stint in denial:

> Indeed, the first point to ask is whether the Land Access Reference Group should have been set up in the first place. The current system seems largely to have served everyone well enough down through the decades.[121]

***Scottish Outdoor Access Code: A Consultative Draft* (2003)**

Key principles.
… Almost everyone wants to act responsibly when they are out enjoying the outdoors and the experience of public restraint during the foot-and-mouth epidemic shows that people will act responsibly, when asked to do so for common-sense reasons. However, the legislation and the Code cannot solve all of the problems that can arise from people being on land, such as vandalism and crime. These problems need to be tackled in other ways and they should not be grouped together with access to the outdoors for open-air recreation. Those engaged in crime or vandalism don't stop to ask about access law. Indeed, the presence of law-abiding people can help to deter crime.

Land managers, however, do have concerns and fears, and these can be serious and legitimate. Action is needed to help those land managers who are most affected by anti-social behaviour.

One wonders whether the writer of this editorial has bothered to read even the Preface of the Acland report, in which John Acland wrote: 'This report shows that access arrangements and associated conventions in New Zealand are under threat. Few New Zealanders recognise this, and there is a reluctance to debate the implications.'

On 15 November, a careful editorial in *The Press* asked both sides 'to step back and consider whether this issue has been blown out of all proportion'. It criticised the government for the long delay since the Acland report. An undernourished debate will feed on anything that it can get hold of. But *The Press* also pointed out that:

> ... there is a significant dose of alarmism being employed in this debate. Federated Farmers, the most vocal group, has done an excellent job of inflaming the issue by linking the question of access to increased burglaries, home invasions and vandalism. Such talk is principally unrelated to the access issue. Those intent on criminal activity are hardly likely to stop to ask permission before crossing a property.[122]

On 17 November, Simon Fergusson, writing in *The Marlborough Express*, acknowledged the 'hot issue' and proceeded to take some of the heat out of it in a lengthy and measured article that quoted views from both sides. Fergusson had talked to Neil Deans, the manager of the Nelson-Marlborough regional office of Fish and Game New Zealand:

> Mr Deans said they did not share farmers' concerns about more people on their land compromising their safety. 'We're appalled by the recent crimes against farmers, but these people would probably commit these sort of crimes whether they had walking access or not.' Every farm had a road up to the house which would be used by anybody, said Mr Deans. 'If anything, having more people coming through will help to catch people committing illegal activities.'[123]

Fergusson had talked also to Heather Sorensen, the regional development officer for Rural Women New Zealand (RWNZ). Sorensen said that personal and property security was RWNZ's main concern: 'Mrs Sorensen said people had their own informal arrangements with people wanting access, but a law would force farmers to let people on to their land and this was a sign of the Government's contempt for the rural community.'

Contempt? Did the Government consider rural dwellers to be worthless or despicable? Sorensen's choice of words was unfair to Sutton, yet it did reflect the emotive position reached nearly three months after the murder of Jack Nicholas. Three months of abrasive and prickly controversy had driven a wedge between town and country. Or, more precisely, had driven the existing wedge deeper.

On 26 November, the *Otago Daily Times* reported that FMG, one of the country's largest rural insurers, was supporting the farmers' opposition to the government's access plans. The FMG marketing manager, David Clapperton, had reportedly addressed two hundred people at a field day near Gore:

'Three months of abrasive and prickly controversy had driven a wedge between town and country.'

> FMG says greater public traffic through farms would heighten the risk of theft, [be a] threat to rural families, [and] lead to increased bureaucracy and possibly landowner liability from visitors harming themselves … [David Clapperton said that] any legislation should provide landowners with the ability to take action against people assessing property for a possible later return to steal items.[124]

FMG was set up in 1905, by farmers, for farmers. So 2005 is FMG's centenary. We can adapt a remark attributed to Ralph Nader: for a century the insurance industry has been a smug sacred cow feeding the farmers a steady line of sacred bull.

*

By 'informal arrangements', Heather Sorensen meant what *The Nelson Mail*, a few quotes back, called the 'current system'. The current system is a 19th-century system in a 21st-century world. It is no longer working reliably enough and it is now tending to produce a fortress rural culture in which 'secure title' and 'walkers' are becoming mutually exclusive, in which some country-dwellers seem to be developing a fear of strangers, and in which some farmers now talk about using firearms to protect themselves. Yet the figures provided by New Zealand Police, for what they are worth, tentatively suggest that our rural crime rate may be at a twenty-year low.

Left to its own devices, the current system may at best remain a model of inefficiency and at worst go the Texan way, with the PRIVATE signs and the right to carry a gun. Or we can legislate to slightly open up our countryside, moving away from me-me-me and faintly towards the norms of northern Europe.

Letter to the Editor

Taranaki Daily News, 29 October 2004.

Picnic in Labour MP's Backyard.

It appears [that] this Labour Government plans to push ahead with its rural access plans, which are simply an outright attack on property rights. There is now talk of mobilising the rural community for a march on Parliament.

Sorry to sound negative, but this is starting to get monotonous. It's all been done before. There must be an easier way to deal to these jumped up little Hitlers.

Next time you get the yearning to take the wife and kids to the big smoke, throw a picnic basket and box of tinnies on the back of the ute. I'm sure our Labour MPs would appreciate a visit from their rural constituents, especially ones picnicking in their backyards.

We could check out their vegetable patch, there might be something ready for picking. While we're visiting, they better hope we don't injure ourselves. Would hate to have to call in the men from OSH.

C J Aylward, Warea.

8. New Landowners and Traditional Access

Pro-access statement:
'Sometimes the new regime is established by an overseas purchaser, although often it is a new New Zealand owner.' (Hon Jim Sutton, media statement, January 2003.)

Federated Farmers comment:
With change of ownership, overseas or urban-dwelling landowners are not always aware of the tradition of considering access requests.

- *[A] code of conduct outlining access expectations would go long ways [sic] towards ensuring reasonable requests are considered.*

By 'new regime', Sutton was referring to the restricting of public access to previously accessible rivers, beaches, and mountain land. His statement was true. Later in 2003, many submissions verified what he had said. In a news release after the Acland report was published, he reiterated that it could be misleading to generalise about the origins of the new owners:

> … it is clear that the erosion of public access is not caused solely or even greatly by foreigners. It is often caused by returning expatriates, people from other areas of New Zealand moving in, and by absentee landowners as well.[125]

I have said it before in this essay: nothing about access is simple. The Acland report included sections on changes in land use and changes in landownership. These listed a large number of factors that have contributed to a loss of admittance to previously accessible private land. The notoriety of two particular demons – foreign owner and lifestyle owner – is perhaps supported by some factual evidence, but the genus *Land-guard* can also contain your good old Kiwi cow-cocky and sheep-cocky.

The Federated Farmers's so-called rebuttal does not disprove or discredit Sutton's point; it just takes the discussion further. Explicitly it suggests that a code of conduct will *persuade* lifestylers and foreign owners to adopt the custom of granting entry when asked. Implicitly it contains an assumption that arranged admission to private land will satisfy all the wants of the New Zealand public, just as black-and-white TV once met all their expectations.

Let's look first at the explicit proposition regarding the persuasive power of an access code. We will examine an example of where access-by-permission has been breaking down. Kayakers often need to cross private land to reach a river. Sometimes they walk, carrying their kayaks. When there is no vehicular access, kayakers will often carry their boats and gear a considerable distance. In dozens of places in New Zealand, the ability of a kayaker to approach a river in this way depends on the attitude of the landholder. On the whole, the relations between kayakers and farmers

are excellent. Yet this access system is vulnerable to changing landholder inclinations. In its submission on the Acland report, the New Zealand Recreational Canoeing Association wrote:

> 1. Current situation – what current processes for access are working well and why?
> Not working well:
> - Paper roads, i.e. legal, unformed roads.
> - Locked gates.
> - Local access to pieces of Queen's chain.
> - Water body moved but Queen's chain not moved accordingly.
> - Land owners who do not accept or support the culture of public access to important lands and waterbodies, for the purpose of recreation. Most typically these landowners are new to the culture of owning land adjacent to recreational areas, and are often not of New Zealand origin.[126]

What exactly is Federated Farmers suggesting that the access code should say to any resolutely intransigent land-guard who denies a kayaker the walking access to a river? Remember that the federation has spent two years arguing that New Zealand has few access problems. Remember that the federation strongly opposes the idea of imposed accessways. How about: 'Look, folks. You're new here. We've a tradition in New Zealand of allowing access across our farms provided that the visitors ask for permission. It's ... like ... philanthropy. But please yourselves. It is the landholder's prerogative to say no.'

I hope that I am being overcynical and that the proposed access code will go a long way towards preserving access-by-permission as one part of our national approach to access.

*

Regarding the implicit assumption that one-off arranged admittance will satisfy the changing expectations of walkers and tourists in the 21st century, I have already argued that access-by-permission has basic drawbacks. Many recreators see the need for something better than a black-and-white TV.

Two foreign land-buyers, the Canadian singer Shania Twain and her husband Robert 'Mutt' Lange, have recently offered the New Zealand public something more reliable than access-by-permission. In connection with their purchase of Motatapu and Mt Soho Stations between Wanaka and Arrowtown, they have agreed to the building of a new walking track across the property. The route will make a three-day tramp across a fantastic stretch of country. The buyers have offered to pay for the construction of the track, two huts, and campgrounds. Unlike arranged access, the track will be open 365 days a year and could be marked on maps as a foot-track open to the public.[127] It will meet all the criteria of the government's proposed objective of high-quality access, being certain in existing, open to all, free, and enduring. Ms Twain has not expressed any fear of being mugged by trampers.

The previous owners, Don and Sally McKay, hard-working high-country farmers, did not want people walking over the station, although they occasionally granted access for a fee.[128]

The Overseas Investment Commission (OIC) had to approve the sale of the two stations to foreigners. The national-interest benefits needed to be both substantial and identifiable. At one point during the negotiations, the OIC 'could not conclude … that the Langes' purchase price or capital investment on their own were in either the national or local interest.' Then the idea of the track emerged and reportedly contributed pivotally towards the OIC's assent to the sale.

There's something wrong somewhere. Something deeply ironic. Across great swaths of private New Zealand, the only way we can establish walking tracks in perpetuity is by selling the land to foreigners.

Sceptics' Corner

'This [the Acland report] seems "a bit waffly" … What is to stop people from saying sorry, no access?'

'Two farms in the area have been bought by urban people – with a very strict view of not allowing people onto their land – they treat the farm like a house section.'

From *Meeting Record of Stakeholder and Public Meetings for Walking Access in the New Zealand Outdoors Consultation (September – November 2003)* (Wellington, NZ: Ministry of Agriculture and Forestry, March 2004), pp. 39 and 77.

9. Walking Access Should Be Free

Pro-access statement:
'Sometimes access is allowed in return for payment ... All this is anathema to a lot of New Zealanders.' (Hon Jim Sutton, media statement, January 2003.)

Federated Farmers comment:
Recreational users should contribute to the costs of providing access across private land.

- *Maintained tracks and other facilities have generally been provided at the landowners' discretion for the benefit of users.*
- *Increasing demands for access now leaves some landowners with a cost burden they can no longer bear themselves.*

Anathema? Was that too strong a word? Do a lot of New Zealanders detest the idea of paying for walking across the countryside? After the Sutton press release of 23 January 2003, the Ministerial Reference Group met periodically for seven months to study land access. The Group read 230 submissions and talked to various groups, and so it had plenty of opportunity to test Sutton's hypothesis. On charging for admission, the Acland report was uncharacteristically one-sided and blunt: 'The public believes that access to New Zealand's outdoors should be free.'[129] The summary of the 230 submissions was equally forthright: 'There should be no payment for entry to or through Crown *or privately owned land*, unless a service is provided.'[130] (My italics.)

The Reference Group noted that the Department of Conservation (DOC) charges concession fees for commercial businesses that operate tramping and walking activities on public land. The Group recognised that DOC's charging for access to public resources could set a precedent that might encourage private landowners to charge for walking access to private land.

Regarding hunting and fishing, the analysis of written submissions on the Acland report said that 'most submitters find it unacceptable that there is charging for access to water, fisheries and wildlife, which do not attach to land title'.[131]

Before I examine Federated Farmers's specific comments on charging for access, I should mention that the federation has strongly criticised the Acland report in general. The federation did not think that 230 submissions was a large number. The federation also alleged that 'most of the submissions [came] from representatives of the same or similar interest groups'.[132]

*

The Federated Farmers 'Mythbusters' comment on Sutton's fundamentally important statement is open to wide interpretation. There are many different ways of contributing to the costs of walking tracks, ranging from the voluntary labour of recreational groups to full turnstile-at-the-gate commercialism. Depending on how you interpret the total comment, you may miss the most controversial aspect of charging for entry. So I will completely rewrite the italicised sentences to split the issue into two parts. To do so, I will have to put words into FFNZ's mouth:

- *Federated Farmers considers that when a walking track across private land is open to the public, the landowner should not bear the cost of constructing and maintaining the track, the waymarking, the stiles, and the footbridges.*
- *Federated Farmers opposes legislative changes that would impose public access across farms. In many cases, imposed access would lessen or eliminate the landowner's ability to benefit from controlling the exclusive use of his or her land for farmstays, private tracks, or other outdoor tourism.*

Construction and Maintenance Costs of Public Walking Tracks across Private Land

The cost that public access creates for farmers is a foremost issue for Federated Farmers.[133] The federation has argued that the cost of providing and maintaining public accessways and signage must fall on the public users.[134] The federation has pointed out that:

> … this is an area where organised groups of users could have a significant role. There are many instances of interest groups around the country who provide both time and money to maintain areas of interest to them.[135]

At the time of writing, we do not know the government's plans in this respect.

Free Public Access across Private Land v. Turnstiles at the Gate

In a section on changes in land use, the Acland report acknowledged the growing number of turnstiles:

> A significant and continually developing rural tourism industry now operates as an integral part of traditional farming systems and rural communities. The Group was informed about an increasing trend for landowners to capitalise on controlled access over private land by investing in activities such as private walkways, garden and farm tours, and home-stays.[136]

In its submission on the Acland report, Federated Farmers stated its views on these turnstiles. The difference between farmers and outdoor recreators is sometimes profound! New Zealand farmers do not share the same abhorrence of moneymaking as many other New Zealanders:

> Visitors to the farm impose significant costs on landowners. To offset these costs and to control numbers, charging for access or sale of concessions to specific groups is a valid management tool. It is a well established tool currently used by both the government as well as private landowners.
>
> Landowners should not be deprived of wealth-generating diversification opportunities on their land in the interest of preserving free public access. Having said that, while farm

> tourism is a growing activity, the vast majority of landowners do not charge casual recreational users for foot access to their properties. Access across private land to public resources is a different matter, and should be negotiated between landowners, users, central and local government as appropriate, using existing processes and mechanisms. Where there is evidence of inadequate public access to public resources such as remote and desirable fishing spots or remote parts of the conservation estate, it is up to the government to purchase adequate access. This in itself would then preclude any exclusive use of public resources by adjoining landowners.[137]

Recreation has been the driving force behind the pro-access lobbies that have forced land access onto the political agenda. Yet outdoor tourism too has much to gain – and not much to lose, although some might disagree – from the access improvements that will gradually flow from the proposed New Zealand Land Access Strategy. Readily available topographic maps showing foot-tracks open to the public would provide overseas visitors with an efficient information source that at present, in two-thirds of New Zealand, does not exist. This one development alone, merely the provision of information, could help to diversify and mature New Zealand's outdoor tourism.

'Readily available topographic maps showing foot-tracks open to the public would provide overseas visitors with an efficient information source that at present, in two-thirds of New Zealand, does not exist.'

In April 2004 I wrote to Mark Burton, the minister of tourism, discussing the importance to tourism of the possible repercussions of the Acland report. I said I hoped that he would support any proposals to develop higher-quality linear access across uncultivated rural land, access that would be certain in existence, open to all, and enduring. The minister managed to reply both encouragingly and circumspectly. He zeroed in on a growth area that holds considerable economic importance and which also presents the biggest dilemma in walking entry to private land:

> While I acknowledge your comments, I consider it important to ensure exclusive access in some circumstances. There are over 3,000 rural tourism operators in New Zealand, ranging from farmstay activities to gardens, adventure activities and private walking tracks. It is essential for the success of many of these tourism enterprises that the proprietors are able to ensure exclusive access to their property, attraction or facility.

One of the landowner anecdotes in the Federated Farmers's submission to the Ministerial Reference Group unhesitatingly embraced the right of any farmer to sell walking admission as a commodity, like selling turnips:

> Access to Land: Comments/Experiences from Survey Respondents.
> 035. ... In a FEW situations where regular public access to some particular publicly owned feature such as say, a waterfall, cave or river, is deemed desirable, such access should be clearly limited to a marked walkway & through payment of monies [should be] voluntarily negotiated ... Local govt. in particular seems to have an almost fetish to actually owning all land needed for public access. Perhaps they need to realise the benefits of leaving it under private ownership but with

> rented access. If they proceed with any plans to 'open up' private land for the masses to roam, they would in addition to the constitutional outrage, also be depriving many farms of their existing commercial benefit of offering farm access to walkers, tourists etc ... or are they suggesting mere farmers might also have the right to roam, without charge through private venues such as council swimming pools, picture theatres, golf courses, etc, etc.? I look forward in the future when I need to go to the city, to not having to bother about car parks but simply leave my vehicle on some townies [*sic*] front lawn.[138]

I've said it before in this essay: the farmed landscape is an iconic part of every New Zealander's birthright; most swimming pools, cinemas, golf courses, and gardens are not. There is nothing wrong with being receptive to economic goals. But treating the private rural scenery as raw material for generating private wealth is more morally complicated than charging for entry to a swimming pool or golf course.

Face the facts: my garden, a tiny patch, is of no importance to Dunedin walkers; the farmland of the Otago Peninsula is almost innately important to them and they do not expect to pay to walk across their own countryside.

***Otago Daily Times*, 13 July 1990**

Peninsula Farmers Seek Rates Discount.
Representatives of Otago Peninsula farmers have pleaded for a special rating case based on the protection of scenic values and the farmers' role in tourism and city recreation … A Peninsula farmer, Mr Ron Cross, said the generosity of farmers allowed people access to many beaches and natural attractions.

Royal Hunting Forests and Private Fishing Waters

Another part of every New Zealander's birthright is the free access to hunting and fishing (with the appropriate licence) that stems from the fact that wildlife, fish, and water are public property; ie, they do not attach to land title. On page 36 I mentioned that some landowners use the Trespass Act to restrict access, hence obtaining exclusive capture of fishing and hunting. *Reel Life*, the angling newsletter from Fish and Game New Zealand, described an example:

> A current example of private capture of a public resource through ownership of access is that of Poronui Ranch in the Hawke's Bay area. The ranch advertises itself as offering guests exclusive access to trophy trout in privately owned and managed waters. However, it cannot legally own those waters and the trout in them. This then is an instance of sought-after areas of New Zealand being closed off from public access for either private recreational use or private commercial use, and the ordinary citizens who actually own that resource being left without access to it.
>
> There is real commercial gain at stake here: Poronui Ranch advertises itself on the Internet as charging $US5,800 a week for its exclusive fishing and to stay there. It isn't likely that commercial enterprises like this are going to sit down and negotiate public access when their whole business is built on the exclusive use of the public traffic issue. So it has to become a legislative issue.[139]

Jim Sutton has had plenty of time to gnaw on this bone of contention. In 1996, while discussing the private Banks Peninsula Track, he wrote:

> Obviously, the opportunity to derive a profit from such commercial initiatives should be preserved, in the public as well as the private interest. This opportunity to make a profit should also apply where someone places a facility, such as a fishing lodge, alongside a river. What should never happen, but occasionally does, is that access to the river is denied anyone who does not use the lodge. This is the origin of the 'private fishing water' advertisements that have just begun to appear in tourist catalogues.[140]

Federated Farmers has argued that legislating to extend the Queen's Chain will amount to a taking or reduction of private property rights for which landowners should be financially compensated. Fish and Game, in reply, asserts that by using the Trespass Act some farmers and other landowners have confiscated the public's rights to wilderness fishing and natural waterways. These farmers and other landowners, Fish and Game says, should be paying compensation to the public.

***Otago Daily Times*, 8 January 1992**

Peninsula Land Owner Calls for Compensation.

Dunedin City Council rates should be used to compensate farmers for the inconvenience of people using their land for access to tourist attractions such as the Chasm and Lovers Leap, an Otago Peninsula farmer believes..

'Sandymount is, after all, my land totally and with no legal paper roads anywhere near the areas concerned …, it is my prerogative to do as I see fit,' Mr Des Neill said.

Mr Neill, of Hoopers Inlet, has closed a road which passed through his farmland to the popular Lovers Leap and the Chasm attractions at Sandymount. Because of the nature of visitors to his area, funding for compensation should come through city council rates levied on businesses, he said in a letter to the editor of the *Otago Daily Times*. The area was promoted in many brochures and leaflets and after seeing the obvious attractions the peninsula held, many tourists stayed longer so they could take in these, he said.

'This creates extra income to the community – especially the retail community – through these tourists spending more dollars during their extended stay.

'I feel as I help the region in keeping tourist money within the greater Dunedin area that I should also in some way be rewarded for my assets contribution. In this day of user pays does this not seem justified?'

The Origins of the Laws of Trespass

'It was Britain's most dramatic ever act of land reform – the Norman Conquest in 1066 – which paved the way for the laws of trespass which were to restrain the movement of people in the countryside. William the Conqueror, unlike the Romans, expropriated the indigenous population, and handed land as property to his barons. The barons and the king began the process of exclusion by shutting people out of new deer parks which they opened to indulge their passion for hunting and to provide venison. Soon nearly 2,000 of these parks, ranging in size from fifty to several thousand acres, existed in England and Wales. Vast areas elsewhere were made into royal hunting forests and private hunting chases devoted exclusively to hunting by the privileged.'

Marion Shoard, 'Access to the Countryside', *History Today,* 50, no. 9 (Sept 2000), p. 16–18.

The Unavoidable Battles Ahead

On 5 November 2004 the *Otago Daily Times* reported some comments made by Professor Bob Hargreaves, the head of property studies at Massey University. Hargreaves, like Mark Burton six months previously, pinpointed a possible conflict between public access to the private rural panorama and a landowner's right to use that landscape commercially:

> Some landowners could be considering subdividing or developing exclusive accommodation in areas of beauty or seclusion. If they found those features compromised by public access, that raised the issues of loss of value and compensation. 'That is where the battle lines will be drawn and the question of compensation raised,' he said.
>
> Farmer claims [that] there was no difference between public access over their land and public access over an urban section to a beach were justified. But farmers should look at this as an opportunity. A commercial walking-track system over farm land on Banks Peninsula was an example of landowners accommodating demand for access, but also making money along the way.[141]

The private Banks Peninsula Track runs for 35 kilometres through glorious scenery. It was a finalist in the 1999 New Zealand Tourism Awards. It also won a regional conservation award. The admission fee includes an element for hut and cottage accommodation.

I discussed access entrepreneurship in my 2003 diary, 'Going Out for a Bike Ride'.[142] In the short term, turnstile-at-the-gate approaches widen the access opportunities for those outdoor recreators who can afford to take advantage of them. The income generated from them can pay for improved environmental management and aesthetic refinements. They can also create jobs. But views on them are likely to remain polarised. There is an argument that such approaches are hopelessly provisional and are unsuitable for protecting valued natural or cultural features in perpetuity.

Plenty of enterprising farmers are very confident of their ability to not only safeguard such features but also to transform them into market commodities. A recent *New Zealand Herald* story was titled 'Tourism To Surpass Farming in Northland Economy'. It said that figures from the Tourism Research Council suggested that pastoral agriculture, worth about $850 million a year, will lose its place as Northland's number-one income-earner by the end of the decade:

> Some farms had been subdivided and turned into smaller lifestyle blocks, while other farmers had got into the homestay tourism business. Hugh and Pauline Rose, who are farming nearly 100 ha at Tangowahine, 13 km northeast of Dargaville, have recently installed accommodation on their farm with room for nine tourists. 'What we are creating is an environment where tourists come and see a working farm in action,' she said. 'A third of the farm is also in native bush and people can walk through that and get the total experience.'[143]

The Peasants' Revolt, 1381

'The exclusion of the people of Britain from most of their countryside was, however, never simply accepted. From the beginning people resisted the idea that the land itself and the bounty of the earth including wild creatures should be treated as property to be used according to the whim of its owner, without the rest of the population having any say.

'The leaders of the Peasants' Revolt of 1381 … were inspired by the Christian doctrine of the equality of people in the sight of God. The peasants' demands for land reform were actually quite modest: the replacement of feudal dues with a money rent and a fundamental change in the law on wild animals so that everyone would be entitled to take all fish and game.'

Marion Shoard, 'Access to the Countryside', *History Today,* 50, no. 9 (Sept 2000), p. 16–18.

By 'total experience' I assume Pauline Rose was referring partly to the combination of the forested, grazed, and cultivated landscape. There is another way of providing this part of that total experience – you can provide it free, to all New Zealanders.

Access entrepreneurship might appear progressive to some people. But if recreators are going to insist on free walking entry, they cannot afford to be overjoyed when a private landowner treats a walking track as a tradeable asset. A turnstile at the gate effectively reinforces a landowner's right to exclude and delays efforts to weaken it.

New Zealand has been woefully slow in developing networks of public foot-tracks over private fiefdoms. Outside the national parks, our web of public tracks is embryonic. With some notable exceptions, such as Christchurch's Port Hills and some parts of Banks Peninsula, the track networks in many places are nonexistent. Yet, for example, the forestry tracks I mentioned earlier, near Kaikohe, already exist. Opening them officially for all walkers would not require any additional maintenance. But the motivation to do so would need to be altruism and public rights rather than annual rentals, admission fees, commercial growth, and supplementing the income.

In many situations, a public foot-track across a farm may not conflict with the commercial uses of the land, even those uses connected with homestaying. In other situations, the two demands may be incompatible. It is possible that some decisions will be made in the courtroom. If so I hope that all the statutes and strategies that apply will put people before profits, reflecting the words of Jim Sutton's press statement of 23 January 2003: 'Sometimes access is allowed in return for payment … All this is anathema to a lot of New Zealanders.'

Access Entrepreneurship at the End of the Middle Ages

' … from the mid-fifteenth century, farmland started to be shut off, through the process of enclosure or the abolition of communal arrangements over land. Before this happened, people used to be able to move freely along grassy areas between strips in the open fields, along streams, in woods and over uncultivated, rough land. But as new barriers went up in the countryside, ordinary people found themselves increasingly restricted to certain roads and paths. Woodland also came to be enclosed as energetically as fields. The reason was the same in each case – profit.'

Marion Shoard, 'Access to the Countryside', *History Today,* 50, no. 9 (Sept 2000), p. 16–18.

Taiaroa Head on the Otago Peninsula: Nice Carpark, Nowhere to Walk

Signs at the gate on Tarewai Road, a private road that leads to Penguin Beach. (Penguin Beach is on the oceanic coast, two kilometres south of Taiaroa Head.)

Penguin Beach nestles under a high crumbling cliff near the end of the Otago Peninsula. Colonies of hoiho – the rare yellow-eyed penguins – nest here. Also little blue penguins. The penguins share the beach with New Zealand fur seals and their pups. Cormorants too abound.

No public roads connect to Penguin Beach. No public walking tracks connect to it either. There is no open, non-paying access to the beach except by sea.

Car-borne tourists and other visitors in motor vehicles can drive along a private road and can then pay for access to the beach or for a tour of the area (private land) in an 8-wheel-drive Argo vehicle. Walkers seem to be a lower caste; they are denied the privilege of paying to walk to the beach.

Most of the New Zealand foreshore is crown land. The public expects there to be at least walking access to it. The control of the access to Penguin Beach, by Nature's Wonders, appears to be a form of exclusive capture: the control, for private gain, of the entry to a public resource. The penguins will appreciate this ecotourism, as it keeps their beach more private than it would otherwise be.

The oceanic side of the Otago Peninsula has no continuous coastal walking track. Only fragments exist, and there are very few of these in the easternmost third of the Peninsula. In 1991 Dunedin City Council's Otago Peninsula Public Access Working Party proposed a coherent coastal walk along the Peninsula, including a track from Taiaroa Head, past Penguin Beach, to Pipikaretu Point. In the years ahead, planners and interest groups may seek to develop this long-distance coastal walk. The government's proposed New Zealand Land Access Strategy, released in December 2004, includes the intention to provide walking access along identified parts of the coast.

Regarding walking access to Penguin Beach, the planners would need to balance the possibility of improved accessibility against the special need to protect the hoiho. Dunedin has more then twenty beaches within half an hour's drive of the city centre, and so perhaps it could afford to reserve a few for the exclusive use of penguins. Ie, the planners and interest groups could choose not to push for walking access to Penguin Beach.

The main direct threat to the hoiho lies in mammalian predators other than humans: stoats, ferrets, feral cats, and stray dogs. Non-stray dogs also could pose a threat – if walking access were created – as the public has not shown itself to be universally ready to obey signs saying NO DOGS.

Exceptional circumstances can justify the exclusion of walkers from sections of the foreshore. But a long-distance coastal walk would not need to visit every single beach.

The Federated Farmers Campaign to Defeat the Government's Walking-access Plans

In January 2003 the terms of reference of the Land Access Ministerial Reference Group asked the Group to study three issues:

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

Each of these issues raised, directly or indirectly, questions about linear access across private land. At that time (January 2003) no-one knew whether the third area – access onto private rural land – would lead to the right to roam. It is interesting to recall that Public Access New Zealand viewed the terms of reference as too wide and as so potentially problematic that it declared:

> Government's Public Access Plan 'Pie in the Sky'.
> ... Mr. Mason [the PANZ researcher] said that the terms are too broad, trying to encompass access over private land as well as over public land. The set[s] of rights and values are vastly different, with the issues surrounding private land political dynamite. 'There is a very strong private property right ethos surrounding private land in New Zealand, reinforced by draconian trespass laws. Whereas on public lands, the public have statutory and common law rights of use, without trespass.'[144]

The PANZ criticism had little effect. Jim Sutton said I'll-do-it-my-way. His way has led to a thorough debate on access to private land – although, unfortunately, much of the media coverage of land access has not reflected either the complexity of the issues or the comprehensiveness of the debate. And PANZ was correct: New Zealand landholders adore their property rights. For two years Federated Farmers has argued uncompromisingly in support of those rights. 'Mythbusters' was just one small component of the federation's campaign to defeat the government, a campaign that will probably continue into 2005.

Undeclared Assault

For twenty months from January 2003 onwards, the federation's offensive against the government's walking-access proposals was implicit rather than explicit. But an undeclared campaign can be as obvious and as negative as a proclaimed one. This analysis of 'Mythbusters' and of related papers has shown that the federation:

- was lukewarm towards the formation of the Land Access Ministerial Reference Group, being disappointed that the government had not liaised with it before convening the Group;
- fiercely criticised the Acland report;
- expressed no confidence in the evidence presented to the Group;
- denied the existence of any widespread access difficulties, arguing that 'a relatively small number of individual anecdotes and instances of problems with access onto private property have been translated into a general need for greater access';[145]
- has failed to recognise the public's changing expectations and aspirations;
- does not support the idea of a national access strategy, nor the establishment of an access agency;
- views walking tracks across farms as generally incompatible with farm management;
- opposes any interference into property rights, however minor that interference may be;
- opposes any extension of the Queen's Chain that would impinge upon property rights;
- argues that single-occasion entry-by-permission should remain the main form of access across private rural land;
- argues that the third of New Zealand that is public land is sufficient to provide for most of the recreational needs of New Zealanders;
- does not seem to view the farmed landscape as an iconic part of every New Zealander's outdoor heritage; and
- often seems blind to the recreational, social, cultural, and economic value of coherent networks of public walking tracks across rural land.

From the Acland report's large fleet of constructive ideas, three ships survived the federation's storm of condemnation. The federation:

- recognises the need to improve information on access, such as maps and waymarking;
- supports the idea of an access code that would clarify the rights and responsibilities of all parties; and
- is promoting the idea of an access trust that would negotiate voluntary access agreements with landowners, and is also supporting the idea of local user-groups negotiating local agreements.

John Aspinall is the FFNZ national board member who has responsibility for lands, tenure review and access. On 1 November 2004 he wrote to the *Otago Daily Times*, full of pride and confidence in the remnants of the fleet, which the federation has taken ownership of:

> I am surprised and disappointed by comments made by Rural Affairs Minister Jim Sutton [see page 47]. Mr Sutton accused Federated Farmers of 'putting themselves on a campaign footing'. Federated Farmers is an apolitical organisation. We have taken a proactive stance on the access issue by preparing a draft voluntary code of conduct and a proposal for an access trust, both designed to build on the existing access network and the goodwill which currently exists between landowners and recreational users.[146]

Who runs Rural Affairs? The board of Federated Farmers or the Ministry for Rural Affairs? Who will decide New Zealand's land-access policies? Mr Aspinall or Mr Sutton?

*

Throughout this essay I have treated the collective noun 'Federated Farmers' as singular in number: it is a federation, one entity. But 'Federated Farmers' can also carry a plural meaning, referring to a large group of individual farmers. When I say, therefore, that Federated Farmers *have* displayed a siege mentality, I mean those many individual farmers whose views the newspapers and press statements have frequently expressed over the last two years. Often a newspaper story identified a farmer as an FFNZ office-holder. These federation members have shown more paranoia than goodwill. They have exhibited more walker-phobia than walker-friendliness. More nostalgia than realism.

The federation's policies are member-driven. The federation's staff and elected representatives canvas its members for their views. This democracy clearly works efficiently, because the submissions and press releases out of the FFNZ headquarters in Wellington have been as reactionary and as negative as the news columns from the heartlands. They have been as full of deep defensive trenches as the fields of the farmers.

We should, however, half expect this conflict. The mission of Federated Farmers of New Zealand (Inc) is: 'To add value to the business of farming for our members.' Federated Farmers is designed to promote the economic interests of farmers – or what it *sees* as their economic interests. Networks of public foot-tracks would appear to offer no economic benefits to rural New Zealand.

' ... the submissions and press releases out of the FFNZ headquarters in Wellington have been as reactionary and as negative as the news columns from the heartlands.'

Open Opposition

In September 2004 the federation posted a web page headed 'Public Access across Private Land'. The federation's crusade against the government's proposed New Zealand Land Access Strategy moved up a gear, from implicit to explicit:

> Our members have clearly indicated that any moves to legislate away a landowner's right to manage who comes onto their land and business will be strenuously opposed. The Federation is working proactively to develop proactive solutions, but will fight any attempt to impose access across private land [that] will destroy established goodwill and reduce access onto private land.
>
> ... For this campaign to be won in Wellington it must be fought in the provinces. Help the non-farming community understand why legislating rights of access is unnecessary and will only make things worse.[147]

The campaign web page includes links to various supporting papers, such as 'Mythbusters'. In a little flourish of provocative banner-waving, one of these links reads: 'Private Property Signs. A guide on how to make signs warning visitors that they are entering private property.'

The farmers might like to consider importing second-hand signs from Britain, where recent legislation has in many places – mountain, moor, heath, down and common land – rendered such signs redundant. Erecting forests of PRIVATE signs is the surest way to guarantee that some future New Zealand government will designate open country and create a right to roam.

For some people, careful debate is a little boring compared to rhetoric and hyperbole. Back in 1996, Jim Sutton recognised that the access debate tends towards stridency and division:

> A characteristic of most developed countries with open countryside access is the existence of strong recreational and environmental organisations, with well-established traditions of consultation with and mutual consideration for landholders and local authorities. But in New Zealand in recent times … while individual recreationists and individual landholders usually enjoy excellent relations, the pronouncements of representative organisations sometimes come across as belligerent and resentful.[148]

If we apply Sutton's observation to the last two years, the situation seems to have been more complex than a simple paradox between beneficial individual relationships and strained organisational relationships.

Certainly representative bodies on both sides of the discussion have strayed into shrill embellishment and mild personal attack. The judgments of Public Access New Zealand have sometimes wandered off into frustrated pessimism. At times PANZ has written mockingly and scornfully. Federated Farmers, meanwhile, has gone for the jugular. It aimed 'Mythbusters' directly at the minister for rural affairs.

Certainly the relations between many individual farmers and many individual recreators remain cordial and productive. Yet it is also probably true to say that the vocal majority of farmers – as well as their national organisation – vehemently oppose the government's walking-access plans.

One submission to the Acland report asked for a more level-headed and measured contribution from the farmers:

> I would like to see some genuine discussion of the [topic] by Federated Farmers and a few positive suggestions. The current attitude is hard-line denial of any problem, demand for commercialisation, talk of property rights etc. All this sounds like right wing America, and I don't think [it] really reflects the attitudes of most members […] There is room for genuine dialogue on this subject. It may well be that those farmers most used to providing access are the most receptive to positive moves which clarify the situation for both sides.[149]

'On access, "Federated Farmers" has become a byword for obstinate conservatism and wild dramatisation.'

I haven't yet seen any widespread sign of farmers' open-mindedness to radical change. Quite the reverse. On access, 'Federated Farmers' has become a byword for obstinate conservatism and wild dramatisation.

On 17 November 2004 the *Otago Daily Times* kept the pot boiling with a short item titled 'Farmers Talk Civil Disobedience over Access'. West Coast farmers, reportedly, are considering mass

disobedience if the government pushes ahead with the New Zealand Land Access Strategy. For about the fiftieth time since May 2003, I read that 92% of farmers allow entry when asked. The farmers have yet to grasp the principles of high-quality access. Or perhaps they *have* understood those principles – and perhaps they don't like them.

Dissent in the Ranks

After the publication of the Acland report, more than fifty meetings were held nationwide, roughly half of them being public meetings and half being stakeholder meetings. At the public meeting in Hamilton held on 20 October 2003, one farmer spoke in support of the government's walking-access plans. The notes taken at that meeting record his views:

Farmer: Has been involved in walkways since the 1970s.

- Have only had one problem in that time.
- There are still marijuana growers, but otherwise the experience has been positive.
- Walkways take the pressure off private land.
- Many people are frightened of the outdoors and if things are well sign-posted they are no trouble.
- Want to get people into the country so that urban people have more sympathy for rural issues – it must start with the young people.

From *Meeting Record of Stakeholder and Public Meetings for Walking Access in the New Zealand Outdoors Consultation (September – November 2003)* (Wellington, NZ: Ministry of Agriculture and Forestry, March 2004), p. 79.

Miscellaneous Issues

There are a few assorted matters that I have not yet covered. They are the questions of whether the Reference Group was prejudiced against landowners, whether New Zealand's demographics produce a political imbalance in favour of the urban population, and whether FFNZ's famous figure of 92% was based on rigorous independent research.

The Make-up of the Land Access Ministerial Reference Group

When in January 2003 the Group undertook its study of the convoluted and sensitive topic of land access, it was on a hiding to nothing. The Canterbury farmer John Acland, when Jim Sutton offered him the job, reportedly told his youngest daughter he was afraid he would be burnt at the stake.[150]

Looking back now, two years later, one forgets that there was a good chance of recreators erecting that stake. The gang of eleven included eight people who had some connection with farming, plus one mountain guide and one mountain-biker. Acland had chaired the New Zealand Meat Producers Board and had held office in Federated Farmers. Sally Millar, an environmental consultant, had worked for Federated Farmers as a policy manager on resource management. Eric Roy, one of the Group's farmers, is a former National Party Member of Parliament. Regarding this make-up, the initial reactions from the recreational lobby varied from unworried, through noncommittal, to pessimistic. John Wilson, the president of Federated Mountain Clubs, expressed hope:

> ... we welcome the opportunity Jim Sutton has provided for the issues to be investigated. Eight of the 11 members of the Reference Group are farmers or have close ties with rural communities. They outgun the recreation side, comprising a mountain guide, a mountain biker and one of the farmers who is also a keen angler. But in spite of this FMC sees the group as a way forward ... [151]

Fish and Game New Zealand expressed faint optimism, but with misgivings on the Group's composition. *The Timaru Herald* reported Fish and Game's response:

> Fish and Game New Zealand welcomed the announcement of the working party yesterday but expressed reservations about the make-up of the group and its ability to deliver a timely solution. 'It is heavily weighted toward the farming sector and iwi interests and it has a very limited representation of recreation and conservation interests and people with research expertise in this area ...' director Bryce Johnson said yesterday.[152]

A gang that contained more farmers than lawyers did not impress Public Access New Zealand, which commented:

> The Reference Group has a predominance of farming interests, and minimal recreational presence. The latter is most disappointing given its purpose. 'We don't believe that, even given fine intentions by all involved, there is the knowledge and skill present to adequately address this growing public issue.'[153]

And again:

> … there is no purpose to Mr Sutton's scheme, other than to 'study access' (with a poorly equipped group to do that) and to 'clarify and enhance the legal situation pertaining to public access' … [154]

Rural News reported Bruce Mason, the PANZ researcher, as having commented that the government may have set the Group's objectives too wide. Sutton, according to Mason, should have limited the research to the access issues surrounding public land instead of including access onto private land. Mason said that 'irritating landowners will be the only achievement … '[155] Mason knew much about angering landowners, and this prophesy from the horse's mouth was to prove correct in one sense and – assuming that the New Zealand Land Access Strategy goes ahead – incorrect in another.

What about the landowners? What did the farmers think about the land-access troop's composition? I heard no complaints from Federated Farmers. But Acland was still at risk of falling under the farmers' tractors, if the recreators didn't roast him first. Some farmers didn't bother to question the Group's balance; they questioned the Group's existence. The *Daily News* reported the reaction of Neville Hagenson, the president of the Taranaki branch of Federated Farmers:

> … Neville Hagenson is sceptical about the need for a reference group set up by the Minister of Agriculture, Jim Sutton, to look at land access issues … Hagenson said that while the reference group appeared to be made of experienced individuals and have a proper balance, he wondered if it might not create more problems than it solved … 'I feel the situation [access-by-permission] works well and should be left alone,' [he said].[156]

'Some farmers didn't bother to question the Group's balance; they questioned the Group's existence.'

Whatever the balance of the Group, it produced a progressive report that received praise from recreators and odium from farmers. One submitter wrote: 'The report of the Land Access Reference Group cannot fail to become a document of great historical significance to New Zealand'.[157]

I cannot agree with the PANZ suggestion that the Group was 'poorly equipped' for its role. Nor would I agree with any suggestion that it was biased against landowners. Rather, I would reinforce Acland's tribute: 'This Group has an immense range of expertise, and experiences, and the fact that this is an agreed report on a complex, emotive and controversial topic reflects highly on its members.'[158]

Jim Sutton, in setting up the Reference Group, had expressed a wish to bring community wisdom to bear on the topic. The Group did that.

*

The predominance of agricultural interests on the Group had been so manifest that the anti-access factions had not disputed the fairness of the Group's make-up. But this did not prevent David Carter, the National Party spokesman on agriculture, from trying to do so in retrospect. For twenty months Carter stockpiled his complaints, until a year after the publication of the Acland report. Then on 2 September 2004 during question time in Parliament, Carter queried the appointment of one member of the Group:

> Hon David Carter:
> Why was Gottlieb Braun-Elwert, Helen Clark's personal mountain guide, appointed as a member of the land access task force, and why was his name deliberately omitted from the Minister's press release dated 23 January 2003 in which he announced all other members of that group?
> Hon Jim Sutton:
> Mr Braun-Elwert was chosen by Cabinet for the same reason that every other member was chosen – because he had experience and talents that would make a contribution to the work of the panel. His omission from a draft of a press statement was simply a typo, in effect – it was simply a mistake.[159]

On 8 September 2004 a story in *Rural News* piled on the innuendo. The National Party was questioning the impartiality of the Group. Sutton's appointments had been 'deliberately devious'. His selections had been designed to 'push the Government's agenda' on land access. Carter was accusing Sutton of nepotism in the selection of Sutton's friends John Acland and Eric Roy. (Neither is related to Sutton.)

Carter was 'most concerned' about the inclusion of Braun-Elwert. Carter was alleging that the omission of Braun-Elwert's name from the draft press release had been deliberate because the government knew that his selection would 'create considerable anxiety' in the farming community. *Rural News* quoted Carter as saying: '[Braun-Elwert] has had a number of run-ins with Tekapo farmers trying to operate his commercial business over private land without any agreement and I think he had a very strong influence on the outcome of the group.'[160]

For two years Sutton had avoided an over-involvement in the trivialities of the land-access imbroglio. But Carter's personal slurs on three members of the Reference Group demanded rebuttal. Sutton wrote to *Rural News*:

> Dear Sir,
> I have let many of David Carter's inaccuracies go past (such as his asking 'hundreds of questions in the House' on land access when he has only asked me one since the last election and that on a different topic all together), but his latest rubbish is beyond the pale.

> Firstly, it is striking that with all the issues surrounding land access, Mr Carter can only come up with personal attacks, criticising members of the land access reference group rather than the issues.
>
> In an effort to pose as a champion of landowners' rights, he descends to attacking people who have put considerable time and effort into public service, including a former National Party Parliamentary colleague. As I said at the time, the members of the reference group were not representatives. They were chosen because they had a range of relevant experiences and could be relied on to consult widely, to understand a wide range of viewpoints, and to consider the issues with intelligence and integrity. Their experience was listed in the press statement. At the time, I was criticised by recreation people for having too many farmers.
>
> Mr Carter accuses me of nepotism. Nepotism is when you appoint relatives – I am not related to anyone on the land access reference group. Mr Carter should stick to words he knows.
>
> [The letter continued.]
>
> Jim Sutton, Minister of Rural Affairs.[161]

Carter's insinuative and one-sided criticism of Braun-Elwert deserved a comprehensive reply. It received one. In a long, detailed and factual letter to *Rural News*, Braun-Elwert described the 'excellent support and cooperation' he had received from many high-country farmers. He also particularised some access problems that had sprung from just one change of landowner. Then he suggested that *Rural News* engage in some objective debate: 'Sir, the problem of public access will not go away, no matter how much disinformation your paper might spread amongst the public. It would be more constructive if you debated the facts, and [did] not malign the character of those who do.'[162]

This Braun-Elwert letter seems to have provoked *Rural News* into digging up some more unsubstantiated dirt. On 16 November it published a malicious, if infantile, piece that cast unattributed aspersions on Braun-Elwert, with xenophobic undertones: 'Your old mate [no writer's name is given] reckons that Agriculture Minister Jim Sutton must be lamenting his decision to appoint PM Helen Clark's favourite tramping guide, the very Germanic Gottlieb Braun-Elwert to the controversial Land Access Reference Group ... '[163]

Such is politics. And piss-shallow journalism.

Population Statistics and the Urban Bias

In its section on the changes in demand for access, the Acland report pointed out that 85 per cent of New Zealanders live in urban areas of 1000 people or more. It continued:

> Major cities usually have regional, or similar, parks that provide recreational opportunities close to them. As the population increases and the urban area expands, pressure on these public areas may require augmentation through private or commercial ventures or through other means. The high use of existing walkways suggests that an increasing

> urban population will result in more pressure for better access on the margins of urban and rural areas. Submissions and other literature show that peri-urban areas are coming under pressure for more public access and higher use.

Since the publication of the Acland report, some rural landholders have vaguely or directly alleged an unfairness, an imbalance in the rural-urban populations that might allow a government to ignore the concerns of rural dwellers.

In September 2003, during the public consultations on walking access, North Canterbury Federated Farmers released a statement titled 'Public Access Meetings Designed to Disadvantage Landowners'. Pam Richardson, the president of the North Canterbury branch, argued that the Ministry of Agriculture and Forestry should not have scheduled the meetings to take place at a time of year when bad weather, low-lying snow and seasonal work could make it difficult for farmers to attend:

> The organisation of the public meetings has been appalling. Either the Land Access Ministerial Reference Group wants to hear only one side of the story or the organisers are totally out of touch with farming … 'Federated Farmers has asked MAF to reschedule the Christchurch meeting but quite frankly the whole lot should be rescheduled to a more reasonable time of year. This is yet more evidence of the urban bias of the Government,' concluded Mrs Richardson.[164]

Three weeks later, a farmer expressed a similar sentiment during the public meeting in New Plymouth, at which emotions ran high:

> Ms Mulcock [a member of the Ministerial Reference Group] said the report concluded that a strategy was required to protect and advance access to the outdoors for all New Zealanders. But many [of the farmers attending the meeting] were not happy … 'Is this basically a law of what urban people want in the rural areas?' questioned another farmer.[165]

After the land-access public consultations, the foreshore-and-seabed issue arose and contributed towards a nine-month hiatus on land access. Then in August 2004, Jim Sutton's update brochure woke up the farmers. Gerry Eckhoff identified dangerous similarities between the government of New Zealand and that of Zimbabwe: 'In much the same way as Robert Mugabe – who began by taking selected areas of land – Labour is exploiting rural landowners for political advantage.'[166]

A month later, *Rural News* relayed to us another Eckhoff observation linking the demographics of New Zealand to the land-access issue: 'The government has identified a huge political advantage in appropriating property rights of the country's 45,000 rural landowners and handing them to the 350,000-plus recreationalists.'[167] The language is classic Eckhoff hyperbole. The gentleman does not seem to know any other way of talking. 'Appropriating property rights' conjures up an image of a tyrannical regime that confiscates land; in fact the Labour government is merely trying to establish walking access along water margins

and along coastline. Yet Eckhoff was showing an alert understanding of the numbers, an understanding that many of his fellow farmers have not yet grasped.

It may not often happen that a senior academic substantiates a Gerry Eckhoff proclamation. This was to be one of those rare occasions. A couple of weeks later, the *Otago Daily Times* reported a comment made by the head of property studies at Massey University:

> … Prof Bob Hargreaves said the debate came down to simple arithmetic. More people lived in towns and cities than in rural areas, and they were demanding room for recreation. Ultimately, the majority would win. Even the farmers' traditional political ally, the National Party, was no longer a party of farmers, and general elections were won in towns, not rural areas, he said.[168]

The operative word in Hargreaves's comment is 'ultimately'. Gaining high-quality access across rural land will be a long-term crawl that will face many obstacles, one of which may be the occasional National government. David Carter, the National Party's spokesman on agriculture, has already signalled National's opposition to Jim Sutton's intention to enhance pedestrian access along water margins and coastline. On 16 August 2004, after Sutton sent his update brochure to submitters, Carter announced: 'The next National Government will repeal any legislation that significantly impinges on private property rights.'[169]

The National Party will probably send carefully mixed messages about the Queen's Chain. On 7 May 2004 I went to a debate about the seabed and foreshore. Four Members of Parliament each spoke for seven minutes. At the end I asked this question, addressing it to Wayne Mapp, the deputy leader of the National Party:

> The National Party is vigorously supporting the principle of public access to the foreshore – in fact, most parties are. I welcome National's sudden enthusiasm for public access. Will this devotion to access extend to the area of New Zealand that lies above the high-water mark?

Mapp is a practised politician. He replied adeptly with three minutes of evasive sympathetic waffle about national parks, marginal strips and the Queen's Chain. He could have simply said: 'The National Party believes that property rights are absolute and sacrosanct.' On walking admittance to the farmed countryside, it looks as if the New Zealand electorate may have a fairly clear choice long into the future. Remember though that a week is a long time in politics.

What can recreators learn from the last two years of debate? Can recreators take a back seat and sleep soundly, dreaming about the rural-urban bias? No. They face two dangers. First, that not enough of them will involve themselves in the public debate. Second, that not enough of them will vote.

Since January 2003 the land-access debate that has gone on spasmodically in the nation's media has not reflected Eckhoff's figures of 45,000 against 350,000. Our newspapers *have* pub-

'Since January 2003 the land-access debate that has gone on spasmodically in the nation's media has not reflected Eckhoff's figures of 45,000 against 350,000.'

lished the occasional balanced and informed editorial or feature, yet these have been collectors' items, rarities that have shone out from the mass of superficial and often one-sided reporting. The farmers and other landowners may be in a minority, but this minority speaks in a disproportionately loud voice. This voice has fed the New Zealand public – and has also suckled itself – with whole silos of farmer-gossip, half-truths, misinformation, distortion, scaremongering, and Eckhoff brouhaha. In particular the farmers' side of the war of words over the alleged link between access and rural crime was a model of panicky overstatement.

There is irony here. All parties on both sides of the access debate seem to agree on the need for an access code that will help to educate the public on the authoritative facts of access. Yet the political build-up to the creation of that access code has contained much false information. My impression is that that misinformation has come entirely from the farmers' side.

Professor Hargreaves's observation is correct. It is true that Federated Farmers could present sound arguments against changes in walking access and yet could still be overruled by the wishes of the urban marority. But it is also true that outspoken anti-change attitudes towards such harmless provisions as walking tracks could be out of touch with the fair-minded views of the majority of New Zealanders

From its national office in Wellington, which provides a centre for policy development, advocacy, lobbying and legal services, Federated Farmers runs a professionally staffed lobbying machine, which in 2003 churned out 268 media releases. There are good reasons for the existence of this formidable lobby. All New Zealanders benefit from farming having a strong voice. The agriculture-and-forestry sector is one of the largest sectors in the New Zealand economy. Together with its support and processing components, it regularly contributes more than $21 billion per year, or about 20 per cent of New Zealand's Gross Domestic Product.[170] The danger, though, is that the farmers' mouthpiece can skew the public debate on a matter that is much wider than the economic indispensability of sheep.

Two years ago we witnessed an example of the self-importance of that mouthpiece. When Jim Sutton set up the Land Access Ministerial Reference Group, Federated Farmers complained that it had not be consulted beforehand. While every other New Zealand organisation and every other New Zealander would be expected to wait for the formal consultation process, the leaders of Federated Farmers wanted special treatment.

At the time of writing, the debate seems more finely balanced than the population statistics might indicate. If the federation's two-year campaign against the government's access plans fails, the reason may have as much to do with losing the arguments as with being crushed by the plebiscite.

For if the wellbeing of every New Zealander depends to some extent on the prosperity of the country's farms, the opposite is also true. The future of those farms cannot be divorced from the quality of urban life. Farmers will benefit not just from efficient farm management but also from the existence of vigorous and sophisticated urban populations. One important influence on national mental and physical health is the recreational opportunities open to our townspeople.

Sooner or later, Federated Farmers will have to change tack. The case for high-quality walking access to the New Zealand countryside is irresistible.

Ninety-two Per Cent

In April 2003 the Federated Farmers submission to the Ministerial Reference Group included some results from a survey:

> … we conducted a survey of members to ascertain their experiences and views on issues relating to access to land … Only 8 percent of respondents said they would not allow access at all; at the other end of the scale, 9 percent allow access as [a] matter of course, if asked.[171]

In the twenty months since then, federation spokespeople and farmers in general have frequently claimed that 92 per cent of farmers admit walkers if asked. The number 92 has become a farmers' rallying cry. It refuses to go away. In one sense the number deserves this stubborn importance, because many recreators will continue to depend on access-by-permission. In another, more significant sense, the number is irrelevant because access-by-permission is inferior access that fails to meet several of the criteria of high-quality access. That the number 92 has become ingrained in the debate, like the lines on a farmer's face, indicates how very entrenched that debate has become. The farmers will not stop shouting 'Ninety-two Per Cent!' until they face the facts and recognise the need for more-certain access.

What are the facts? In what ways does arranged entry fail to meet the criteria of high-quality access? I mentioned several ways on page 8. John Acland has pointed out another deficiency of traditional admission:

> 'We need access defined so people have defined routes to get to the beach or whatever,' [Acland] said. 'Farmers say, "Look, ninety per cent of landowners give access if asked", but my challenge is, what do you do about the ten per cent who are not?'[172]

An article in *The Marlborough Express* unintentionally highlighted – for me, if not for most readers – another way in which arranged access can in practice mean no access. At the end of the piece, having talked about the access debate in general, the writer attempted a neat conclusion:

> These are issues that have been in the too-hard basket for a long time and there may be no easy answer. However, in the meantime for those in doubt about setting foot on private land, the easiest thing to do is to ask for permission.[173]

In many situations it is problematic and time-consuming to ask for permission. A day's walk in the countryside can take you across the land of a dozen different farmers. Event-organisers sometimes spend months researching the property-owners for a stretch of country that takes participants a day to traverse.

The worst feature of single-occasion arranged access – it's worth my repeating this – is that it cannot be marked as a public walking track on a map, for the benefit of all. New Zealand's time-honoured system of arranged entry, for all its good points, represents a colossal waste of recreational opportunity. In this connection, Ninety-two Per Cent has become a symbol of obduracy and unresponsiveness.

*

So I am not particularly interested in arranged admission. To me the accuracy of the 92 per cent statistic has little pertinence to the overall debate. The reliability of that figure is a secondary concern. On principle, though, recreators should examine this peripheral issue rather than ignore it. The correctness of the 92 per cent figure could be important to those walkers, anglers and hunters who regularly rely on one-off access-by-permission.

Recreators should be asking three questions about the 92 per cent figure. Firstly, how often do these sympathetic farmers say no, and on what criteria? I have reservations about a farmer's appraising a person by what he or she looks like.

Secondly, are there trouble spots where the percentage of farmers who say yes is significantly less than 92 per cent? The answer would appear to be an emphatic yes.

In November 1999, as part of a study of landholder attitudes to recreational public access to their private lands, Dirk Reiser delivered 125 questionnaires to probable farmers on the Otago Peninsula. The response rate was 46 per cent, fifty-seven questionnaires being filled in. (Twenty-two questionnaires were returned blank, mostly because the land or house owned or rented was 'no farmland'.) One of the study's findings indicated a lessening of willingness to allow recreational access. Whereas nearly 60 per cent of the respondents had in the past permitted public access for recreation, only 46 per cent would do so now.[174]

Thirdly, does the 92 per cent figure accurately reflect the average situation across the whole country? Far be it from me to imply that the FFNZ results are based on anything less than immaculate science, yet I thought I would check. In November 2004 I contacted Federated Farmers, asking for a copy of the research documentation. The federation answered courteously, explaining that only the results of its research are publicly available.

I already had the results. I was asking for the methodology. There is a principle at stake. Federated Farmers runs one of the most powerful lobby engines in New Zealand. It has bombarded the public with this figure of 92 per cent. Yet the procedures that led to that figure are not open to public scrutiny. Bear in mind, here, that if the government itself were to conduct a similar survey, the documentation would be available to the public under the terms of the Official Information Act.

I have done a little poll myself. I have discovered that 92 per cent of hunters and anglers hate Federated Farmers. But I am willing to release only the result of my survey, not the documentation behind it.

'The worst feature of single-occasion arranged access … is that it cannot be marked as a public walking track on a map, for the benefit of all.'

'There is no proof that access across private land is a problem. An FFNZ survey shows 92% of farmers provide access if first asked.'

From a Federated Farmers of New Zealand media release, 'Good News on Way?', 21 December 2004.

Letters to the Editor

The Southland Times, 26 November 2004.

Distorting the Issues.

I am weary of Gerry Eckhoff's regular rantings.

His most recent example (November 24), on property rights, is full of speculation, shonky logic, misrepresentation, failure to accept-concede that citizens have duties as well as rights, that title doesn't bestow carte blanche and never has in a civilised society, and so on.

He ever fails to note that in New Zealand very few people, if any, are now, or ever have been, advocating confiscation or right to roam.

But there is an issue when some in effect capture publicly owned amenities – water and the recreational activities carried out there – by denying access, or allowing it only to those willing to pay. Part of the New Zealand ethos, part of what makes New Zealand decent and special, is that there is widespread acceptance of, and liking for, areas in the outdoors which are seen as a kind of public commons. In that category are reserves, marginal strips (the Queen's Chain to most people), and so on.

One could go on. Either Mr Eckhoff is ignorant of much of this, or he is grievously obstinate and irresponsible by choosing to distort the issues by attributing to others motives and intentions they do not have. The word for that is scaremongering on a goofy scale and if Federated Farmers thought harder it would stop backing him up.

Fortunately, in my experience in the outdoors – climbing, hunting, fishing and so on over the past 50 years – most landowners and lessees are fair and reasonable and aren't antagonistic towards recreational users. They know that, overwhelmingly, we have much in common.

Let's hope we can rely on their good sense and fair-mindedness to continue, and that they are not sucked in by Mr Eckhoff's grandstanding.

In some countries his behaviour would be seen as seditious.

Brian Turner, Oturehua.

The Southland Times, 30 November 2004.

Worshipping at Altar of Socialism.

Poor old Brian Turner (November 24).

He still fails to grasp that public access to private land is not about excluding the public from recreational opportunity but about property rights. Do owners of land have an exclusive right to their property or don't they, Mr Turner? It's clear he still worships at the altar of socialism so I am not surprised at the vitriol positively dripping from his letter.

Mr Turner accuses me of ignorance of the way we are in New Zealand, especially as it relates to what he calls 'the New Zealand ethos'.

As a farmer who regularly or unwillingly exercises that ethos by giving access to my property for all manner of purpose, I find his comments reprehensible and unadulterated drivel.

He fails to mention that part of that ethos is the tradition of asking permission for the privilege of access. That is to be eliminated by the pending legislation.

Mr Turner further fails to mention his executive status and membership of Access New Zealand, an organisation dedicated to free and unhindered access to the environment, regardless of tenure.

Furthermore, he is an active member of Fish and Game New Zealand and is one of the few fishermen who actively promotes the redistribution of property rights from farmers to fishermen.

Most respect the desire of landowners for the status quo.

The reality is that the 'right to roam' is a simple amendment away once this bill is passed.

Mr Turner accuses me of sedition. I proudly plead guilty to attempting to start a concerted movement to get rid of this current Government and incite rebellion of landowners against the abusive power of the State.

As a Member of Parliament who values freedom and individual responsibility, I will always rail against the tyranny of the majority. As for Brian Turner, stick to trying to be a poet or a poetaster.

Gerrard Eckhoff, MP, Roxburgh.

Into 2005

A Once-in-a-lifetime Opportunity

In August 2004, Jim Sutton's update brochure made it clear that the government was not considering creating a right to roam over private open country. Federated Farmers has perhaps achieved its number-one objective. This is no bad thing for recreators as it simplifies the task ahead, allowing them to concentrate on the development of linear access across private land.

On 16 August 2004 a press release from Rural Women New Zealand included the statement: 'The Government's misguided attempt to protect public access rights to waterways will achieve nothing except make a handful of hunters and fishermen happy at the expense of all private land owners in the country.'[175]

We could perhaps excuse Rural Women its perception that the Queen's Chain issue is merely a little tiff setting farmers against hunters and anglers. This narrow interpretation of the issue has been around a long time. In 1992 the National government began discussing changes to esplanade reserves that would have pleased landowners but at the expense of weakening the Queen's Chain concept. Rob Storey, the minister for the environment, discussed these proposed changes during a speech to the Dairy Section of Federated Farmers. He was reported to have said that 'whatever the system, it is important to remember that only a relatively small number of people want access to waterbodies for activities such as walking and fishing'.[176]

The access controversy is far more than a squabble pitting farmers against hunters and anglers. What is under scrutiny is the long-term future of New Zealand's foot-track network. What is at stake is the recognition of the right of every New Zealander to appreciate the ordinary rural scene, not only the preserved wilderness. What is being discussed is the rediscovery and harnessing for recreation, where appropriate, of many hundreds of kilometres of unformed public road. Under consideration is a sea change in the provision of information on access. Of concern is the future of rural-urban relations, currently at a low ebb and unlikely to improve under a Fortress FFNZ model of admission. A problematic challenge, in two conflicting and potentially brain-throbbing ways, is the further diversifying of New Zealand's outdoor tourism. Walking tracks are part of outdoor tourism, and yet, ironically, our embryonic or only-half-finished walkways networks face a race against the touristification of rural New Zealand.

'The access controversy is far more than a squabble pitting farmers against hunters and anglers.'

But the main thing at risk, in the eyes of Federated Farmers, is the property rights of the rural landholder, even though we are talking only about walking tracks. The Acland report acknowledged this central dilemma: 'The core question is where does society draw the line between the right to exclude someone from land and the State's interest in ensuring public access, in a manner consistent with societal expectations?'[177]

Hugh Barr, a Wellington tramper and the secretary of the Council of Outdoor Recreation Associations of New Zealand, has been involved with the land-access issues for the last twenty years. He

had significant contact with the Walkways Commission over its fifteen-year life. Perhaps his response to the Acland report epitomises the recreators' answer to that core question:

> The recent major review of problems with public foot access to the outdoors, the Acland Report, and an associated detailed Action Plan by Public Access New Zealand, provides a once in a lifetime opportunity for recreationists and landowners to make access improvements that we should all grasp … But without strong directed public support and action, we may all miss out.[178]

The government seems determined that we do not miss out. On 22 December 2004 it released some details of its proposed New Zealand Land Access Strategy. Recreators and farmers now have some nitty-gritty to approve of or moan about. We should hear no more misinformed alarm about the right to roam.

The government's proposals reflect the pledges of Labour's *Conservation Policy 2002*, part of Labour's election manifesto, which stated: 'Labour will develop a public access strategy, including the extension of the Queen's Chain and the provision of rural and urban walkways, to ensure New Zealanders have ready and free access to our waterways, coastline and natural areas.' The proposals stop short of an immediate extension of the reserves that make up the Queen's Chain. The proposed quasi-extension, using five-metre strips, will allow only pedestrian access; no vehicles, no dogs, no guns.

Also in late December, after suffering two years of farmers' censure, Jim Sutton relinquished the rural-affairs portfolio, handing the poisoned leather case to Damien O'Connor. Sutton has retained a role in rural affairs, becoming its associate minister.

It remains to be seen whether Federated Farmers will continue or even intensify it campaign to preserve a 19th-century colonial model of walking access. Perhaps the great unrecognised blunder of New Zealand history is that the early settlers did not bring with them their public footpaths, those winding tracks that crossed the British fields from village to village. Yet the colonists do seem to have enthusiastically brought with them the right of a New Zealand baron, as tenant-in-chief of the Queen, to stop you walking along a riverside.

Cautious Delay

Earlier in this essay I acknowledged that some of the practical concerns of farmers are justified; they are based on cogent and informed reasoning. In the months ahead, Federated Farmers will redouble its efforts to communicate these anxieties to recreators and the general public. But the federation will face both general and specific credibility barriers. The polarisation of the issues has lifted these plausibility barriers to a considerable height.

For some recreators, the federation's general believability and its goodwill are tarnished. The federation's overall attitude towards access changes has been narrow-minded and aggressively dismissive, except on access information and access trusts. The federation's tactics in opposing the government's plans, although

not deliberately deceitful, have capitalised on misinformation and distortion. The recreational public has been left wondering, To what extent are the farmers' worries based on realistic practical considerations? And to what extent are they based on the dictum of stuff-the-general-public and on self-serving resistance to change? So it did not surprise me, when I was discussing a federation media statement with the leader of a national recreational body, that he contemptuously dismissed the media statement. He added, 'Nobody believes anything the Feds say.'

Regarding the many specific practical concerns that Federated Farmers has raised – such as on gates, dogs, beef measles, and rows of vines – the farmers will need to convince a sceptical recreational side, and possibly also a sceptical government. The federation's practical anxieties have varied from the reasonable to the fanciful. Absurd claims about the danger that walking tracks pose to national security have damaged the federation's credibility. Dubious contentions connecting walking tracks with biosecurity have so far raised only questions about the federation's exaggeration; to be treated seriously, these claims need peer-reviewed scientific substance. Hysterical prophesies linking walking tracks with criminality have created a rift between the federation and the minister for rural affairs; he may not view Federated Farmers as an intelligent organisation with which to deal. Federated Farmers must blame itself for this.

The farmers' embellishments have confused the issues and have distracted people from studying the undisputed practical stumbling blocks. For both sides of the access debate, this is unfortunate. Some of the farmers' worries are genuine and well founded, such as on gates, dogs, litter, and people accidentally wandering off the track. It would be counterproductive for recreators to win the moral and political arguments if the practical details led to headline-making riverside mayhem. The surest way to obtain that riverside chaos would be to implement the changes too quickly.

To judge by the details so far released, the government is building plenty of cautious delay into the proposed Land Access Strategy. The next six months, before the walking-access bill is ready in mid-2005, will allow the government to further scrutinise the farmers' practical concerns. Humans adapt and adjust well – if the will is there. Some hard-nosed common sense applied to the farmers' objections might deliver workable solutions.

Regarding the mapping and establishing of footways along water margins and coasts, pilot projects could take the teething problems out of national implementations. After the Access Agency finalises the location of a riverside footway, the landholder will have a year to seek exclusions before the footway comes into effect.

The Wrong Investigation

On 24 November 2004 the Green Party of Aotearoa New Zealand announced its 'public access position'.[179] Jeanette Fitzsimons, the party's co-leader, agrees with the need to locate and open unformed public roads. She also supports the ideas of an access code and an access commissioner. She also envisages the access commissioner negotiating, and holding on behalf of the public,

written access agreements with landowners. If I have interpreted her press release correctly, she means voluntary agreements. Recreators will eagerly welcome the general thrust of these stances.

Walkers will particularly approve of the Green Party's call for the utilisation of 'paper' roads. At present it can be difficult to reconnoitre a walk along an unformed public road without first taking a double degree in law and land-surveying.

So far, so good. But Roman politicians had a word, *procrastinare*, which meant 'to postpone until tomorrow', and the Green Party would like to postpone some delicate aspects of the New Zealand Land Access Strategy for two years. Fitzsimons is suggesting that the access commissioner should spend two years collecting 'information from the public about how common is the refusal of access across private land, [information on] whether some parts of the country are particularly affected, and [the] reasons given for refusals'.

Such a two-year investigation would in some respects be a time-consuming diversion. The gathering of information would amount to a critical scrutiny of the infamous Ninety-two Per Cent (see page 76). The access commissioner would be spending two years investigating the availability of black-and-white TVs.

The access commissioner, if such a person is designated, should concentrate not on the known inadequacies of one-off arranged access but on the clear superiority of high-quality access. I can think of a two-year investigation that would be very revealing and immensely relevant. He or she could spend two years determining what proportion of landowners will voluntarily consent to the establishment of permanent walkways.

Over the thirty-year history of walkways, since the Walkways Act 1975, many landowners have declined to agree to the creation of gazetted walkways by easements in perpetuity. This fact runs indelibly through the faltering story of walkways in New Zealand. Without a Walkways Act that provides the possibility of compulsion as a last resort, this partial stagnation may continue.

I have frequently acknowledged the established place of arranged admittance as one part of access in New Zealand. I have also emphasised its deficiencies. For the sake of our children and their children, we need a longer-term approach than solely access at the pleasure of the landholder.

'The access commissioner, if such a person is designated, should concentrate not on the known inadequacies of one-off arranged access but on the clear superiority of high-quality access.'

The Big Picture

Amid the welter of complexities that suck you down into the furthest chambers of the access labyrinth, it is easy to lose sight of the big picture. For me the big picture starts with the following opinion of the Ministerial Reference Group: 'The Group considers that a New Zealand access strategy needs to be developed, to give a framework for leadership, coordination and coherence to the various approaches, programmes and initiatives for improving public access'.[180] In August 2003, Jim Sutton asked the public what it thought of the Group's idea: 'Do you think that a New Zealand access strategy is required?' Many landholder submitters replied no. But most submitters argued for the establishment of an adequately funded and independent access agency or an access commissioner with a duty to regularly report to Parlia-

ment.[181] In December 2004, the government released some details of the Land Access Strategy and it also announced that an Access Agency would be set up.

The second part of the big picture is the 'overwhelming support for greater provision of information that is concise, free, regularly updated and easy to locate'.[182] To me this means one thing above all else: a public-access map series. Others emphasise other priorities, such as signposting and contact information. A Cabinet paper released on 22 December 2004 points out that 'most of the necessary information about current access is held by Land Information New Zealand and other sources, in particular local government and the Department of Conservation.' The proposed Land Access Strategy recognises the need to collect this information and make it available in a much more publicly accessible form.

The third part of the big picture is the almost unanimous support for an access code: 'A large number of submitters consider that an enforceable code of conduct should be a cornerstone of an access strategy ... Many submitters state that a code should be heavily advertised, included in newspapers and produced as part of an authoritative book on access.'[183] The proposed Land Access Strategy includes an intention to develop a Code of Responsible Conduct, which the Access Agency will formulate after extensive consultation.

The fourth component of the big picture is a large incongruous hole, the filling of which will remain entirely dependent on negotiation with landowners, as it has been since the Walkways Act 1975. During the public meeting in Hamilton on 20 October 2003, an alert person from Raglan Rambler Group asked about this bizarre white space: 'You emphasised riverside access, but there are also ridges – please comment.'[184]

Too right! That comment has not yet emerged forcefully enough. Across extensive tracts of private New Zealand, our Queen's Chain fixation is leading us towards the development of track networks almost wholly based on water margins and coastline. In many areas the valley-bottoms away from rivers, the hillsides, the spurs and the ridges will remain off limits, except where public roads happen to exist. Undistinguished coast and nondescript riverside will be accessible, while many exquisite corners of *Country Calendar* will remain in Forbidden New Zealand. The primary stock of potential walking access – the existing farmtracks – will stay private (unless they happen to follow public roads or parts of the Queen's Chain).

I will qualify that last paragraph slightly. The Land Access Strategy will include a contestable fund 'to help create and enhance access opportunities across private land to the footway [ie, to the water margin or coastline] and to other land with recreational or iconic values.' Perhaps this money, combined with the leadership of the Access Agency, will breathe some long-awaited new life into the Walkways Act. Many submitters on the Acland report saw a need to resuscitate this Act. One wrote: 'The Group does not appear to have fully appreciated the importance of the NZ Walkways Act in providing public walkways over private land and the tragedy of their slow descent into oblivion under the auspices of the Department of Conservation, the Conservation Authority and the Conservation Boards.'

'Every man, without distinction of race or colour, is entitled to nourishment, housing, covering, medical care and attention, employment and … the right to roam over any kind of country, moorland, mountain, farm, great garden or what not, where his presence will not be destructive of its special use, nor dangerous to himself nor seriously inconvenient to his fellow citizens.'

H G Wells, 'The Rights of Man', in *The Times* in 1939.

Spurs, Hillsides, and Ridges

The Port Hills of Christchurch have long attracted the city's walkers. In the late 1970s, after the passing of the Walkways Act 1975, the Canterbury Walkways Committee sought to regularise the walking access to the Port Hills by negotiating walkways. Some landowners tolerated or approved of unofficial walking access to their land but were reluctant to agree permanent easements. The Canterbury Walkways Committee and the Christchurch City Council continued to negotiate with the landowners, over fifteen years. This perseverance gradually gained the confidence and goodwill of the landowners and secured the consent for the walkways.

As a result, the Port Hills offer an extensive network of walking tracks. Some of the routes weave alongside streams, in valley bottoms; others climb spurs or traverse the skyline ridge. The combination of tracks on different terrains provides a variety that is natural and logical. In terms of relative importance, the skyline ridge tracks, such as the Crater Rim Walkway and Mitchells Track, form the motorways of the Port Hills. The spur tracks and stream tracks form the A-roads and B-roads that feed the motorways.

The proposed New Zealand Land Access Strategy has given us a new term, linked to the Queen's Chain: 'significant access value'. But the Strategy also needs to stress that walking routes other than along water margins are crucially important. They are not necessarily B-roads tacked onto Queen's Chain motorways. Often the reverse may be true. Terrain other than water margins may have highly significant access value.

The Land Access Strategy, if implemented in its proposed form, will follow a dual approach to creating new walking access across private land. The Access Agency will *impose* walking access along significant water margins and coastlines. It will try to *negotiate* walking tracks elsewhere, such as up spurs, across hillsides, and along ridges. As I see it, this dual approach implies a difference in priority and importance that will often not reflect the very considerable access significance of spurs, hillsides, and ridges.

After that, the big picture becomes murky. Many people would like the big picture to be painted on a background of goodwill. Many submitters on the Acland report thought that 'informal goodwill relationships between users and landholders are an important part of any access strategy and this tradition should be upheld where practical'.[185] Note the words 'where practical'. Much of what has been written about goodwill is long on platitudes and short on realism. Capitulating to the ultraconservative views of Federated Farmers would salvage some landholder goodwill but would be unlikely to resurrect the recreator goodwill where access problems persist. Conversely, legislating to strengthen or extend or quasi-extend the Queen's Chain would put smiles on the walkers' and anglers' faces but at the expense of some landholders' goodwill. Nobody wants a solution that sees walkers running the gauntlet of angry farmers; but in the final analysis, in the most intractable situations, such a solution could be preferable to none at all.

At the time of writing, we seem to be facing another six months of acrimonious debate. Federated Farmers is staring at long demographic odds, but it still talks mainly of fighting. The so-called cordial relations that the collective soul of New Zealand landowners bangs on about are those looking down from above, from Forbidden New Zealand. The most amiable connections between city-dwellers and country-dwellers spring from positions

of equality, not from squire-tenant inequality. You cannot achieve rural-urban friendship and understanding if New Zealanders do not belong in their own countryside. Again and again in the federation's submissions and media releases, the federation talks about visitor ignorance, blatant abuse and disrespect. Does all this sound like cordiality? Without radical action to open up Forbidden New Zealand, this situation may worsen. I wonder whether there is any place in Europe where the country-dwellers so distrust the visitors. Maybe Sardinia.

Fish and Game New Zealand is optimistic that the government's New Zealand Land Access Strategy, if implemented, will lead to a mending of the bonds between farmers and recreational visitors: 'The relationship between town and country has been steadily eroded over the years and this strategy, we believe, will be the platform for improved relations between land owners and the public.'[186] In the short term, I cannot share Fish and Game's hopefulness unless Federated Farmers makes a u-turn away from outspoken intransigence. The Acland report stated that the status quo is not an option; for sixteen months since then, Federated Farmers has been saying 'it's always been done this way'. There's something drearily unadventurous about this response. In the long term, yes, the farmers might eventually get used to regarding visitors with something other than suspicion.

Improving the walking access to rural land requires a long-term commitment. The Labour Party's defining and adopting of high-quality access – being access that is certain, free, practical and enduring – will provide guiding principles for its access policies for decades to come. Governments will come and go, but the concepts behind high-quality access are sound enough to recover from the occasional predations of right-wing ideologues. The proposed Land Access Strategy, when implemented, will be a victory for common sense. I have faith in New Zealanders' common sense and in their ability to adapt and compromise. If some farmers object to visitors having sex in the paddock, the Department of Conservation could establish copulation zones on public lands (subject to the requirements of the Conservation Act 1987).

'Federated Farmers makes no excuses for forcefully opposing the government using the heavy hand of legislation to building [*sic*] pedestrian highways over their land. That opposition will continue until the government listens with both ears, Mr Aspinall [a member of the FFNZ national board] said.'

From a Federated Farmers of New Zealand media release, 'Government Listens with One Ear', 22 December 2004.

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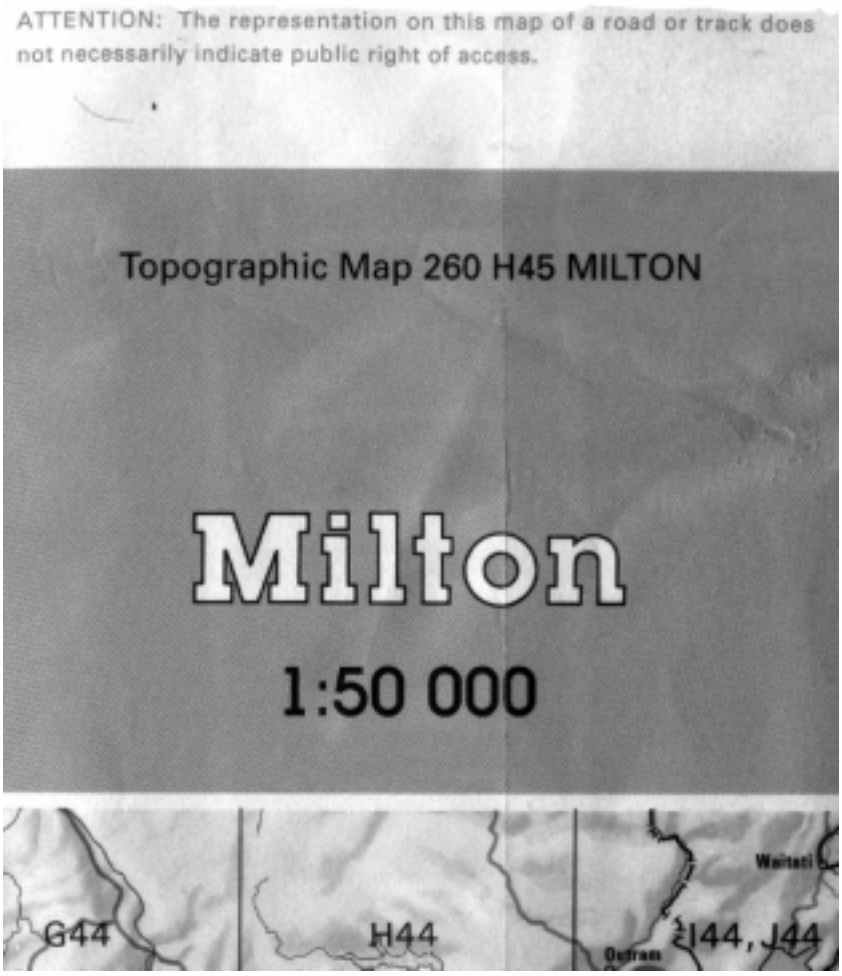

The roads and tracks marked on New Zealand's 1:50,000 Topographic Map 260 series do not necessarily indicate public rights of access. Public Access New Zealand considers that difficulty in obtaining authoritative access information is the largest single factor deterring public outdoor recreation. (*Improving Public Access to the Outdoors: A Strategy for Implementing Government's Election Policies*, Public Access New Zealand, July 2003, page 3.)