Foot-tracks
in New Zealand

'We return by the upper road; and my comrade points out that, while there is a well-marked foot-track on the hard road, there is no trace of wheels.'

(*New Zealand Spectator and Cook's Strait Guardian*, 11 May 1853. Reproduced from *Household Words: A Weekly Journal*, No. 136, 30 October 1852, by Charles Dickens, London.)

'The road from the Lower to the Upper Anatoki is now so far complete that the foot-track is passable all the way.'

(*Nelson Examiner*, 10 April 1858, in news from the Takaka diggings.)

Foot-tracks in New Zealand

Origins, Access Issues, and Recent Developments

Pete McDonald

Published as an ebook in July 2011
http://homepages.vodafone.co.nz/~pete.mcd/ft/ft.pdf
pete.mcd@vodafone.co.nz

Parts of this book, listed below,
recycle extracts from the author's previous writings.
Chapters 6, 8 and 9 include material from 'High-quality Access', 2003.
Chapters 11 to 21 reproduce and adapt 'Walking Access across PrivateLand:
Behind the Soundbites', 2004. The discussion of the term 'land grab' in
Chapter 25 appeared in *NZWords*, April 2006. Chapter 27 borrows extracts
from three papers on the mapping issues.

ISBN 978-0-473-19095-8 (online)

Contents

Introduction

In 2003 some Dunedinites, who knew the Otago Peninsula quite well, considered it to be amply provided with public walking tracks. God bless the easily-pleased. I must now thank them because their debatable contention spurred me into starting the research that led to this book, a task that has been thoroughly absorbing. The story starts with foot-tracks in the age of the waka and it ends with walking access as a delicate political issue early in the 21st century.

Since 2003 the Otago Peninsula has gained a couple more public foot-tracks, which provide entry to Peggys Hill and Harbour Cone. A few more wouldn't go amiss. Since the late 1980s, people have argued over the adequacy of the peninsula's track network. Disagreement erupted again in 2010 after the *Otago Daily Times* reported on a proposal to create 'a multi-stage walking track … taking in the area's stunning landscape and wildlife'.[1] One correspondent implied, inaccurately, that there was already 'unfettered [walking] access to most spots'.[2]

If you were to ask me to pick out a representative scrap of Dunedin countryside that is shrieking for a public foot-track or public multi-use track, I would choose a route I know of that starts at the entrance to Penguin Place, on Pakihau Road on the harbour side of the peninsula. From this starting-point you walk or mountain-bike easily southwards up onto the grassy rounded spine of the land near Kaika Hill, pausing once or twice to view the harbour to the north and the Pacific to the south. After crossing the watershed you drop steeply to the flats of Okia Reserve, which abut upon Victory Beach and Papanui Inlet.

Penguin Place is an award-winning private conservation reserve. The route I have described, about three kilometres long, is entirely on private farmland until it reaches Okia Flat, where it is said Ngati Mamoe killed many Ngai Tahu by stealth and captured the legendary fighting chief Tarewai.[3] The route starts on a farm road, then crosses rough pasture, with views of spectacular decaying sea cliffs, and then it snakes down as ancient a farmtrack as exists in New Zealand. As regards environmental considerations, the route goes nowhere near the habitats of the yellow-eyed penguins. The landscape is expansive and in a sense wild, but has been profoundly transformed by humans, there being little of the peninsula's original forest. The seascape combines sheltered harbour and pounding surf and shallow tidal inlet. For an ageing walker or mountain-biker, this

is as good as it gets. The journey across the farmland can be an end in itself; it is not some poor relation of the equally attractive but different tracks across the salt marshes of the Okia Reserve. The fact that the route starts at a public road and finishes at a public reserve that adjoins a shimmering beach and a delicate lagoon, and that it could therefore serve as a link that would meet several criteria mentioned in the purpose of the Walking Access Act 2008, is coincidental.

The route is open on one day a year for fee-paying participants as part of an event called the Otago Peninsula Challenge, which entrants can walk or run or cycle. In New Zealand nearly all farmers and many walkers view this sort of arranged access as a privilege. A small minority of recreators take a radically different stance: they believe that linear walking access across the farmed countryside is a moral right and that it should become a legal right. Their revolution is not yet on the horizon, but if it ever does arrive the whole route from Penguin Place to Okia Reserve will be open daily, and without the regimentation and fee of an event and without any fences to climb over.

Section 11 of the Walking Access Act lays down the priorities that the New Zealand Walking Access Commission must take into account when it negotiates walking access over private land. Under section 11(f), the commission must consider 'the desirability of walking access … to areas of scenic or recreational value'. The windswept end of the Otago Peninsula is undeniably an area of scenic or recreational value. On this line of reasoning, the three kilometres I've described ought to catch the attention of the commission.

Under other interpretations of the act, though, the route would not even make it onto the bottom of the commission's list of desirable track developments. It is not along a river. It is not beside a lake. It is not along the coastline. It is not mountain. It is not forest. Most of it is not publicly owned. Yet it is wonderful countryside, within cycling distance of the city. Or just half an hour's drive from the Octagon. A key feature of this countryside is the weathered and little-used farmtrack that zigzags cleverly down a narrow break in the coastal ramparts, heading conveniently for the ocean. The Walking Access Act does not contain the word 'farmtrack' (or 'farm-track' or 'farm track'): surely an example of where consensus politics got things partly wrong. Under the present mass of legislation that governs private property rights and public access, this route – and countless similar tracks and routes throughout rural New Zealand – will probably remain decidedly private.

Never mind. For nonmotorised track-users, there's also some good news. Incremental voluntary change, a quiet growth of new foot-tracks, is happening in some rural areas and could prove to be a more powerful and lasting force than controversial law. The prospects for improved walking access to and along water margins and to landlocked public lands are favourable. We now have the National Strategy for Walking Access, prepared and administered by the New Zealand Walking Access Commission, as required by the Walking Access Act 2008. In September 2010 the strategy set the commission's aims for the next twenty-five years. The commission's overarching objective is that 'free, certain, enduring and practical walking access to the New Zealand outdoors is enhanced'.[4]

Structure of the Book

This book started out as an account of the walking-access developments of 2003–8, which culminated in the Walking Access Act. Time passed, and one thing led to another, and the book grew at both ends. It became a hybrid: a historical sketch of two centuries grafted onto a detailed commentary on nine years.

Origins

The book is arranged in five parts. Firstly, for a wider understanding of the present, we must look at the past. Part One overviews foot-tracks in post-contact New Zealand. It crams more than two hundred years into eight chapters.

Chapter 1 describes the Maori trails that early European travellers followed and sometimes wrote about. Many of the characters in this chapter will already be known to readers of early New Zealand books, a body of writing that has been called the literature of invasion.[5] The invaders reappear here because they tell us something about 19th-century foot-tracks.

Chapter 2 covers the origins of our unformed public roads and of our Queen's Chain reserves.

Clarity demanded these separate chapters for the Maori tracks and the Pakeha roads. In actuality each of these chapters starts about 1840. From 1840 onwards as the network of formed and unformed roads gradually grew, the network of Maori tracks gradually fell into disuse.

Chapter 3 looks at the role of Maori tracks in the New Zealand Wars. This chapter also examines some examples of Maori tracks that were lost and a few examples of ones that survived.

Chapters 4, 5 and 6 describe how foot-tracks for tourism and recreation evolved for over a century, starting in the 1880s, without any recognised need for a national plan to foster and guide their development. Trampers and landowners coped cooperatively well without an overall access strategy throughout, say, the first eighty years of the 20th century. Walkers who needed access across private rural land asked permission for it; in response, landowners usually granted it, at no cost. Through this convention, landowners and walkers – such as trampers, hunters and anglers – achieved an informal access regime that worked and was mutually acceptable.

Chapters 7 and 8 provide some background on Public Access New Zealand (PANZ) and tenure review. In the early 1990s, PANZ became a prominent defender of and advocate for public access to publicly owned land. In the mid-1990s, tenure review emerged as quite a prickly shoot on the briar of access matters.

Issues

The rest of the book commentates on relatively recent events. Parts Two, Three and Four unfurl six years, 2003–8, onto the pages of twenty-five chapters, describing and discussing the walking-access debate chronologically from material I collected at the time. Because this story proceeds mainly chronologically, long-standing issues, such as those surrounding unformed public roads, reappear frequently throughout it.

Part Two summarises the setting up of the Land Access Ministerial Reference Group in January 2003 and the publication of this group's

report in August 2003. We begin to understand, in Chapter 9, why many people at the start of the 21st century thought a walking-access master plan to be necessary. Chapter 10 discusses the fifteen-month government near-silence that followed the 2003 Acland report.

Part Three fits into the overall chronology but is internally thematic. It looks separately at each of the vexed talking-points of 2003–4, except the question of compensation. It draws attention to the widespread agreement on the need for improved information on existing access. Part Three also discusses the farmers' concerns about farm management, the safety of walkers and the security of livestock. It also examines the Federated Farmers of New Zealand perspectives on the Queen's Chain and on country-dwellers' privacy. Among the more contentious matters in 2003–4 were the extent of the loss of traditional access; the need for certain and durable access; the need for an access agency; the need for legislation to improve walking access; the absoluteness and immutability of property rights; and the alleged link between walking tracks and rural crime.

Part Four is a sequel to that examination of the issues. It describes the happenings of 2005–8, a period that saw deadlock on some matters and progression on others. An area of disagreement, especially during the first half of 2005, was the question of how to create, where there's a demand for them, public walking tracks across private farmland. These will include, as they gradually evolve, accessways to reach stranded islands of public land; foot-tracks alongside publicly owned rivers that lack Queen's Chain reserves; vital connections within networks of walking tracks; and walkways across uncultivated land for their own sake – that of enjoying the orderly farmed landscape.

Part Five looks at the Walking Access Bill's journey through parliament and at the start-up phase of the New Zealand Walking Access Commission. It also hints at the strengths and weaknesses of an access strategy that began life amidst furious controversy but which reached maturity in calm consensus, having become less radical than was originally contemplated. It asks whether the government, after six years of talking, got our access plans right.

Walking Access Issues: a Summary, 2011

To hell with the chronology, for a moment. Before we zip back to 1840, I want to offer you a seven-page summary of the walking-access issues of 2011.

The principal access deficiency in New Zealand, I will suggest later, is the paucity of certain and permanent public foot-tracks across farmland. Most of our pastoral landscape is privately owned. In 2003–5 our farmers whipped up a bullocky rumpus in opposing almost all the government's plans to improve walking access to the outdoors. Much of this book, therefore, focuses on the issues of linear access (keep-to-the-track access) across private land. But concentrating solely on these issues would hide important complexities, for it is impossible to discuss the issues of walking access across private land without also including issues involving public land. For example, some unformed public roads, having been located and waymarked, now provide walking routes across private farmland. More

will do so in the future. A public road is a strip of public land that bisects the land it passes through. Inevitably when you examine the issue of linear access across private land, you end up including the crucial function of these twenty-metre-wide strips of public land.

Similarly, most Queen's Chain reserves are strips of public land. We think of them as providing access along our publicly owned rivers, along lake shores and along the coast. Yet in a loose sense these narrow publicly owned strips along water margins do often provide all-important routes across sweeping expanses of private farmland. No analysis of the issues of walking access across our private countryside would be complete without some consideration of strip-land: marginal strips, esplanade reserves, unformed public roads along water margins, and other such strips of public land.

It is important to understand the paradox: these narrow strips of *public* land – public roads and most Queen's Chain reserves – form an intrinsic part of the issue of linear access across *private* land.

Why do walkers need linear access across private farmland? Firstly, some members of the public may desire to walk across farmland as an end in itself, to enjoy the rural landscape. This is often the case in picturesque modified areas such as the Otago Peninsula. This aspiration to delight in the farmed countryside for its own gorgeous sake was frequently neglected or played down – or pessimistically avoided – by participants in the access consultations and debate of 2003–8. Secondly, some people may not be especially interested in obtaining entry across private pasturelands for its inherent recreational value but may be passionate, as anglers are, about improving the access to Queen's Chain reserves. Some sections of the Queen's Chain are stranded islands of public land, inaccessible without crossing the bordering private land. A part of the process of improving our access to the public reserves of the Queen's Chain will require creating accessways across the surrounding private farmlands.

So, there are two reasons for gaining linear access across private countryside: one, for its own sake; two, to get to publicly owned land. There is much sympathy and support for the latter, as nobody likes the thought of being blocked from public reserves. There is far less recognition and acceptance of the former; a recurring theme of this book is that people have a moral right to linear access across farmland as an end in itself.

The twin issues of access to private and to public land are often inseparable. Having said that, I will now try to separate them.

Walking Access to Public Land

New Zealand has a total land area of 26.9 million hectares.[6] The Department of Conservation (DOC) administers much of the publicly owned land that is set aside for recreational purposes or that is protected for scenic, scientific, historical and cultural reasons. Excluding marine reserves, DOC manages about 8.8 million hectares, nearly 33 per cent of the nation's total area. This includes fourteen national parks totalling 3.1 million hectares and assorted conservation areas totalling 4.7 million hectares. Thousands of reserves make up the rest of the 8.8 million hectares (2010 figures).[7] Walkers have free access as of right to many of these lands to the extent that such access does not conflict with the principal decree of 'conservation in perpetuity' (Conservation Act 1987).

Queen's Chain reserves exist along a large proportion – commonly said to be 70 per cent – of our rivers, lakesides and coasts (maybe 50 per cent being 'effective' Queen's Chain, and maybe 20 per cent being 'ineffective', having been lost to coastal erosion or river movement[8]). A strip of publicly owned land exists above the foreshore (ie above the mean high water springs mark) along 13,694 kilometres of our 19,883 kilometres of coastline.[9]

Among these Queen's Chain reserves, and also elsewhere away from water margins, there are many thousands of kilometres of public road, formed and unformed. In 2005 there were 93,148 kilometres of actively maintained formed public roads (being 60,080 kilometres of sealed and 33,068 of gravelled).[10] In 2006 a project run jointly by the Ministry of Agriculture and Forestry, Land Information New Zealand (LINZ) and Eagle Technology estimated that there were 56,900 kilometres of unformed public road.[11] These are usually twenty metres wide. They are owned by district councils or city councils.

With New Zealand having all this publicly owned land, a higher proportion than most other countries have, you would expect it to be a walker's paradise. In some ways it is. Although there are some deep concerns about contemporary influences on DOC-managed lands, which I will mention in a moment, you do not hear many complaints about an undersupply of walking access wholly inside national parks or conservation parks or recreation reserves or scenic reserves. DOC maintains nearly 13,000 kilometres of walking and tramping track, much of it being in the national parks, conservation parks and reserves.[12] I readily admit that this book will not praise these tracks enough; its primary focus and energy lies elsewhere. And so, for example, although it will mention Moir's guidebooks, we will not be spending much time examining them.

Not that outdoor recreators can be complacent about walking access to DOC-managed parks and reserves. Some New Zealanders do harbour concerns about powerful influences that are detracting from their enjoyment of these places.[13] There are complaints about the relative importances that DOC attaches to conservation, recreation and tourism.[14] Some people have observed a shift in values within DOC, away from recreational and cultural values towards more-commercial ones. Some people are unhappy about the impact of international tourism. Some doubt the motivation behind and the wisdom of DOC's vigorous promotion of the nine Great Walks. There are complaints about the intrusion of helicopters, jet boats and scenic flights, with their attendant noise pollution. As long ago as 1996, one researcher suggested that DOC 'has become an agency of New Zealand tourism. The Department of Conservation has become responsible for the management of an increasing proportion of inbound tourists at some point, or at numerous points on their New Zealand itineraries'.[15]

There are also concerns about and, for some people, profound dilemmas in using public conservation land for Treaty of Waitangi settlements.[16] And every so often some spine-chilling think-tank proposes entry fees for our national parks (the National Parks Act 1980 prohibits charging for access).

Even so, despite all these real concerns or threats, it seems unlikely that any radical reorganising will suddenly stop alpinists climbing Mount

Madeline or prevent trampers from following the Sabine River or deny walkers their picnic near the Cobb Reservoir. New Zealand's national parks and other public lands are fantastic. The evidence is in every issue of *Wilderness* magazine. Rights of public access for walking in the national parks, in many reserves, and in the conservation parks, which Kay Booth has described in detail[17], are strong. Take a look at Colin Moore's *Tramping New Zealand* (2007), which lists over four hundred tracks.

What, then, was the immediate problem? Why in 2003–8 did the government spend six years examining walking access to the New Zealand outdoors? One reason was that the accessibility of Queen's Chain reserves and unformed public roads was often much less satisfactory than the accessibility of walking opportunities inside the national parks, conservation parks, recreation reserves and scenic reserves. By 'accessibility' I mean the degree of certainty that the access existed, the availability of information about it (especially maps showing it), its obviousness on the ground, and its practicability.

The Queen's Chain, in some ways a triumph of Victorian far-sightedness and social awareness, in other ways was – and still is – a mishmash, howling to be tidied up. It is fragmented and bristling with complications and impracticalities. Even when a specific strip is legally definite and undisputed, it may not be signposted or marked on authoritative maps easily available to the public. Often the public do not know whether a Queen's Chain reserve exists along a particular section of river. But people can find out, can't they? We're in the information age now, aren't we?

We *are* in the information age. And people *may* be able to find out what they need to know. In 2005–6 the Ministry of Agriculture and Forestry (MAF), with the technical support of LINZ, ran a pilot mapping project to investigate the possibility of making information on Queen's Chain reserves readily and cheaply available. In February 2007 the report of the Walking Access Consultation Panel noted that 'the LINZ pilot database demonstrates that the mapping of most legal access is technically feasible'.[18] Then the Walking Access Act 2008 established the New Zealand Walking Access Commission. One of the commission's tasks was to develop a complete and authoritative mapping database for walking access. Until this database was finished and online maps derived from it became available, authoritative information on the existence of public roads was not available on paper maps or freely available online for the whole country. (Cadastral maps, which are maps that show property boundaries such as the edges of public roads, were obtainable on quite costly CD-ROMs or DVD-ROMs and on microchips for Global Positioning System receivers.) On about 22 December 2010 we arrived gladly in the information age when the commission's walking access mapping system became available to the public. In this book, we will not reach that point until Chapter 37.

Some information gaps remain. The mapping system does not yet show marginal strips established between April 1990 and June 2007. Some esplanade strips and access strips are awaiting adding; in May 2011 the commission was adding easements as the information became available. Meanwhile, information on these may only be available to lawyers and other land professionals who have access, at a price, to Land*online*.

(Land*online* is New Zealand's electronic database of land title and survey information.)

There are other problems with the Queen's Chain, apart from those just listed. Often a Queen's Chain reserve may exist, of a type to which the public legally has access, but convenient walking access to reach it may involve crossing private land. In such a place the public may need a permanent pedestrian accessway across the private land, but experience suggests that some landowners may be loath to agree the easement necessary to create this public right of way. (An easement is a right to use someone else's land. One type of easement is a right of way, ie the right to pass and repass across the land.)

A third headache with the Queen's Chain concerns its missing links: the 30 per cent of water margins where no Queen's Chain reservations exist; and the estimated 20 per cent of water margins where Queen's Chain reservations exist but are inoperative – of sod-all use to walkers – because of river movement or coastal erosion. Landowners in New Zealand do not own the natural water and fish; freshwater and the fish in it belong to the public. Yet without a publicly owned strip or a right of way adjacent to a river or lake, the water and fish may be inaccessible to the public except by kayak or helicopter.

How about the public roads, then? Aren't they supposed to provide guaranteed public access, underpinned by centuries of common law and statute law? Yes. That's the theory. Unformed public roads form a huge reservoir of latent walking tracks, albeit a reservoir from which walkers must identify useful routes selectively; but to a large extent that reservoir remains untapped – and untappable by Joe Public. You seem to need a double degree in law and land-surveying to exercise your legal right 'to pass and repass without hindrance' along these public roads, except when they have been officially waymarked. Even when unformed public roads are physically evident and their legality is not in dispute, they are often obstructed, such as by fences, farm debris, scrub or plantation trees. Dead ends and gaps in the network of unformed roads are common, presenting discontinuities that, in the absence of flexible responses from landowners, may be irresolvable.

Leaving aside the imperfections of the Queen's Chain and of public roads, one might be tempted to think that New Zealanders' walking access to the outdoors is otherwise plentiful or even exceptional. Frequently during the access consultations and discussions of 2003–8, farmers asked why – when the public already had walking access to a third of New Zealand – did people need to walk anywhere else.

The answer is straightforward and is not a new argument but is a rationale that parliament has recognised since the Walkways Act 1975. We noted earlier that DOC administers 8.5 million hectares of publicly owned land. Nearly six million hectares of this are native forest.[19] Some of the remaining 2.5 million hectares are high basins, steep rocky slopes and scree slopes, and alpine tops, above the bush-line. The string of high-country conservation parks and reserves that the Labour-led governments expanded in 1999–2008 consists mainly of remote backcountry. Roughly speaking, therefore, most of the DOC-administered land is wilderness or semi-wilderness, largely unmodified; or is faraway tussock grasslands,

some of which may be one or two steps removed from wilderness, having replaced through burning the totara and broadleaved forests of the past.[20] There are two basic faults in the argument that these huge tracts of Crown land should more than sufficiently meet New Zealanders' needs for places to go for a walk.

Firstly, a lot of this land lies hundreds of kilometres away from where most people live. This fact is overwhelmingly obvious, and in 1985 a national policy statement on outdoor recreation made the equally obvious deduction:

> The predominantly urban nature of New Zealand society highlights the significance of outdoor recreation opportunities in and near population centres. Management should ensure that the quality of these resources is enhanced and not diminished … While scenic quality and grandeur are important attributes, areas around population centres, whether or not of great scenic attraction, may have high recreation value because of their proximity and ease of access … It must be asked if provision is adequate where it is needed most, particularly within easy reach of population centres.[21]

We will return to this point several times as we progress from 1970 to 2011. Having walking access to the outdoors near where people live seems to me, in 2011, to be even more relevant now than it was twenty-six years ago. According to James Kunstler – but disputed by some experts – the global oil-production peak has probably already passed, the end of the fossil-fuel age is in sight, and synthetic fuels are unlikely to take the place of oil to any large extent, except perhaps for the wealthiest individuals.[22] During the access debate of 2003–8, some recreators tended to talk only of improving the access to the backcountry; increasingly in future the emphasis may be on the near country, on the tranquil fringes of our towns and cities. In 2005 Kunstler looked ahead forty years:

> Any way one might imagine it, the transportation picture in the mid-twenty-first century will be very different from the fiesta of mobility we have enjoyed for the past fifty years. It will be characterised by austerity and a return to smaller scales of operation in virtually every aspect of travel and transport. It will compel us to make the most of our immediate environments.[23]

Secondly, even if Kunstler's prediction proves to have been alarmist, walkers will still need certain and long-lasting entry, in the form of walking tracks, to the domesticated landscape as well as to unaltered nature and the high country. These foot-tracks across the pastoral countryside should include short easy loops, moderate walks, and quite long and demanding days.

Walking Access to the Farmed Countryside

New Zealand's farms, excluding horticulture, cover about 11.3 million hectares of grazing, arable, fodder and fallow land. (This figure is from the year that ended on 30 June 2007.[24] Annual changes are usually only small.) This is 42 per cent of our land area. Much of this pastoral and

arable land is privately owned. A small proportion of it is publicly owned. The commissioner of Crown lands still administers (in July 2009) about 1.6 million hectares of Crown pastoral land in the South Island high country, comprising 1,079,500 hectares of Crown pastoral-lease land, 46,845 hectares of Crown pastoral occupation licence land, and 435,269 hectares of other Crown land.[25] The area remaining under pastoral leases will fall as tenure reviews reach completion. The tenants of the Crown pastoral lease land enjoy exclusive possession in almost an identical way to the holders of a freehold title. They can grant or deny access, and so, regarding walking access, pastoral-lease land is similar to private land. Likewise the 0.17 million hectares owned and farmed by Landcorp Farming Limited, a state-owned enterprise, are the commercial resource of a corporate agribusiness and in access terms are like private land.[26]

The public has few legal rights of access to this vast area of private, tenanted public, or SOE-owned land, which is mainly uncultivated. There is no right of area access, sometimes called the right to roam, as exists for specific areas of England and Wales, Germany, Denmark and Switzerland, and for all the countryside in Scotland and the Scandinavian countries.[27] The high-country pastoral leaseholders have traditionally granted single-occasion access when asked; many still allow this sort of de facto access and may continue to do so (if they choose not to invite tenure reviews), but their backblock sheep runs make up less than a fifth of our farmed countryside and are far removed from where most of us live. Closer to our rural townships and our cities, a few walkways, based on easements or on precarious informal agreements, bravely penetrate the farmdoms. Some local authorities are making gradual progress establishing walkways where we most need them: close to where we live and not just in native bush or exotic timber plantations but also across open farmland. Yet it is taking many decades, and will take many more, for these emerging sections of walkway to grow and coalesce into coherent networks.

Public foot-tracks across private uncultivated farmland are New Zealand's access Cinderella. They have been, except perhaps by some local authorities, starved of attention and funds compared with foot-tracks across public land.

In rate of occurrence they are, in my experience – this view is wildly subjective – behind the linear-access norms of northern Europe, although possibly ahead of some areas of Australia and North America. Some city councils and district councils record their foot-tracks in databases, as also does DOC for the tracks that it manages, but we do not inventory foot-tracks nationally, and so we have no overall national statistics on how few or how many there are or on where they are or on their varied legal statuses.

In some areas of New Zealand in 2005 many long-established and officially recognised foot-tracks were missing off the LINZ 1:50,000 topographic maps.[28] Some of these unmapped walking tracks provided crucial access across private farmland. Yet in November 2005, LINZ said that it was not mandated to design and produce topographic maps that would meet the needs of walkers. Recreational map-users, according to

LINZ, were to rely on the market-responsiveness of the private sector to produce up-to-date, accurate and complete mapping of foot-tracks.[29]

If we judge from the events of 2003–5, walking tracks across private land are feared by many of our farmers, ridiculed by others, and welcomed by an enlightened but under-reported minority. The idea of creating them has been avoided or neglected by generations of nervous politicians, except for the promoters of the New Zealand Walkways Act 1975 and the originators of the Walking Access Act 2008. Local people and local officials have often recognised the need for such tracks, but equally often these people's visions have remained visions. Foot-tracks across private land have been undervalued by some of our recreational bodies. Many of the general public are oblivious to the need for them, because most New Zealanders have never known what it's like to have plentiful and dependable linear access across the farmed countryside. Some walkers and mountain-bikers, when granted access on one day a year, shed tears of sheer gratitude. They are happy folk, to be envied.

From that trim countryside, meat and wool and dairy products flow to hundreds of destinations around the world, generating – with horticultural and forestry exports – about two-thirds of our merchandise export earnings (2009 figure[30]). Agriculture, food and forestry are 'the only major industries in which we have sufficient scale, market share and well-developed supply chains to be truly competitive internationally'.[31] Our farmers have readily adopted new technologies. They have overcome immense disadvantages in their distance from markets. They receive no subsidies from the government. No other developed economy is as dependent on the export of primary products. No New Zealand government can afford to allow agricultural production to languish.[32] The farmers, who are few in number compared with our total population, are an important minority group. But all these achievements of farmers and all this profound importance of agriculture is absolutely no reason why walkers should tolerate those few landholders unnecessarily excluding walkers from 42 per cent of the landmass of New Zealand.

Agriculture will remain a large part of our future. The total primary farming area is, as we have seen, huge. At some time in that future, our farmers will have become used to the idea of their fellow-citizens walking across farmland, keeping to the tracks and dealing correctly with gates, without first knocking on the farmhouse door to ask subserviently for permission. Right now, we're a universe away from that normality. Many New Zealanders adore *Country Calendar,* but walkers tolerate a wholly 19th-century model of admission to the inviting turf of the pastoral countryside. They enjoy little certain walking access to that resplendent but outrageously private landscape.

A Multidisciplinary Topic

Finally, there are my limitations and partialities to acknowledge. The first lesson a writer learns is to stick to something he or she knows about. The ideal author for this book would have been a lawyer, a land-surveyor, a cartographer, a geographic-information-systems professional, a planner and resource-manager, a rural-studies researcher, a media-studies academic, an economist, a historical geographer, a political scientist, a legislator, a

farmer, a forester and a walker. I am just the last of these, and the book endeavours to be no more than a jack of the other trades. When I touch upon legal matters, such as the law underlying public roads, I write only in general terms and from the groping margins of my knowledge. The law relating to the status of dry land at the water's edge and to the ownership of riverbeds is extremely complex. Public access rights along such places must be assessed on a case-by-case basis. Authoritative information on the legislation ruling access along roads, rivers, lakesides and the coastline is available in Brian Hayes's *Roads, Water Margins and Riverbeds: The Law on Public Access*. More than twenty-five acts of parliament contain matter impinging, slightly or greatly, negatively or positively, on rights of public access. Kay Booth has extracted and recorded the access aspects of many of these statutes.[33]

I write as a walker and cyclist and as an advocate for public walking and cycling access to existing farmtracks, which would be relatively inexpensive to introduce and would be entirely manageable. There are weak forces pushing in this direction, thanks to examples like Te Araroa (the Long Pathway), the creation of the New Zealand Walking Access Commission, and the existence of some socially responsible landowners; there are strong forces ranged against such a development, explainable by our colonial history, our past and present preoccupation with access through public ownership, our quaint but counterproductive access conventions, neoliberal trends, and the lack of enduring coalitions of interest among our access advocates. New Zealanders' attitudes towards walking access to the outdoors are complex and disparate. Our outdoor ethos at the start of the 21st century contains sharp contradictions. A crucial part of this ethos is a public belief that access to our outdoors should be free; but this belief is competing against a new way of thinking, in the minds of some people, that private walking tracks are beneficial entrepreneurial developments, meritorious and morally impeccable.

There's bound to be a tension in a book of this sort, which tackles some highly political issues and which tries both to analyse and to advocate. You strive for objectivity and restraint, yet you remain emotionally involved, which distorts your observing and writing to serve your own ends. It seems impossible to achieve exemplary objectivity and passionate promotion of a cause. In the attempt, one of these two things has to suffer, and there's a chance that in this book it may be the objectivity that succumbs. But this should not be a problem; you, the reader, will spot the indiscipline – you might have noticed some already – and I have prepared myself to burn in hell for eternity.

One other thing. I will occasionally refer to access situations in Britain and Europe and elsewhere. Some Kiwis can't stomach such comparisons. Dogberry said that comparisons are odorous. In New Zealand, you break with access convention at your peril. Yet there's no harm in learning about other countries' attitudes towards property rights and countryside access. The comparisons can tell us what we do well; they can also reveal the obsoleteness and impracticality of our old worn-out ideas. And these reactions to comparisons will often be debatable because each depends as much on the preconceptions of the observer as on the access regimes observed.

PART ONE

Origins of the New Zealand Foot-track

Chapter 1

Too Narrow for a Horse

At the start of the 21st century, the in-vogue date being nominated by scholars for the initial settlement of the New Zealand islands was the 13th century AD.[1] The growing consensus among prehistorians was that there were probably considerably more than three foundation groups, that they in all likelihood arrived within a short time of one another, and that 'these groups would have explored the whole of the country rapidly to locate its mineral and food resources'.[2]

By the time of Captain James Cook's visit of 1769–70, the population was probably about 100,000 to 110,000.[3] The *New Zealand Historical Atlas* has a map of Aotearoa that shows pa sites, mainly dating from six hundred years ago to the time of the first contact with Europeans. Archaeologists have found over six thousand pa sites, perhaps about half the number of pa that were constructed.[4] Archaeologists use the term 'pa' to refer to earthwork fortifications, and so this total does not include the less obvious, but more numerous, undefended settlements (kainga). The map shows each pa site as a tiny red dot. In the North Island, these dots coalesce into a solid red band around three-quarters of the coastline. There are also many spreading red blotches inland. Elsewhere there are sprinklings of dots. Such is the density of the speckles on this map that the overall impression one gets is that, at least in the North Island, there was probably hardly a single accessible place – forested or open – that the Polynesian inhabitants had not visited before the Pakeha arrived.

Exactly how much long-distance overland travelling occurred in pre-contact Aotearoa may remain a matter for conjecture. What seems certain, however, is that information could sometimes travel a long way quickly. Cook, on several occasions, was surprised at the speed with which news of his expedition had spread.[5]

In 1805 the surgeon John Savage of Sydney visited the Bay of Islands for six weeks, while on his way to England to face a court-martial. In 1807 his book *Some Account of New Zealand* was published. He referred to the indigenous people as 'the natives' (many times) and 'the New Zealanders' (once) and he thought they were 'in all respects a superior race of Indians'. He did not use the word 'Maori', which existed but hadn't yet become

common in English. By the 1830s, though, many Maori themselves were using it. By the mid-19th century, 'Maori' and 'Maoris' had come into common usage in English.[6]

Savage told his readers nothing about Maori trails, but later writers were to make amends for this omission, especially regarding the physical characteristics of the trails. In December 1814 John Nicholas, while visiting the Bay of Islands, rowed up the Cowa-cowa (Kawakawa) river and then alighted from the boat to walk up the banks:

> The underwood was here in such quantities, and so entangled with the trees, that a passage through it would have been utterly impractical, had not the natives taken the pains to clear a path, which ran along through various intricate windings.[7]

Richard Cruise spent most of 1820 in New Zealand, either onshore or sailing from port to port. He wrote that

> there was scarcely a part of the island visited by our people, however distant, to which one or more pathways did not lead. They are wide enough for only one person to walk upon, nor do they diverge on account of the nature of the ground, or the obstructions offered by rivers or morasses. They lie over the highest hills and the deepest ravines: where a river winds it is necessary to pass it several times; and the heath on either side of the pathway is so high, or the underwood so thick, that it is impossible to go from [the pathway].[8]

Trails, Well Known and Individually Named

The historian James Watson gave a name to the period that stretched from the first Polynesian settlement of Aotearoa through to the end of the eighteenth century: the Age of the Waka (canoe). In many situations, the waka had considerable – sometimes dramatic – advantages over walking.[9] Yet there were also times when environmental factors, such as steep hills, stormy seas and boulder-strewn rivers, limited the use of waka. 'Hence travel on foot was important, not just for hunting and gathering expeditions, but [also] for long journeys.'[10]

We know from written 19th-century accounts that narrow tracks existed along regularly travelled coastal and inland walking routes. Lines of least resistance were favoured. 'Beaches were major highways, especially on the west coast of the North Island, where the often wild ocean made seaborne travel particularly hazardous and where the country inland was generally forested and often swampy.'[11] Individuals and small groups, as well as war parties, used these trails.

As an example of a Maori overland traveller, there was the young Te Rauparaha, born probably in the 1760s in Kawhia or Maungatautari, a future Ngati Toa war-leader.[12] According to Patricia Burns, in the 1780s as a young man of chiefly descent he travelled a great deal, cultivating friends and acquaintances and visiting chiefs of neighbouring and important tribes. Burns points out, however, that

> although Te Rauparaha may have been unusual in the initiative he showed in travelling around the North Island, claiming kinships, making friends and gaining knowledge, he was not unusual in covering such vast distances on foot. In a land without beasts of burden, the Maoris had learned to walk hundreds of kilometres without fatigue, living off the land, and guided by the stars and their extensive knowledge of physical landmarks.[13]

In a paper published in 1949, the geographer Kenneth Cumberland provided a schematic map of Aotearoa that showed the Maori canoe ways and overland routeways of about 1780 and the relative density of traffic.[14] He wrote: 'The neolithic Maori was no stay-at-home. His great interest in his surroundings, his geographic curiosity, his social obligation to attend feasts and mourning assemblies, his warring raids and expeditions, and his peaceful trade and exchange took him frequently into the territories of other tribes.'[15]

In 1805, however, John Savage's short and superficial acquaintance with the Bay of Islands Maori left him with the impression that the internal travel opportunities open to Maori, to satisfy a spirit of enquiry or for visiting distant relatives quietly, were limited: 'As this country is divided into small principalities, whose chieftains are almost constantly at war with each other, the wandering of the natives is prevented by its being rendered unsafe'.[16] This statement may have been hearsay. Savage might have gained the unfavourable impression from conversation with Moyhanger (Moehanga), a young Maori he befriended who accompanied him to England.

War parties travelled long distances on foot as well as by canoe. In 1819–20 Te Rauparaha of Ngati Toa in Kawhia and Patuone of Nga Puhi in Hokianga joined forces on a great taua (war expedition) that set out from Kawhia, raided several pa in Taranaki, and moved on southwards through Whanganui, Rangitikei, Manawatu, Horowhenua, Ohau, Waikanae, Porirua, and Te Whanganui-a-Tara (now Wellington). According to an account written by Te Rauparaha's son Tamihana, although this force used canoes in some places (it visited Kapiti Island, 'slaying everywhere the people of that country') it also moved around often on foot. For example, after besieging Te Kerikeringa pa, near Tarata on the Waitara River, 'Rauparaha and Waka Nene went right on southwards, going inland … by the path which leads behind the mountain of Taranaki, until they came to the country of the Ngati-Ruanui'.[17] This inland path, the Whakaahu-rangi Track, was a frequently used route between Kairoa pa (near Lepperton) and Ketemarae pa (near Normanby).

Patricia Burns imagined the taua on the march: 'In the course of that year many a person, many a little group, must have hidden and watched with terror as a long, long line padded along a track, or as a new path was marked out by the leader – hundreds of tattooed, well-armed warriors, many high chiefs, walking in single file, their slaves carrying food and booty.'[18]

When in 1821 the Ngati Toa people quit their ancestral lands at Kawhia, on their bold and eventful migration firstly to Kapiti Island and later to Te Wai Pounamu (the South Island), they headed south on

foot, as the tribe initially had few seagoing canoes.[19] They walked slowly down the west-coast trails, stopping frequently. This Taranaki overland coastal route was one of the busier routeways in Aotearoa, a 'main through route' between Kawhia and Te Whanganui a Tara.[20] While his people rested during a long halt in the Urenui area, Te Rauparaha walked to Taupo, then north to Tauranga, then back southwards to Rotorua and back to Urenui.[21]

Trails across the Tararua

Yet what about the North Island's more mountainous, inaccessible and climatically harsh parts, such as the Tararua Range, often regarded as alpine, in vegetation and climate if not in present-day glaciation? Winter conditions can occur on Tararua tops at any time of the year. Early European explorers and self-taught ethnologists wrote of trails across the range. An old man of the Ngati-wehiwehi hapu (subtribe), speaking to Elsdon Best, recalled from his youth a war party of the Ngati Kahungunu of Wairarapa descending upon his people in the Horowhenua area, having crossed the Tararua by the Kaihinu track (sometimes called the Tokomaru track).[22] Best's ethnography has been described as 'both suspect and vital'[23]; in this instance, twentieth-century science seems to have confirmed that Maori knew the Tararua well. 'Radiocarbon dates for an oven in the southern Tararua Range … and archaic styles of artifacts found in the northern Tararua Range … indicate that the ranges were being traversed, either by travellers crossing the ranges or for food gathering, from early in the prehistoric period.'[24]

While making exploratory journeys into the Tararua, early surveyors recorded the existence of some trails in use by Maori. Also, Maori gave information about trails to various settlers.[25] From these accounts, and knowing where stone implements have been found, and by considering the topography, Phil Barton listed nine possible or probable trails across or around the Tararua.[26] Bruce McFadgen showed these trails on a map of archaeological sites in the Wairarapa region.[27] In 2010 the public site map of the New Zealand Archaeological Association showed the locations of about fifteen recorded archaeological sites in the Tararua.

My choosing the Tararua for this example is random. A look at what we know about any of the mountainous areas of the North Island would have provided similar indications or evidence of Maori tracks. A mass of knowledge exists, for instance, on the 19th-century Maori routes through the vastness of the Urewera; many of these ways will almost certainly have been used for hundreds of years. In 1867 George Preece sketched a map of the Urewera with the arterial tracks clearly marked.[28] *Encircled Lands*, Judith Binney's history of a century of colonisation in the Urewera, depicts the encounters of two peoples; the region's tracks – and its geography – form a recurrent thread through the 670 pages of her book.

South Island Trails

In the South Island, where the early Polynesian settlers subsisted more by hunting moa and seals than by cultivating plants, there are far fewer pa sites than in the North Island. But stone was fundamentally important to Maori, and most or all of the stone resources prized by Polynesians in Aotearoa had probably been discovered by the end of the 13th century.[29] Also there were many stone-transfer routes by which Maori transported

raw materials and finished tools from one end of Aotearoa to the other.[30] Even without universal archaeological evidence, it seems reasonable to surmise that South Island Maori, often while hunting moa or trading in stone – basalt, 'baked' argillite and greenstone for adzes; and obsidian, silcrete and perhaps the best cherts for knives[31] – had thoroughly investigated most of the accessible parts of the hinterland during the centuries before HMS *Endeavour* sailed around the island's coast.

The historian and author Barry Brailsford has written extensively about the greenstone trails and the tribal lore connected with them. His book *Greenstone Trails* lists fifteen South Island routes and thirty subsidiary trails.[32] River trails, such as those along the Buller, Waitaki and Clutha rivers, were the most common type, followed by passes and coastal trails. He also includes three coastal canoe routes, but makes the point that on the western coast of the South Island, 'much of coastal travel in pre-European times was along the beaches rather than by canoe because of the pounding surf'.[33]

All the traversable low passes of the Southern Alps were known to Maori.[34] Sometimes Maori marked trails by half breaking and bending down the top or a prominent branch of a shrub. 'Where the track led over moss-covered ground in the mountain forests the path, though not visible, could be felt by the natives, as the moss, once trodden on, never regained its original shape.'[35]

Writing about the Poutini Ngai Tahu (and relying on notes of oral accounts, taken by G J Roberts in 1897), H D Skinner described their crossings of the Alps:

> The Poutini parties were always small, generally five or six, rarely more than twelve, and they consisted of men, women and children. The chief would carry nothing more than his weapons. His mats and food would be carried by slaves. Each free man carried his weapons, a load of food, and generally two or three mats. The women carried loads.
>
> The men wore sandals (paraerae). These were made of plaited flax, or of ti, or of mountain grass. The time they lasted depended on the materials used, the care taken in manufacture, and the nature of the country traversed. The number of pairs of sandals they carried varied – some took five, some twelve, some twenty. Wherever they stopped they made more, using whatever material was handiest. The best ones were made of dry ti leaves, and if double, would last for five or six days on fair ground. In swampy country they would last for three or four days. Mountain flax on stones would not hold out for more than half a day. Everyone in the party would be employed making them.[36]

In January 1844, Edward Shortland travelled overland from Otago to Banks Peninsula, becoming the first Pakeha to do so. His guide, Huruhuru, made for him a pair of double-soled sandals called torua, tough enough 'to endure several days' walk along a beach'.[37]

Resource Localities, Mind Maps and Bivouacs

Discussing the gathering and fishing forays of late pre-contact Maori, James Belich wrote that

> routes were a series of localities a short march apart, where quickly caught and processed food such as freshwater crayfish or birds' eggs could be obtained. They were remembered as travellers' tales or oral maps, whose place-names described resource localities …
>
> This network of resource localities linked by routes was only available to those who knew its secrets; the people of the land could always obtain more from it than outsiders, and this may have reinforced the bonds of particular groups with particular areas.[38]

Shortland, when a few miles north of the Rakitata (Rangitata) River during the 1844 journey mentioned above, 'was surprised to find that, even in this thinly populated part of the country, names had been given to many small streams and ravines, which one would have imagined scarcely worthy of notice.'[39] The anthropologist Joanna Wylie has suggested that Maori, in common with other hunter-gatherers past and present, used detailed mental maps to navigate through a wide range of landscapes, and that these maps consisted of sequences of place-names that represented trails.[40] The 'cartographic' mental images included knowledge of the shape and form of the land.

When Europeans asked them to, some Maori were able to draw maps of different parts of New Zealand.[41] In 1848 the naturalist Walter Mantell asked his guide, Te Warekorari, to sketch from memory the Waitaki River and all its tributaries and its source lakes. Te Warekorari drew a remarkable diagram representing the complex river system with all the place-names in the correct order.[42]

In about 1848, while serving as the commissioner for the extinguishment of native titles, Mantell himself produced a sketch map of the southern half of the South Island.[43] He used black dots in indicate 'native paths'. Even though early European explorers were able to measure walked distances using a pedometer[44], Mantell recorded the lengths of these trails using the traditional Maori measurement of the number of days' travel. The trail up the Mataura River and onwards to Lake Wakatipu, for example, was labelled '4 or 5 d.'

The cartographer Jan Kelly has examined four maps made by Maori at the time of their first or early contact with Europeans. She argues that 'Maori had an acute geographical and navigational facility and were able to relate their own sense of being, expressed in cosmology, genealogy, history, and lived experience, in the oral map that [was] laid on the landscape'.[45] Kelly's 1999 paper *Maori Maps* includes some discussion about pathways, which he considers to have been significant elements on some written Maori maps.[46]

In contrast to the Pakeha surveyor-explorers, who usually set off laden with supplies such as flour and biscuits, many Maori in the early and mid-19th century were adept at living off the land, when there was anything to live off. They caught birds and fish and gathered berries and fern roots. For settled groups, though, growing vegetables was just as important as

netting eels, and in each locality there was a limit to the population that hunting and gathering, by themselves, would have sustained. From the early 1800s, 'the potato spurred on a quiet but vital agricultural revolution within the Maori world'.[47] James Belich touched on the importance of Maori vegetable gardening when he wrote about the land conflict that was still smouldering in South Taranaki at the end of 1866:

> The surviving Ngati Ruanui and Ngarauru had fled the coastal lowland for their ancient fastnesses in the mountainous inland forest. But the notion that Maori could easily pluck a living from the bush was always nonsense: these refuges could not feed them for long, and soon some had to trickle back to the arable areas, under the shadow of British redoubts.[48]

Itinerant Maori in the late 18th century had been nonchalant bivouackers, adroit at erecting temporary shelters, as Cook had observed in February 1777:

> It is curious to see with what facility they build these little temporary habitations: I have seen above twenty of them erected on a spot of ground that not an hour before was covered with shrubs & plants. They generally bring some part of the Materials with them, the rest they find on the spot … These temporary habitations are abundantly sufficient to shelter them from the wind and rain.[49]

Along with the book and the nail and the wheel, Europeans brought the tent in large numbers. Yet many Maori retained their traditional bivouacking skills well into the 19th century. The Reverend Richard Taylor, who arrived in New Zealand in 1839 and journeyed extensively among Maori tribes, often noticed and admired the knowledge that 'makes the native at home wherever he may be':

> When encamped with my little party in pouring rain, I have been surprised at the short time it took, to erect a comfortable shed impervious to the rain, to produce fire by friction, to find fuel and ignite it, to seek out food and sit down comfortably to enjoy it, and this before an European would have made up his mind what to do.[50]

Worn Tracks, a Person Wide

In some places in both islands, typically through forest or on open hillsides rather than across swamps or along beaches, frequently followed ways had become worn tracks. But we are not talking here about wide pathways or of anything similar to the rocky trading roads of central Asia. Routinely walked trails were

> only a person wide; at best, occasionally punctuated with logs tied across raging rivers for bridges and flax ropes ascending or descending cliffs. The forest was more dense, with lianes and dense thickets under the trees, in those days before the introduction of deer and

> goats and possums. Much of the country was in sticking swamp. Vast exposed plains of fern lay between.[51]

Prominent among the lianes (or lianas) was supplejack. Peter Webster has likened dense pockets of supplejack in the Urewera to spiders' webs. 'Although usually it is possible for a man to push, or rather ease, his way through these tough lianas, they would be a problem to a horseman or laden pack pony.'[52]

William Swainson, the second attorney-general of New Zealand, found the air in its forests to be 'generally close and oppressive'. He wrote that 'under foot, the path is thickly matted with damp and slippery roots; while above his head, especially in wet weather, a shower-bath lurks in every bush, ready at a touch to drench the unwary traveller with a copious shower.'[53]

In forested country, according to the ethnographer Elsdon Best, who wasn't always right, Maori sought the easiest route for a track. 'As he did not possess tools fitted for excavation he did not often locate paths on a sideling [hillside], but, as a rule, in hill country, they ran up leading spurs and along the summits of ridges. Occasionally the bed of a stream served as a path.'[54]

In 1832 Joel Polack, a Bay of Islands trader, journeyed with ten Maori companions overland from the Bay of Islands to the Hokianga Harbour and the Kaipara Harbour. By 'overland' I mean by a combination of river travel – by whaleboat and canoe – and walking. On leaving Moperi (now Omapere) to walk down the hilly west coast, they followed a distinct trail. Polack described it: 'We took our departure, pursuing a path across the hills, hollowed in the clayey soil by the continual repassing to and fro of the natives, amid the high varieties of the fern that covered the country in every direction.'[55]

Polack and his group continued southwards, walking sometimes along the beaches, at other times over the steep intervening hills. 'These heights were intersected with winding paths, which are discernible at a great distance, though only a foot broad, from the yellow clay trodden by the villagers, appearing among the dark fern.'[56]

The next day,

> the hill paths were of a slippery clay, and difficult to ascend … After a long, tedious travel, every foot of which was attended with danger, from the mountain-path not being a foot broad, which wound alongside steep declivities, as slippery as could well be, we were gratified with a view of the sand-hills, which announced the sea-shore to be within the distance of half a mile.[57]

Several 19th-century travellers described places where the passage of human feet, sometimes aided by water runoff, had worn deep trenches. From 1840 onwards, on some tracks the feet of pigs, cattle and horses increased the erosion. In October 1868 James Bodell and his prospecting party took the Wairere Track westwards across the Kaimai Range, from Tauranga harbour to the Matamata plain. After they reached the summit

of Te Wairere, the track ahead dropped 1,400 feet to the banks of the Waihou River:

> Descending we found the track was about 4 feet below the surface, and so steep that in places we had to slide down and cling on to the sides. After tumbling down about 1800 feet [actually 1,400 feet] we got to the Waiho [Waihou] river.[58]

Over seventy years later, in February 1941, C W Vennell looked for remaining signs of the Wairere Track. He found that 'from the [Matamata] plain right up to the summit [the track] has been gouged out by water rushing down the steep slope until, in places, it is as deep as a drain (and as slippery after rain)'.[59]

Wooden Pegs for Handholds and Footholds

The Maori paths usually necessitated travelling in single file, except near settlements; even large war parties travelled in single file.[60] Tracks across swampland were sometimes built up with layers of bracken or manuka brush. Steps were dug into earthy slopes. Wooden pegs (ara tiatia) were driven into steep faces to provide handholds and footholds.[61] Bundles of flax were tied together and used as floats (moki or mokihi) for crossing rivers. Maori used the breast-pole (tuwhana) for linking people when crossing rivers, as trampers still occasionally do today. Some Maori used a pole for walking. While walking along a slippery trail near Papakoura (Papakura), George Angas and his companions 'found [their] *toko tokos* of considerable use, both as walking-staffs and also to feel [their] way through the swamps and peat-bogs that [they] constantly had occasion to cross'.[62]

When travelling through heavy rain, Maori sometimes wore rough capes (pake) made of undressed leaves of kiekie or flax. They carried light loads in kete (flax baskets) and heavier loads in kawe (two long flat bands of plaited flax that when combined with a bundle became a backpack with shoulder straps).[63]

In October–November 1843, Richard Taylor and his party followed a track up the Manganui-a-te-ao River (sometimes written Manganui-ateao), a tributary of the Whanganui River. The Manganui-a-te-ao River meandered from side to side of a narrow plain, frequently abutting against the hills in cliff faces. The track continually ascended and descended, skirting above obstacles or dropping to fords. 'Taylor was impressed by the way the Maoris used their bare feet to get the best advantage from small toe holds.'[64]

The mid-19th-century Pakeha travellers left many other descriptions of routes up or across steep and exposed ground, such as sea cliffs and rock barriers on ridges. Collectively these accounts indicate that Maori were strong, wiry and agile and that they possessed what a modern rockclimber would recognise as an effective combination of balance, skill and judgment. Bare feet may sometimes have advantaged Maori. A prominent British mountaineer of the 1950s, Gwen Moffat, was well known for sometimes rockclimbing barefoot. One day in 1947 she led in bare feet an ascent of Bellevue Bastion, a Very Severe rock climb in north Wales,

and later wrote: 'The tiny holds on that slab, although far apart, were perfectly fitted for my big toes.'[65]

Coastal trails often entailed as much deviating and clambering as riverside trails. In 1853 George Earp described a steep coastal journey from the Wairau Plain northwards to Port Underwood:

> The inland path runs from the plain over the spurs between the coves … and descends to the sea-coast in each of them. Some of our party … tried this road, and describe the first hill as excessively steep – indeed, so near a perpendicular in its ascent, that they were obliged to clamber and drag themselves up it by the bushes growing out of its rocky sides. The path then runs along the ridge of the hill, which is narrow and rocky in most parts … From Ocean Bay to Guard's Bay, the hill-spur requires steps cut in the footpath here and there, which will give a tolerably correct idea of its steepness.[66]

Writing about the ascent of a 120-foot vertical cliff (now called Perpendicular Point) near Te Miko on the West Coast, the draughtsman and artist Charles Heaphy described 'two stages of ladders, made of short pieces of the ropy rata, lashed together with flax, with steps at irregular distance, the whole very shaky and rotten'.[67] His party's baggage and dog was hoisted up by a flax rope.

Between 1912 and 1931 Elsdon Best wrote eleven Dominion Museum bulletins on aspects of Maori life.[68] Archaeologists and anthropologists later discredited some of his theorising on Maori migrations and pre-European Maori society. But Angela Ballara, one of his critics, has left the door open for us to cautiously select material from his 19th and early 20th-century descriptions:

> [Stephenson Percy] Smith, Best and others, driven by theory, distorted Maori history and custom in ways which fitted what they saw as the inner structure or grand design of Maori and Pacific history and the tribal system. But though they were slaves to theory, they knew and worked among Maori people, and their experience and first-hand knowledge resulted in much detailed work which reflected local tradition and was thus of value.[69]

In *Forest Lore Of the Maori*, published in 1942 eleven years after his death, Best included five pages on 'Paths and Travelling' and ten on 'How the Maori Ascended Trees'. The former section, as well as describing aspects that I have already mentioned, also dealt with resting places, Maori sayings connected with tracks, and the reluctance of Maori to travel during hours of darkness.[70] The latter section, as well as detailing tree-climbing, also covered Maori's use of crude ladders and life-lines on steep bluffs.[71] Best greatly admired the bush skills of the Maori, required for travelling, gathering plant food, snaring birds and – in pre-contact times – trapping native rats. But his respect did not extend to Maori bridge-building:

> As a bridge-builder there is little to say for the Maori; his efforts in that direction were confined, apparently, to the laying of poles

> across narrow chasms, etc., and to an occasional crude form of short swing or suspension footbridge.[72]

Augustus Earle, describing a journey made in 1827, told of the confident and nimble way that Maori balanced across their improvised bridges:

> The only bridges which the natives ever think of making are formed by cutting down a tree, and letting it fall across; and over these our bare-legged attendants, loaded as they were, scrambled with all the agility of cats or monkeys; but it was not so with us: for several times they seated one of us on the top of their load, and carried him over. The chief … made it his particular business to see me safe through every difficulty, and many times he carried me himself over such places as I dared scarcely venture to look down upon.[73]

According to Best, Maori did not often need the convenience of bridges as they were 'expert at crossing swift-running rivers, mostly by swimming, and lacking extraneous aid'. When crossing fast-flowing rivers by swimming, they trod water and took 'a somewhat long slant down stream' so that the current would assist them to reach the other side.[74]

In January 1844, during his journey from Waikouaiti to Banks Peninsula, Edward Shortland crossed the Orakaia (Rakaia) River. In a passage about this crossing, he described how Maori use the breast pole (tuwhana) as a shared aid when wading a swift river:

> The natives use a pole to aid them in crossing these rapid rivers. Two or three persons hold this pole … firmly about breast height, the strongest being stationed at the end pointing up the stream. They then take advantage of the set of the current to get from one shoal or shingle bank to another, always allowing it to carry them with it, while they strive to advance across it.[75]

In April 1846 Charles Heaphy and his fellow travellers used a similar technique to cross the Mokinui (Mokihinui) River close to the surf at the bar. He declared this method of using a pole to be 'a good one' but the Mokinui crossing to have been 'the most dangerous ford' he had met with in New Zealand.[76]

Another first-hand description of this pole method of river-crossing is available in Dudley Dobson's reminiscences. He writes: 'I have seen ten on a pole, the small women and children being sometimes afloat in places. The advance was made slowly, the two end men getting a firm footing before each step was made. In this manner a very rapid stream could be crossed with strong men.'[77]

As the 19th century wore on, some Maori restyled their bridges. One day in the late 1860s or 1870, Lieutenant-Colonel J H H St John and his party ended up on the wrong side of a river that was in flood (he doesn't say where this river was). Maori allies present on the far side of the river, led by Wiremu Kingi Te Tutahuarangi, 'rather a sharp fellow', lashed poles together to form tripods, which became the main parts of a

makeshift bridge. This solution, St John wrote, had 'showed considerable ingenuity'.[78]

Pleasant Ridge-paths

It would be a mistake to assume, from the tone of the earlier quotations, that all Maori journeying on foot was either along narrow slippery tracks or through tangled undergrowth and across sucking swamps or up and down steep barriers. In 1840 for example, tussock grassland occupied nearly half of the South Island.[79] Only about half of the whole colony was forested.[80] In some regions a traveller on foot could pass through a number of different terrains in a day. Early Pakeha journeyers wrote of difficulties – typically deep mud and crumbling exposed 'goat-tracks' – but also of gentle grassy country, pleasant ridge-paths, rich valleys and glades, open fern-hills, valuable level plains, and 'beautiful and grand scenery for so many days continuously'.[81]

The bush was not everywhere jungle-like and unyielding. In 1841–2 the printer and missionary William Colenso traversed the Urewera by way of Waikaremoana and Ruatahuna, becoming just the third Pakeha to venture into this area.[82] He later wrote that on 30 December 1841, 'having gained the summit of the range we found travelling easy, for in these forests, where the broad-leaved *Fagus* [beech] is the principal tree, there is but little underwood'.[83] (At a lower altitude in the Urewera, nature runs riot and the bush can be impenetrable.) Charles Heaphy's Nelson Lakes journal of 1846 tells of walking for miles 'through tangled underbrush' or 'deep swamp-grass'; but he also wrote of 'open manuka country' and 'highly picturesque grass ridges'.

Between Cook's arrival in 1769 and about 1840, before substantive European settlement and before the arrival of the horse and the bullock in large numbers, most Maori foot-tracks probably survived unchanged: human width rather than horse width; formed mainly by usage, occasionally by design; often linking river systems or skirting above sea cliffs; and a whole lot different from Walking Tracks as prescribed in Standards New Zealand specification HB 8630:2004.

For just a few more years after 1840, Pakeha travellers journeyed more on foot on Maori trails than either on horseback on bridle tracks or in horse-drawn coaches on roads. Robert Fitzroy, the governor of New Zealand in 1843–5, wrote that 'in New Zealand, the colonists generally travel on foot, wheel carriages are useless except near the settlements, where there are a few very bad roads. Strong bullock drays are employed in some parts, but they require powerful teams of oxen.'[84]

Major and Minor Trails

Murray Thomson arrived in New Zealand on 10 February 1862 aged eleven. He spent part of his youth exploring the Dunedin area on foot, sometimes alone and sometimes with friends. Later in life he wrote some reminiscences and included a short but invaluable chapter on Maori tracks. His account provides a different Pakeha perspective from that of a missionary or gentleman traveller making a long journey with Maori guides.

From about mid-1862 to December 1865, aged twelve to fifteen, Murray lived with Mr and Mrs John Hunter at Murdering Beach, then 'a very isolated place, the whole district being just one great forest

stretching from Port Chalmers to Purakanui. The only roads were Maori tracks'.[85] Murdering Beach had once been a greenstone export centre, Whareakeake, whose population in about 1800 might have reached five hundred.[86]

One of Murray's farm jobs involved some agreeable local exploring. In describing this boyhood enterprise, he took pains to distinguish between major and minor Maori tracks:

> During my stay with the Hunters it was often my duty to search for and bring home cattle from the bush, and, boylike, I delighted in making deep inroads into the forest. It was on such expeditions that I became curious concerning the large number of tracks that I encountered. I afterwards learned that these had been made by successive generations of Maoris. They were little wider than a sheep track, were worn to a depth of some inches, and in dry weather were full of leaves. They generally led to a waterhole or creek, or, perhaps, to a clump of *kowhai* or black pines, the last named trees being a specially favoured resort of pigeons and other birds that the Maoris relished as food. Even in the most difficult places the tracks showed no signs of having been cut out; they were just the result of the continual padding of bare feet.
>
> … The tracks I have described were not travel routes, they were merely the paths made by the natives when on their daily hunting excursions.
>
> The prinicpal [*sic*] Maori travel routes either hugged the coast or followed an approximately parallel course, not far inland. These latter tracks generally wound along some prominent ridge. From this main route, tracks branches off through the forest to the various *hapu*, or tribal sub-sections.[87]

In 1866, aged fifteen, Murray moved to Dunedin and enrolled at North Dunedin School for one year. Looking back, he counted this year as one of the most pleasant years of his life. Its not being all schoolwork might have helped: his reminiscences include rare evidence of mid-19th-century settlers – lads in this case – bushbashing for pleasure:

> I must have given the mothers of the boys with whom I associated cause for a good deal of anxiety. I would organise long tramps up the McGlashan and Leith Valleys or over the surrounding hills, and from these my companions and I would often return, long after dark, our clothes and boots soiled and wet through and ourselves fatigued.[88]

In his early twenties, Murray Thomson joined the excursions of the Dunedin Naturalists' Field Club. He summed up the appeal of these trips: 'Apart from the scientific interest of the excursions I also enjoyed the walking they entailed. Walking is grand exercise and I have done a lot of it in my time.'[89]

There may have been a few Murray Thomsons around in the 1860s and 70s. In being ordinary settlers who worked full time and walked in the bush as a leisure pursuit, they lived before their time.

Europeans on the Trail

Among the Europeans who commonly used Maori trails were missionaries, traders and surveyor-explorers. The ability and willingness to walk long distances, and often to wade short ones, was a prerequisite for these occupations. Prominent also in the list of professional Pakeha walkers are several government officials. In 1841, for example, Governor Hobson wrote that George Clarke senior, the chief protector of aborigines, had duties that were most severe, requiring his 'often undertaking a journey of 200 miles, every foot of which he is obliged to walk'.[90]

Even in the vicinity of main canoeing highways, such as the Whanganui River, early European travellers sometimes faced a choice of going by canoe or following a track to the same destination.[91] More often, though, journeys included unavoidable sections of both land and water. The Wesleyan missionary James Buller arrived at Mangungu mission station on the southern shore of the Hokianga Harbour in April 1836. He was based there for three years. Visitors sometimes came from Tokerau (the Bay of Islands); this journey took two days, finishing 'along an old war-path' through a forest and then down the Hokianga by canoe or whaleboat.[92]

The missionary life could be lonely, even for those with families. So the annual district meeting of the Wesleyan missionaries was an important get-together, not to be missed. In the late 1830s, Maori trails were as vital for Pakeha as they were for Maori:

> To attend that meeting, some [missionaries] would travel hundreds of miles, through forests, across rivers and swamps, and over hills and valleys. There was neither bridge, nor hotel, nor road, other than the narrow trackways beaten by the natives in their old war expeditions.[93]

Another missionary, John H Bumby, arrived at Mangungu early in 1839. He soon found himself involved in coastal sea travel and overland walking. James Buller tells us that Bumby's walk from Kawhia to Mokau was 'a toilsome week's journey, over the most rugged paths, and some fearful precipices'. Bumby himself said: 'It is an indispensable qualification for a New Zealand missionary that he should be a good walker.'[94]

Richard Taylor, another missionary, exceeded that requirement. A prodigious walker, he arrived in New Zealand in September 1839 and was based at the mission station at Putiki, Wanganui, for over twenty years. In 1855 he wrote:

> The country is intersected with paths, which, though not more than a foot wide, and closely resembling sheep runs, still are the means of communication. All their roads [ie, foot-tracks] have particular names, and are well known, just as in former days the British had

> their Watling, Ermin, and other roads, so the natives have theirs – *Kainga roa*, *Taumatamahoe*, *Rangipo*, &c.[95]

We shall look at the Taumatamahoe Track in Chapter 3. It was once an important east–west highway across Taranaki, as Watling Street was an important southeast–northwest road across Roman Britain (although the name 'Watling Street' is a later attribution). Beyond these generalities the similarity breaks down. A more apt comparison might have likened Maori tracks to Britain's pre-Roman pathways. 'Medieval Britain inherited around 10,000 miles of Roman road, combined with an extensive network of trackways following less clearly defined routes. Difficult terrain and hills led to multiple pathways being employed, many still visible to aerial photography.'[96] The principal Roman roads across Britain 'were solidly built, normally with a foundation of large stones capped by gravel and served by side-ditches; often the road itself [was] raised on an embankment (agger) for even better drainage'.[97] Built roads were a novelty introduced by Rome. Many parts of Watling Street still exist.[98] Maori tracks owed their existence to the passage of human feet. It appears likely that few fragments of the Taumatamahoe Track remain physically detectable.

James Watson called the period from the 1800s to the 1860s the Age of Sail. Perhaps we could call the second half of this period the Age of the Leather Boot, because leather footwear was the unsung hero behind many lengthy overland treks by Pakeha travellers. 'Land transport was … profoundly changed over most of New Zealand during [the Age of Sail]. The very introduction of leather footwear made walking long distances considerably easier. Boots might be hazardous on slippery surfaces, but they did protect the feet from cuts and from wear on stony ground.'[99]

Most Maori guides went barefoot. When they stepped on the spiny leaf of a taramea (wild Spaniard) or on the thorns of a matagouri (wild Irishman), they probably wished they were wearing the tanned leather of a Northampton shoe factory.

Extensive Reliance on Maori Guides

Pakeha travellers employed Maori guides extensively, though not universally. In December 1839 the explorer and naturalist Ernst Dieffenbach made two attempts to climb Mount Egmont (Mount Taranaki), guided by an old tohunga (priest or skilled person), Tangutu-na-Waikato. When describing the approach route taken during his party's first attempt, Dieffenbach applauded his guide's bush skills:

> Although we walked on a track, it was one visible only to the eyes of Tangutu; and it was not until after much practice that I could distinguish, in the turning or the pressure of a leaf, indications that the path had ever been trod by mortal feet. My guide went patiently forward, carrying a heavy load for me, without a murmur, although a priest and a person of consequence among his own people.[100]

Dieffenbach's second attempt to climb the mountain, with James Heberley, succeeded. But on this occasion, when the party reached the snow-line, its two Maori attendants declined to go any further, because

of what Dieffenbach called 'superstitious fear' and also because of having 'uncovered feet'.[101] It is reasonable to imagine, however, that without the help of barefoot Maori guides and porters on the approach to the mountain, Dieffenbach and Heberley would never have reached the snow-line.

In February 1846 Charles Heaphy and others journeyed from Nelson to 'the lake of the Roturoa' (Lake Rotoroa) and to the middle part of the Buller River. Their guide was Kehu, 'a perfect bushman'. Heaphy wrote that Kehu

> appears to have an instinctive sense, beyond our comprehension, which enables him to find his way through the forest when neither sun nor distant object is visible, amidst gullies, brakes, and ravines in confused disorder, still onward he goes, following the same bearing … until at length he points out to you the notch in some tree or the foot-print in the moss, which assures you that he has fallen upon a track, although one which he had not been previously acquainted with.[102]

Two subsequent journeys from Nelson, prominent in the story of European exploration of New Zealand, further enhanced Kehu's reputation of being a knowledgeable and reliable guide. Over four months from March to August in 1846 he guided Heaphy and Thomas Brunner down the West Coast to the Arahura River and back to Nelson. His bush skills enabled the party sometimes to manage on slender meals of fern-root and ti (cabbage tree) root but more frequently to dine well on eels and fish from the rivers and on birds – weka (woodhen), pigeon, blue duck and grey duck.[103]

Over eighteen months in 1846–8, Brunner walked down the West Coast to Tititera (Tititira) Head and back to Nelson. Kehu, accompanied by his wife, guided Brunner on the northern half of this hike, to Taramakau; several local chiefs guided him on the southern half, to Tititera. Kehu's bush lore, at critical times, kept the half-starved party alive, helped at one point by a reluctant decision to kill and eat their dog Rover.[104]

When writing in 1966 about the numerous journeys of the 'missionary tramper' Richard Taylor between 1839 and 1873, A D Mead acknowledged the assistance given to Taylor 'by his Maori guides, paddlers and bearers, without whom the journeys would have been impossible; a matter often ignored in books on white travel in primitive areas'.[105] This is how John Pascoe put it: 'When the first European settlers arrived they had it made, so to speak, so far as many of the routes to the interior of the North Island were concerned. All that they needed were Maori guides.'[106]

Unguided 'exploration' by Pakeha did occur, but mainly close to settlements and for short distances. On 30 July 1940 Lieutenant Abel Best followed a Maori track from Pipitea Point on Wellington Harbour most of the way to Ohariu Bay. He described part of this track, unusually, as 'very wide'. An article in the *Stockade*, featuring Best's walk, is titled 'Maori Tracks a Boon to Settlement'.[107]

There was one other thing, apart from existing trails and Maori guides, that Pakeha travellers might sometimes have needed: approval to cross

tribal boundaries. Often this chiefly consent came as a sort of by-product of hiring local guides. The Pakeha travellers took care to obtain men of enough standing themselves to grant, or to convey, the chiefly go-ahead. We will return to this point later.

Missionaries tended to travel accompanied by an ample number of porters. Bishop Selwyn, planning the next leg of a journey in September 1842, knew pretty well the manpower that he would require:

> I shall be alone [the sole European] only from Taranaki to Hauriri, a distance of six or seven days' journey. My train [group of travellers] will consist of about six natives; one carrying tent, one bedding, one clothes, and cooking and other utensils, three provisions; each native carries about thirty pounds, rather more at the beginning of the journey, as the daily consumption of provisions lightens the loads.[108]

Obtaining guides was sometimes difficult or expensive or both. On 31 March 1841 Dieffenbach left Waitemata, heading on foot for Lake Taupo. The labour market was competitive: 'At the moment of my departure I had the disappointment of finding that all the natives whom I had engaged to accompany me, and whom I had brought with me from the northward, had absconded, enticed by promises of high wages in Auckland.'[109] On 1 January 1847 Dr John Johnson met a similar problem at Otawhao (now Te Awamutu): 'Our time was limited, and we were under the necessity of hurrying on, but we found great difficulty in procuring two natives to accompany us, unless we submitted to an extortionate charge for their services.'[110]

Mahinga Kai (Traditional Food), Boundaries and Trespass

Maori society consisted of genealogically linked groups rather than people with an overriding sense of nationhood. Earlier we touched upon the gathering and fishing foragings of late pre-contact Maori, using routes known only – or perhaps available only – to the local communities. According to Murray Thomson's reminiscences, minor trails for 'daily hunting excursions' still existed to the north of Otago Harbour in the 1860s. We should add the proviso that many edible plants and some birds were only available at specific places and times. Thomson does not say whether any particular whanau (extended family) or hapu (subtribe) had the customary right to use these lesser tracks.

Clearly Established Rights to Resources

Ann Parsonson, writing in 1992 about the Maori way of life in the mid-19th century, acknowledged that the potato was widely grown on both islands and that wild pig (successfully introduced in 1804–5[111]) had already become a useful addition to people's diet. But she also pointed out that

> traditional food remained of great importance, both to provide hospitality and pay respect to visitors, and for trade.
>
> Each community had clearly established rights to resources within its rohe (region). Some rights – such as those to particular

> birding trees, or (as on the Titi Islands) birding grounds (wakawaka) – descended within particular families; others (to resources which required substantial numbers of people to take and preserve the seasonal catch) within hapu. All such rights were carefully defended against trespass, since the strength and the standing of the various communities depended on their strength in resources. Trespass might be dealt with severely – depending, however, on the relationships between those involved, and the circumstances. Traditionally, those surprised in the act of emptying traps which were not theirs might be killed on the spot.[112]

Which seems harsh, until we remember that in 1723 in England an act of parliament had introduced fifty new offences punishable by death, including poaching deer and taking rabbits and fish. In the first two years of the act's operation, sixteen deer-poachers were hanged. The Waltham Black Act, as it became known, remained on the statute book for a century until its virtual repeal in 1823.[113]

In England, Norman feudal law had triumphed over the ancient Saxon liberties: until the 18th century, hunting rights were peculiarly vested in the king himself; people's rights to catch and hold animals for food were limited. The 18th century added another variable: the rights of property.[114] The many laws and customs surrounding game in the 18th century were extremely complex, which makes it difficult to generalise about poaching. Often, however, the poacher was a member of a traditional community exercising a customary right in defiance of the formal legal code.[115]

The Maori poacher, in contrast, was the outsider, infringing on someone else's traditional resources. But these contrasting situations did share one thing in common, which was still true in the mid-19th century: in England and New Zealand, trespassing could get you into trouble, while trespassing *and* poaching could be a serious business.

The Boundaries of Rohe (Territorial Areas)

In assessing the worth and appeal of a territorial area, the focus was less on the size of the land involved than on the resources, or mahinga kai, that it supported. The most desirable rohe included a little bit of everything: assorted terrains, such as hills, valleys and coastal strips; and various types of water, such as streams, swamps, shallow coastal waters, reefs and deep sea.[116]

Maori often linked tribal territoriality to one mountain. The boundaries of rohe often followed mountain ridges. Occasionally, especially in the South Island, rivers were boundaries, but it was more common in Maori society for both sides of a river to be in the same ownership.[117] Sometimes rohe were defined in terms of particular forests. Sometimes single trees or outcrops of rock or old hearth-stones served as boundary-markers.[118]

One day in November 1841 William Colenso passed through Te Kawakawa (Te Araroa), a village near the East Cape. One of the chiefs presented him with 'two fine fresh *Wapuku* [hapuku or groper], each weighing more than 20 lbs'. Colenso wrote:

> This fine fish is common on the New Zealand coasts; the natives having their marked spots for fishing, near rocks and shoals lying

> off the land in deep water, where they fish for the *Wapuku* with hook and line. These preserves are all *rahui*, i.e. private; and scrupulously descend from the chief to his nearest relatives. Any infringement on such a fishing preserve was invariably resented, and often ended in bloodshed.[119]

Richard Taylor, writing in 1855, may have been only slightly exaggerating when he said: 'There is no part, however lonely and apparently unknown, of which the natives do not know the owners, and the different boundaries.'[120] He recalled an incident that illustrated the importance of boundaries:

> When [we were] travelling over the central plains [somewhere in the North Island], where apparently human beings had never resided, one of my natives suddenly stopped by a stream, and said, that land belonged to his family. I expressed my doubts, and asked him how he could tell. He went into some long grass, and kept feeling about with his feet for some time, then calling me to him, he pointed out four hearth-stones, and triumphantly said, here stood my father's house, and going thence to the stream, he pointed out a little hollow in the rocky side, over which an old gnarled branch sprung, and said, in this hollow of the stream, we used to suspend our eel baskets from the branch. In fact, they have many marks which, though they might pass unnoticed by Europeans, clearly indicate to them their respective rights.[121]

If this outline of mid-19th-century boundaries sounds straightforward and mostly harmonious – things weren't quite that perfect. The realities of the positions of boundaries and of who enjoyed what rights where (including the right to follow a particular trail) were often complicated. We are, after all, talking about human affairs, based on complex rules of conduct and liable to fickleness and frailties but also able to benefit by adaptation. The geographically defined resources of hapu often overlapped, creating the potential for conflict.[122] Tensions sometimes arose after intermarriage involving people from different hapu. There were hundreds of hapu names.[123] Under one meaning of 'hapu', people could have several different hapu affiliations.[124] Important trading routes crossed hapu and iwi borders. Special concessions were sometimes made to kinsfolk in other iwi. The peaks themselves were sometimes out of bounds, being the homes of atua (spiritual beings) and often also the burial places of high chiefs.[125] During the intertribal wars of the early 19th century, which were greatly intensified by an increasing use of muskets in the 1820s, an estimated 30,000 Maori had moved to different areas, which was subsequently to cause endless complications over land rights.[126] Finally, the basic idea of a single boundary line between territories has been said to be too simple to describe accurately all situations. In the mid-1990s, in a paper presented to the Waitangi Tribunal, Sidney Mead argued that in the 19th century in some places 'there were zones of contested land lying between iwi groups, that these zones were characteristically rich

in resources and were exploited by both sides, and that it was difficult to fix a boundary line within this zone'.[127]

Inter-region Arterial Routes

Chapter I of Percy Smith's *History and Traditions of the Taranaki Coast*, published in 1907, included brief descriptions of twenty-one Taranaki tracks.[128] Chapter VII, published in 1908, included a one-fold map of Taranaki that showed and numbered these 'ancient foot paths'.[129] According to Smith (or his sources – the land-surveyor H M Skeet, W H Skinner and Elsdon Best), the tracks shown on this map had been the region's principal lines of communication in 1840. There were numerous other, minor branch tracks – such as connecting routes or birding trails – that could not be shown on a map of this scale.[130] Many of the twenty-one arterial routes crossed one or two tribal boundaries. For example, the Taumatamahoe Track crossed the lands of the Atiawa and the Ngati-maru to reach the territory of the Whanganui people. Similarly, by combining what appear on the map as three distinct routes that included track sections and river sections, a traveller starting from Waitotara could travel fairly directly to Tokaanu (at the southern end of Taupo Moana, ie Lake Taupo), crossing three tribal territories, labelled as Ngarauru, Whanganui and Ngati Tuwhare-toa.

Who could use these principal routes, for long-distance travel that spanned different tribal areas? Although many 19th-century accounts of life in New Zealand emphasise the dire consequences, in Maori culture, of trespassing on the hunting and fishing grounds of others and taking fish or birds or rats, few accounts discuss whether an outsider's mere presence on a track constituted an intrusion or infringement. Many journals and narratives written by travellers do describe the tracks, but only their physical characteristics. We will see later that Richard Taylor, after following the Taumatamahoe Track in 1844, described it as an old well-worn track, frequently used by Maori. We might therefore consider viewing the Taumatamahoe Track as having been an inter-region arterial route, as opposed to its having been just a chain of local trails, each one providing access to a local source of food. Or perhaps it fulfilled both of these functions.

Did special, protected tracks exist, on which any person could travel in safety? Pei Te Hurinui Jones has implied that they did. In his book *King Potatau*, he tells of the murder in 1819[131] of Te Rauparaha's first wife Marore. Patricia Burns, discussing the same incident, says that Te Rauparaha, in grief and fury, and some other relatives of Marore picked out a Ngati Maniapoto chief, Te Moerua, to be killed as utu for their loss.[132] (Utu is often defined as revenge but has a fuller meaning that includes a redress of the imbalance in the interhapu and inter-iwi relationships.) Jones continues the story:

> Te Moerua was on his way from Totorewa [near Otorohanga] to Arapae [near Piopio] to visit one of his wives when he was waylaid and killed on a 'peace track'. There were three 'peace tracks' by which the Ngati Maniapoto travelled to and from the coast, and the killing of Te Moerua on one of them was the very first occasion the rule of immunity had been transgressed by any of the Tainui tribes.[133]

Jones also mentioned that one of the three peace tracks, running from Oparure (near Te Kuiti) to Marokopa on the coast, was called Mangahaua. I have not found any other occurrences of the term 'peace track' in the context of tracks in New Zealand. Perhaps 'peace track' was a literal translation of a Maori phrase known to Jones.

Bruce Biggs has suggested that we regard *King Potatau* as a historical novel rather than a biography.[134] Yet even if Jones had presented his book as a work of fiction, his references to peace tracks might still have stemmed from accurate tribal history, either spoken or written. Maori academics have been writing histories since the 19th century. Also, tribal historians have been recording tribal histories, writings that have often remained unpublished and unknown outside the authors' kin groups.[135] For information on peace tracks, I may not yet have looked in the right places.

Some safe-conduct tracks might have existed in pre-contact Aotearoa and may have survived into the first few decades of the 19th century, especially, perhaps, for important trading routes along which guaranteed peaceable passage benefited neighbouring tribes mutually. But I have not come across any other mentions of such tracks, let alone any details of the customary laws that applied to their use, or any discussion on whether or how the host tribes controlled pan-tribal use.

Equally sparse in 19th-century accounts in English are mentions of important arterial routes being made tapu. This seems to have happened occasionally in some areas and possibly more frequently in others, resulting in tapu tracks that were in some ways the opposite of safe-conduct tracks. Tapu was and is one of the three primary concepts of the Maori world, the other two being noa and mana.[136] The word 'tapu' can be translated into English as the adjectives 'sacred' or 'restricted' or as the adjectival phrase 'under atua protection'; or it can be rendered as the noun 'restriction', a condition achieved by dedicating a person, place or thing to an atua (an ancestor with continuing influence).

If an intense tapu, such as that on the head of a chief, was defiled, the breach of tapu was a terrible insult that could have grisly repercussions, although more so in the 18th century than in the mid-19th.[137] In 1772 in the Bay of Islands, Maori killed the explorer Marion du Fresne. Several tribal accounts from the 1850s say that he met this fate for the offence of fishing in a tapu bay.[138]

Augustus Earle, describing an impression he had gained in 1827, wrote that tapu 'is a great inconvenience to a stranger who is rambling over the country; for if he does not use the greatest caution, and procure a guide, he may get himself into a serious dilemma before his rambles be over'.[139]

Places commonly made tapu included burial sites, vegetable gardens, food storehouses, mountaintops, tidal mudflats containing shellfish and rivers being fished with a seine. Elson Best wrote that 'the Maori garden was a thing to be avoided. Prohibitive tokens were sometimes placed on paths leading to such places; these were equal to our notices to trespassers'.[140] Minor pathways connected with hunting and fishing were also candidates for tapu. But according to William Swainson, who was in

New Zealand from 1841 to 1856, major inter-region tracks were never restricted except by the most powerful chiefs:

> If an influential chief desired to secure … any road from being travelled on, he had only to call it his Head or his Backbone, and it at once became more secure from trespass than if it had been fenced round with a high stone wall … The power, however, thus assumed by them, was based, not so much upon any superstitious fear of offending the native Atua, as on the power of the chiefs to avenge any insult offered to themselves; and it was never exercised to obstruct any great general line of road, except by those whose name was itself a tower of strength, and who had confidence in [that name's] power to secure the Tapu from being broken: when once imposed, however, the prohibitory ban was no respecter of persons, and it extended to all alike, without distinction of rank or race.[141]

H F McKillop left a similar account. In 1843–6 in the Wellington area, tensions were high over some disputed landownership.[142] The Ngati Toa chief, Te Rangihaeata, was one of the leading characters:

> The principal chiefs hold the power of tabuing a road or plantation, or any other place; for instance, Rangahiata tabued the road leading from the principal settlements on the coast, by calling it his backbone; and consequently no one dared trespass on such tender ground: thus cutting off the only means which the out-settlers possessed of bringing their cattle and other goods to Wellington for sale. On its being attempted by an Englishman to drive some cattle along this road in spite of the tabu, his cattle were seized, and himself threatened with death.[143]

Richard Taylor, writing in 1855, implied that some chiefs commonly made tracks and waterways tapu: 'If [a tapu] were put on by a great chief, it would not be broken, but a powerful man often broke through the tapu of an inferior. A chief would frequently lay it on a road or river, so that no one could go by either, unless he felt himself strong enough to set the other at defiance.'[144]

In 1857 Henry Tancred, the postmaster-general, arranged an overland postal route between Auckland and Napier. He wanted to improve the road along the Waikato river into 'a good horse track', but a tapu on this road became a problem.[145]

In reality the traditional rules on the use of inter-region trails may have been more complicated and flexible than any conventions that a basic understanding of kinship, hapu, iwi, rohe and chiefly autonomy would lead us to construct. In the past, simplified standard descriptions of Maori social structure were common but did not reflect the real world.[146] Research carried out in the 1990s has stressed the convoluted dynamism of the Maori social system.[147] In tandem with this intricate communal framework was a tangled but also fluid network of tribal political connections. Perhaps a correspondingly complex and ever-changing rule-book governed the use of tracks that crossed from one tribal territory to another.

In 1998 David Young, discussing the 19th-century use of the vital tracks linking the middle and upper Whanganui River to Taranaki and Taupo, seemed to suggest a free-for-all regime, but one that held for strangers an at-your-peril attribute. He wrote that 'these paths were used [in the first half of the 19th century] by both friend and foe; if friend, then canoes might be made available for the journey at a certain point'.[148]

Regarding the Whanganui River itself, whose river was it, in for example the 1830s? Who could travel freely on it? Was it an ara waka, an open highway to the central plateau, available to all? Did Ngati Tuwharetoa, the spiritual heirs of Tongariro, the source of the Whanganui River, enjoy freedom of passage? Or did they need the permission of Te Atihaunui a Paparangi (also referred to as Ngati Hau), the combined tribes of the river, 'a loose and sometimes fractious confederation of hapu'?[149]

Young considered these questions. He concluded that 'where and whenever Te Atihaunui had the strength to do so, they [had] upheld their mana whenua [territorial rights] on the river': if visitors used the river without approval, there was strife. Some court evidence in 1956 – and many stories – had suggested that 'Ngati Tuwharetoa traditionally did venture down the river, not as guests, but only to raid the tribes of its lower reaches'.[150]

Whereas I found only one mention of peace trails, many important trails seem to have been anything but peaceful. Guthrie-Smith, writing in 1921, re-tells spoken accounts of several robber-chiefs who had preyed on travellers on the trails from Tutira to and through the Maungaharuru Range. Guthrie-Smith doesn't date these events. There was Titi-a-Punga, who, like Rob Roy, followed 'the good old rule, the simple plan, that he shall take who has the power, and he shall keep who can'. His permanent eyrie was probably sited on rocky promontories of the Maungaharuru. 'There, encamped above the pass leading from Hawke's Bay into the Taupo country, he watched for travellers.'[151] And there was Tarakihi, who resided in the vicinity of the upper Waikari river and 'levied a toll on the track, until at last, killing some person of importance, he was himself set upon and slain'.[152]

For family groups, there was an element of uncertainty even when following well-known arterial trails. The prehistorian Atholl Anderson, describing the seasonal journeying of Ngai Tahu, wrote:

> Travel by land, however, was relatively slow, due in part to the need to gather food on the way. The journey from Kaiapoi to Arahura, on the West Coast, took ten days, and the return fourteen. More importantly, it was often unsafe. Family and hapu disputes flared up often, and groups bent on trouble could be encountered, without warning, almost anywhere. Travel by sea was in that respect much safer, and southern Maori were habitual sailors.[153]

As regards inter-region travel in wartime, one is apt to assume that war parties ranged to wherever they fancied, until opposed by the enemy. Yet there are mentions of chiefs seeking permission for their warriors to pass over the land of another tribe. Robert Ward wrote that after the Battle of Ohaeawai in 1845, Hone Heke, flushed with victory, 'applied to the

Kaipara tribes for permission to go through their territory, and invited them to join the expedition; but his design was checked by the positive refusal of the Kaipara chief, Tirarau, to allow the war party to pass over his land'.[154] In very different circumstances in 1868, while taking sanctuary at Puketapu (near Napier), Te Kooti Arikirangi Te Turuki wrote to the Urewera chiefs seeking their permission to enter their heartlands.[155]

Which brings us to something rather different again, two aspects that we have not yet mentioned. For a Maori in the mid-19th century, what formalities were involved in following a trail amicably – without gathering or catching mahinga kai – across the resource area of a whanau or hapu or iwi to which you did not belong? Similarly, for a Pakeha of the same period, how did you go about gaining assent to cross tribal lands?

Trails, Tribal Lands, and Chiefly Approval

Away from the main European settlements, in some areas of the country – such as the interior of the North Island – 'the Polynesian culture of the late eighteenth century remained almost unchanged in the middle of the nineteenth'.[156] Walking continued to be a large part of any journeying, as shown by Percy Smith's party's Taranaki trek of 1858, during which the five Pakeha walked 500 miles, rode on horseback sixty, and canoed forty-six.[157] Smith's group seems to have obtained chiefly approval partly by paying for guides. But as regards Maori–Maori interaction, the use of a trail by a Maori outsider without permission and without any family ties to the occupiers of the land could still result in suspicion or altercation or ejection or in what John Savage described as 'prompt administration of summary justice'.[158]

In pre-contact Aotearoa the need to seek redress for trespass (or for insult) had often caused war, as also had the quest for status and prestige.[159] In mid-19th-century New Zealand, trespass remained a risky business. However, most references to trespass in writings from or about this period concern intrusions onto the hunting or fishing grounds of other hapu or iwi or unauthorised entry onto tapu land. There appear to be few accounts that use the word 'trespass' when the circumstances merely involved the presence of a traveller on an inter-region Maori trail.

Perhaps the reality was that when Maori strangers followed trails they could meet various receptions ranging from friendliness and neighbourliness, through neutrality, to resentment and belligerence. As recently as 1993 Ngawini Keelan, discussing Maori hosting traditions, wrote that

> the practice of journeying outside of one's traditional boundaries was fraught with danger and certainly not lightly undertaken. This degree of caution was still apparent until quite recently. My grandfather spoke about journeying from Port Waikato to the Gisborne area when he was a child, and how the family travelled at night to avoid detection when circumstances forced them to travel over foreign territory.[160]

Yet if we judge from their writings, Pakeha travellers in the 19th century before the New Zealand Wars seemingly went wherever they wanted to, with rare exceptions and conditional on their successful hiring of Maori guides.

Pakeha Blur the Old Boundaries

We shall begin this section with a sweeping statement made by Ernst Dieffenbach, who has with good reason been called 'precise, careful, and measured in his expression'.[161] After describing an intertribal battle that occurred in 1839 in Waikanahi (Waikanae), he wrote: 'I must repeat my assertion that the hatred of the New Zealander is never directed against the white man, who may travel where he likes, and is never molested unless his own misconduct give rise to a quarrel.'[162]

Pakeha travellers in the 1840s enjoyed considerable freedom to use the main tracks, but it would be imprecise and oversimplified to imply that they could also dispense with chiefly approval. In 1841 Dieffenbach himself, despite attempting to negotiate, was twice denied permission to ascend Mount Tongariro; Te Heuheu, the leading chief of the Taupo district, 'had laid a solemn "tapu" on the mysterious mountain'.[163] To partly verify and partly refute Dieffenbach's statement about travel, we will dig a little deeper into travellers' accounts.

The writings of mid-19th-century Pakeha travellers in New Zealand abound in references to Maori guides and porters and in accounts of meetings with chiefs at settlements en route. Few of these descriptions explicitly mention the need to obtain chiefly assent to follow a trail. Sometimes this subject may not have been broached during the visitor–host encounter. However, gaining what we would now call access permission may often have been an unspoken aim and outcome, among others, of the etiquette and behaviour involved in dropping in on the locals.

Colenso and Selwyn both mention times during their travels when they had difficulty obtaining guides; they seldom talk about gaining permission to follow a trail. Missionaries and bishops, though, were a race apart, who strode on their way believing that 'the firm and undaunted demeanour of a white man will keep many natives at bay'.[164] Also, for two or three decades the churchmen were in the advantageous position of trading new ideas about spirituality. In February 1844 Hone Wiremu Hipango of Putiki, referring to Richard Taylor's journeying, said that 'it was the gospel which enabled [the missionaries] to go about into every hole and corner of the land fearless of danger'.[165] One is tempted to conclude that until the New Zealand Wars the bible-carrying missionaries seem to have enjoyed the freedom to roam over private land: the first and only New Zealand residents ever to do so. Yet this deduction would oversimplify the situation because it would understate the several different roles of the local Maori guides who bore the baggage, set up the camps, cooked the meals, showed the way, and – while in their own tribal territories – conveyed to the party, dependent on chiefly approval, a right of passage.

So there was more to safe travel than just carrying a bible. Sometime in 1839–40 the missionary James Buller, while en route to Port Nicholson (Wellington), was delayed at Te Ahuahu, near Kawhia, for twelve days. He later wrote:

> The cause of this delay was in the difficulty of engaging the required number of natives to go with me: travellers are always exposed to this annoyance. The natives are slow to learn the value of time;

> 'Taihoa,' or by-and-by, is their reply to remonstrance. In my case the difficulty was increased, inasmuch as my journey would take me over the territory of hereditary enemies; and, as it was, I had to hire fresh hands at several places.[166]

What about Pakeha nonmissionaries? How much liberty did they have to follow the main tracks across different tribal territories? When reading the accounts of European travellers other than missionaries, one gets the impression that they too, before the New Zealand Wars, enjoyed substantial freedom of movement. So, what was going on? Why no delays at territorial borders? Were the so-called Anglo-Saxons, as described by Dieffenbach, an 'imported race of shopkeepers … who pride[d] themselves on their own ignorance regarding everything that belong[ed] to the original inhabitants'?[167]

Firstly, some Pakeha travellers – especially the sort who wrote journals – could afford to employ guides and they sometimes had desirable goods to trade, such as tobacco, nails, metal fish-hooks, iron tomahawks or muskets. Many Maori wanted these aspects of European contact.[168] Secondly, the Pakeha travellers often engaged local guides who were in their own tribal areas; the travellers often took care to employ a new guide when entering the territory of a different tribe. Thirdly, the overall status of a party of Europeans may have sometimes affected the way that chiefs received the travellers. Edward Shortland, whom Angela Ballara has described as one of the best minds of the early colonial days[169], mentioned this question of stature:

> As to native attendants, from four to six are quite enough for one person; the latter number being only required if the country to be traversed is not populous, when an additional quantity of provisions must be carried. A traveller's importance is usually estimated, in places where he is unknown, by the number of his attendants; hence, if only accompanied by one or two, he is looked on as a low sort of fellow, and treated accordingly. Four, however, are quite enough to establish a character for respectability.[170]

The number of Maori guides employed was one factor of several that influenced the status of the party. The presence of at least one guide of high rank was also desirable:

> Those who know but little of the language of the country when about to make a tour in New Zealand – I refer more particularly to the North Island – should be careful to have among their native attendants, one young man at least, the son or relative of a person of consideration. They will thus have the best possible passport, a portion of the respect due to him being shared by his European friends and companions.[171]

The botanist John Bidwill described another measure by which Maori judged the importance of European travellers: dress and bearing. On 31 March 1839 he and his guides crossed a four-mile-wide marsh on their

way to Matamata pa. 'The mud was in many places three feet deep, of a soft custard-like consistence'.[172] At one point he sank up to his waist. After the swamp was a grove of enormous trees:

> Here the natives brought me to a pool, saying that I ought to wash, in order to be clean when we came to the Pa, which was close by … The natives it was evident did not like appearing as guides to a shabby fellow, and thought it would raise their consequence with their friends if I looked more like a great man than was usually the case with their visitors.[173]

It is possible that white travellers of sufficient appearance and prestige operated under a conveniently liberal interpretation of the customary conventions on 'access' to trails across Maori land. It may even have been easier, in terms of obtaining chiefly approval, for two or three well-heeled Pakeha and their guides to walk openly from, say, New Plymouth to Taupo than for a few unranked Maori with no family ties to the region.

In actuality, there sometimes were delays caused partly by progressing from one tribal area to another. On 7 January 1858 Percy Smith's youthful party was at Mokau, intent on heading eastwards up the Mokau River and over the hills to Lake Taupo. He writes: 'Takarei, who is one of the chiefs here … wanted £80 to let us go to Taupo, and afterwards came down to £13, which we could not give, and after a great deal of talk, we had nearly made up our minds to return and try the Wanganui river'.[174] The next day, however, the five young Pakeha successfully hired two guides to take them to Taupo and back for £10. Even so, later in the journey one of these guides had to go back some distance 'to get a letter of introduction to Te Heuheu', the leading chief of the Taupo district. This guide eventually rejoined the party, 'with his letter nicely written on a green flax leaf'.[175]

The hospitality laid on for travellers was often generous, while the formalities and diplomacy involved in meeting the people of a settlement could be lengthy. In April 1841 Dieffenbach apparently met relaxed hospitality at a village in the Waipa valley:

> At the foot of the hill [Pirongia] we halted at a small settlement of natives. The news of our approach having preceded us, they placed before us, at the moment of our arrival, long rows of baskets filled with articles of food, such as green calabashes, kumeras, pumpkins, water-melons, and dried fish. This is an old native custom in regard to strangers, and is rapidly giving way to European modes of hospitality.[176]

Dr John Johnson, on his 1846–7 journey to the Central Lakes, experienced ritualistic meetings of visitors and hosts:

> The reception strangers often meet with at a native settlement, particularly if not visited much by Europeans, is at first rather chilling … The arriving party generally sit down, when, if any of the natives should chance to have acquaintances, a *tangi* takes place, the others

> looking silently on, at length the spirit moves one of the residents to come forward, and after the customary salutation to the pakeha, the ice being broken, reserve is soon thawed, the news of the country are asked, the quality and occupations of the white strangers, and sundry other questions. It is then taken for granted that food will be required, and some of the slave girls are despatched to dig up and prepare the potatoes, and the conversation becomes general.[177]

As well as conforming to the traditional routines of Maori hospitality, such as the donating of food, these visitor–host gatherings involving European travellers often included the purchasing of food – typically potatoes and pigs – and the hiring of guides.

Although hostile or apparently hostile receptions for European travellers, before the New Zealand Wars, were unusual, they weren't unknown. On 27 March 1846, ten days after starting on an arduous five months of exploration, Heaphy, Brunner, Kehu and their scotch terrier reached the north end of the Whanganui Inlet, near Cape Farewell. The next day they engaged a young Maori called the Duke of York to take them southwards down the harbour in his canoe. They passed the inlet entrance and arrived at a small bay to be greeted by Niho (whose name Heaphy spelt 'Eneho'), an elderly Ngati Rarua chief.

With the flippancy of youth and after a safe outcome, Heaphy later wrote:

> The old fellow received us running up and down at the water's edge and flourishing his tomahawk, without any apparent purpose other than to appear a person of some consequence, and perhaps to some degree to intimidate us. On hearing that we were heading for Kawatiri [the mouth of the Buller River], he at once began to bluster … We had no right he said, to undertake the journey without his permission. He was chief of Wanganui, and the whole of the coast beyond was his, and he must have much money before he would allow us to proceed.[178]

A few other apparently unfriendly Maori appeared on the scene, one of whom declared that Heaphy and his companions should return to Pakawau on Massacre Bay (Golden Bay).

In controlling access to the coastal trail, Niho was within his rights, as sanctioned by tikanga – well-known and long-established custom. Sometime in 1828–31 a Ngati Rarua force under Niho and Takarei had marched down Poutini (the west coast) and had defeated the Poutini Ngai Tahu at the Hokitika River. Niho had thus, by right of conquest, gained rangatiratanga (chiefly authority) over one third of the western coastline, from Hokitika northwards to what is now Cape Farewell.[179]

Niho's apparent antagonism may have merely been his version of the rules of conduct that applied to receiving and bargaining with strangers: the opening wero, or challenge. Dieffenbach wrote of speeches delivered by 'orators strutting with long strides and lively gesticulations'.[180] Heaphy and Brunner responded to the speech-making – or defused the confrontation, if that was what it was – by offering Niho four sticks of tobacco in

payment for some potatoes. At that time, and through at least the 1840s, tobacco 'supplied the place of small money in all parts of [the] country remote from the towns'.[181] Having quietened the chief, they dragged their canoe hastily over some shallow water and paddled briskly away.

The gruelling journey that followed led William Fox, the New Zealand Company's agent at Nelson, to write: 'I think Messrs. Brunner and Heaphy are entitled to the credit of having accomplished the most arduous expedition which has yet been undertaken in New Zealand'.[182] He should have written ' … undertaken by Europeans … 'They travelled with a skilful and dependable Maori guide, over terrain well known to Maori and often along visible – albeit sometimes dangerous – trails. Looking back at this trek from the late 20th century, the historian Michael Fitzgerald rearranged the credit: 'It is clear that had it not been for Maori hospitality en route, the party would have starved during their mid winter journey'.[183] Barry Brailsford identified the pair's main accomplishment:

> We should not forget that they were travelling a well-worn Maori trail and a vital route in the greenstone trade system. There was nothing new in the venture. It had been done many times over many centuries. Now it was recorded in writing for the first time. That was the lasting Heaphy-Brunner achievement.[184]

In 1840 Joel Polack wrote of the changing power of the chiefs, but in a context unrelated to Maori trails.[185] It is difficult to judge how seriously the Pakeha use of Maori trails, from 1840 onwards, blurred tribal boundaries and eroded the authority of chiefs. Many missionaries, explorer-surveyors, prospectors and botanists took buoyantly to the trails; but most immigrants had other, more important and less intrepid things to do, such as road-building. By the 1850s some North Island Maori were becoming concerned about the declining force of tapu.[186] Yet unrestricted Pakeha use of trails, if it did happen, was the least of the problems facing the indigenous people of Aotearoa, because Pakeha highways and railways together with changing land use would gradually blot out or cause the discarding of many of those old trails. Compared to unmapped and unwritten tribal boundaries, there was nothing blurry about the new boundaries that were being recorded on the deeds plans and in the deeds books held at the register offices (from 1841 onwards[187]). In 1861 there was some resentment among Maori who were living on a riverside native reserve near Temuka (having, presumably, been displaced from their tribal lands). When the river was low, Pakeha travellers usually followed the riverbed to avoid trespassing on the reserve.[188] But from the perspective of Maori on that reserve, the reserve boundary was all too clear: their venturing beyond it would risk their trespassing on land where they had once walked freely.

In the next chapter we will return to 1840 to look at the coming of the highways.

Chapter 2

Once a Highway, Always a Highway

Europeans made very few tracks in New Zealand before 1840. One or two pre-1840 accounts of timber-harvesting mention the cutting of tracks. By 1805 at least sixteen ships were whaling off North Cape.[1] When the weather battered these whalers, damaging their masts or spars, New Zealand had trees in plenty to supply replacements. Seamen prized kauri for its durability as planking as well as its strength as spars.[2] The first tracks made in New Zealand by Europeans were probably short tracks through the bush to reach kauri groves. Felled timber, for whalers' spars or for trading, was slid down to the nearest river or beach. In December 1814 the missionary Samuel Marsden traded an axe worth ten shillings for three kauri spars that would fetch £8 in Port Jackson (Sydney).[3]

The intertribal conflict of 1818–40 caused the deaths of at least 20,000 Maori.[4] Yet in 1840 there were still approximately 80,000 to 90,000 Maori in Aotearoa in contrast to a little over 2,000[5] non-Maori. These population totals were soon to change markedly. On 6 February 1840 at Waitangi, about forty-five Maori chiefs signed the document that 'would turn out to be the most contentious and problematic ingredient in New Zealand's national life'.[6] On 21 May, Governor Hobson proclaimed British sovereignty over the whole country, making New Zealand a dependency of New South Wales.[7] The British colonisation of Aotearoa was now able to proceed, although nearly 150 years later New Zealand governments would find themselves trying 'to give judicial and moral effect' to the Treaty of Waitangi.[8]

Bridle Tracks, Drove Roads and Dray Roads

The first horses in New Zealand were probably the stallion and two mares brought from Australia by Samuel Marsden in December 1814.[9] Importation of horses in large numbers, mainly from Australia and to a lesser extent from Britain, began in the 1840s.[10] During the early 1840s a horse cost significantly more than an agricultural worker's annual income; walking remained the main means by which labourers travelled around the country in search of work.[11] By 1861 in Taranaki, however, there would be 'a horse to nearly every male in the Province'.[12] For eighty years,

from 1840 until the motor-vehicle boom that followed World War I, the development of New Zealand would rely greatly on the power of horses.

In the history of land travel in Aotearoa, the horse track, cut through the bush using iron-headed axes, was the first technological improvement on the Maori trail. While travelling in the far north in late 1840, Ernst Dieffenbach found that 'a bridle-road [led] from Kaitaia [to Waimate] for thirty-four miles through the forest: it was cut by fifty natives for as many blankets, and was completed in six weeks'.[13]

From 1840 onwards, European settlement rapidly increased, and muddy bridle tracks, bullock tracks and dray roads inched out from the main centres of population. Many remote forested areas, however, remained accessible only on foot or by river. In 1852, for example, John Rochfort decided to make his way from Rangitikei on the west coast of the North Island to Hawke's Bay: 'I wished to see that part of the country and the centre of the island, and determined on walking. I sold my horse on the spot, because the bush was too thick to get a horse through.'[14]

Sometimes it was possible to ride a horse along a narrow track through the bush, but only at a walking pace and only in the daytime. In the 1860s a track of this sort joined the headwaters of the Grey and Inangahua rivers, over a low saddle. 'No one could get through at night.'[15]

Some other regions, less forested, conveniently suited horse-riding. On 5 May 1856 in Nelson, William Robinson, known as 'Ready Money' because he usually paid in cash, paid £10,000 for 40,000 acres (16,200 hectares) of land at Cheviot, north Canterbury. He had not yet seen the country he was purchasing.[16] Horses feature strongly in the story of his subsequent journey to Cheviot and of his creating there a vast estate. Walking is little mentioned. On 15 May 1856 he reached Cheviot, having journeyed over the Lowry Peak Range and looked down on tussock and native grasses, stretching as far as the eye could see. Right from the start, he could ride around much of his own and his neighbours' estates. Between May and September 1856 he and his brother Samuel and friend John Oakden rode around the runs in the Wairau and Awatere districts, buying sheep.[17] Here, only the horseless walked.

By November 1866, people were constantly journeying from Cheviot Hills station to Christchurch (120 kilometres), doing the northern section on horseback or by bullock dray, and the southern section by carriage or public coach.[18] 'Horses greatly facilitated river-crossing, being able to wade and swim more powerfully than a human being, even with a rider clinging to their mane or tail.'[19]

Although some bridle tracks enjoyed only short lives, being soon widened and improved into dray roads or coach roads, others were to remain bridle tracks into the 20th century. The bridle track from Picton to Havelock via the Grove, proposed to Marlborough provincial council in April 1861, would still be no more than a horsemen's route in July 1896.[20] Bridle tracks were cheap to construct compared to vehicular roads. The first motorcar to travel this way would not do so until 3 October 1915.[21]

Similarly, in the Urewera the route from Maungapohatu to Waikaremoana, over the Huiarau Range, would still be just a horse track – and 'a nerve racking ride' – in December 1927. One section would be a trench, similar to the ancient holloways[22] of England; Norman Nicholls later

recalled this deep groove: 'The track was so worn down in places by the continual passing of horses that it was 6 feet (2m) below the surface of the surrounding earth, and only the horses heads could be seen. Sometimes the horses got wedged in and had to be hauled out again.'[23]

In terms of increased width, although not of refinement, one stage beyond bridle tracks were cattle tracks. In about 1845 Alexander Marjoribanks wrote that 'a road or cattle path, five feet broad, has … been opened up [from Wellington] to Porirua, sixteen miles distant … from whence cattle can be driven to Wanganui and Taranaki. Where these cattle tracks are widened, and rendered available for carts and bullock teams, the thing will be complete.'[24] In 1848 Arthur Whitehead, a land-surveyor – with a different view on droving – advised New Zealand surveyors that 'a width of 20 feet has been found sufficient for the purposes of driving cattle'.[25]

The first vehicles to be used on the widened cattle tracks were bullock-drawn sledges and rough carts, strongly built for travelling across recently felled bush. A dray was a low two-wheeled cart without fixed sides, generally lacking springs. Drays were used for carrying heavy loads such as barrels, slowly. In south Canterbury, 'bullock drays required no roads, for they gouged their own through tussock and matagourie and marked a line for future use'.[26] Dray roads were sometimes as little as ten feet wide physically, even when based on public roads that were one chain (sixty-six feet) wide legally.

Sometimes these 'new' transport routes followed and widened existing Maori or settler foot-tracks. This happened in some parts of Hawke's Bay:

> It has been pointed out that most of the coastal roads in Hawke's Bay developed upon foot tracks already in use. Just as 'the rolling English drunkard made the rolling English road' so the foot traveller, picking his way through the gullies and down to fords on the rivers made the twisting New Zealand road.[27]

The best route for a horse or for a horse and cart, however, was often different from the best route for a human on foot, and sometimes the settlers' roads departed from the Maori trails, leaving those once frequented trails to fall into disuse. Maori themselves 'took to horse riding with relish and skill once the animals became generally available in the mid-nineteenth century'.[28]

How many horses and carts are we talking about? How much road-building was required? Another look at the population figures suggests that the answer to both of these questions is 'a lot'. The figures also suggest that Maori, as well as Maori tracks, were in severe trouble. By 1858 the number of Maori had fallen to 56,000, and the number of settlers had increased to 59,000. By 1881 there would be around 500,000 settlers.[29]

With the benefit of hindsight, we can see that those who predicted that the Maori race would die out were wrong. They underestimated the enduring strength of Maori culture. In time, Maori would survive colonisation 'by selectively accepting and adapting what Western technology and culture had to offer'.[30] Yet the 'fatal impact' view of history does seem to fit some aspects of colonisation: by the end of the century many

old Maori trails of all types, from local birding trails to regional trading routes, would be superseded and forgotten.

Collecting Groceries from Dunedin, about 1849

Even when Maori did try to walk their traditional trails, to obtain mahinga kai (traditional food) or to reach kainga nohoana (seasonal settlements), those who lived near Pakeha settlements or farms or mines increasingly found themselves trespassing on land that they had once 'owned' (land over which they had enjoyed tribal territorial rights).[31] The blocking of their old trails by fences, and the obliteration of these trails by cultivation and pastoralism and gold-mining, were consequences of the alienation of their land, a calamity that Maori would both fight against and adapt to, but which would leave many of them eking out an impoverished subsistence for the rest of the 19th century.

While disempowered Maori suffered chronic privation and grew wanting of mana and devoid of hope or increasingly bitter and militant and, eventually, resilient and politically active, Pakeha sowed clover, planted apple trees and gooseberry bushes, oaks and elms, hedgerows and roses, harvested turnips and swedes, renamed many of the places and the features of the land, and confidently drove sheep and cattle to the market. Writing in the 1880s, the Reverend John Christie of Waikouaiti looked back at the Mountain Track out of Dunedin, a high-level drove road that had avoided the impassable tangle of the lowland bush:

> This track, opened up by the pioneer settlers [the first Dunedin ones arrived in 1848], was much shorter and more suitable for them than the native footpath [along the coast]. It was free from bush, so that horses, sheep and cattle could be driven to market by it. Though superior to the Maori track, it was not free from drawbacks. Travellers often lost their way, and were benighted on account of the thick fogs that lay on the hills in dull weather, and lives were sometimes lost. The names of several persons are mentioned who entered that region but were nevermore seen or heard of. Skeletons have been found at different times among the mountains in the neighbourhood of this old route, which are supposed to be those of lost travellers … Some may also be astonished to learn that the first Goodwood [near Waikouaiti] settlers carried their groceries on their backs from Dunedin by the Mountain Track, a distance of nearly forty miles … The Mountain Track was the only inland communication for Europeans between Dunedin and Waikouaiti till 1863.[32]

Note that the first European settlement at Waikouaiti is usually dated to the arrival there of the *Magnet* in 1840, eight years before the arrival at Port Chalmers of the *John Wickliffe* and *Philip Laing*.[33]

The runholder at Goodwood was a Swedish sailor, Charles Suisted, a big man. On his overland journeys from Dunedin to Goodwood in the 1850s, he 'always took two horses with him – a dark roan mare called Violet, well-broken and good-tempered, and a powerful grey called Dick which had the build of a good stout coach-horse and grunted his way up the 2,000ft climb [up Flagstaff] without his heavy master leaving the saddle during the ascent.' On reaching the top of Flagstaff, Suisted

always changed horses; it was Violet's job to carry him down, usually all the way to Goodwood House.[34]

Discussing communications of the 1850s, the historian Charles Moore wrote that 'the Maori track [from Dunedin] round the coast to Waikouaiti, in places barely discernible for bush and creepers, was used by the more adventurous foot travellers'.[35] Murray Thomson, writing about his 1860s boyhood, devoted three pages to describing this route. At Heyward Point, for example, 'a precipitous 200 feet face of rock was ascended by a winding path, known to the old hands as "Jacob's Ladder" '.[36] A little further on, from the western end of Murdering Beach the track climbed steeply to the top of Pilot Point. Thomson wrote: 'More than once I have seen a line of Maoris, men and women, ascend the face of the cliff by this track, their backs loaded with what were probably mutton birds from down south.'[37]

Another Maori trail near Dunedin started at Otakou, crossed the peninsula to its oceanic side and headed southwest along the coast via Wickliffe Bay, Hoopers Inlet, Sandymount and Sandfly Bay to reach Tomahawk Lagoon.[38] Perhaps this was the finest foot-track that the peninsula has ever had: continuous, end to end, and in tune with the shape of the land. From Tomahawk Lagoon the trail continued to what is now St Clair. From here it climbed slightly to follow the clifftops, sidling below Forbury Hill and continuing westwards along the clifftops to reach Green Island Beach.[39] (From there it probably continued along the coast to Taieri). Henry Duckworth, who was born in 1853, remembered this track and wrote of it in some detail. Murray Thomson described the same track, calling it a Maori main highway.

Other writers have stated that Maori who were heading north from Otakou in pre-European times used the high-level ridge route as well as their coastal trail.[40] In September 1850 a Dunedin shop-owner proposed the erection of flagstaffs along this exposed route to prevent further loss of life.[41] In April 1854 there were further calls for 'the restoration and completion of a line of poles and cairns to guide travellers across the "Snowy Mountains" … on the route to Waikouaiti'.[42] But this track up in the mist would only be needed for another nine years. On 1–3 January 1863 Dunedin held its first Caledonian games; on the 4th the Cobb's coach from Dunstan, taking advantage of Dunedin's new north road, reached the city in one day; and later that year the city's first street gas lights were installed.[43] By 1865 a telegraphic line connected Invercargill, Dunedin and Christchurch.[44]

Travelling from Napier to Taupo in the 1850s and 60s

As well as recognising that many Maori tracks were too narrow for a horse, we should also acknowledge that many of these tracks, even had they been widened, would still have proved too steep or too boggy or otherwise difficult or impossible for a horse and cart. Some travellers, however – and no doubt some horses – were hardier than others. In February 1857 George S Cooper, a subcommissioner for land purchases, travelled on horseback from Auckland to Napier, by way of Taupo. He reported that

> the journey on the whole is neither difficult nor dangerous. It is rough in some places and occasionally requires circumspection in travelling. But with very little expense it might be made into a good bridle path fit for driving sheep or cattle. In summer time the journey from Napier to Auckland could be easily accomplished in ten days, allowing for resting a Sunday on the road, by a well mounted person who knew the road, or had the advantage of a competent guide.[45]

Perhaps Cooper was made of sterner stuff than some of those who came after him. On 11 January 1864 J B Ellman, who was concerned about the laboriousness of the overland route between Napier and Auckland, wrote to Henry Sewell, who had been New Zealand's first premier and who was still active in politics. The first paragraph of the eight-page letter discussed the general character of the eighty-mile section from Napier to Opepe (a place ten miles southeast of Taupo), which followed a Maori track. Ellman reckoned he had found an easier route, suitable for a dray road:

> Dear Sir,
> I have for several years felt a great interest in the overland route from Napier to Auckland, especially the … hitherto used Maori track from Opepe on Kaingaroa plain to Napier. I have been struck with the conviction that no permanent road could be made on that line, the natural surface of the country presenting highly objectionable obstacles; and looking to the future, when peace shall have been permanently established, and the Bay of Plenty be the site of thriving settlements, I have always had an opinion that a practicable dray road, avoiding the two great difficulties, the river Mohaka and the central range of mountains [the Maungaharuru Range], would somewhere be found, which when completed, would be of the greatest possible importance to the East Coast, especially to Napier.
>
> Impressed with this belief, I devoted considerable trouble to the examination of the country, and having discovered an easy practicable route, entirely avoiding the ascent of the main range, and also the fording of the Mohaka, and all the other creeks and rivers, presenting moreover through its entire length between Napier and the Taupo plain no engineering difficulty whatever, I have felt it to be my duty to acquaint His Excellency the Governor with the existence thereof.[46]

The letter then described the toils of the Maori route:

> Starting from Napier by the present Maori track, there is 6 miles of soft beach to traverse to the entrance of the Petani Valley [Esk valley]. This valley is then followed, crossing the river about thirty times, until the Kaiwaka creek is reached – this creek is then ascended for two miles, in which there are about twenty crossings. The road then traverses a very rough broken range of hills as far as Rongomaipapa [?] whence is a descent to the low valley at the foot of the great maunga haruru [Maungaharuru] range. This brings

> you to the [Te] Pohue bush. The road now ascends for four miles to the Titi-o-kura saddle on the summit of the range from whence there is a very bad descent to the river Mohaka – the crossing of which is very dangerous – On the north side of the river the track traverses an exceedingly broken and hilly country the whole way to Kaingaroa plain – abounding in steep and unnecessary ascents and descents, crossing the Waitara [?], a branch of the Mohaka in three dangerous places. At the South East end of the Kaingaroa plain the road is boggy and impassable in wet seasons and indeed it is only in fine weather that the four rivers are safe to cross. The Mohaka in particular is often flooded for days together so that all communication is stopped.[47]

The rest of the letter detailed Ellman's proposed easy route and the 'several material advantages' that it would offer. In 1859 he had 'had the honor to conduct Mr. Thomas Gill the Provincial Engineer of Napier [ie, of the province of Hawke's Bay] over the new line'. Mr Gill had been favourably impressed.

An 1864 sketch survey of this proposed road from Napier to Taupo shows the road line and also 'native tracks, churches, pas, bush etc'.[48] A manuscript map of 1868–9, drawn to show some of the campaigns of the New Zealand Wars, marks the route strongly, labelling it OVERLAND TRACK TO AUCKLAND.[49]

Less than three weeks after Ellman wrote his letter, the naval officer Herbert Meade rode the old Maori trail. After a brave or naive wartime 'ride through the disturbed districts' of the hot lakes, he left Tapuaeharuru (Taupo) on 29 January 1865, heading for Napier.[50] Of the central section of the route, from Tarawera to Titiokura, accomplished on 30–31 January, he wrote:

> We had some heart-breaking mountain ridges to cross during this and the following day, more especially one just before arriving at Te Haroto – miles of steep and slippery ascent without a single break … The track between Taupo and Napier may occasionally be dignified by the name of a road, some part of it being passable to a cart.[51]

As in Ellman's description, Meade too followed what he called the river Petane (Esk River), 'fording it just nineteen times'.

Maori, in actuality, had used three different routes from Napier to the Mohaka River:

> [One Maori] track followed the Esk Valley from Napier to Te Pohue. It turned off at the back of what is now Bay View township and followed the hill road into the Esk Valley.
>
> Another track went via Rissington and Patoka and cut across to join the Esk route at Te Pohue.
>
> A third route followed the same line to Patoka, then up to Inangatahi and met the other routes at the Mohaka crossing.[52]

By 1870, as a result of the New Zealand Wars, the road had become a chain of military blockhouses, eight in number.[53] Also by then, 'the old Maori path from Taupo to the coast [Hawke Bay] had broadened into the overland mail track, and was to be the main highway of a motor age'.[54]

By early 1871, a possible dray road was open from Napier to Te Haroto. The next section, from Te Haroto to Tarawera, was nearly complete:

> Formerly 5 miles of this was dense forest. The traveller knew then what the Shadow of the Valley of Death was like. He was in danger of falling headlong into a gully or sideways into a mudhole or being caught up like Absolom on overhanging vines and branches.
>
> Now there is a track a chain wide through the bush and it was done by Maoris for half the money it would have cost done by Europeans.[55]

For forty years, however, from the time of Gill's trip over Ellman's proposed route, debate would rage over which of several possibilities should be the main Napier–Taupo road.[56]

An account of the planning and building of the Napier–Taupo road appears in Part 3 of Kay Mooney's *History of the County of Hawke's Bay*.

State Highway 5 passes through some of the sites of settlements that the Maori tracks passed through.

The King's (or Queen's) Highway

The first Europeans to arrive in Aotearoa and the settlers who followed them had focused on other priorities than preserving Maori foot-tracks. They were primarily concerned with personal survival and the utilisation of resources. The first sealers, at Dusky Sound in 1792, had merely needed a shore base from which to exploit the harvest of the sea.[57] The settlers, who began to arrive about fifty years later, became fully occupied subjugating and exploiting nature: clearing land for grazing and cultivation, building homes, harvesting the forests and the flax, dipping scabby sheep, burning the tussocks, rushing – or more likely trudging – to the gold, and constructing roads.

The first Dunedin settlers had arrived in 1848 to find the town's 'streets' to be merely surveyors' lines cut through the bush, flax, fern and tutu.[58] In 1861 the main road heading south from the thirteen-year-old settlement, crucial for exploiting the harvest of the Tuapeka (Lawrence) goldfield, was still in many places a narrow unmetalled and uneven track. On a fine spring morning in September, three months after the start of the gold-rush, a Mr Wheeler set off on horseback from Dunedin, heading for Gabriel's Gully by the 'easy' way via Tokomairiro (Milton). The first coach service to Gabriel's Gully had not yet started. Wheeler found the road to be 'roughly metalled for some miles with pieces of light and brittle rocky sandstone'. But later on, before reaching Taieri Ferry,

> the road we were travelling was abominable. With all its disadvantages, New Zealand has no lack of water, and Otago is particularly abundant in springs. These and the late rains had produced their due effect on the unctuous mouldy soil, and only a narrow track was

> left through which our horses could pick their way at a tediously slow pace.[59]

On the cadastral record maps, though, this quagmire along the edge of the Taieri Plain already enjoyed the status of public road, and the provincial council had allocated £8,000 to improve it[60], and those who used it did so under the full authority of laws that dated back to the days when English kings liked nothing better than parading around the kingdom, collecting taxes. That is to say, the South Road was part of the queen's highway. (This term alternated depending on whether a king or a queen reigned.)

Origins of the King's (or Queen's) Highway

To obtain an understanding of the meaning and origins of the king's highway, we can look back to a time and a country many centuries earlier than and far away from Victorian New Zealand:

> In the 1250s, Richard of Glaston, a confessed thief, abjured [renounced] the realm. As he left Northampton on the road southwards towards Newport Pagnell on the first leg of his journey to Dover and overseas, he was followed by some of the sheriff's men. When they were clear of the town, these men seized Richard, dragged him off the king's highway by the feet and beat him until he was near death. When questioned about this subsequently, the sheriff retorted that it was perfectly just to maltreat an abjurer who left the king's highway.[61]

Leaving aside the question of the right of the sheriff's henchmen to assault an abjurer anywhere, what does this odd story say about the king's highway? The tale implies that, in theory, the sheriff's men broke the law in grabbing hold of Richard when he was on the road itself. The law allowed Richard, a thief and a fugitive, to proceed along the highway unharmed. In the early Middle Ages, Anglo-Saxon law guaranteed the safety of travellers on the highway.[62] The law on this matter, in 1250, was already many centuries old.

The great blunder that the early British settlers of Aotearoa made was in not bringing with them their public footpaths and bridleways. These public rights of way crossed public and private English and Welsh countryside, and in a less formalised way Scottish fields, bogs and mountains. They often followed logical routes between farms and villages. Typically these walking and horse-riding routes had formed by long use, as essential parts of daily life in a densely farmed and villaged country. They had then, at a later stage, been marked on parish maps or recorded in parish records. Not all footpaths on parish plans were public rights of way, but those that were recognised as such were legally part of the king's (or queen's) highway and enjoyed the same protection in law as other highways including main roads. 'Landowners had to tolerate the passage of their fellow-citizens across their land because the economic life of the countryside depended upon the ability of all to get to and from their places of work.'[63]

I am not suggesting that England's public footpaths in the mid-19th century were as clear cut, well recorded and vigilantly guarded as they are

now. The 18th and early 19th centuries, before the departure of settlers to New Zealand, had seen a widespread loss of customary area access to land.[64] Yet the ancient principle of footpath law remained 'once a highway, always a highway', and many thousands of miles of English and Welsh footpaths – more plentiful in some areas than in others – survived the industrial and agricultural revolutions. They form the basis of today's network.

Public Roads in 19th-century New Zealand

No such interconnected nationwide system of traditional public rights of way, established by long usage, developed in 19th-century New Zealand. The early land-surveyors may have plotted the occasional convenient new foot-track that crossed private land, but none of these workaday tracks were to become pedestrian rights of way by reason of ancient practice.[65] Nineteenth-century map-makers did sometimes depict old Maori trails, but as we shall see, changing land use and other influences would lead to the demise of most of these tribal 'rights of way'.

Yet the king's (or queen's) highway did develop here extensively and importantly for modern-day recreators – and in a totally different way from how it had evolved in Britain. New Zealand's early administrators and lawmakers did not ignore the need for freedom of movement around the country; on the contrary they emphasised its importance by requiring that when any crown lands were sold every allotment had at least one frontage on a public road.[66]

Notice, though, the entirely opposite ways in which the English queen's highway and the New Zealand queen's highway developed. English footpaths and bridleways and the earlier English coach roads first matured on the ground, following logical routes, and later were surveyed and added to the maps. New Zealand's public roads were first drawn on the plans and maps, usually as twenty-metre-wide strips, and only later were laid out on the ground. Being marked out with wooden pegs was as far as many of our public roads ever got. Some never even got that far, because the demand for land exceeded the availability of land-surveyors.[67] These unpegged public roads remained in the fullest sense 'paper roads', existing only on maps.

The early administrators had intended to provide public roads wherever people were likely to need to get from A to B on lawful business. In practice, what evolved initially was far from a wayfarer's utopia. In 1863–4 Richard Taylor of Wanganui went frequently to the Rangitikei, either to Parawanui (Parewanui, southwest of Bulls) or to Westoe (Sir William Fox's home, near today's Marton). Drawing on Taylor's diaries, A D Mead has described the legal access problems that Taylor met:

> In spite of increase of white settlement, travel did not seem to get easier. There were no formed roads, only bridle tracks. The early cross-country routes cut across the later property boundary lines, and as the settlers fenced their holdings, a traveller would suddenly come to a fence crossing the track and would not know whether to turn right or left, perhaps riding a long way before finding himself wrong …

> [On one occasion], after staying a night at Parawanui, he started up the bridle track parallel to the Rangitikei for Westoe, but a settler had fenced his holding across it and [Taylor] had to take to the river bed and cross the river twice, finding it very deep.[68]

The fencing of boundaries also took place in the South Island. In south Canterbury, until the runholders fenced their properties, people travelled by the most direct route to reach their objective. But fences gradually appeared. 'In November 1865, E. Pilbrow wrote to the Geraldine Road Board stating that he was fencing his property along Valley Road and traffic in several places would have to be stopped, for which he was sorry, but he had to fence his boundaries.'[69]

Writing in 1926, a contributor to the *New Zealand Surveyor* looked back at the problems faced by the first surveyors and at why the early roads 'came to be laid out of such extraordinary "badness" ':

> Recall the early history of settlement. A forest-clad, more or less mountainous country, with the better lands separated by pathless bush, settlers pouring in and clamouring for land and farms to settle on, money scarce, for there was nearly no export trade or production, no money for public works, and great areas to be quickly cut up and allocated to satisfy both the real needs of genuine settlers, and the cupidity of fortune-hunting speculators. There was no money to make roads, no vehicles with wheels; the beast of burden was chiefly the bullock dragging a sled behind him.
>
> What else could the administration do but neglect real roading in the interests of section pegging, leaving [road] reserves along the ridges to act as bullock tracks where no formation other than clearing the bush and an occasional log bridge was required – where the rains and storms kept the formation clean and passable; where the swagger [swagman] and the packhorse could clamber; where culverts were unnecessary and road 'formation' was at a minimum.[70]

Given the choice, in my dreams, I would mix and match: I'd transplant England's footpath system into New Zealand's sunny and overwhelmingly private pastoral landscape. What a fine combination that would make. I have already raved about New Zealanders' access to the mountains and native forests. But in the context of access across the farmed countryside, England's public footpaths win easily in terms of their immediate usability for walking. Although some of New Zealand's unformed public roads do follow rivers or ridges, many others take ugly lines unrelated to the topography; these deformities, even if located and waymarked, would be of little or no practical use to walkers. So we should do away with them, some landowners have suggested. What! Try telling that to the lawyers. In 2006 Duncan Webb, an associate professor of law at Canterbury University, wrote:

> There's nothing that warms a lawyer's heart more than ancient and venerable law, and you can't get more ancient and venerable than the law relating to highways and other public rights of way. The idea

> that even common folk should be able to travel from one public area to another predates, by a considerable margin, any recent spats over private citizens taking public land in Redcliffs, or the sagas of the Spencer family on Waiheke Island.[71]

Maori and the Queen's Highway

Maori did not always share the colonists' enthusiasm for the law of highways. William Swainson, the attorney-general of New Zealand from 1841 to 1856, wrote of an incident at Tongaporutu (north Taranaki) in which 'free passage was denied to her Majesty's subjects at the caprice of a barbarous New Zealand chief'[72]:

> In this remote part of her Majesty's dominion it was clear that the Queen's name had not yet become 'a tower of strength' … Along this part of the western coast of New Zealand, the advance of an army may be held in check by a handful of armed men: and so it was, as the Queen's writ would not run, and as the Queen's troops could not march, that her Majesty's Colonial Attorney-General was stopped on the Queen's highway.[73]

In fact, Swainson's 'barbarous … chief' might have been literate and perfectly capable of comprehending the crown's writ and deciding for himself how to respond to it. Since the early 1830s, Maori pupils in mission schools and their parents had shown widespread enthusiasm for literacy. 'By the early 1840s … about half or a little over half of the adult [Maori] population could read or write a little in their own language.'[74] Writing in 1849 about the 700 Maori of the New Plymouth settlement, Charles Hursthouse said that 'of males between fifteen and thirty, it is estimated that three out of four can both read and write'.[75] Whether the Queen's writ was in Maori or English or both I do not know.

Another reference to this queen's highway occurs in Ferdinand von Hochstetter's *Nee-Seeland*. Hochstetter was an accomplished geologist. He had heard of the existence of coal on the west coast about seven miles south of the mouth of the Waikato River. On 25 January 1859, he set out to examine this spot:

> I followed the 'Queen's Road', a much trodden foot-path leading from the Waikato along the West-coast to Taranaki, along which a native carries every fortnight the mail from Auckland to Taranaki.[76]

Public roads in the mid-19th century had military significance as well as peacetime importance for travel, communications and trade. The law of highways featured in one of the more violent chapters of Aotearoa's colonisation. In 1859 Thomas Gore Browne, the governor of New Zealand, agreed controversially to buy land at Waitara in Taranaki, against the express wishes of the region's most prominent chief Wiremu Kingi Te Rangitake and other claimants. In March 1860 Browne ordered the army to support the survey of this block.[77] At 4am on 3 March an armed force of over four hundred officers and men left New Plymouth, heading for Waitara by the Devon line, a survey baseline cleared through the bush and considered by the crown to be a public road.[78] On the night

of 4 March the Maori built a pa across the Devon line. An escort from New Plymouth delivered to this pa (by then deserted) a letter from the colonial governor:

> To the Chief who obstructs the Queen's Road—
> You have presumed to block up the Queen's road, to build on the Queen's land, and to stop the free passage of persons coming and going. This is levying war against the Queen; destroy the places you have built; ask my forgiveness and you shall receive it. If you refuse, the blood of your people be on your own head. I shall fire upon you in twenty minutes from this time if you have not obeyed my order.
> T. GORE BROWNE
> Camp Waitara, 6th March, 1860.[79]

The first shots in the Taranaki war of 1860–1 were fired on 17 March 1860.[80] In 1863 governor George Grey concluded that the crown had been at fault and he returned the Waitara block to its owners. The matter of public roads and roadmaking remained a contributory factor during the destructive Waikato wars of 1863–70 and the Urewera wars of 1865–72.

In the Urewera after the wars, the dominant Maori viewpoint opposed the construction of roads into and through the mountains. The senior chiefs correctly discerned the strategic purpose of roads. But some hapu disagreed, being in favour of the proposed roads for trade. So roads were a divisive issue between the people of the Urewera.[81] Be that as it may, for one reason or another few roads penetrated the Urewera in the 19th century, and the old trails retained their practical importance for longer than those of most other regions.

Land-surveyors and Their Temporary Foot-tracks

We have been focusing on public roads, but while the network of roads grew, Pakeha foot-tracks grew also. The histories of foot-tracks and bridle tracks and vehicular roads in 19th-century New Zealand are intimately linked. Many roads, having been firstly drawn on plans, started out as survey lines: alleys hacked and slashed and axed through the bush by survey parties. Some of these measured and pegged lines, which could be miles long, became foot-tracks. Hence, on 1 August 1855 Charles Abraham, when leaving Runciman's farm at Opaheke (near Papakura), 'took the surveyor's line for a path'.[82]

Walking along a cut survey line required agility and fitness. In 1873 a government survey party began surveying a trial route for a railway from Westport to the Mokihinui River. 'The projected line ran through heavy forests and swamps, through which only an active man could walk, even when a survey line had been cut.' The engineer who had been appointed was 'a stout, elderly man, who was quite unsuited for that class of work'.[83]

Sometimes the survey-line foot-tracks matured or were improved into bridle tracks or packhorse tracks. Then, if provincial government money was available and if the public demand was sufficiently strong, the tree-fellers and stump-pullers and swamp-drainers and bridge-builders followed up the surveyors, and the crude tracks were widened and smoothed into dray roads or coach roads, before eventually being metalled – only

to deteriorate rapidly into quagmires. In his reminiscences William H Skinner described his work surveying disputed lands in South Taranaki in 1880:

> In addition to the Oeo survey I was instructed to lay off for military use, in case of need, strategic foot- and horse-tracks from the main South road at Oeo and Otakeho to connect with the Stratford-Opunake track being cut through the forest by Mr. C. W. Hursthouse, road engineer, at the same time and for the same purpose. This route, with minor deviations, is the present Stratford-Opunake road and the tracks I made are the present Oeo and Ahuroa roads.[84]

Regulations required the survey lines through bush, scrub and fern to be cut not less than four feet wide.[85] An 1848 textbook on land-surveying recommended a slightly wider cut:

> Having, after an attentive examination, fixed upon the best line of road connecting the district about to be surveyed … the Surveyor will proceed to have this line well cleared by his men to a width of five feet at least, so that it may be available as a path over which a man laden with a heavy load may safely and expeditiously travel.[86]

Some of these rudimentary foot-tracks – often not as many as the settlers would have liked – became formed roads, as described above. Others came to be mere boundary lines, sometimes marked by fences. Others were obliterated by changing land use, having served their land-surveying and land-granting purposes. The survey-line foot-tracks seldom remained for ever as physically evident and practical walking tracks. Even so, it seems right to recognise surveyor-explorers and road-surveyors, with their gangs, as being among the main builders of new foot-tracks in the period 1840–80, along with missionaries, the settlers themselves, timber-harvesters and prospectors.

The Canterbury High Passes, Alive with Surveyors

In her book *Caught Mapping*, Janet Holm meticulously examines the lives and times of a handful of the many pioneer land-surveyors of New Zealand. Much of her account is about their exploration and mapping of Canterbury, which, in the period covered, included Westland.

When gold was discovered in Otago in 1861, large parts of the trans-alpine routes from Christchurch to the West Coast were still little more than old-time Maori trails. It became important to the province of Canterbury that rocks should be examined on the boundary between the provinces, and if possible all the way to the West Coast.[87] An urgent need arose for a proper road across one of the lower alpine passes. 'The mountains were alive with surveyors all seeking the most feasible route for a cart road through the alps.'[88] In the early 1860s, five potential routes were considered: Haast Pass, Whitcombe Pass, Browning Pass, Arthur's Pass and Harper Pass.[89]

Holm describes the work of the surveyor-explorers and their assistants in searching for a suitable transalpine route for a coach road. Their explorations and the subsequent roadmaking followed a pattern. Firstly,

they reconnoitred and roughly mapped and sketched the possible routes on foot, often forcing a way through impenetrable forest or over difficult mountainous terrain and across dangerous rivers. If they had studied Whitehead's *Treatise on Practical Surveying*, they will have read that 'the art of swimming should be acquired by every bush Surveyor, for he can seldom pursue his researches in an unknown country without meeting rivers, and the time consumed in looking for fords is often considerable and at the best but ill-spent'.[90] When money was available to go beyond a reconnaissance, subsequent developments passed through one or more of the transitional stages we listed earlier: from survey line to foot-track to bridle track to dray road to coach road.

Of the five transalpine routes assessed in the early 1860s, only Arthur's Pass and Haast Pass acquired roads, the former a century before the latter. Whitcombe Pass, Browning Pass and Harper Pass remain tramping routes only, as also do numerous other alpine passes whose first European discoverers were either gold-prospectors or surveyor-explorers. Some of today's high-country and alpine walking tracks may follow, either exactly or roughly, the routes blazed by the pipe-smoking men of trigonometry and logarithms, who themselves often retraced old Maori pathways. (The Browning Pass, or Noti Raureka, has been singled out by Brailsford as being the one ancient trail that 'stands supreme, for it holds the mana of the stone'.[91])

Rochfort's Track, North Island Main Trunk Railway

The Waimarino district, southwest of Mount Ruapehu, provides a well-documented example of the life history of what began as a surveyor's foot-track and became, in places, a bridle track, a dray road, a coach road and finally a state highway. The first four of these five lives were connected with the building or running of a railway. In 1883 the great surveyor-engineer John Rochfort, 'a gentlemanly fellow', began a reconnaissance survey for a railway from Marton to Te Awamutu, a roughly 200-mile route that would take him and his theodolite through the uncharted interior of King Country.

Rochfort, an experienced bushman and pathfinder, seems to have been the perfect person for this job:

> He was … a man of middle stature. He impressed one as very strong and wiry of physique; his shoulders were somewhat bowed with many years of swagcarrying … He always carried a heavier load than any man in his party; a 50lb. *pikau*, he used to say, was only just enough to steady a man in fording a river.[92]

The attitude of the historian James Cowan towards the plight of Maori was more sympathetic than that of most of his contemporaries.[93] In the following passage, however, he was focusing on the character and abilities of Rochfort, not on the fraught circumstances of the tribes of the upper reaches of the Whanganui River. 'Up in the Rohepotae [King Country],' Cowan wrote,

> the natural difficulties of the wild country, unroaded and unbridged, lying for the most part in its ancient dress of forest, fern and raupo,

> were accentuated by complications with a sullen, war-seared native people …
>
> [Rochfort] cheerfully set out alone [being the sole European in his party] into the wilderness to carry out a mission involving not merely professional technical skill and calling for uncommon powers of physical endurance, but requiring in superlative degree the exercise of diplomacy and the supreme quality of courage.[94]

Maori themselves were split, for and against the railway. Kingite Maori opposed it with unrelenting hostility.[95] Rochfort spent weeks painstakingly exploring the eastern headwaters of the Whanganui River between the Waimarino plateau (southwest of Mount Ruapehu) and Taumarunui, on foot and on horseback. The surveying was desperately arduous. He trailblazed a foot-track or bridle track from Taumarunui to and across the Waimarino plateau. This track, while it existed, became known as Rochfort's Track.[96]

Rochfort completed his survey in 1884. In 1885 work began on the construction of the North Island Main Trunk Railway. By the end of 1906 the northern railhead had reached Raurimu, and the southern railhead had reached Turangarere.[97] Between these two outposts was a gap of about fifty-two miles, which was rapidly closing. Here, part of Rochfort's Track had firstly been improved to become a narrow but well-graded bridle track and had then been further upgraded to a dray road. In 1906 the Public Works Department paved twenty-four miles (thirty-nine kilometres) of this dray road to form a well-constructed twelve-foot-wide coach road between Raurimu and Ohakune.[98]

This coach road linked the railheads for two years until the last rails were laid in August 1908.[99] After that, the use of the coach road diminished. Part was asphalted over and now forms part of State Highway 4.[100] But a nine-mile (fourteen-kilometre) section between Horopito and Ohakune survived untouched. In early 2009 local community groups were engaged in reopening this section as a green walkway of historical and engineering interest. In July 2009 the government included this old coach road as a part of the proposed Mountain to the Sea Cycleway, one of seven 'possible quick start tracks' for the New Zealand Cycleway.[101]

Mr Explorer Douglas

In Chapter 1 we saw that Pakeha travellers and explorers in the 19th century often followed visible Maori tracks or took routes known to Maori, and that they frequently engaged Maori guides. But this was not always the case. Sometimes the European explorers pushed on into mountainous country without any tracks to follow, without any prior knowledge of the route, and without knowing whether humans had been there before. One of these self-reliant pioneers was Charles Douglas, who spent over thirty years exploring and surveying in the notoriously difficult terrain of south Westland. He has been called 'one of New Zealand's greatest explorers'.[102] His achievements, however, were little known beyond Westland until John Pascoe wrote his biography, which was published in 1957.

Douglas arrived at Okarito on the West Coast in about 1867.[103] Initially, when not exploring, he earned a living by carrying flour and stores to gold-diggers, track-cutting and cattle-farming. In about 1873 he and

two others, working under contract, cleared a five-foot track from Bruce Bay to Haast, a distance of about fifty miles (eighty kilometres).[104]

One theme of the story of his life in Westland deals with the physical struggle of swagging his own food, shelter and equipment, of surviving alone on high and remote mountains, and of penetrating alpine gorges and crossing dangerous glaciers. Another theme relates to his basic surveying, map-making, prospecting and report-writing for the Survey Department and its successor the Department of Lands and Survey. His occasional track-cutting was a necessary means to reach these ends or to earn some money. Today there are probably a considerable number of Westland tracks or routes whose post-contact histories start with the name Charles Douglas.

Douglas's Westland days spanned two foot-track eras, from that of tracks for getting to work to that of tracks for tourism. We will meet him again in Chapter 4.

Other Foot-tracks for Necessary Travel

The missionaries, traders, surveyor-explorers and government officials that we came across in Chapter 1 walked on existing Maori tracks. The men that we have talked about in the last section – the Canterbury surveyors and Rochfort and Douglas – followed a mixture of old Maori tracks and new, tailor-made Pakeha ones. In the meantime, while all these muscular enthusiasts were keeping alive the practice of long-distance walking, many other immigrants were finding faster or easier ways of getting around, such as on horseback or by horse and carriage.

The surveyors, however, were not the only settlers to continue to make and use foot-tracks. Gold-miners and loggers, through necessity, carried on following foot-tracks and bridle tracks throughout the 19th century, as also did farmers, shepherds, rabbiters and hunters.

Walking to Otago's Goldfields

The Scottish settlers had arrived in Port Otago in 1848. In 1852 the New Zealand Constitution Act had divided New Zealand into six provinces; Otago was the largest, comprising the whole southern part of South Island to the south of the River Waitaki. In 1856 the provincial government of Otago passed the Land Law, encouraging the settlement of outlying districts and inducing runholders to venture into the back country.[105] In the same year, the provincial government appointed John Turnbull Thomson as chief surveyor and engineer. By the end of 1857, travelling on foot with packhorses, and following the pathways of hunter-gatherers and greenstone-traders, Thomson and his assistants had penetrated to the headwaters of the Waitaki, the Molyneux (the Clutha), and the Mataura. By 1861, when Gabriel's Gully became Otago's first gold discovery of magnitude, isolated runholders had settled as far to the west as the great alpine lakes.[106] In rediscovering and mapping and using the chief routes through Otago's back country, the government surveyors and the runholders had unknowingly prepared the way for the gold-rushes.

In early June 1861 the *Otago Witness* published the letters of Gabriel Read announcing his discovery of an extensive goldfield in the district traversed by the Waitahuna and Tuapeka rivers, tributaries of the Clutha.

Between 1 July and 30 October, 15,341 men arrived in Dunedin, heading for the Tuapeka diggings[107]:

> … bullock drays, horsemen, horse waggons, hooded drays drawn by horses, and followed by dogs chained to the axles, bullock sleds, pack horses and mules, hand-carts, wheelbarrows, swaggers and Chinamen with picks and shovels; Englishmen, Irishmen, Scotchmen, Scandinavians, Germans, Frenchmen, Spaniards, Americans, Negroes, Italians and Greeks – all pushing forward to the new Eldorado at Gabriel's Gully.[108]

One would-be digger, William Martin, set out to walk to Tuapeka from Oamaru. He was accompanied by a sailor. Martin recalled the journey: 'One day's walk brought us to Hampden, the second day saw us at Waikouaiti and the third day we should have reached Dunedin, but McClean, who was, like most seamen, only an indifferent walker, could get no further than the top of the junction. So we stayed the night at … The next day we went on to Dunedin.'[109]

Martin rested for a while in Dunedin, no doubt contemplating which route to choose for the rest of his trek. Most animals seem to realise instinctively that the shortest path between two points is a straight line. Humans are no different. Gabriel's Gully lies forty miles (sixty-four kilometres) west of Dunedin as the crow flies: but the crow would have to fly over the summit of Maungatua, 895 metres high. The diggers faced a choice between two contrasting routes.

The more frequented but circuitous route doglegged for some seventy miles (113 km) via East Taieri, Lower Taieri Ferry (below the junction with the Waipori River), Waihola, Tokomairiro (the old name for Milton), Mount Stewart and Waitahuna. If this route sounds like State Highway 1 and State Highway 8, bear in mind that even on horseback it commonly took two days, that every river-crossing involved fording (or ferrying), and that the Taieri Plain was then a place of extensive swamps, meandering watercourses and stagnant lagoons. Early descriptions of travelling across this plain talk of often wading in knee-deep peaty water and of sometimes plunging to a much greater depth. Even the terra firma challenged the traveller, with head-high bushes, flax, and fern. The first European to describe the Taieri Plain, Edward Shortland in 1843, had declared one part of it to be 'a wide and eligible space for feeding sheep, but unfit for cultivation'.[110]

The alternative and shorter way took the diggers across the river at Upper Taieri Ferry (where the Outram old town was to sprout up) and then over a shoulder of Maungatua – known as Mount Hard Struggle – and then through Upper Waipori. In winter, snow frequently blocked this route. Although a few miners used pack horses to carry their gear, most trudged along, humping a swag.[111]

William Martin chose the shorter route. 'It was a morning in July, midwinter, on which we left Dunedin for Gabriel's Gully, the first occasion, but by no means the last, on which I carried a swag. We were an assorted lot, we eight: the Scotch element predominated, four of our number coming from thistleland; of the rest, one was Irish, one English,

one Welsh and one French.'[112] They reached the banks of the Taieri River, on the plain, at 4pm, and camped for the night.

Continuous rain and snow kept them there for several days. Then they pushed on to the upper Waipori River, where they again camped for the night. Martin's account describes the postman, Jack Graham, taking his mails across the Waipori River and then returning with his pack horses to take the miners across for a payment of one shilling each. The post office in those days was an important colonial institution; travellers sometimes employed the local mail-carrier as a guide.[113]

On the final day of the journey, the weather tested their endurance, their way-finding, and their unity:

> Our pace when we took the track again was too slow for our mounted companion and we soon lost sight of him and had only the horses' footmarks to guide us on our way. We soon had cause to fear that these would become obliterated as the weather changed for the worse and snow and sleet commenced to fall, and so we travelled as fast as we could and made no stops till we came to the head of Weatherstone's Gully, which we reached about 3 o'clock, not [as] the united party which left the banks of the Waipori, but trailing one after the other in an exhausted condition, with fully a quarter of an hour between the arrival of the first and the last man.[114]

In his four months of digging at Gabriel's Gully, Martin made £300.

*

While thousands of men dug for the pay dirt in Tuapeka, a few enterprising prospectors worked their way westwards, deeper into Otago. On 15 August 1862 two miners deposited more than 1,000 ounces of gold in Dunedin. On payment of a reward of £2,000 they made known the source of their gold, which was some gravel bars and rocky clefts in the bed of the Clutha River, near the confluence of the Clutha and the Kawarau (the Dunstan).[115] Another rush began. Men poured into Central Otago.

Often the goldseekers followed routes shown to them: muddy stock routes and bullock tracks, narrow packhorse trails or bridle paths, faint foot-tracks, or vague directions. The miners did not face the complete unknown, but they did face arduousness and peril:

> The traveller, therefore, followed a mere track across the tussock-covered foothills and ranges and forded the streams that lay in his way as best he could. In stormy weather, as many a miner was to discover, a short journey could become an adventure of considerable danger, as the traveller sought to cross the flooded stream, or in high country tried to keep to a track which driving snow had obliterated.[116]

Gabriel's Gully and the Dunstan goldfield were only the beginning. Field after field would be opened up. For a fine example of a purpose-made gold-miners' track, in Chapter 4 we will cross to the West Coast to look at the Croesus Track.

Fetching a Cow from Big Bay

Earlier in this chapter we saw that 'Ready Money' Robinson, having arrived at Cheviot in 1856 to establish a sheep run, was able to ride around much of his large estate. Had he wanted to walk, he could have done so with ease, across the tussock grasslands. Over on the rugged and forested West Coast, even twenty years later, travel and communications were far more difficult. To illustrate how difficult, I have selected a fragment of the lives of Daniel and Margaret McKenzie, who arrived at Jamestown, a European settlement on the shores of Lake McKerrow, in December 1876.[117] Jamestown and its near neighbour Martins Bay formed one of New Zealand's most remote outposts of immigrant endeavour.

Martins Bay, known to Maori as Kotuku, had been an important Ngai Tahu settlement between 1650 and 1800.[118] On the evening of 8 March 1863 the gold-prospector Patrick Caples obtained a fine view of Martins Bay from a few miles away. He could make out 'the outlines of a rudely constructed hut, on a thickly wooded flat, close to the river, and near the beach'.[119] The next day Caples furtively visited Martins Bay, under cover of a thick fog, avoiding contact with Maori and becoming the first Pakeha to journey there overland from Lake Wakatipu. Later that year Captain Alabaster, a whaler, met two Maori families at Martins Bay.[120] But no Maori were living there when the McKenzies arrived in 1876. The McKenzies and their fellow-settlers faced loneliness, isolation and danger, as well as unrelenting difficulties in providing the necessities of life. Despite this constant struggle, they also knew companionship, romance and adventure.

Alice McKenzie, the third of Daniel and Margaret's five children, later wrote *Pioneers of Martins Bay*, an acclaimed story of the lives of her family and other settlers. The coast to the north and south of Martins Bay was not ornamented with any walking tracks; overland travel along this coast was arduous and time-consuming or even futile. To illustrate this, it would be hard to improve on McKenzie's unembellished account of collecting a cow from Big Bay (Awarua):

> When my parents settled into their home at Jamestown they learned that no milk was to be had at the township. Their cattle had been landed at Big Bay and were still there. As one of the cows had a young calf, my mother determined to get her to Martins Bay as quickly as possible to provide milk for my brother, who had been born at Jacksons Bay a year earlier. The cattle could be driven round a beach, but not over boulder beaches, nor could they get round rocky headlands which ran down to the sea. Except where the beach was sandy, a track had to be cut though the bush, which thereabouts was particularly dense and matted with vines and supplejacks. To procure milk for her baby, mother set off with my father to help him cut a track and bring round the cattle. Mr. Robertson's son, a lad of 13, went with them, and his daughter of eighteen or nineteen was engaged to look after us children. My parents were away for three weeks, during which time they cut through miles of bush and scrub for a cattle track. When they reached Big Bay and found their cattle, the cow they had specially gone for was dry. The calf had

> always been fed out of a bucket, and after their separation the cow and calf were strangers to each other. All my mother's hard work to procure milk for her baby was in vain, and several months passed before another cow calved. In consequence, my brother Malcolm was never so strong as the rest of us.[121]

Another mention of this track-cutting appeared in the *Otago Witness* in February 1877. A correspondent wrote: 'At James Town there are four families – all new settlers. One of them is cutting a track from Big Bay, so as to drive some cattle over from [there to] Martin's.'[122]

The first edition of *Pioneers of Martins Bay*, published in 1947, described the track from Martins Bay to Big Bay as a six-hour walk of twelve miles (nineteen kilometres), which 'was first cut by the McKenzies to bring round their cattle. It passes by windswept headlands and charming coves, and the last stage is along the three-mile beach to the Awarua river'.[123] It had become part of the ten-day Grand Tour, which started and finished at Deadman's Hut beside the Hollyford River.

A 2010 Department of Conservation three-fold brochure dealt with this track efficiently in one paragraph. The description included a warning that McKenzie Creek was often impassable and extremely dangerous after heavy rain.[124] In dry weather you can walk the track in four or five hours – that's without a cow.

Queenstown–Martins Bay Track, 'An Utter Abortion'

The use of their legs for necessary travel remained a part of the McKenzies' lives at Martins Bay. The best access to the settlement by land was over the mountains from Lake Wakatipu or Lake Te Anau and by track down the Hollyford valley. No road to Martins Bay was ever built.

The sequence of events behind the settlers' roadless isolation is all too human: in 1863 the explorer-scientist Dr James Hector (later a Sir) is certain that a road can be built from Queenstown to Martins Bay. But in 1864 a survey party examines the route and reports that no road is possible. The provincial government immediately drops the idea of developing the West Coast.[125] 1868–70, enter James Macandrew, the superintendent of the Otago province and an impetuous visionary dreamer. He favours establishing the settlement. The surveyors lay out Jamestown in 1870. At some point the settlers are promised, or led to believe, 'that a track suitable for horse traffic would be made through the Hollyford valley to Lake Wakatipu and that later a road would be made if the settlement advanced sufficiently to warrant the expense'.[126]

An entry in the *Otago Provincial Gazette* on 26 January 1874 said that William and Thomas McCord of Martins Bay had offered to build the section of the Hollyford track below Pass Creek for three shillings and sixpence a chain. They later received £115 3s 0d for constructing eight miles of this track.[127]

Also in 1874, Michael O'Dea offered to cut a track down the difficult east side of Lake McKerrow.[128] An 1886 newspaper article referred to 'some 12 or 15 miles of a most abominable track known as Mike O'Day's track'.[129] We now call this the Demon Track. One webpage in 2011 described it as well named because the track is rocky and undulating, climbing up and down numerous ridges in the bush.

There was still no horse track from the Hollyford valley to Lake Wakatipu in March 1882, when an *Otago Daily Times* correspondent, after travelling overland from Te Anau to Martins Bay and then to Queenstown, wrote: 'The track over the Greenstone Saddle is almost unfit for man to travel, and as a bridle-track is an utter abortion.' He or she later said: 'Were a passable pack-track constructed from the head of Lake Wakatipu to Martin's Bay it would in a short time become the resort of the tourist and the artist in search of some of the most lovely as well as some of the most stupendous and rugged scenery it is possible to imagine.'[130]

In June 1885 a contributor to the *Otago Witness* left us an early example of something that we are familiar with today: a safety warning to adventure tourists:

> The track to Martin's Bay is one of the most dangerous to travel – no habitation occupied by man is met during four or five days' travelling, and in the whole distance the track is often obliterated, so that it is very difficult to find. For men who have not some general knowledge of the country, and who are not good bushmen, if they wish to make the trip, it is always to be recommended that they take a guide, and choose February as the best month for the trip, the days being then still of good length, and the hills most likely clear of fog.[131]

Alice McKenzie takes up the story:

> The distance is about sixty miles, up the shore of Lake McKerrow, through the Hollyford valley, over the Greenstone saddle and down the Greenstone valley to Lake Wakatipu. The route was surveyed, but sixteen years passed [after the laying-out of Jamestown] before the authorities cut through the dense forest a rough track suitable for a horse to be taken over. Even so, that did not mean a track where one could ride all the way, for vines and branches hung down to catch the rider and drag him off his horse. I know, for I have been caught and swept off a horse and deposited in the mud at his heels. Trees often fell across the track, and either they had to be cut through or a track had to be made round them to let the horse past. After heavy rain the banks of the creeks would be too steep for a horse, and cuttings had to be made on both sides to let a horse in and out of the creeks and rivers. At many of the deeper creeks trees were felled to make a bridge for pedestrians, but the horses had to stumble as best they could over boulders and through the swift-rushing water.[132]

Occasionally in 19th-century and early 20th-century writing we come across mentions of men being employed to cut a track of a certain width, such as 'a six-foot bridle track'. A clear-cut, neat picture enters one's head. We imagine an obvious physical difference between a foot-track and a bridle track. In practice, as in McKenzie's description, the real world was often less accommodating.

Alice McKenzie left Martins Bay in the early 1900s. She returned for visits several times. She and her husband 'rode through in 1912 and found the track but little improved since [she] had come out ten years earlier'.[133]

Carrying the Mail

Organised postal communication in New Zealand began in January 1840 when Captain William Hobson landed at the Bay of Islands and announced himself as lieutenant-governor, under the authority of the government of New South Wales. 'Provision for an official post office was made immediately.' By coincidence, at that very time, the establishment of uniform penny postage within the British Isles fundamentally changed the postal arrangements in Britain.[134]

In describing the difficult terrain confronting overland mail-carriers in the North Island in 1840, the communications historian Howard Robinson wrote: 'For comparable conditions for overland travel in England one would have to go back centuries – at least to the time of Henry VIII, or even to the legendary days of Robin Hood in the Middle Ages. By 1785 mail coaches were travelling the main roads in the British Isles, and much of the forest land had been cleared.'[135] By 1840 in Britain, the mail coach and the railway had largely replaced the footpost and the post rider.[136] In New Zealand for a decade or so, the overland mail-carriers would resort to the same means of getting around as other travellers: walking, horse-riding, and canoeing.

New Zealand's first official post office was set up at Kororareka on 17 March 1840. (Modern Russell stands on the site of Kororareka.) The first overland mail-carrying route went from the Bay of Islands to Hokianga harbour. Maori were employed as mail-carriers. This was a footpost, with the carriers meeting at the halfway point of Waimate where they exchanged the mail.[137]

In the 1840s for months at a time, no communication by sea between Auckland (the seat of government) and Port Nicholson (Wellington) took place. On one occasion Governor Hobson sent dispatches to Auckland by way of Sydney.[138] In 1842–5 the Post Office tried – but failed – to establish a mail route overland between Auckland and Wellington, by way of New Plymouth.[139] This long and ambitious route was by far the most important overland postal route in New Zealand, and efforts to establish it continued.

In 1850 the mail-carriers on this route followed the old Maori path that mainly stuck to the coast. 'The various rivers and harbours along the coast had mission stations that served as stopping places overland.' Now and again, where beaches ended, the mail-carrier had to climb steep ground or even cliff faces. Carriers were expected to hump a maximum mail load of fifty to seventy-five pounds (twenty-three to thirty-four kilograms). [140]

In 1851 William Fox was criticising, or even being cynical, when he wrote: 'There is an overland mail, carried by a native, which is three weeks on the road and affords the prospect of an answer in seven or eight weeks from the date of writing.'

By 1856 the whole route between Auckland and Wellington was probably in postal use. Henry King of New Plymouth reported that the mails were arriving and departing 'with much regularity'. [141] This was not yet

FastPost: letters from Wellington to Auckland typically took two and a half weeks. In the late 1850s the maximum mail load carried on foot was reduced to twenty-eight pounds (thirteen kilograms).[142] We saw earlier in this chapter that Hochstetter followed part of the coastal route in January 1859 and described it as a much trodden foot-path.

In November 1858 Henry Tancred became postmaster-general and set about establishing an alternative, inland route for the overland mails between Auckland and New Plymouth. From Auckland the new mail route went by way of Papakura and Maungatawhiri Creek (near Mercer), and then up the Waikato River and the Waipa River, and down the Mokau River to the coast. From here the mail-carrier walked along the coast for two days to reach New Plymouth.[143]

*

In the 1860s (before the railways were built), the expanding postal service in New Zealand featured small settlements and townships, their post offices, which were often at the stores, their postmasters, who were often the storekeepers, and their mail-carriers (postmen). Usually the mail-carrier collected the post from a distribution point, such as a township or a road junction, and delivered it to the post office of a rural community. Residents then picked up their own mail from the post office.

Increasingly, the mail-carriers went by horse rather than on foot; they followed horse tracks rather than foot-tracks. As soon as bridle tracks were widened into cart-tracks or roads, mail delivery by cart, gig and coach became common.

Postal historians have studied and written about the mail services of many regions of New Zealand. The details of hundreds of post offices and the names of numerous postmasters have been recorded. For a few random examples of early postal services, we will use north Canterbury.

In a letter to the colonial secretary dated 25 June 1855, the postmaster at Lyttelton appointed George Crawford Black to be acting sub-postmaster at Kaiapoi. Kaiapoi post office, in Black's store, became the first post office in northern Canterbury.[144] Mail was exchanged with Christchurch. 'In 1856 the letters and newspapers were carried to Kaiapoi in a bag or box by Mr. T.B. Bishop but by 1858 this service had been taken over by Messrs Wheeler and Nurse, in a cart using two horses, one as an outrigger.'[145]

On the thirty-five-kilometre Oxford–Rangiora route, wheeled vehicles quickly replaced the mail-carrier on horseback:

> In 1862 mail was delivered between Oxford and Rangiora by a boy on horseback, who carried the mail in a calico bag, which often became saturated with rain or chaffed on the saddle … In 1863 this had become a twice-weekly service and by 1864 it had become a cart service between Kaiapoi and Oxford. In 1867 Westby Percival began using a two-horse coach, meeting the Christchurch coach at Rangiora on Tuesdays and Fridays.[146]

As regards the advent of the postie, who would deliver the mail to people's houses, on 1 August 1864 J L Wilson was appointed as letter-carrier for Kaiapoi post office, 'to deliver the letters only at person's residences'. It

was said that Kaiapoi was the only country post office in New Zealand that employed a letter-carrier.[147]

From the 1870s onwards, much mail went by train. After the first world war, the motorcar became involved. But the total end of mail-carrying by horse would not occur until later in the 20th century, especially in remote areas. In December 1927 a tramper, Charles Nicholls, spent a few days in Maungapohatu. Late one afternoon he saw the mail arrive. Recalling this in 1985 he wrote: 'A young Maori girl and two packhorses had come the 17 miles (27km) from Ruatahuna over the terrible tracks that I have described. The horses were loaded with mail and parcels, (mostly Christmas presents) and what excitement there was, with a continual buzz of chattering for hours round each shack.'[148]

Queen Victoria and Her Chain

Earlier we dwelt upon the subject of public roads because some knowledge of their origins helps us to understand their strong public access rights and their varied physical characteristics. As I have previously indicated, because of a shortage of land-surveyors, many public roads were drawn on maps – depicted by parallel lines – but were never pegged out on the ground. The parallel lines on the cadastral records held by Land Information New Zealand are sometimes in the craziest of places, such as over cliffs or under rivers. New Zealand's Incredible Invisible Roads comprise all manner of useless and useful routes. Some unformed roads take ridiculous ways that have no connection with the shape of the land. Others do follow logical routes across the countryside, contouring hillsides or climbing spurs or snaking along riversides or hugging the coast.

When public roads follow water margins – of rivers or of lakes or of the sea – we have a royal pair, because the queen's (or king's) highway is coinciding with the Queen's Chain. But whereas the queen's highway dates back to the movement needs of Anglo-Saxon strangers and itinerant merchants[149], the Queen's Chain is a far more recent idea, originating from an instruction issued by Queen Victoria yet not widely called the Queen's Chain until the late 20th century.

The origin of the strips of public land along water margins is commonly attributed to an instruction from the queen to Governor Hobson dated 5 December 1840. Queen Victoria was twenty-one years old and just three years into her sixty-three-year reign when she rubber-stamped the Colonial Office's lengthy edict laying down how Governor Hobson was to preside over New Zealand, which had been made a separate colony on 16 November 1840. Clause 43 of the instructions said:

> And it is our pleasure and we do further direct you to require and authorize the said Surveyor-General … to report to you … what particular lands it may be proper to reserve … as places fit to be set apart for the recreation and amusement of the inhabitants … or which it may be desirable to reserve for any other purpose of public convenience, utility, health or enjoyment … and it is our will and pleasure, and we do strictly enjoin and require you, that you do not on any account, or on any pretence whatsoever grant, convey, or demise, to any person … any of the lands so specified … nor permit

> or suffer any such lands to be occupied by any private person for any private purpose.[150]

The queen's directive did not mention strips of water-margin land. But clause 56 did require that the crown should not sell any land 'which the surveyor-general may report to you as proper to be reserved'. Brian Hayes has pointed out that there is no evidence that the surveyor-general chose to reserve all water-margin land, ie strips along the coast, rivers and lakes.[151] John Baldwin, too, has emphasised that 'it is not possible to interpret a requirement to reserve chain wide strips from [the *Instructions*'] words'.[152] From the beginning in 1840, partial rather than complete reservation occurred.

The early history, from 1840 to 1843, of the laws and ordinances about reserving land along water margins is complicated. Suffice to say that in 1843 the crown acted to require the reservation of a coastal strip one hundred feet wide. 'What is significant today', writes Hayes, 'is the fact that following action of the Crown in 1843, over the period 1843–1892 water margins were extensively though not comprehensively reserved by the early administrators of the land law.'[153]

The water-margin reserves, until 1892, usually took the form of public roads. Creating a public road was the most convenient and secure legal way available at that time to ensure that the strip of land was kept for public use. There was seldom any intention to form these water-margin public roads, and most of them remained unformed.[154]

Origins of the Term 'Queen's Chain'

We do not know how long it was before someone called these water-margin strips the Queen's Chain. Present evidence suggests that the term was seldom used in the 19th century. A search of Papers Past for the phrase 'Queen's Chain' found no occurrences. A search just for 'Queen's' did not reveal any examples of 'Queen's Chain' but did quickly find – let's omit the quotation marks – Queen's Sovereignty, Queen's Supremacy, Queen's prerogative, Queen's soldiers, Queen's flag, Queen's authority, Queen's representative, Queen's government, Queen's law, Queen's warrant, and, of course, the Queen's land. The idea of a sovereign queen and her imperial troops was a source of some comfort to the earlier settlers.

Perhaps the term 'Queen's Chain' existed but not in the world of people who wrote to or for newspapers. The cupboard is not completely bare. In 2010 we knew of one 19th-century example of a New Zealand reserve along a water margin being called the Queen's Chain. The term appeared in the *West Coast Times* of 24 August 1865:

> LOCAL AND MINING.
>
> There have been no cases of much import heard at the Police Court during the past few days. The drunkard's list has been unusually light, and order and quietude prevail in our streets. On Monday, Samuel Garforth, a slaughterman, was charged by Sergeant McInnes, for obstructing a public thoroughfare, he having erected a slaughter-yard above high-water mark, on what is termed the Queen's Chain, a strip of ground one chain wide, extending from high-water mark inland, and which is by law a public highway. His Worship decided that

> the charge was not proven, as from the evidence it seemed almost impossible to define the line of high-water mark. He considered it the duty of the police to cause the removal of all nuisances, and such these slaughter-yards were. He directed that all the offal should be removed to low-water mark, and if thrown back by the sea, it would have to be either buried or burnt. Case dismissed.

After 1865, there is an intriguing gap in the known New Zealand occurrences of 'Queen's Chain', although it is likely that some land-surveyors and lawyers may have continued to use the term. For a while, particularly between about 1880 and 1920, the expression 'chain reserve' found its way into newspapers: 'The right to cut and remove flax from the Chain Reserve along the Waihou River … will be disposed of in five (5) lots by Public Auction at the Land Office, Auckland, at 11 a.m. on TUESDAY, the 24th July, 1888.'[155]

While editing the *Dictionary of New Zealand English* in the early 1990s, Harry Orsman sought citations for examples of our reserves along water margins being called the Queen's Chain.[156] Despite his contacting various associates and also seeking the assistance of the readers of the *Listener*, the earliest occurrence he found was from 1977, when the architect Graham Anderson pointed out that the Chain had grown in an incomplete way: 'in many places in New Zealand the Queen's Chain, as the coastal reserve became known because of its nominal width, has been the foundation of coastal land subdivision, but in others it has not'.[157] As the 1980s passed, the term 'Queen's Chain' became established in everyday New Zealand English.

Queen Victoria has been called Britain's first modern monarch. During her reign a series of legal reforms increased the power of the House of Commons at the expense of the powers of the House of Lords and the monarchy. The queen's role became more symbolic than political. Perhaps, therefore, what we call the Queen's Chain we should more accurately call Russell's Chain, Lord John Russell being the Secretary of State for War and Colonies in 1840. John Baldwin has taken this suggestion one stage further. He pointed out that the royal instructions only mentioned places, not strips.[158] He remarked that marginal strips could legitimately be dubbed 'John McKenzie strips' or 'John Balance strips', thus recognising the contributions of one of these two men to the Land Act 1892, which hardwired the notion of the Queen's Chain.[159] Linking modern strips to Queen Victoria's instructions, he said, implies a history that does not exist. But Victoria, if she were here today and faced with that suggestion, would no doubt respond: 'We are not amused'.

She would probably not be amused either if we were to point out to her that in 1933 in St Lucia in the Caribbean, which in former times passed from English to French ownership many times, 'the King's Chain, or *Cinquante Pas du Roi*' was still in force.[160] The strip of coastal land was 'part of the domain of the Crown', and this piece of property law might have owed its origin to the Code Napoleon.[161] But now I'm getting carried away.

We will cover the gist of the Land Act 1892 and marginal strips in Chapter 4.

Chapter 3

Lost to Human Ken

By the mid-1840s, long and strenuous journeys by Pakeha on Maori tracks were becoming quite frequent.[1] Sometimes this use of Maori tracks by Pakeha was tolerated or permitted or encouraged by Maori, subject possibly to lengthy formalities at settlements en route or at tribal boundaries; sometimes it was most definitely not. 'Generally, Maori welcomed Europe and its things and thoughts until the 1860s, when co-operation collapsed into conflict.'[2] One cause of this collapse was a wretched dilemma plaguing Maori: they desired interaction with Europeans but also were determined 'to uphold chiefly authority against arbitrary British interference'.[3] The New Zealand Wars (also called the Land Wars and the Anglo-Maori Wars) started with various conflicts during the 1840s, but the main engagements took place between 1860 and 1872. In the North Island of the 1860s, the missionaries and land-surveyors and prospectors were cautious about where they went for long walks and how they did so. 'Europeans travelling between Wellington and Auckland in the 1860s felt safer going by sea than crossing territory controlled by anti-government Maori.'[4] Surveyors 'were obvious targets for Maoris resentful of sales and confiscations of land, and often they had to work under covering parties of troops or friendly natives'.[5]

Maori Tracks in the New Zealand Wars

At the start of the wars, Maori were inclined to favour two types of combat: open battle (a clash of formed troops on open ground) and the defence of fortifications.[6] But after some difficult open fighting during the British attack on Puketutu pa on 8 May 1845, Maori dispensed with the open-battle option.[7] For the rest of the wars, the story is one of British attacks on pa and of Maori guerrilla tactics: hit-and-run raids, sporadic surprise attacks, sniping from the edge of the bush, small roving bands and bush-fighting.

The settlers' roads and new military roads and Maori tracks all played important parts in the movement of the opposing forces around the North Island. In retrospect, we can see that the wars wrote the elegy for the ancient tracks, whose loss continued inexorably for the rest of the

century. The tracks performed several wartime roles. We shall look at each role separately.

Bush Tracks as Planned Escape Routes

James Belich has argued that Maori adapted their traditional battle plans to better counter British military weaponry and strategy. Maori employed a well-thought-out and effective scheme that consisted of three main elements: they modified their pa, adding rifle pits and strengthening the structures; they deliberately sited pa in remote places that were difficult for the British imperial forces to reach and which offered escape routes into the bush; and they included the possibility of retreat as a military option to be taken in a calculated way when appropriate.[8]

The first battle that contained these three elements was the British assault on Ruapekapeka pa in December 1845 – January 1846. The pa lay deep in the bush, approachable only by difficult bush tracks; this terrain slowed the approach of the British force, which included artillery and carts. The British then bombarded Ruapekapeka pa for two weeks, after which the defenders retired to strong defensive positions in the bush outside the pa. Some heavy bush-fighting ensued, during which 'the British suffered the great bulk of their forty-five casualties'.[9] The Maori then slipped away. Their escape routes probably combined trackless bush with existing trails.

Bush Tracks as the Scenes of Skirmishing

A number of British military men kept diaries or wrote accounts of the campaigns, adding a new sub-genre to New Zealand's literature of colonisation. There is a stark contrast between Colenso's description of botanising in the early 1840s and Gudgeon's of soldiering in the 1860s. Colenso's writings contributed much to natural history, whereas Walter Edward Gudgeon left us *Reminiscences of the War in New Zealand*, a cringeworthy empire-building tale. Gudgeon, however, was a product of his time and he left some descriptions of bush warfare that are not wholly worthless and which quite often mention tracks.

On 1 August 1866 he took part in a ruthless operation in the Patea district, a surprise night attack on a Ngati Ruanui village that had made peace.[10] Two months later, on 1–2 October, he participated in another unprovoked attack on a settlement, a brutal dawn raid during which 'the raupo whares [with people in them] burnt like tinder'.[11] Gudgeon's account of these operations lacks any moral qualms but does provide a Pakeha soldier's practical view of bush skirmishing:

> The danger of entering the bush with a small or untried force consists chiefly in this, that one wounded man will take at least six men to carry him off, and if the enemy is enterprising, some of the stretcher parties are almost certain to be hit, as they offer a good mark to the well concealed Maori; thus eight or ten casualties will cripple a force of 100 men.[12]

On 18–19 October 1866 Gudgeon was involved in another plan to attack a village at night. This time the would-be attackers became the pursued. Gudgeon gives us another glimpse of bush-track warfare:

> The force advanced in single file along the track, although it was so dark that a man could not see his comrade in front, when suddenly, from the front and right flank, a volley was fired into our leading files, lighting up the bush with streams of fire … The mistake made in entering the forest before dawn was now apparent to all, for the column, checked by the volley, unable to see their enemy, or move on, remained kneeling in the track … Nothing was left us but a hasty retreat, and Captain Newland gave the order reluctantly; we reached the open country at grey dawn, closely followed by the enemy, who fired volleys from the edge of the bush.[13]

Lieutenant-Colonel J H H St John, like Gudgeon, was a typical soldier of his time. Nancy Taylor described the tone of his *Rambles* as 'urbane and mildly prosperous'.[14] In a couple of places, actually, this tone drops to the literary standard of the *Boy's Own*, so that, for example, the lives of the Opotiki settlers 'were daily in peril at the hands of savages inhabiting the back ranges'.[15] Even so, his description of the danger of being ambushed when bush-fighting deep 'in the glens of the Uriwera' has a tension that is probably authentic:

> At every ford, at every bend of the streams, at every rise, at every difficult spot, there was the perpetual expectation of an ambuscade. An ambuscade in bush means this: a number of men are marching along in single file; leading them are a dozen picked scouts with senses of sight and hearing ever on the alert, who, with carbine ready in hand, minutely scrutinize each clump of bush, each fallen log, each boulder as they approach it. They turn a corner at a bend in the river; no sound betrays the presence of an enemy; but of a sudden, a cloud of smoke issues from the trees on the opposite bank, some twenty shots come hurtling through the head of the column, and, when all is over, it is found that one or two, or perhaps more, are past seeking shelter. And all this time not a glimpse can be caught of the nimble foe who has started off directly after delivering his fire; and who will be found a few miles further on awaiting at another favourable place the approach of the invading party.[16]

The nimble foe were themselves superbly capable, through long practice, of alternating the roles of marauder and fugitive. Of the Urewera anti-government Maori, St John wrote that 'it was their common practice to descend to the coast down one of the gorges, shoot or burn, and then disappear as rapidly as they had come'.[17] These mobile warriors probably travelled sometimes on tracks and sometimes through trackless forest; the written accounts often don't elaborate on this.

A 21st-century analysis of the conflict in the Urewera is available in Judith Binney's *Encircled Lands*. Binney quite often mentions tracks, sometimes by name. We learn, for example, that Te Kooti and several Tuhoe leaders and 150 warriors, on their way to raid Mohaka, came down the Putere track on the night of 9–10 April 1869.[18] Putere was a point – probably a track junction – near the upper Waiau River, north of Mohaka. It marked the southern boundary of the Urewera.[19] After their

attack on Mohaka, followed by some other maraudings and assaults, the fighters withdrew back up the Putere track 'and reached Wairaumoana, the western arm of Tuhoe's great lake. There, they … crossed the narrows, the horses swimming behind the waka. Tuhoe re-entered their heartlands.'[20]

In response to the raid on Mohaka, in May 1869 three separate colonial forces entered the Urewera to wage 'a war of cruel devastation, a war intended to kill by starvation'. St John led one of these forces.[21]

Encircled Lands includes twenty-nine maps, many of them showing 19th-century tracks.

Pursuits along Bush Tracks

Regarding chasing after the enemy along bush tracks, there are mentions from earlier in the century, during intertribal conflict, of Maori pursuing Maori. Te Rauparaha, renowned as a leader of ruthless aggression, was also capable of wily avoidance and timely retreat. During one incident, according to John Grace, Te Rauparaha canoed down the length of Lake Taupo to escape the clutches of a hostile group of Ngati Te Aho. Then, from the southwestern corner of the lake, he took the Ponanga track (now State Highway 47) over the saddle and down to Motuopuhi Pa on Lake Rotoaira, pursued closely by the Ngati Te Aho chiefs, Tauteka and Te Riupawhara.[22] Such use of tracks during tribal skirmishes was commonplace; the written accounts in English, however, only occasionally name the tracks. According to Jan Kelly, the Ponanga track, part of which survives as Hinemihi's Track, had been worn over a metre deep by generations of walkers.[23]

From the New Zealand Wars, we have accounts of Maori hounding Pakeha and vice versa. There were also many occasions when colonial troops consisting mainly of pro-government Maori pursued hostile, anti-government Maori. Again the written descriptions in English tend not to name the tracks followed; often we cannot easily tell, even from the detailed and meticulously researched histories and biographies that are available, whether the fugitives and their pursuers were travelling through trackless forest or along worn trails.

Here and there in the histories, though, a track-name does appear. At the Battle of Te Ngutu o te Manu on 7 September 1868, a determined and numerically far superior British attack on the pa disintegrated into a chaotic and humiliating failure.[24] At about 2.30pm some of the surviving colonial forces gathered up their wounded and began a twelve-mile retreat down the Pungarehu Track, heading back to their military base at Camp Waihi but with Ngaruahine warriors in vigorous pursuit.[25] This unexpected retreat was singularly different from a Maori planned withdrawal via a pa backdoor. Pungarehu Track and its surrounding bush became the scene of a running struggle to maintain military discipline and to stay alive. The stretcher parties began to lag behind, harassed by the pursuing Ngaruahine who sniped at them from under cover of the forest. 'The force dragged itself into Camp Waihi at 10 pm, after nearly twenty-four hours marching and fighting.'[26]

For an example of Pakeha forces (or Maori pro-government forces) pursuing so-called Maori rebels, we'll go to the Urewera. Peter Webster has added a different slant to our discussion on the wartime role of

tracks. Writing about the region's sometimes impenetrable rainforest and steep-sided gullies, he indicated that the rugged terrain, rather than the main, well-beaten tracks, had assisted the Tuhoe during times of trouble:

> During the latter stages of the Land Wars, when the colonial forces (composed mainly of Maori troops) penetrated the heart of the Urewera country by travelling along the main tracks, it was possible for the tribesmen to escape by taking to the surrounding bush. Moreover, even when the colonial forces employed a scorched earth policy of burning the crops of the Tuhoe in their kainga [villages], and many of them suffered and died of malnutrition and exposure, the majority were able to survive in the forest.[27]

Of the hot pursuits on bush trails, none was longer or hotter (with occasional cold spells) than the hunt for Te Kooti Arikirangi Te Turuki, the best-known prophet-guerrilla and fugitive. Named tracks occasionally appear in the accounts of Te Kooti's raiding and skirmishing and darting and hiding. In August 1869 he returned from Waikato to Tokaanu, at the southern end of Lake Taupo. David Young writes that 'as he came over the Hauhungaroa Track west of the lake, those with the slightest doubt about how their loyalty might be interpreted flew in terror before him.'[28]

Postwar Surveying and the Desecration of Foot-tracks

Some shots fired at the retreating Te Kooti in February 1872 are regarded as the last engagement of the New Zealand Wars.[29] For some years after the end of the wars, friction continued to arise over the presence of surveyors on land whose ownership or to which the right of access was disputed. In the Urewera in about 1883, the activities of the assistant surveyor-general, Stephenson Percy Smith, earned the animated disapproval of the local chief. According to Smith's son Maurice, writing many years later and possibly using his imagination to re-create the moment, for the transgression of erecting a triangulation station on a hilltop, and thereby insulting the local place spirits, the surveyors were 'that hated class of the grasping white man' and 'a vulgar people, of no reverence, of no mana, of slavish spirit, [who] had desecrated [Tuhoe] lands, their streams, their gorges and hills, their footpaths'.[30]

There was more to this anecdote than the violation of foot-tracks. In Maori culture, fiery speech-making formed a normal part of the ritual involved in the receiving of visitors, especially significant strangers. Secondly, the Tuhoe had ample cause for resentment and suspicion. A more complete account might have mentioned the intense sense of grievance associated with the unjust confiscation of their ancestral land, their most valuable asset in both the economic and the spiritual sense.[31] In 1883 this acquisitive part of 'the brutal and messy business of colonisation'[32] was still going full steam ahead, facilitated by the map-makers. Land-surveyors relied heavily on Maori workers to cut survey lines through the bush, to carry men and equipment by river canoe, and to identify geographical landmarks. But Maori also sometimes resisted surveyors, correctly seeing their activities as a prelude to the occupation of the land by settlers.[33] Maori had disrupted the surveying of disputed land as early

as 1841, when Te Rangihaeata, with just cause, ordered his people living at Porirua to obstruct the surveys.[34]

Almost always, however, the surveys eventually went ahead – sometimes illegally. Tahora 2 was a vast block of land, about 213,000 acres, on the eastern edges of the Urewera. An illicit survey carried out furtively by Alma Baker in 1887–8 led to a massive and legally flawed forced transfer of about 132,000 acres of Tahora land to the crown.[35]

By 1891, after half a century of selling ancestral land to the crown and enforced confiscation of ancestral land by the crown, the Maori estate had been reduced by 12 million acres (4.9 million hectares) to 11.5 million acres (4.7 million hectares).[36] In the Urewera, the Tuhoe were still turning back government survey parties in 1895.[37] And justifiably so.

Guiding, 1870s: a Profession in Decline

In the next section we will be discussing the fate of the old Maori tracks. Before that, though, we should mention what became of the Maori guides, whose knowledge and skills had underpinned the treks and explorations of the early Pakeha travellers.

Even in the 1840s, as we have seen, Pakeha missionaries and officials had sometimes met difficulty in finding Maori who were willing to work as guide-cum-porters. A growing Maori preference for coastal travel by whaleboat rather than by coastal trails had worsened this problem. By the late 1870s, there was far less need for guides or baggage-bearers, except in remote areas; the coming of the horse and horsemanship and roads had transformed the nature of much travel, and wage inflation had increased the cost of the guided variety. The missionary James Buller spent forty years in New Zealand from 1836 to 1876. In a book published in 1878 he wrote nostalgically of the old days and he informed his readers of the new situation:

> Our travelling, rough and toilsome as it was, had its peculiar charms in fine weather, and when the natives were in good humour. I retain very pleasant recollections of many of those journeys. Times have changed since then. That experience cannot be repeated now. The natives have become comparatively rich: they ride on horseback, having roads. If a guide be wanted for the interior, he must be hired, together with his steed, and that at no small expense. But at the date of which I write [1836–39], the services of natives could be obtained on easy terms.[38]

The assistance of a guide remained a necessity, or a prudent precaution, in some isolated or politically sensitive regions. In March 1891 the *New Zealand Graphic* sent Tom (Darby) Ryan to the Urewera, accompanied by a Ngati Rangitihi guide, Alfred Warbrick. Ryan, an artist who had played for the All Blacks, was to write an article for the *Graphic*. When the two men arrived at Te Whaiti, they received a distinctly cool welcome. Tuhoe were still excluding Europeans from the Rohe Potae (the tribal land under Maori authority).[39] The incident says something about the terrain as well as the power struggle:

Ryan's sketchbook and materials were taken away. However, the visitors were permitted to ride, under escort, towards Ruatahuna to seek permission from the chiefs for their article. In the event, Ryan turned back, daunted by the difficulties of the tracks.[40]

Mixed Fates of the Maori Trails

What became of the Maori tracks that I have mentioned? Polack's Northland west-coast trail of 1832? The trail from Waikaremoana to Ruatahuna, followed by Williams, Father Baty and Colenso – one after the other – in 1841? The Maori track from Napier to the Kaingaroa plain, which J B Ellman complained about in 1864? The Wairere Track across the Kaimai Range, whose trench James Bodell slid down in 1868? The South Island's greenstone trails? Christie's inferior Maori coastal track northwards from Dunedin? The hundreds of other pre-contact tracks, major and minor?

Nowadays – by linking the Hokianga Track, the Waipoua Coast Track, the Maunganui Bluff Track and the Kaiiwi Lakes Track – walkers can explore from the Hokianga Harbour southwards down the Kauri Coast for fifty kilometres to the Kaiiwi Lakes. The route combines native forest and tidy farmland, coastal travel and hill country. Much of the modern route follows beaches, best done at low tide, just as Joel Polack did in 1832 and numberless Maori before him. Elsewhere along this route it is probably difficult or impossible to tell which fragments of today's walkways coincide exactly with Polack's 'steep declivities', 'flax swamps', 'rivulets composed of the freshest water', 'plantations of Indian corn and kumeras', and forests where 'the totara, or red pine, grew in vast abundance'.

The story of the trail from Waikaremoana to Ruatahuna runs uncomfortably through the 19th-century and well into the 20th and it touches upon the iniquities of colonisation in general and of the attempted subjugation of Tuhoe in particular.

Peter Webster has suggested that after the wars, the Tuhoe, in pursuing their policy of isolation from Europeans, deliberately left the access tracks as rough as possible so that strangers always had difficulties on any journey into the interior.[41] However, some of the main routes had not possessed obvious, well-trodden tracks even before the wars. William Colenso, in describing the grind from Waikaremoana to Ruatahuna undertaken in late December 1841, wrote of 'threading our tortuous way through the endless mazes of a trackless forest'.[42] Thirty-three years later, as we shall see, little had changed.

In March 1874, two years after the end of the New Zealand Wars, Tuhoe held a great hui at Ruatahuna. Judith Binney has described in detail the purposes and politics of this meeting and the participants at it.[43] We will focus on just one man's story, which will update and sharpen our mental picture of the bushwalk from Waikaremoana to Ruatahuna.

Robert Price, a young journalist, left an account of his journey to the hui. One day in early 1874, Price and his party were slogging through dense bush, on their way from Lake Waikaremoana to Ruatahuna.

> There was only the faintest indication of a track, and a stranger to this part of the world would soon have lost his way. The path was not to be compared to a pig track; it was overgrown, and it wound about between the trees, apparently for no other object than that travellers along it should have their patience exhausted, and their endurance tried to the utmost, by constantly being called upon to clamber over fallen trunks, to have their hands and faces scratched, and their legs bruised.[44]

At one point, they followed a creek up through the forest. Price noted the ability of Maori to travel barefoot in difficult terrain:

> This pleasant path through the water we followed for about two miles, and then came to a spot where the rocky banks of the creek closed too narrowly to allow the passage of timber during floods, and for nearly half-a-mile we clambered over the trunks of trees which had been piled up by a succession of freshes for ages, the water of the stream rushing about twenty feet beneath us. The Maoris with their bare feet got along pretty well, but with us [Pakeha] it was vastly different. We stumbled and fell, and picked ourselves up to fall again, and all the while our minds were by no means free from fear, through the knowledge that along these slippery trunks it was … easy to break a leg or one's neck … [45]

They continued along a faint overgrown trail. Price was accompanied by Maori from Wairoa, whom he called 'the Wairoas', and also by some Tuhoe, 'the Uriweras'. The Wairoa were in a boundary dispute with the Urewera. With Price was Samuel Locke, the resident magistrate at Wairoa, who hoped to conciliate in talks in Ruatahuna to resolve the intertribal quarrel. The Wairoa accompanying Price and Locke were out of their tribal area; they were outsiders, potentially trespassing if the Urewera were to misunderstand their motives. When the group neared Ruatahuna, one of the Wairoa chiefs delivered an impassioned speech, asking whether 'the pakehas and Wairoas were being led into the heart of the forest, as into a trap, to be killed'. Two offended Urewera, their tribe's hospitality having been questioned, responded with some vigorous speech-making of their own and offered to 'go first and lead the way, so that if any were killed they would fall first'. This ended the suspicion and confrontation. The Pakeha and their retinue, a single file that had grown to more than half a mile in length, continued on their way with the two Urewera – the hosts – walking first, followed by the Wairoa and with the women and young people bringing up the rear.[46]

Unknown to anyone in 1874, the story of the rudimentary track from Lake Waikaremoana to Ruatahuna was only in its early chapters. A great deal more had still to unfold. A 'small war' would be fought over a triangulation survey of the Urewera and an accompanying covert road survey.[47] Most of the Urewera people did not want their land surveyed. The route from Lake Waikaremoana to Ruatahuna was still only a rough bush track in 1904 and would remain so for a long time to come.[48] An annotated public works map of 1911 labels it a bridle track.[49]

In 1927, at the request of tourism interests, the government agreed to build a road from Waikaremoana to Ruatahuna. This was built in 1929–30.[50]

*

As regards the old Maori trail from Napier to the Kaingaroa plain, which by the 1870s had broadened into the overland mail track, I do not know whether any parts of the original eighty-mile route remain as they were, unspoilt by a century and a half of roading developments. Some such portions may be known to trampers. Fragments may have survived, like isolated scraps of Kiwiana.

On the history of the Wairere Track across the Kaimai Range, there is some carefully researched information available. In the 1940s and 50s the historian C W Vennell investigated this track on the ground and in the records of missionaries and other 19th-century European travellers.[51] Building on this research, Alister Matheson's *The Wairere Track* (1975) squeezed much history out of the footslog from Matamata mission station to Te Papa mission station, a 'hard walk of fourteen hours'. Reminiscing in 1888 about a prospecting trip of 1868, James Bodell wrote that 'the Wairere or middle track from Tauranga … to the Waihou plains was not used very often by the natives, and in places there was no track visible'.[52] Matheson, however, describes some oral evidence that the Pirirakau people of Te Puna and the Ngati Hangarau of Bethlehem were still using the Wairere Track, on foot and on horseback, at the time of the first world war.[53] A few sections of the Wairere Track remain foot-tracks today in the Kaimai-Mamaku Forest Park.

One frequently mentioned example of a Maori walking route that walkers can still roughly follow is the St James Walkway. Generations of Maori used the Lewis Pass area as a trading route to the pounamu sources on the West Coast. The route now taken by part of the St James Walkway – up the Maruia River through Cannibal Gorge, over Ada Pass and then down to meet the Waiau River – was popular because of its low altitude, food resources and hot springs. Alternative routes used by Maori to link the western rivers to the Waiau River included the Amuri Pass and the Hope Pass, which are still tramping territories today.[54]

Further south, another greenstone trail started in Martins Bay on the West Coast and led southwards up the Hollyford valley and over one of several passes to reach the pounamu deposits at the head of Lake Wakatipu.[55] Trampers still follow these routes.

*

The slow demise of the Maori coastal trail northwards from Dunedin typified the fate of many local and regional trails. For Maori, while the wheel had been a momentous innovation, the whaleboat and the oar had also been significant new ideas. By the 1840s Maori had widely adopted whaleboats in preference to dugout canoes, and rowing in preference to paddling, although both types of craft remained in use. The historian Harry Morton assessed the effects of this change to be substantial: 'Adoption of the European whaleboats by the southern Maoris increased the emphasis on coastal movement, and caused the abandonment of most of the well-used land trails.'[56] In December 1843 Edward Shortland, on an assignment as a protector of the aborigines, was in Waikouaiti, preparing

for his overland journey to Banks Peninsula. He later wrote: 'The greatest difficulty I had to encounter was to find natives willing to accompany me; the young men of the present age having given up the habit of travelling on foot for the more easy and rapid voyage by sea.'[57] In the early years of European settlement in Dunedin, however, the Maori coastal track that headed north from the town and was too narrow for a horse remained 'still much used despite the adoption of European whaling and sealing boats for local travel'.[58]

But at some point, which is difficult to pin down exactly, people did stop using this track. From 1863 onwards most Europeans, and many Maori if starting from the city itself, will have used the new road, even if travelling on foot. A few people, if starting from the eastern end of the harbour, may have continued to follow the coastal track until the 1870s, for convenience and to avoid the tolls.

This old Maori track did not stay well defined, to be mapped and to survive into the 20th century as a foot-track. Instead, it was the settlers' Mountain Track (itself superseded by the lower-level road in 1863) that stayed on the maps and lived on, in fragments, to become a popular tramping and mountain-biking route over Swampy Summit.

We do know that the Maori coastal track in the opposite direction, southwards, from Otakou to Green Island Beach, was well defined as late as 1870. In the 1870s and 80s its old Maori camping sites became the haunts of curio-hunters.[59]

Abandoned or Remodelled

Many Maori trails were gone for ever within three or four decades of the arrival in 1840 of the first shipload of New Zealand Company immigrants at Port Nicholson (Wellington). The trails melted into the past, leaving little physical evidence behind, except perhaps the occasional fireplace, oven or stone tool. In some areas near European settlements, the disuse or replacement of old tracks started in the 1840s and 50s.

In 1842–3 for example, Maori labourers and two brothers named Nairn cut a bridle track along the well-known inland route from New Plymouth southwards to the mouth of the Waingongoro River. Whether they widened the centuries-old Whakaahu-rangi Track or pioneered a new track I do not know; either way, their industry substituted a Pakeha horse track for a Maori foot-track.[60] (On 21 March 1959 John Houston unveiled a Historic Places Trust plaque at Kahouri Bridge, marking a likely site of the ancient Maori trail.[61])

On 14 August 1855, Charles Abraham was walking south towards Onacri (Onaero), on his way to Waitera (Waitara). But 'the natives [had] so neglected their inland paths, that two of the Wai-iti men who undertook to escort us toward Waitera by the path inland instead of the beach (as it was high-water), altogether lost their way, and dragged us through high fern bush for an hour or two, till at length we reached Onacri'.[62]

A well-known source that describes a few Maori tracks in considerable detail and which tells of their abandonment is *Tutira: The Story of a New Zealand Sheep Station*, Herbert Guthrie-Smith's celebrated chronicle of thirty-nine years of ecological change. Guthrie-Smith, a naturalist and conservationist, came to the 24,000-acre (9,700-hectare) Tutira Station, Hawke's Bay, in 1882. *Tutira* was published in 1921. A H McLintock,

writing in 1966, described *Tutira* as having 'an honoured place among the very few really first-class works that have come out of New Zealand'.[63] The book is mainly a meticulous record of nature and of environmental change, but Guthrie-Smith also devoted three chapters to describing the Maori tracks that crossed his station, and their associated place-names and folklore.

The 1969 edition has a double-spread endpapers map of the trails that led from Tangoio Lagoon and Arapawanui (now Aropaoanui) on the Hawke's Bay coast to Tutira Lake and from there northwestwards to the Maungaharuru Range. In writing about these trails, Guthrie-Smith was writing mainly about the past, before his taking-up of Tutira as a sheep station. He noted that by 1882 'a general shrinkage in the native population of New Zealand had drained off the inland tribes and sub-tribes towards the coast, towards warmth, richer lands, food supplies more easily won from sea, lagoon, and river-mouth. Tutira was deserted save as a temporary residence of hunting-parties.'[64]

In the 1880s some of the Tutira trails were still identifiable by the scattered presence of peach trees and grape-vines that travellers had planted earlier in the century.[65] But it seems that only a few fragments of unaltered Maori track survived into the 20th century. Guthrie-Smith describes a remnant that was still visible in about 1911:

> On one of these juts of land [on the shore of Tutira Lake] … there remained until ten years ago a section of about twenty yards of native footpath, a trail trodden out by naked feet long prior to the advent of the booted settler.
>
> This old-world track, slightly dished and about eighteen inches in width, used to be one of the most interesting relics of Maori life on the run. It had remained untouched on a soil of grit, dust, and powdered *kakahi* shell. There had been no inducement for cattle, sheep, or pig to visit this desolate little bluff with its unpalatable stunted bracken and starved danthonia. Alas! it exists no longer; like other sentimental interests dear to this writer, it has been sacrificed to exigencies of station management. Its contour has been defaced, obliterated indeed by cattle.[66]

Today at Lake Tutira there is a country park with four walking tracks, owned by Hawke's Bay regional council. Local people are promoting the Tutira–Maungaharuru district as a recreation area.

We will now look in more detail at several Maori trails that vanished and at a couple that have survived as tramping tracks.

Te Kowhai Track: Fallen into Disuse, 1891

For a more detailed example of a decline in the use of a track, we will look at the old Maori route that once connected Poverty Bay with the Bay of Plenty, across the 138 kilometres of hills and forests now traversed by State Highway 2. In December 1840 the missionary William Williams and his young nephew Henry Williams followed this route from Opotiki to Turanga (Gisborne), taking four days to walk with Maori guides across what William described as 'densely wooded and extremely rugged'

country.[67] William subsequently repeated this journey, in one direction or the other, on at least seven occasions between 1840 and 1850.[68]

Part of this route followed a ridge at high altitude for fourteen miles (twenty-two kilometres). The general route, which had variations, became known as Te Kowhai Track. It was an arduous swag track with some steep grades, rather than a horse track. During a crossing in 1848, William for possibly the first time used a horse, but only on a small section of the route.[69] The fourth day of his February 1850 crossing was a typical day in the life of a 19th-century New Zealand missionary, worth a few lines in his diary:

> February 14. Proceeded on our journey. At the first crossing of the river I had the misfortune to get a ducking. I was safely ashore on the opposite bank, but the horse made a plunge in trying to get up the bank & pulled me in after him. Continued till eleven when we passed the last crossing & halted to breakfast. The hill we had now to ascend was a hill of difficulty. The path is so little used that in many places it was not to be discovered and we had to make our way as best we could. Encamped by a small stream.[70]

Another European who followed Te Kowhai Track in both directions was the missionary Thomas Grace. He left Turanga on 3 February 1851 'accompanied by the Native Schoolmaster and a boy who had been [along] part of the road before'. They reached Opotiki on the 9th, the walk having been 'very toilsome, being a succession of hills and mountains all the way, while the mosquitoes at night were terrible'.[71] One event suggests that for local Maori this trek was routine:

> On Friday morning, one day's walk from Opotiki, we met a Native woman and a little boy returning to Turanga. Was greatly astonished to find that she was carrying 60 lbs. of potatoes on her back, and more astonished still, when, a few hours afterwards, I found she had climbed with them up an almost perpendicular hill of between 2000 and 3000 ft. high.[72]

Grace returned the same way with two boys later that month, again taking about six days. He recorded this return journey in some detail. In one place, they followed the crest of a slender ridge: 'We were now crossing a sharp ridge, in many places not broader than a narrow pathway, but, being well wooded, there was not much danger.' Even so, one of the boys had a narrow escape, slipping off the path and making 'several turns before he could stop himself'.[73]

As with many other old Maori trails, it is difficult to determine exactly when Te Kowhai Track ceased to be regularly used. Harold Williams surmised that

> one has to assume that the 'Te Kowhai Track' between Poverty Bay and the Bay of Plenty remained in use, with successive improvement, mainly to meet the expanding needs of the constabulary and their foes throughout the opening phase of the New Zealand Hauhau

> wars 1864–1872.[74] [Hauhau was the European name for Pai Marire, a syncretic religion that promised its followers deliverance from European domination. Not all anti-government Maori believed in Pai Marire. The wars that Williams refers to are more commonly called the New Zealand Wars.]

Maps and other records dating from 1872 onwards show that horse tracks and dray roads were beginning to appear in roughly the same area as Te Kowhai Track but taking lower-level routes.[75] Te Kowhai Track fell gradually into disuse. 'By 1891 the "Te Kowhai Track" crossing the Motu opposite what is now Alcuin Station, was already history; no longer a prospective swag track to and from Opotiki'.[76] For the next twenty-seven years the only direct overland route from Turanga (Gisborne) to Opotiki was a bridle track down the Pakihi Stream valley, 'a horse journey with no little risk'.[77] This horse track in its turn would be supplanted by the Motu Road in about 1918.[78]

An Urewera Track: Lost to Human Ken, 1897

Southwest of Te Kowhai Track, other Maori trails once crisscrossed the Urewera. For example, in 1871 part of the route from Te Papuni (on the upper Ruakituri River, east of Lake Waikaremoana) to Maungapohatu, according to one description, was 'a well-defined trail'.[79] (Unlike the faint route from Waikaremoana to Ruatahuna, mentioned earlier.) But on 12 April 1897 Llewellyn Smith and others set out from Gisborne to reconnoitre a stock route across the Urewera to Galatea. Smith arrived in Te Whaiti several weeks later and said that he had had 'a fairly rough time, as the old Maori trail from Te Papuni to [Maunga] Pohatu is now lost to human ken'.[80]

In 1908 Cook county council was still debating whether to complete the proposed Gisborne-to-Galatea drovers' track. A way required clearing through eight miles of forest between the Anini River and Maungapohatu, where the Tuhoe prophet Rua Kenana Hepetipa and his followers had settled in 1906.[81] This section, a 'mere native bush track' where riding was impossible,[82] was never improved to a width suitable for droving. Furthermore, despite its name, the Gisborne-to-Galatea drovers' track was never used for droving.[83] Part of it appears on some modern maps as Rua's Track. Gordon Ell categorises Rua's Track as 'a comparatively recent Maori trail into a region once unserved by roads'.[84] Well into the 20th century, rough or steep bridle tracks provided the only access to Maungapohatu, hampering the settlement's economic viability. Judith Binney has argued that, in not completing the stock track or providing roads, 'the government underdeveloped a Maori community'.[85]

Trampers and botanists began to visit the Urewera in the late 1920s and early 1930s.[86] In the summer of 1927–8, Norman Nicholls, a teacher at Auckland Grammar School, and three of his colleagues tramped from Te Whaiti to Maungapohatu and Waikaremoana and then on to Gisborne and Opotiki. Nicholls kept a diary and, much later, wrote an account of the walk. The highlight for him had been their visit to Maungapohatu:

> Well the day came when we had to reluctantly leave on our next part of the tramp, after one of the most memorable visits I have

> ever made to any Maori settlement. We came to know the Maori people better by this visit, their kindness, hospitality and love, the way in which they lived in this most isolated village, practically cut off from civilisation, completely so in the winter, when the snow covered everything.
>
> They lived off the land, the fish in the streams and the animals and birds in the bush.[87]

While there may be some truth in the last sentence, the food available to the people of Maungapohatu left a lot to be desired.

For some of the Pakeha recreators and scientists, the poorly maintained narrow tracks were picturesque features of a journey into the rugged interior. For the Tuhoe that interior was home, but its isolation posed problems. The rough tracks, still rudimentary in 1927, compounded that isolation. Poverty, poor housing, an inadequate diet, and being distant from medical welfare had contributed to a prevalence of respiratory diseases and tuberculosis.[88] The last thing the Tuhoe needed was romantically photogenic horse tracks.

Raukumara Range: Ancient Route Still Followable, 1993

Northeast of Te Kowhai Track, generations of East Cape tribes journeyed across what we now call the Raukumara Range. Bishop Selwyn crossed this range over six days in December 1842, with his 'party of about twenty natives, laden with food and armed with hatchets'.[89] Starting from Rangitukia, near East Cape, they followed the Waiapu River to Wakawitira (now Whakawhitira). From here they continued up the bed of the Waiapu, fording the river 'an indefinite number of times'. A long ascent westwards then led them up 'a lofty woody ridge'. The bishop wrote that

> the native path, such as it was, went over the highest ridge as usual, probably from the desire of the war parties to keep [to] the highest ground for fear of surprise. This is the only respect in which we suffer from the warlike character of the natives in former times, as their present disposition … is remarkably peaceable.[90]

From the summit of the ridge, the party dropped down to the Raukokore River. Two more days of river-bashing and gorge clambering led to Te Kaha on the Bay of Plenty coast, where the bishop was 'sorry to find … that the majority of the population were heathens'.[91]

In January 1993 fifty-four peaceable walkers, mainly from the predominant East Cape tribe Ngati Porou, retraced the steps of their warrior ancestors. The ten-day coast-to-coast hikoi (march) headed west from Tuparoa to cross the rugged Cape interior and so to visit the Whanau-a-Apanui people on the Bay of Plenty side. The route included over a hundred river crossings, the surmounting of log jams, ascents to about a thousand metres, and a descent of the Raukokore River, once the site of several Ngati Porou pa.[92]

A Tale of Two Ridgeways

Barry Brailsford has noted that in the South Island there seem to have been few ridge trails and many valley trails, whereas some country in the

North Island may have suited the ridge trails.[93] Ridges were especially useful in bush country that lacked navigable rivers or wide, walkable riverbeds.

Sometimes short ridges formed just part of varied terrain. Charles Abraham, heading south from the mouth of the Waikato River on 3 August 1855, met 'continual changes from ridge-paths and table-land to woods; up and down, high and low, sandy beach, rocky beach, cliffs and rivers'. The next day he 'had the usual alternations of ridge-paths and sandy beach to Pukerewa'.[94]

In some terrain, ridges ran for long distances without deviating, providing ideal routes. We have already met one of these North Island ridgeways, a fourteen-mile section of Te Kowhai Track. The fate of this old high-level Maori trail from Poverty Bay to the Bay of Plenty, in being abandoned for lower-level ways, was probably common for routes of this type but was not a universal outcome. Some Maori trails that followed convenient high-level routes along long straightish ridges have survived to this day, albeit sometimes improved into official walkways or farmers' four-wheel-drive tracks.

Two archetypal ridgeways, possibly of some antiquity – the Taumatamahoe Track and the Matemateaonga Track – traversed the deeply serrated hills of central Taranaki from west to east.

The more prominent of these in 19th-century writings was the Taumatamahoe Track (sometimes written Taumata Mahoe). The bulk of this well-trodden arterial route lay to the west of what is now Whanganui National Park. Part of it appears to have crossed land that is now in the Whangamomona Conservation Area. The Taumatamahoe Track seems, from my limited research, to have fallen into disuse by the end of the 19th century.

Less commonly mentioned in 19th-century writings was the Matemateaonga Track. Today most of this lies in the national park, and it is clearly a 21st-century survivor.

Several 19th-century accounts of following the Taumatamahoe Track begin on the west coast in the vicinity of Waitara. When starting from here, the traveller was spoilt for choice: three tracks were available, from the mouths of the Waitara, Onaero and Urenui Rivers.[95] These three routes joined up, and the resulting single trail climbed up the Taramoukou valley and then dropped to cross the Waitara River near the present-day Purangi.[96] Here started the Taumatamahoe Track proper. It climbed eastwards over a divide and down into the Matau valley. From here it seesawed across the Pohokura area, crossing the upper Mangaotuku stream and the upper Makahu stream. It then climbed eastwards onto the watershed separating several tributaries of the upper Mangaehu from the western tributaries of the Whangamomona River. Some accounts have the track crossing the upper Mangaehu stream. Several accounts mention, after a narrow ridge, a crossing of the Whangamomona River, presumably near Aotuhia. Of those sources that describe or depict the eastern end of the Taumatamahoe Track, most place it at the junction of the Tangarakau River and the Whanganui River.

Richard Taylor and his Maori guides followed the Taumatamahoe Track from west to east in January–February 1844, as part of a longer

circuit from Wanganui. The party set out from the settlement of Waitara on 30 January, taking about six days to follow the Waitara River up to the riverside starting-point of the Taumatamahoe Track.

Striking roughly southeastwards from here, up the 'old, well worn [track], frequently used by the Maoris', they climbed out of the Waitara valley and onto 'a narrow ridge top amid a forest of tawai or beech'. After following this ridge eastwards for some distance, they 'suddenly ascended a precipice by means of notches cut in the cliff face, overhanging a deep abyss'.[97] They camped a little beyond this obstacle, eight and a half hours – or an estimated eighteen miles (twenty-nine kilometres) – after leaving the Waitara River. It had rained for most of the day. Another day and a half's slippery and strenuous walking brought them to the Whanganui River at its junction with the Tangarakau River. Taylor repeated this tramp in June 1845.[98]

Donald McLean, then a police inspector, followed the same or a similar route in April–May 1850, taking ten days to journey from New Plymouth to the upper Whanganui River. His party comprised two Pakeha and fourteen Maori.[99] On the seventh day Major Willoughby Brassey, the other European in the group, described their forest campsite: 'Our quarters are a small cleared place on the path and there are always a number of stones at each of these spots sufficient to make a native oven.'[100] On the ninth day, they negotiated the Taumatamahoe ridge. McLean recorded:

> The track became so steep that it [could] only be ascended by ropes and ladders of rough bush-vine construction. Camped early in the afternoon to cook our kiwi and wild pigs. Our encampment is a beautiful spot; the sun's rays shine through a large tree, having the appearance of a lovely decorated crown.[101]

The next day they again used a makeshift vine ladder, repaired for the occasion, this time on a climb up from the Whangamomona River. Brassey described this ladder:

> Crossed a small river called Wanga Momona the ascent on the other side up a perpendicular rock for about 30 feet up which we mounted by means of a ladder composed of two thick creepers well lashed above to bushes and furnished with cross bars.[102]

John Richardson, who became Sir John Richardson and was described in 1878 as 'one of the finest specimens of a good old Colonist that have ever lived in New Zealand', followed the Taumatamahoe Track in 1852.[103] The journey from New Plymouth to the Whanganui River occupies twenty-nine pages of his book *A Summer's Excursion in New Zealand*.[104]

A piece of evidence indicating the importance and perhaps the physical obviousness of the Taumatamahoe Track dates from 28 February 1853. On that day the *New Zealand Government Gazette* contained a proclamation fixing the boundaries of the six provinces of New Zealand. In defining the eastern limits of the province of New Plymouth, the proclamation used a section of the Whanganui River. It specified the southern end of this section to be 'the point where [the Whanganui

River] is met by the Taumatamahoe Path leading from the River Waitera [Waitara]'.[105] This track, we might therefore assume, was evident enough to form a landmark.

During the Taranaki war of 1860–1, according to David Young, Maori used the Taumatamahoe Track 'to shunt reinforcements from Ngati Maru and upper Whanganui districts west into Waitara, where their *Aotea* canoe kin needed them'.[106] A writer in 1863, when discussing the defence of New Plymouth should hostilities resume, warned that 'the Waikato and Taupo natives can get round the country either coastwise through Mokau on the West, or eastward by Lake Taupo, and the Taumatamahoe path from the Upper Wanganui river'.[107]

Taylor's son, Basil Taylor, walked the Taumatamahoe Track from east to west in March 1862. The first day, heading westwards from the Whanganui River, was tough going. In some places Basil found 'quite park-like scenery: grass and underwood with splendid trees'. In others he had 'a very rough journey through the wood'. Paths were entangled with roots, and the route involved 'steep and slippery ascents and decents [*sic*] with much mud from the rain and dripping trees'.[108]

The next day seems to have been warmer and drier:

> In the heat of the day, when climbing one of the most rugged mountains, as we approached the top, I happened to say I was thirsty and Taru said there is water near and presently pointed to a wide spreading beech tree called Onerua and said, 'There is water'. I looked round the peak of the hill descending steep allround and could see no water suggestion until he pointed to a little hole in the tree with a wooden tube and plug in it. There seems to be a large cavity within full of water and it is a well known drinking place for the thirsty way farer. They seem to be perfectly at home on these mountain forests and know every spring even in the least expected places.[109]

A newspaper article in 1897 described Taumatamahoe Track as one of 'the old native war tracks, which took leading ridges of mountains and hills … [It] leaves Purangi on the Waitara River and goes through the Pohokura Block to Wanganui over Waipurutehinga [sometimes spelt Waiporutahunga]'.[110] Another newspaper article, in 1899, mentioned the possibility of building a road starting from the Makahu valley and following 'the old Taumatamahoe native foot track to the Wanganui river'.[111]

Two later, secondary sources slant their mentions of the Taumatamahoe Track differently from each other. Percy Smith, writing in 1909, called the track 'one of the great Maori highways leading from the west coast into the interior of the North Island'.[112] W B Johnston, a geographer writing in 1949, stated that the Maori used the Taumatamahoe Track and two other west-east trails across the uplands 'mainly as a means of refuge'.[113]

An 1892 map of Taranaki shows a growing network of roads supplanting the western half of the Taumatamahoe Track. The route of the eastern, most mountainous half is clearly shown and is labelled in two places.[114]

A quite detailed four-miles-to-an-inch topographic map, produced in 1897, showed and labelled the Taumatamahoe Track going from Purangi to the Tangarakau–Whanganui confluence.[115]

In 1907 the surveyor Harry Skeet superimposed Maori tracks and Maori settlements onto a five-miles-to-an-inch published map of Taranaki.[116] In 1954 Skeet's tracks were transplanted onto a composite four-miles-to-an-inch map created from two 1950s published maps.[117] The tracks, shown in red, stand out well against the sharp detail of the topographic base. This composite map shows the whole of Richard Taylor's 1844 route from the settlement of Waitara up to Purangi and from there across to the Tangarakau–Whanganui confluence.

A third map of interest to us, published in 1908 and depicting the tribal boundaries and 'ancient foot paths' of Taranaki, is at a smaller scale than the other two but clearly includes the Taumatamahoe Track.[118]

But over the 20th century the Taumatamahoe Track gradually vanished from the topographic maps. The 1:63,000 *Whangamomona* topographic map of 1967 showed just the eastern end of the Taumatamahoe Track (not named as such), from Aotuhia to the Whanganui River, a distance of about eight kilometres. The 2005 edition of DOC's national-park map *Whanganui* did not show any of this age-old ridge track.[119] Neither did NZTopo*Online*, when examined in 2009. After remaining in use probably for centuries, this track seems to have joined the chaff of history.

*

The Matemateaonga Track follows the bush-clad crest of the Matemateaonga Range, a long narrow ridge whose highest point is Mount Humphries (Whakaihuwaka), 730 metres. The western end of the Matemateaonga Track is Kohi Saddle, at the summit of Upper Mangaehu Road. The eastern end of the track is a point on the Whanganui River about one kilometre south of Ramanui and Tieke Kainga.

Some current and late 20th-century references to the Matemateaonga Track call it an old Maori trail, linking Taranaki with the great Whanganui River, a busy water-transport artery. My cursory research, confined mainly to published 19th-century writing, did not dig up many explicit mentions of this track. Ian Church, however, has suggested that 'it was probably along this track [which he calls the Whaka-ihu-waka track] that Wiremu Kingi Te Koroiti led his people to the support of Ihaia Kirikumara at Karaka Pa on the Waitara River during the Puketapu feud of 1857'.[120]

In 1892 John Skinner surveyed the Matemateaonga ridge as part of the government's drive to acquire more Maori land for Pakeha settlement.[121] Curiously, the 1897 and 1908 maps that I mentioned above, which showed the Taumatamahoe Track, did not include the Matemateaonga Track, although they did name Whakaihuwaka (Mount Humphries). The 1954 composite map, *Old Maori Tracks in Taranaki as Delineated by H M Skeet 1907*, shows the Matemateaonga Track as merely an alternative unnamed side branch to the Taumatamahoe Track.

Further evidence suggesting that the Matemateaonga Track was the less important of the two tracks lies in an 1897 newspaper article that referred to the Matemateaonga Track as being a branch of the Taumatamahoe Track. It 'went over Matemateaonga or Mount Humphreys [*sic*],

across Kaitangiwhenua Block [and] into the Waitotara'.[122] (The last bit is unhelpful, as today's Matemateaonga Track passes well to the north of the upper Waitotara River.)

It looks to me as if the Taumatamahoe Track was the main foot-track, in pre-contact times and into the 19th century, for people heading from Waitara to the middle Whanganui River. My guess is that most of the Taumatamahoe Track fell into disuse, perhaps by the 1880s, and probably also got obliterated by changing land use. So nowadays we're just left with the Matemateaonga Track, which used to be a long, indirect and illogical way to reach the middle river.

The story of the Matemateaonga Track from about 1900 onwards is more definite and more coherent. In the early 1900s a need arose for a direct transport link between the thriving town of Raetihi and central Taranaki. The roading authorities decided to build a road from Raetihi to Makahu. The central part of this proposed road was to take a high-level way along the Matemateaonga Range, from Tieke to and over Mount Humphreys. It would become known, for a while, as Whakaihuwaka Road. A map compiled by John Skinner in 1902 shows this central part, prematurely and optimistically, as a 'main road in [the] course of construction'.[123]

Immediately before and during the first world war, workers cut a three-foot-wide pilot track for fifteen miles (twenty-four kilometres) along the old Maori ridgeway.[124] A shortage of men and equipment stopped this work. Road-building proper started in 1921 when '11 navvies with pick, shovel, wheelbarrow and explosives' pushed Kurapete Road – a ten-foot dray road – up from Aotuhia to connect with the pilot track just north of Mount Humphries.[125] This gang then worked their way southeastwards along the ridge, widening the pilot track into a ten-foot bench until they reached a point just beyond the present Pouri Hut. 'Officials inspected the work by truck in February 1922 prior to handing the road over to Whangamomona County. That evening a cloudburst swept much of the formation away.'[126] Despite argument, petition and protest, the widening of the pilot track progressed no further eastwards.[127]

> Farming and roading experience in the region yielded the comment from the Public Works Department in 1935 that 'the desired route passes through some of the roughest and also the poorest land in the North Island'. In 1943, in the midst of another war, the inner roads of the Whangamomona–Matemateaonga region were closed and the area [was] abandoned for settlement.[128]

Whakaihuwaka Road became overgrown, but hunters, trampers and Forest Service rangers kept the foot-track open. The 1:63,360 *Matemateaonga* topographic maps of 1967 and 1975 showed the whole length, labelling it the Whakaihuwaka Track.

In 1980 the New Zealand Walkway Commission opened it as a walkway. 'Considerable work [was] carried out on the track, clearing windfalls, building footbridges, cutting brush and re-establishing the bench where it had disappeared.'[129] The 1981 annual report of the Department of Lands and Survey described the walkway as the commission's first long-distance

route, 'a 3 day hutted walk extending from Taranaki to the Wanganui River … [that was] proving extremely popular'.[130]

The 1982 *AA Book of New Zealand Walkways* called this track Matemateaonga Walkway (hence the title of Philip Temple's 1986 booklet, *The Shell Guide to the Matemateaonga Walkway*) but classified it as a Route.[131] This illustrated a semantic confusion in the way that the naming and classifying of walkways was evolving: most people thought of 'walkway' and 'route' as being things at different ends of the scale of difficulty. By 1987, someone had removed this contradiction, the name having become Matemateaonga Track and the classification having been altered to Tramping Track.[132]

Whatever has been the fate of other ancient Maori ridgeways, this one has clearly survived the encroachment of the motorcar: a Department of Conservation pamphlet calls it 'one of the two major tramping opportunities available in Whanganui National Park'.[133] (The other being the Mangapurua Track.) Mainly heavily forested, predominantly by tawa and kamahi, the Matemateaonga Track is the classic bush-lover's route, a place for botanising and bird-spotting. In the view of Philip Temple, 'no other walking track in New Zealand offers quite the same experience'. Walkers usually take three or four days to cover the track's forty-two earthy and enclosed kilometres.

Obliterated by Changing Land Use

In some areas of the country, archaeologists and historians have built up a basic knowledge of the old Maori trails. From the mid-1920s to the late 1940s, Leslie Adkin, 'a self-taught scholar with the skills and integrity of a professional', studied Maori life in Horowhenua, the southwestern littoral of the North Island.[134] This work resulted in *Horowhenua: Its Maori Place-names and Their Topographic and Historical Background* (1948). A reviewer wrote that

> his treatment is so much better than anything of this type yet produced in New Zealand that it is scarcely fair to have to mention *Horowhenua* in the same breath as the usual study of Maori place-names …
>
> On this vast plane-table [Horowhenua] he plots in by words and maps, and so accurately that one feels it can never be improved, every physiographic feature recognised and named by the Maori, and every arbitrary mark which as men they made on nature. These include features as evanescent as the old Maori trails … [135]

Regarding these trails, Adkin himself was less satisfied than this reviewer. He wrote that he had produced only 'a somewhat fragmentary account of their geographical distribution', which would have to suffice.[136] Nevertheless, anyone who is researching the Maori tracks of Horowhenua is lucky to have Adkin's book to start from, with its section 'Native Tracks on the Lowland Area' and its numerous maps, many showing old Maori tracks.

In some other parts of New Zealand, we may still have elementary details to learn about the ancient Maori tracks. In the South Island, for example, the New Zealand Historic Places Trust and Ngai Tahu have been working with DOC and LINZ to try to ensure that historic values

are assessed and managed appropriately. Ngai Tahu has been researching place names, trails and archaeological sites.[137] Several archaeologists have argued that in many historic places, such as farmhouses and outbuildings on private land, the assessment of historic values has been inadequate.[138]

Janet Davidson's *The Prehistory of New Zealand* is a comprehensive standard text. Yet it says little explicitly about trails; none of the words 'trail', 'track' or 'path' appear in its extensive index.

Likewise, the archaeologist Kevin Jones's book of aerial photographs, *Nga Tohuwhenua Mai te Rangi*, reveals historical and archaeological features, particularly earthworks, from every region of Aotearoa, often with remarkable clarity. But Jones was looking mainly at pa and at vegetable gardens, not for evidence of ancient tracks across the landscape between these sites. Even had he done, most of the tracks, whether originally in forest or in the open, will have been obliterated by changes in the use of land. His book, although forming a fascinating collection of photographs of historical landscapes, does not mention the old Maori trails that in rare places might still visibly imprint the land.

Peter Horn has offered evidence suggesting that some species of moa followed regular tracks and that these tracks were still visible in various parts of New Zealand in 1989.[139] Horn's examination of these two possibilities was inconclusive, but if experts *can* see and identify moa tracks, other experts ought to be able to detect, here and there, the faint signs of Maori trails. In some places, however, archaeological investigation would need to distinguish between Maori trails and settlers' foot-tracks. On the Otago Peninsula in the 1860s, Broad Bay children followed an overland track to the North East Harbour School. Although this track had not been used for over a century, it was still obvious from the air in the 1970s.[140]

*

In the next chapter we will discuss the walking tracks that the government began building for tourists in the 1880s. It is ironic that by then Pakeha were well advanced on the extirpation of the network of trading routes and food trails that had existed in 1840 almost unaffected by external influences.

In February and March 1871 Lieutenant-Colonel J H H St John toured the Waikato in some sort of inspector-of-roads capacity.[141] He later compared the Waikato of 1871 with that of the 1830s, as described in Charles Marshall's 'Waikato Forty Years Ago'. What we now recognise as St John's Anglocentric, war-against-nature perspective helps us to understand the unstoppable change that was leading to the disuse of, or was annihilating, the old Maori tracks:

> The scenes I have witnessed contrast so strongly with those described in 'Waikato Forty Years Ago', that I have been tempted to tack my experiences on to that description. Where its writer found a country inhabited by thousands of natives, I saw cultivated farms, occupied by a thriving European population: where he wandered through difficult bush tracks, I drove along a metalled road; and where he witnessed deeds of savage slaughter, I met happy and

> contented English families, pursuing their daily avocations in peace and quiet.[142]

St John died in 1876, and so would not have known the full details of the road-building progress, nationally, of that decade:

> Roadmaking, even over rivers, boomed in the 1870s, 'the busiest bridge-building period New Zealand has ever seen'. Central government alone spent £1,100,000 making nearly 2,000 miles of roads and tracks between 1871 and 1881. Road and rail obviously had great importance, both as the basis of a national communications infrastructure and as major industries in themselves. They also had great symbolic significance: paths of civilisation, bringing order and doom to natives and nature; huge, smoking, iron engines leading the charge of progress.[143]

The changes to travel times illustrate the 'charge of progress' in the South Island. In 1844 Edward Shortland and various Maori guide-cum-porters took twenty-seven days to trudge through the tussock and fern, occasionally following Maori trails, from Waikouaiti (twenty-five miles north of Dunedin) to Hakaroa (Akaroa) on Banks Peninsula.[144] In May 1852 William Valpy and two shepherds set a record for roughly the same trip but in the opposite direction, journeying overland from Christchurch to Dunedin 'in twelve days' hard travelling'.[145] On 6 September 1878 the newly completed Christchurch–Dunedin railway line officially opened; the inaugural through train, with about 300 passengers, took 12 hours 30 minutes for the journey, which included two hours of stops for speech-making in towns en-route.[146] In 1894, after the invention of the safety bicycle and the pneumatic tyre, 'Duff the Melbourne bicyclist' cycled from Christchurch to Dunedin in 26 hours 5 minutes.[147]

Nobody knows the number, location and length of Maori trails that remained followable in 1880. It is probably safe to say that by then the arrival of the horse and the dray and the grocery store, the building of roads, the logging and clearing of the bush, and the coming of the railway had all contributed to the abandonment of a large proportion of the Maori trails that had existed in 1840, except in remote areas such as the Urewera. Some bridle tracks remained in use into the 20th century, but the coming of the motorcar and the tractor – private cars would boom in the 1920s[148] – would destine the Pakeha's horse tracks to the same fate as that of Aotearoa's ancient foot-tracks.

Much has been written about the loss of the country's forests and about the conversion of its wetlands, tall tussock grasslands, fernlands and shrublands into improved pastures. Far less has been written – from a national perspective – about the near-complete loss of the Maori track network. The disappearance of each old Maori track went unnoticed by Pakeha or reached only a traveller's tale or, later, a local history. We should recognise this outcome of colonisation for what it was: the death of a nationwide web of trails, a loss that we have since spent 130 years working to replace. That industry has resulted in acclaimed networks

of foot-tracks on publicly owned lands but has produced relatively few certain and enduring public foot-tracks across privately owned farmland.

As for Maori themselves, 'the immense strength of the late nineteenth century Maori political movements is evidence enough that Maori were not ready to withdraw into demoralized isolation. Though their population, by 1896, was at its lowest ebb since contact with Pakeha, they had resisted the first great push of the British to assimilate them.'[149] (The Maori population in 1896 was 42,113.[150]) Not until 1947 would a change of law replace the term 'native' with 'Maori' for official use.[151] Many Maori were probably involved, in one way or another, in the track developments of the 20th century on publicly owned land, but it will be Chapter 24 and 2005 before our story of New Zealand's foot-tracks returns specifically to the matter of foot-tracks on Maori land.

The Melancholy Wailing of the Wind

Although Queen Victoria used the word 'recreation' in her instructions of 1843, most mid-19th-century settlers in New Zealand had little time for leisure and what we nowadays term outdoor recreation. Most of the settlers viewed the land as a place of toil rather than of relaxation. Urban nostalgia for the farmed and domesticated landscape, which was developing in the Old Country, was absent in the raw and sometimes menacing New Country. 'The word "countryside" in its English context was to have no comparable meaning in the New Country in the wake of settlement after the 1840s'.[152] Aotearoa's tangled bush and empty backcountry and towering mountains were inhospitably different from the cultivated and villaged countryside of England. William Wordsworth would have understood this aesthetic gulf; writing in 1844, he claimed that the concept of appreciating rugged and wild landscapes, such as the Swiss Alps, was a novel one.[153] Writing in 1887 about the mid-19th-century goldminers of Central Otago, Vincent Pyke suggested that they had not appreciated the spartan scenery:

> The reader who is unable to draw upon memory and personal experience, cannot possibly conceive more than a very faint idea of the absolute solitariness which in those days pervaded and enveloped the Interior of Otago – the solemn loneliness of its mountains; the ineffable sadness of its valleys; the utter dreariness of its plains. The weary traveller pursued his lonely way from point to point, always viewing around and before him a continuous and apparently interminable expanse of lofty hills – range succeeding range in monotonous uniformity, everywhere clothed in a sober livery of pale brown vegetation, relieved only by grim, grey rocks of fantastic form … an expanse diversified by no pleasant forests; devoid of animal as of human life; where the profound stillness was painful in its prolonged intensity; and the only sound that greeted the ear from dawn to dusk was the melancholy wailing of the wind among the tussocks.[154]

Walking for Pleasure: Sketchbooks Were Carried

Vincent Pyke's portrayal may have accurately reflected the reactions of some Otago goldminers to the landscape they laboured in. But it was

not true of the landscape attitudes of all Otago settlers or of all settlers elsewhere in New Zealand. Perhaps – not pointed out by Pyke – the mid-19th-century goldminers had not gone to the right schools and studied the Renaissance. At least half of the pre-1850 travellers and settlers whose diaries survive in libraries reported on more than just the soils and minerals and timber resources; they also described the landscape, revealing 'feelings rooted in a [European] tradition of landscape aesthetics, informed by neo-classical ideas of art, natural history, and empirical science'.[155] Lydia Wevers has looked at the history of walking as an aesthetic and recreational practice in New Zealand. In the mid-19th century, for a middle- and upper-class minority, such as educated missionaries and well-to-do gentleman explorers and botanists, 'walking in a colonial landscape … was inflected with culture- and class-derived habits of discrimination and pleasure. Sketchbooks were carried, vistas described, travel accounts written in a Romantic mode, and feats of endurance disingenuously dismissed as the natural legacy of public school education and evidence of superiority.'[156]

The attitudes towards the landscape varied greatly, even among the budding literati, and from day to day or sometimes hour to hour. Arthur Empson, in 1838, thought the hills of Northland were as godforsaken as those of home:

> Our Road for the next 15 miles was nothing more than a Mountain path, something like what the Shepherds use in Cumberland, and the scenery on each side was as wild and desolate as one can well imagine … There was not such a thing as a tree on either side to relieve the eye, nothing but these interminable Hills, covered with fern. I could not help fancying that the scenery would bear a strong resemblance to the Highlands of Scotland, judging from the description I have heard of them, and substituting the Fern for the Heather.[157]

Similarly, Charles Hursthouse rejected the western half of Nelson province and by extension the whole of the western half of the South Island:

> The greater portion of the western half [of Nelson province] appears to be a densely-timbered Alpine wilderness – a 'Black-forest' region, unfit for man or domestic beast. Indeed … this rugged region … extends along the entire western coast of the South Island, 500 miles from Cape Farewell to Dusky Bay. It is a savage, gloomy, country: silent, desolate, and dreary.[158]

Some mid-19th-century writers did wax lyrical on the New Zealand scenery. In 1846–7, Dr John Johnson journeyed through the central North Island and he wrote glowingly of the lakes, rivers, mountains and volcanic phenomena.[159] Johnson was a man of science and was New Zealand's first colonial-surgeon, an articulate gentleman traveller with the means and time to tour for pleasure and curiosity, hiring Maori guides whenever necessary. The artist George Angas, in his book of 1847, immediately after writing of knee-deep mud, continued:

> The scenery along this forest track is, for the whole twelve miles, exceedingly picturesque. The lofty forest – filled with noble trees of gigantic growth, clothed not only with their own evergreen foliage, but with innumerable parasitical plants, ferns, mosses, and orchidae, climbing up to their very summits – presents a scene of luxuriant vegetation not to be surpassed in the tropics.[160]

Johnson and Angas and similar moneyed explorer-travellers, however, hardly represented typical settlers. This is not to say that the early- and mid-19th-century whalers, woodmen and goldminers lacked any sort of free time or knew no leisure pursuits. But these visitors or settlers were mainly transient men, and 'the main distractions from their isolation were drinking, smoking, gambling and prostitution'.[161] In 1841 the Rev James Watkin considered Otakau (now Otakou) on the Otago Peninsula to be a veritable Gomorrah, 'a place well nigh as wicked as it can be … Drunkenness and lewdness are rampant'.[162] The strong male culture did also lead to some sober athletic endeavour, and in particular to contests of strength and skill such as boxing, wrestling and foot races and to occupation-related events such as wood-chopping and shooting.[163] For boat-owners, regattas featured rowing and sailing races. But wood-millers and sheep-shearers and gum-diggers did not waste their precious Sunday afternoons bush-bashing for fun or climbing forbidding mountains, although they might have gone hunting or fishing for necessity.

Foot-tracks for Walking to Work

We are nearing the end of this chapter and the end of an era in which most foot-tracks were for essential travel rather than for the pleasure and wellbeing of the traveller. The database Papers Past, provided by the National Library of New Zealand, forms a kaleidoscopic picture of 19th-century life. A search of Papers Past for the word 'track' in newspapers published between 1839 and 1880 found 13,968 articles. A glance at a few of these revealed contexts that were almost invariably utilitarian rather than recreational, such as the following comment from the Wangapeka goldfield:

> Beyond that point, however, there are several miles of a most execrable track to reach the diggings in Rolling River, and Nuggetty and Blue Creeks. Some parts of the track in question are absolutely dangerous to a traveller loaded with a swag.[164]

Searching for more-specific terms than 'track', such as 'foot-track', 'foot track', 'footpath', 'foot road' and 'bridle track', greatly reduced the number of results, but still the contexts were usually of practical, necessary travel. A report on the Buller goldfield in 1863 complained that

> there is not even a walking track yet open as far up [the Buller valley] as the Lyell, a distance of only thirty-five miles … a foot track of the most indifferent kind would enable men to travel backwards and forward at all seasons.[165]

A few miners used packhorses to carry their supplies and tools, but most footslogged, often for long distances, lugging a swag. Ten years later, the provincial engineer's annual report on the public works carried out on the southwest goldfields included an expenditure of £3,988 7s. 5d. on the maintenance of roads. Foot-tracks also received a mention:

> *Foot-tracks.* – Expenditure, £251 3s. 4d. The works executed consisted of a track from Nelson Creek to Ahaura, four-and-a-half miles, and a track from Hughes' near the Old Buller Diggings to the new Landing, six-and-a-quarter miles; also a short track was cut to avoid a bad ford in the Inangahua, near David Wallace's. I would recommend the Government to place £200 on the Estimates for foot-tracks for the ensuing year.[166]

As the 19th century progressed, and while the axe and the plough mercilessly changed the landscape, better-balanced communities evolved based on the family and influenced by the church. At the census in 1874 the Pakeha population totalled 297,654 and the Maori population, which was falling, totalled 47,330.[167] By the 1880s, 'the years of overt Maori–Pakeha conflict were over and British sovereignty – now meaning the authority of the colonial government – was a reality throughout the land'.[168] Families and other groups began to use their local outdoors for such things as picnics, horse-riding and, from the late 1880s onwards, bicycle trips. Even so, these first stirrings of interest in outdoor recreation in the late 19th century were confined mainly to New Zealand's upper classes. Participation was not widespread. Tramping, mountain-climbing and other backcountry activities were overshadowed by the 'overwhelming popularity [of] and social identification with team sports such as rugby and cricket'.[169]

For much of the 19th century, everyone had more important things to do than to build foot-tracks for people who liked walking. This began to change in the 1880s, and tourism, not recreation, was the main impulse behind the willingness to spend money on foot-tracks.

Chapter 4

Tracks for Tourism and Recreation, 1880–1930

On 23 September 1887 Te Heuheu Tukino IV, paramount chief of Ngati Tuwharetoa, gifted to all New Zealanders 6,500 acres (2,630 hectares) of Maori land, covering three small circles drawn around the main volcanic craters of Tongariro. In 1894 an act of parliament created Tongariro National Park, covering 62,350 acres (25,000 hectares) that included Te Heuheu's sacred gift. This national park was the world's fourth. Writers on the history of conservation and outdoor recreation in New Zealand love to point out that this was fifty-seven years before the establishment of Britain's first national park in 1951.

Furthermore, the New Zealand public from 1894 onwards enjoyed, where practical, a steadily increasing amount of statutory area access first to Tongariro National Park and later to other national parks. In contrast, the English and Welsh public from 1951 onwards did not benefit from area access to their newly established national parks. England and Wales's National Parks and Access to the Countryside Act 1949, which led to the United Kingdom's first national parks, did not establish statutory area access. It merely provided an extra degree of planning control and management, to preserve the countryside. Large parts of that countryside, inside the national parks, remained privately owned. The main entry mechanism in these privately owned areas was linear access: the existing public footpaths, off which, in many farmed areas, walkers were not to stray.

What is less often mentioned in these historical comparisons is that in 1865 in London some outdoor enthusiasts had formed the Commons Preservation Society, now the Open Spaces Society and said to be Britain's oldest national conservation body.[1] In a closely related development, in 1884 some English country-lovers had formed the National Footpaths Preservation Society. Britain in 1884 had many thousands of miles of public footpaths, often ancient in origin, admittedly in urgent need of signposting, unblocking, formalising and guarding, but nevertheless usually marked on parish maps and sometimes already legally secure. New Zealand by 1894 had lost many of its old Maori trails, major and minor.

Despite the potential of its unformed public roads and despite having the world's fourth national park, it had nothing remotely equivalent to Britain's time-worn network of walking tracks, the legacy of a once well-populated countryside. In the matter of public foot-tracks, New Zealand had much catching-up to do. *Homo britannicus* had had a 700,000-year start, with quite a few breaks for ice ages, or 11,500 years if you insist on continuity of occupation.[2]

Tracks as Visitor Attractions

New Zealand's catching up had started in the 1880s, in a small way in isolated examples, with the beginnings of tourism. Standard texts on the history of New Zealand tourism begin with the Hot Lakes region in the 1870s: Prince Alfred's visit to the Pink and White Terraces in 1870; Thorpe Talbot's guidebook of 1872 promoting 'a month in hot water'; bathers at the Pink Terraces undressing in the bracken and taking 'a few quick steps into one of the warm pools – men to one side, women to the other'; and the novelist Anthony Trollope's calling these pools a place of 'intense sensual enjoyment'.[3] Yet the Wonder Country offered more than just steamy ponds and boiling mud, sulphurous fumaroles and spectacular geysers, and water cures. The early tourism soon diversified to include guided walking in the alpine mountains, keeping sensibly to the benign picnic zones, from where the well-to-do visitor could safely view the savage summits. The using of and sometimes improving of existing foot-tracks solely for the enjoyment of walking preceded the establishment of our first national park. In a few of the most scenically dramatic areas of New Zealand, the sightseers and walkers arrived only a decade or two after the European explorers, surveyors and prospectors.

The Routeburn, a New Use for an Old Trail, 1881

On 9 June 1861 two Southland runholder-explorers, David McKellar and George Gunn, had become the first Pakeha to reach Key Summit, at the head of the Hollyford valley (Whakatipu-katuku). They followed the Mararoa valley and the upper Greenstone valley, the old Maori trail to the West Coast.[4]

In 1870 the surveyor James McKerrow had reported on the possibility of building a track from the head of Lake Wakatipu to the Hollyford valley. The proposed purpose of this track had initially been entirely utilitarian to enable agricultural developments and to improve communications. The time to exploit tourism had not quite yet arrived. The track would open up some good pasturelands and would also shorten the distance from Queenstown to the settlement at Martins Bay, thus benefiting the isolated West Coasters:

> Queenstown, 9th February, 1870.
> To J. T. Thomson, Esq., Chief Surveyor.
> Sir – I had the honour this day of forwarding a telegram to you, to the effect that a practicable bridle track from Lake Wakatipu to Hollyford Valley can be made via the Dart River, Route Burn, and Lake Harris. The altitude of the saddle is 4,500 feet above sea level. The distance from head of Lake Wakatipu to Lake McKerrow by this route will be about 35 miles. The difficulties requiring to be

> overcome in the construction of a bridle track are: lst. The rounding of the end of a rocky spur opposite the lower falls on the Route Burn. 2nd. The steep ascent at the falls near Lake Harris. 3rd. The rounding of a rocky bluff at Lake Harris. 4th. A side cutting part of the way from the saddle down to the bed of the Hollyford Valley. A sum of say £2,000 would remove the hindrances. The other parts of the track run through either grass land or open birch forest that would require but little clearing.
>
> To make the track easy for travellers on foot, all that is requisite is to blaze the trees on the line, and remove the dead timber, so as to allow of a free step. If this were done a man could walk the through distance of 35 miles in one day.
>
> The advantages of this track are: 1st. That for the first 13 or 14 miles from Lake Wakatipu it passes through a belt of good agricultural land varying from one half to one mile wide. 2nd. It opens up a considerable area of pasture land around Lake Harris and up the north branch of the Route Burn. 3rd. Its short distance, being only one half the distance of the route hitherto traversed via Queenstown, Mararoa and Yon Rivers; and the height of the saddle between the Mararoa and Yon Rivers is not much lower than the saddle at Lake Harris.[5]

Subsequent European track development in this area met a hiccup in 1874 when McKerrow abandoned his attempt to build a bridle track over the Routeburn.[6] Yet by 1881 and possibly earlier, tourists were beginning to visit the Routeburn Falls, being taken into Routeburn Flats by horse and then continuing on foot to the Harris Saddle (Tarahaka-Whakatipu). George Shorns of Christchurch, writing in the Glacier Hotel's visitors' book, recorded a trip up the Routeburn in February 1881, reaching Lake Harris and the saddle, where he gained a view of the Hollyford valley and Lake Howden.[7]

The Milford Track, Postcard Perfect, 1888–9

About nineteen miles (thirty kilometres) due west of the Routeburn valley, at Milford Sound, the time gap between exploration and tourism was even shorter. In some respects the two activities overlapped. The explorers might have even watched the tourists. Tourism in the sounds of the southwest began in 1877 with a special excursion from Port Chalmers run by the Union Steam Ship Company.[8] A company travel booklet later described the trip to the sounds as 'an extended pic-nic' that attracted travellers 'from all parts of the Colonies, and even from Europe and America'. The sightseeing lasted about eight days:

> The sounds being almost equidistant (about eight miles) from one another, the steamer is very little at sea, and the greater part of each day is spent in the quiet of these inland lakes; while anchored at their head, each night is passed in social enjoyment of the most pleasant character, strangely heightened by the grandeur and novelty of the surroundings.[9]

On 10 November 1880 Donald Sutherland, the soldier turned explorer, discovered the falls that came to bear his name (and which were known to Maori as Te Tau-tea).[10] 'Through the 1880s, as regular steamer trips left Bluff to tour the West Coast Sounds, pressure mounted for a track to be created from the fiords into the southern lakes area.'[11] In 1888 C W Adams, the chief surveyor for Otago, commissioned Sutherland to cut a track up the Arthur valley to the Sutherland Falls. The government would pay Sutherland £50 to cut the track, build a hut at the falls, and build a boatshed at Lake Ada.[12] The government also engaged Quintin Mackinnon to blaze a track up the Clinton valley from the head of Lake Te Anau. The payment for this work would be £30.[13]

On 17 October 1888 Mackinnon and his companion Ernest Mitchell reached the head of the Clinton valley, crossed the pass and continued down the Arthur valley on the track cut by Sutherland. Thus began the modern era of the Milford Track, which had for centuries been a principal greenstone trail. In 1888–9, the first summer after the cutting of the track, forty people visited the Sutherland Falls; the next summer, seventy.[14] In 1890 Adams produced a map of the route and strongly recommended the opening of the Milford Track for tourists – apparently somewhat behind the happenings. The government assigned seasonal contracts to improve and maintain the track, guide tourists, and carry the mail to Milford.[15]

Also in 1890, in a fit of what we would now call thinking outside the square, someone suggested that 'a road from Milford Sound to the Sutherland Falls' could be constructed by gangs of convicts.[16] The government was considering the idea. The Southland *News* questioned the sense of stationing convicts along a tourist route:

> So far as tourists' traffic is concerned, the presence of gangs of men of dangerous types of character along the road to the celebrated Falls or lakes must be rather deterrent than inviting. At any moment a party of tourists would be liable to be murdered and stripped of their clothing and effects by desperadoes clever enough to personate for a time their victims … Is it fitting and right to give a number of long-sentenced prisoners a kind of holiday picnic at the public expense, while there are hundreds of good and honest men ready and willing to take axe, pick, or shovel in hand, to do the work that is proposed to be done?[17]

The convict-labour scheme met approval from some other newspapers. The government went ahead with it. But on 14 April 1892 the government announced the abandoning of the Milford Sound convict establishment 'as work is stopped by rain nearly every other day throughout the year. Lord Onslow and the Hon. Mr Seddon, after visiting the spot, recommended a pack track instead of a vehicle road for Milford and Te Anau.'[18]

Track-building on Mount Egmont (Mount Taranaki), 1885–1903

Early ascentionists of Mount Egmont, in the mid-19th century, had spent weeks cutting tracks just to approach the base of the mountain.[19] By the 1880s, all this had changed. In 1885 Harry Peters improved and popularised the easy route to the east of the Waiwhakaiho River.[20] In

autumn 1887 'sixty-eight horsemen were counted on Egmont Road', all heading for Peters's Kaimiro route up the mountain.[21]

One day in March 1888, C S Curtis and T H Penn pioneered a route that followed the Patea River, crossed a flax swamp to reach Te Popo Stream and headed up the Manganui Gorge. Over the next two years, leading a small team of volunteers they 'cleared a "first class" bridle track to the Manganui Plateau'.[22] The first ascent of the mountain by this Pembroke Road route was made on 17 March 1889.

Also in 1889, Mr Speck and his sons developed a third track, from Midhirst.[23]

> By the end of the 1880's Egmont had been climbed from all sides except from the Okato-Rahoto region. Soon tracks were to give way to roads, with wheeled carriages and cheerful parties, which looked for greater comfort than tents. For the public Egmont no longer was an object of beauty to be admired from afar; the people were discovering 'their' mountain.[24]

A search of Papers Past for the first New Zealand newspaper occurrence of the phrase 'tourist track', used specifically to refer to a walking track in New Zealand, came up with the *Taranaki Herald* of 29 November 1890. In an article titled 'Mount Egmont: The Midhirst Tourist Track', the writer reported that

> several parties last year, including a number of ladies, made the journey, on foot, from Midhirst to the summit and back in a day, and had easy walking … By widening the track … a splendid and perfectly safe horse track could be made as far as the snowline … A number of blackberry, raspberry, and red currant bushes will also be planted in sheltered nooks along this route, and especially in the vicinity of the camping ground. The berries will be ripe in the tourist season, and [will] afford great enjoyment and pleasure to many travellers.[25]

The 1890s became 'the golden age of activity and development on Egmont'.[26] Roads for horse-drawn traffic penetrated to the 3,000-foot level to reach camphouses at three points: North Egmont, Stratford Plateau, and Dawson Falls. In February 1892 a recent visitor to the North Egmont mountain house, later known as the Old House, wrote to the *Taranaki Herald*, describing his return along the bridle track from North Egmont to New Plymouth:

> ROAD TO MOUNTAIN HOUSE.
>
> TO THE EDITOR.
>
> SIR, – Your readers may be interested to know that even with the track to the Mountain House at its very worst, as it is now, being little better than a succession of bog holes, the journey is very brief and easy. I left the [Mountain] House on Wednesday morning at 8.50, reached the Egmont Creamery at the Waiwakaiho bridge at 10.42, and unsaddled at Vogeltown [in New Plymouth] at 11.29;

> total time, 2 hours 39 minutes. My stoppages on the road amounted to about ten minutes; so that the actual travelling time was 2 hours 29 minutes. This was done without making any call upon my horse. I am not, however, prepared to advise women and children to tramp the track. There is a stretch of four miles of excellent slush which wise persons will do well to cross, or shall I say ford, on horseback. I am aware that an eminent divine of this district, heading a party of sixteen or seventeen weary pilgrims of both sexes and all ages, patiently waded through this Slough of Despond last Friday; and whilst I am writing this I know also that, at this moment, eleven most courageous tourists, including a small boy of 2½ years and a maid of about 8, with seven ladies in their party, are counting the puddles and admiring the rich loam of the track on foot. Nevertheless, it is no thoroughfare for foot passengers.[27]

This correspondent also mentioned that between 23 December 1891 and about 9 February 1892 over 120 people had visited the North Egmont mountain house.

On 25 February 1894, to settle a wager, George Herbert, wearing shorts and singlet and light sandshoes, ran from the North Egmont mountain house to the summit and back in one hour, fifty minutes and four seconds.[28] He probably returned to New Plymouth on horseback. Horses, and on a few routes steam locomotives, were still the mainstay of overland transport. Long journeys around New Zealand, such as those undertaken by affluent tourists, were often taken by steamer rather than by rail or road. But four years later, on 19 February 1898, two Benz motorcars from Paris arrived at Wellington; the first petrol-driven cars in New Zealand, they indicated the changes that lay ahead.[29]

One other happening about this time demands a mention: in 1899 dairy farmers in Taranaki and in the far north set up the New Zealand Farmers' Union.[30] Concerning itself with land tenure and marketing, it was the forerunner of Federated Farmers of New Zealand, an organisation that would considerably influence the public attitudes towards and politics of walking access to the farmed countryside.

In 1900 the Egmont National Park Act created New Zealand's second national park, setting aside as reserve 'land comprised with a circle having a radius of six miles, and a centre on the summit of Mount Egmont [Mount Taranaki]'.

In 1901 the Department of Lands and Survey published a one-inch-to-one-mile topographic map of Mount Egmont based on a survey conducted in 1900 by H M Skeet.[31] The writer of an article in the *Hawera & Normanby Star* praised this 'most valuable topographical plan of Mount Egmont and the Pouakai Range, which shows at a glance, as from above, the peaks and slopes, the rivers and swamps, the mounds and humps, and the tracks existing to give access to the highlands and the sites of the resting places available when that goal is reached'.[32]

The report of the Department of Lands and Survey for 1902 said that 'Mount Egmont is becoming one of the recognised attractions of the colony and outside world'. This report also outlined the tracks available for climbing the mountain. 'Four tracks [were] offered to the intending

visitor', but there were six tracks in all: the Holly Flat route, the Egmont Track (from the North Egmont mountain house), the Stratford Track (from the Stratford mountain house), the Manaia Track (via Dawson's Falls), the Surrey Road Track and the Rahotu Track. The last-named was not quite complete. Four and a half miles of it were 'only a rough walking-track; the work of opening this out for a bridle-track [had been started], but owing to shortness of funds [had not been] finished'.[33]

'Considerable sums of money' had been spent on these six tracks, and 'the mountain [could] be ascended from any side now without serious difficulty'.[34]

In 1903 over a thousand visitors reached North Egmont. Mount Egmont, according to the Department of Tourist and Health Resorts, was 'one of the grandest pleasure-grounds of the colony', but it suffered from a 'lack of adequate means of access and of proper accommodation for visitors'.[35]

On 5 January 1908 a motorcar reached Dawson Falls Hostel for the first time.[36]

Track-building in Tongariro National Park, 1901–9

In 1891 the Department of Lands and Survey published a topographic map of the Tongariro district based on surveys carried out by Lawrence Cussen. The scale of this map was about 1: 130,000, which was adequate for roughly depicting any main foot-tracks. However, although the map showed roads or tracks encircling the base of the Tongariro–Ngauruhoe massif, it showed no tracks over the actual mountains.[37] This suggests, but does not prove, that there were no formed tracks.

In 1894, the year that Tongariro National Park was established, the Tokaanu–Waiouru–Pipiriki coach road was completed, as was the railway from Auckland to Rotorua.[38] The information about these routes became instantly available, with the publication in 1894 of *Willis's Guide Book of New Route for Tourists: Auckland–Wellington, via the Hot Springs, Taupo, the Volcanoes and the Wanganui River*. People began to show an increasing interest in visiting the volcanic mountains. Fifty years earlier the tapu restrictions on these volcanoes had been rigorous (although ignored in 1840 by the amateur botanist John Bidwill, the first Pakeha to climb Mount Ngauruhoe). Now, in the 1890s, the volcanoes remained sacred to Tuwharetoa but the power of the tapu had weakened greatly.

One day in 1896 or '97 the Reverend Father Charles Kreymborg, a German scientist Dr Friedlaender, the scientist's servant, and their guide took the coach road from Tokaanu to Waihohonu, where they camped for the night. Kreymborg's account of their ascent of Ngauruhoe suggests that there was not yet a track from Waihohonu:

> At an early hour next morning, after having packed our estovers on my horse, we were steadily advancing on the road to Ngaruhoe – but no, there was no road, not even a miserable track.[39]

To meet the demand, in 1901 the government built tracks from Waihohonu.[40] In 1900–1 a bridle track was built for tourists to access the Ketetahi Springs on the northern slopes of Mount Tongariro, 'a place of

a thousand roaring kettles'.[41] G T Murray described the track-making up to and beyond the Ketetahi Springs:

> On the Tongariro Range the survey of a road [ie, a bridle track] from Papakai to Ketetahi Springs was done by Mr. Beggs about 1900, and in the following year Mr Charles E. Field and myself laid off the track from Ketetahi to the Blue Lake, and during the summer of that year it was formed by Mr. Field. We had considerable difficulty in cutting the track around the boiling springs. The ground was so hot just below the surface that only one spit (about eight inches) could be taken off at one time. After the ground had cooled for a day or two, another spit could be taken off and so on till completion.[42]

In 1903–4 the Department of Tourist and Health Resorts built the Waihohonu Hut and the Ketetahi Hut.[43] The Waihohonu Hut was used for over sixty years and is now maintained as an unused historic hut. It is the oldest example of a typical early New Zealand two-room mountain hut.[44]

These volcanic mountains were important for tourism, and so the maps of them soon caught up with the track-makings. A 1909 Department of Lands and Survey map showed a formed bridle track traversing the Tongariro–Ngauruhoe massif from Otukou Pa in the north (near Lake Rotoaira) to the Waihohonu Hut in the south. The map also showed offshoots from this track leading to Ngauruhoe summit, the Red Crater, Tongariro summit, the Blue Lake and Te Mari. This 1909 map also depicted five routes up Mount Ruapehu, carrying labels such as 'Horse track' or 'Good leading spur'.[45] One of these routes was the track from Rangataua railway station that followed the Mangaehuehu Stream and which had been cut in 1908.[46]

Forcing the Copland, 1901–13

Oral history tells of this alpine pass being used by Maori but also tells of its being difficult; it wasn't used often. Until the 1950s, though, Maori commonly travelled from Bruce Bay to Welcome Flat to use the hot pools and to snare weka.[47]

The Copland Track was built, optimistically, to provide a tourist route across the Southern Alps to link the West Coast directly with the Hermitage at Mount Cook. Jackie Breen has examined this track's changing fortunes. Her sixty-eight-page report reveals a foot-track of considerable importance in the history of tourism and mountaineering in New Zealand. The report's detailed chronology[48] dissects the track's life history, listing more than fifty events or situations affecting the track between 1892 and 2003.

If we look at the beginnings of the Copland Track, from 1892 to 1913, we will gain an idea of the considerable importance that the government attached to tourism.

Although the demand for this track came from the Department of Tourist and Health Resorts, the exploratory surveying was the responsibility of the Department of Lands and Survey. A systematic European survey of the Copland valley had to wait until 1892. That year, Lands and Survey, with tourism in mind, commissioned the explorer Charles

Douglas to survey the area 'to determine the practicability of a route for mule- or horse-track from "The Hermitage" across the Alps to the West Coast *via* Hooker Valley and Baker's Saddle'.[49]

Between March and May 1892, Douglas explored the headwaters of the Copland River, blazing a trail through the tangled bush where necessary. At one point the track-cutting and backpacking in the rough country knocked his boots to pieces, causing him to return temporarily to Andrew Scott's homestead at Karangarua. The exploring was some of the most arduous that he had ever undertaken.[50] He stopped under Baker's Saddle, which he considered to be impractical for a mule track. In his report to John Strauchon, the chief surveyor for Westland, Douglas looked at the bright side of things:

> If I have failed in the main object, to discover a pass available for Mule traffic to the Hermitage, the Survey will now have the block filled in for good, and Adventurous Tourists who cross the range will at least know what they have to contend with before reaching the Coast.[51]

And also at the less bright side:

> I am well aware that in many of the mountain regions of the earth Tracks are taken over the most impossible looking canyons along towering cliffs under Galleries and through Tunnels, but how to take a Track over a sloping Icefield continually swept by Avalanches is a puzzel unless the route is carried under ground and such is Bakers Saddle.[52]

Douglas concluded that neither the head of the valley nor Baker's Saddle offered a route for a mule track. The government, he thought, had spent fifty pounds on an impractical route.[53] Undeterred, the Department of Lands and Survey sent Douglas to investigate the area again in 1894–5, accompanied by the mountaineer Arthur Harper. In February 1895, Matthias Zurbriggen and Edward FitzGerald completed the first east–west crossing of the Alps by the Copland Pass. Shortly afterwards, Harper repeated this crossing.[54]

For a while the route remained just a primitive blazed reconnaissance trail. The earliest references to the construction of a proper track are newspaper reports from July 1901, stating that a group of men supervised by Douglas had cut a track up the Copland to within eight miles of the Hermitage.[55] Thus the track-making episodes of Douglas's career progressed from cutting tracks for his own exploring and for Coasters' essential journeying to cutting a track for tourists.

In 1903 Thomas Donne, the enthusiastic superintendent of the Department of Tourist and Health Resorts, wrote that 'the route conducts the traveller into the grandest of alpine scenery, and that it presents no special difficulties is shown by the fact that last April [1902] a party including three ladies, in the charge of government guides, accomplished the trip from Mount Cook Hermitage to the West Coast'.[56]

One wonders whether Donne fully appreciated the difficulties of the task set. The Copland valley was well defended against mules and tourists and government ambitions. Men had to beat it into submission. While the Department of Tourist and Health Resorts provided the resolve behind the project, two branches of the Department of Lands and Survey supplied the muscle; these were the Department of Roads and, from 1909, the Public Works Department. The labour – up to the snowline – took about twelve years, from 1901 to 1913. The men used gelignite to blast benches across rocky slopes and to clear the track of stumps and boulders. The gangs dug cuttings and constructed embankments, an approach we associate with the making of roads and railways. Work stopped each winter. Skilled workmen found less demanding employment elsewhere.[57]

The track was completed in July 1913. According to a DOC heritage webpage, 'there were no other tracks of this scale constructed solely for tourist use on the West Coast. The doggedness with which the completion of the track was pursued by the Government highlights the importance the Copland Track had in their plans for tourism in the South Island.'[58]

Today the Copland Track, as far as Welcome Flat, is a popular out-and-back tramp. When conditions are suitable, some trampers continue up to Douglas Rock. To venture beyond Douglas Rock and over the Copland Pass is a serious business that requires alpine mountaineering skills, experience and equipment.

Away from the Tourist Tracks

In ordinary rural New Zealand in the late 19th and early 20th centuries, there were many places that main roads, railways and tourists in hiking boots had not yet reached – and in some cases still have not reached. A single day's journey across heartland New Zealand could still involve a progression from dray road to bridle track to foot-track to untracked high ground. Shepherds, rabbiters, loggers and gold-miners walked or rode to work along foot-tracks and bridle tracks.

The Croesus Track: a Gold-miners' Pack Track

A 2004 guidebook, *Tramping New Zealand*, gives the vital statistics of the Croesus Track:

> Track type: Tramping
> Difficulty: Moderate
> Time: 1–2 days
> Length: 19.3km
> … A straightforward trek across the open tops of the Paparoa Range between Blackball in the Grey Valley and Barrytown on the Tasman Sea Coast … An east-west crossing from Blackball is recommended over Croesus, as it climbs to 1200 metres via a well-formed and fairly easy track.'[59]

The Croesus Track is one of the finest surviving examples of pack-track construction near the West Coast. Until the late 1890s, however, many users of this route would have allocated it a more daunting description than 'moderate tramping track'. In 1887 a report described part of the route as

> the roughest and most dangerous apology for a pack-track in this County. It follows the bed of Blackball Creek crossing and recrossing innumerable times, for the first 2½ miles where Coal Creek joins it. For one and a half miles of this the Creek is simply a rock bound gorge. The bed is filled with large boulders, and is dangerous to travel, even in fine weather when the creek is low. In wet weather the creek is a roaring torrent and is impassable for man or beast. From the junction of Coal Creek with the Blackball, the present track runs up the former, constructed on the sideling and sometimes in the creek bed. Where on the sideling it is very dangerous to ride over, one false step or stumble would send horse and man to destruction.[60]

Gold had been found in Blackball Creek in November 1864. Mining occurred there from January 1865, but 'from the outset the diggings along Blackball Creek were often out of favour with miners because of the rugged nature of the creek and surrounding hills, and the poor condition of access tracks'.[61] In the 1860s and 70s, the local-government bodies did little to improve access to these diggings or to other remote goldfields of Nelson province. The building of roads and tracks did not start until after the formation of the Grey county council in 1877.[62]

In 1878 the council asked Edward Butler, its road overseer, to survey the route for a new track to Clarke Creek at the Blackball diggings. A contractor completed a metalled track by late 1881. Beyond Clarke Creek was a rough track up a spur and then a blazed route across the tops to Barrytown.[63]

Between 1885 and 1887 the route from Barrytown to the heads of Blackball Creek and Moonlight Creek was widened to ten feet and was signposted or cairned. One report described this section as 'some of the roughest country ever travelled by man'.[64]

In 1891 the only southern access to the upper diggings (Blackball Creek Forks) was either up the riverbed (for pack horses) or by following an old water-race (on foot). The lack of a decent track was hindering the development of the upper Blackball Creek area.[65] Miners petitioned the Grey county council for the construction of a track. In 1892 the council accepted tenders for building a horse track from Clarke Creek to Blackball Forks.[66]

In 1899 a bridle track from Blackball Forks to the Paparoa tops was completed.

Jackie Breen has combed Department of Conservation archives to produce an authoritative Croesus Track life-story and heritage assessment. On the track's historical significance she says:

> The track has strong associations with both alluvial and quartz gold mining in the Blackball district. While the Blackball Creek diggings were never rich, the commitment made by the Grey County Council to improve access to the area by building the Croesus Track demonstrates the high value placed on gold fields by late 19th century society.[67]

Regarding the engineering significance of the Croesus Track, Breen says that the track provides examples of two different building techniques. The 1881 section from Smoke-ho to Clarke Creek is a cambered benched construction. The 1892 and 1899 sections are benched with numerous fords, cut-outs, graded zig-zags, and stacked fills. Much craftsmanship and forethought went into achieving effective water run-off.[68]

Hales Track (the Ridge Road), Mangamahu, 1894

On 5 March 1894 Archibald Willis, a member of the House of Representatives, and two companions left Kauangaroa, near Wanganui, heading northwards on horseback up the Whangaehu River valley.[69] Their main intention was to climb Mount Ruapehu and to journey on to Taupo, but it is the earlier part of their route that interests us. After halting for lunch at Ngamatea in the upper reaches of the Whangaehu River valley, they climbed steeply up to Hales Track (later known as the Ridge Road), a benched track on the ridge between the Whangaehu River and the Mangamahu Stream. An old Maori trail, used by Ngati Apa, had followed this lofty ridge.[70] John Rochfort had come southwards down this track in the middle of winter in 1883, on his way to Whanganui, and had been considerably delayed by snow.[71] In about 1889 government contractors had formed Hales Track as a six-foot track. In 1891, work had begun on widening it into a wagon road.[72] In 1894 Willis and Allen described it as 'a highly-respectable cart-road, some twelve-feet wide' but which, as you progressed northwards, soon dwindled to a bridle track.[73]

After halting overnight at what Willis and Allen describe as Mr Ingram's whare, the party got 'into trouble, first thing after breakfast, by following the idiotic Wellington Provincial map, according to which Hales Track continue[d] as a cart road out to the Hunterville–Taupo road'. They found themselves 'wandering over trackless hills, through the Ruanui block', until they came upon a sheep track that eventually landed them at Turangarere.[74]

By 1896 Hales Track had been improved to take more traffic. 'Everything came that way from Mr A. Todd's smart pony trap to the drovers, mobs of sheep … mail and the wool wagons sending up their clouds of dust.'[75] Mangamahu became a transport hub until the North Island Main Trunk Railway, completed in 1908, took the freight and passengers elsewhere.

Marlborough Sounds, Tracks for the Postman and Drovers, 1900

In case I have given the impression that by the turn of the century all foot-track building and bridle-track building was for tourist tracks, here is an example that shows it was not. In 1900 Jonathan Brough spent seven months supervising the making of various tracks in the area to the west of Pelorus Sound. One two-mile track was for a postman. A one-mile walking track was built for some schoolchildren. In a bigger project, his spade gangs in 1900 built nineteen and a half miles of bridle track from the Ronga valley to French Pass. He expected this track to serve mainly farming-related users, such as drovers. He also recognised that it might attract some recreational users, such as cyclists or tourists, but this was not the reason for constructing the track:

TRACKS.

PELORUS SOUND AND FRENCH PASS.

As I have just lately returned from the Pelorus Sounds, where I have been engaged for the last seven months in constructing tracks, under Mr Humphries, the Commissioner of Crown Lands, Nelson, and, since my return, I have been often asked by bike men, tourists and others what tracks have been made, and how they can be reached, as well as what I think of the Sounds and the people that inhabit them … I will, in my own humble way, say something of what has been done and what I have seen.

I will begin by saying that there have been over 30 miles constructed during the last seven months … The whole length of the through track from the French Pass to where it junctions with the old Maori track, Ronga Valley, is about 35 miles in length. This has been made during the last two seasons.

… Travellers starting from the French Pass end will find that the track mostly leads through steep sidling country, and here and there along the ridge that divides the Croixelles waters from those of the Pelorus Sound, and from some points, the scenery is very grand, and in many points resembles that of the English lakes, but it far excells [*sic*] them … The track winds and twists through those ranges, and travellers will sometimes find themselves on the Croixelles side, then again on the Pelorus Sound side. The track is mostly run at a high altitude, and only in two places does it touch the sea … The track is cut 3 feet into the solid, and the bush is mostly felled for half a chain [about ten metres] wide, and the grade is mostly very good, but I think it would not be wise for cyclists to attempt to ride it. There may be miles where skilful cyclists might be able to ride their bikes along, but it has been constructed more for horsemen, drovers, and sheepmen getting stock in and out … In some places the track runs through settlers clearings covered with stumps and logs, burnt and charred; then through native shrubbery and tangled scrub of very peculiar kind, and blown down forests, which were something terrible to get through, especially before the track was constructed. The men had some tough cutting and slashing through some of those dark supplejack gullies, but the local settlers and natives are accustomed to such work, and they soon make a clearing through those black gullies.[76]

Simultaneous Developments: Mapping, Track- and Road-building, and Tourism

The Department of Lands and Survey had been one of the earliest government departments to be involved – in a small way, as a peripheral responsibility – in the building of tracks. The origins of the Department of Lands and Survey are traceable back to the abolition of provincial government in 1876.[77] 'From 1876 the Surveyor-General's Department and the Crown Lands Department worked side by side until the name [Department of] Lands and Survey was adopted in 1891.'[78] For a while this department administered the tourist resorts at Rotorua, Hanmer Springs and Mount Cook; in 1901 this responsibility was transferred to

the newly established Department of Tourist and Health Resorts, the world's first government department created specifically to develop the business of tourism.[79]

The commercial potential of tourism seems to have been an important, or even the primary, motive for the track-building at Milford Sound and in Tongariro National Park and Egmont National Park. In time, the stimulus for track development would sometimes come to spring also from less materialistic reasons. Yet even in the Tararua Range, nowadays inseparably associated with the needs and deeds of home-grown Wellington trampers, the initial arguments for track-building reflected a growing hope or conviction that tourism could economically benefit the district.

It would be wrong, at this point, for me to give the impression that, because tourism had begun, the European exploration of New Zealand had ended. Certainly by 1880 the surveyor-explorers had completed much of their principal triangulating. In the Tararua mountains, for example, government surveyors in the 1860s and 70s had completed the main triangulation of the range, had climbed and mapped many of the main peaks, and had pioneered some routes through the complex jumble of ridges and rivers.[80] Yet the survey parties would continue to push up into the Tararua on foot for several decades into the 20th century, filling in the finer detail.[81] Mapping and track- and road-building throughout New Zealand, and tourism and recreation in certain places, would continue simultaneously. Although the Department of Surveys began to issue one-inch-to-one-mile topographic maps in 1884, a complete topographic map of New Zealand at this scale would not become available until 1975, after the completion of the photogrammetric mapping of Fiordland.[82] And although track-building for tourism had started in the 1880s, settlers would continue to demand more tracks and roads for essential travel and efficient economic development. One settler, writing in the *Taranaki Herald* in June 1900, complained about the 'no-roads policy' of the Department of Lands and Survey in the Ohura district and elsewhere. This writer argued that

> when a block of bush country is thrown open for selection, two or three road lines be felled through it a chain wide and a good foot track cleared. Will the outside world believe that, instead of this, the Survey Department gives intending settlers only thread lines cut with a slasher, and not many of the sort either? The ordinary man without bush knowledge might just as well be dumped down in mid ocean in an open boat, as attempt to find section pegs unaided.[83]

Land Act 1892 and Marginal Strips

To maintain continuity we ought to be moving straight on to look at hunter and angler tracks and at tourist tracks in the Tararua. Instead we need to step sideways to mention the Land Act 1892. This insert is not completely discursive, as our subject still includes some recreational aspects: access to fishing and hunting.

We saw in Chapter 2 that until 1892, most water-margin reserves took the form of public roads. We also noted that over the period 1843–92, the early administrators of the land law reserved strips along water margins

extensively but by no means completely. The partial, rather than universal, setting aside of reserves created many privately owned riparian titles.

The Land Act 1892, introduced into parliament by the minister of lands, John McKenzie, initiated a new era of law relating to reserves along water margins.

> While the main thrust of the Act was to get settler farmers onto the land quickly, it also enshrined in legislation the belief that public access should be available to and along waterways and to public resources, including publicly held land, the coast, water, wildlife and fisheries … The Act set out a requirement for a one-chain wide strip of land to be reserved, when Crown land was sold or otherwise disposed of, along the sea coast, significant rivers, streams and lakes.[84]

The legal name for a reserve created under this act was to be 'marginal strip'. Marginal strips were to be surveyed and shown on title deeds. They would remain fixed in position irrespective of the movement of water margins. (This would eventually change. Marginal strips created since 1990 move with any change in the location of the water margin.)

The Land Act 1892 was of great importance because it established in law a liberal belief with respect to providing public access to rivers and the coast. Although it did not use the words 'Queen's chain', it 'made the notion of the Queen's chain more explicit than [had] any other piece of legislation: McKenzie wanted all New Zealanders to be able to fish the rivers, lakes and coasts and to enjoy unrestricted access to forests and mountains.'[85]

Information on the subsequent history of marginal strips, up to 2008, is available in Hayes's *Roads, Water Margins and Riverbeds: The Law on Public Access*.[86]

Tracks for Hunters and Anglers

In Chapter 3 we noted that before the 1880s most foot-tracks in New Zealand were utilitarian in purpose, sometimes just stages in the development of bridle tracks or dray roads, enabling missionaries, runholders, prospectors, goldminers, woodmen and surveyor-explorers to go about their daily business. In the present chapter we have looked mainly at track developments motivated by the desire to exploit tourism. We have not yet considered access for fishing. Nor have we yet touched upon the track-cutting of hunters, who include pig-, possum- and deer-exterminators (or controllers), recreational pig-hunters and deerstalkers, and commercial venison operators. Nor have we yet looked at track work driven by the recreational passion of local trampers

Hunters' and anglers' foot-tracks form an important proportion of the country's track network. These tracks deserve some acknowledgment. What's the story behind them? It starts in the 19th century with the acclimatisation societies and at the Colonial Secretary's Office. These bodies are relevant to the subject of foot-tracks for two reasons. Firstly, the acclimatisation societies took an interest in access to fishing and hunting and would eventually become, in 1990, the regional fish-and-game councils, which remain diligent access advocates and track negotiators

today.[87] Secondly, in 1907 the Colonial Secretary's Office was renamed the Department of Internal Affairs[88], and hunters employed by this 'mother of all departments' (and, after April 1956, by the New Zealand Forest Service) would cut many tracks, especially from 1930 onwards. Still today, hunters' tracks provide access to many areas.

Acclimatisation Societies

Acclimatisation societies began in mid-19th-century Europe to foster the introduction of exotic animals and plants.[89] In New Zealand, acclimatisation societies sprang up in the 1860s. The colonial version of these societies focused on 'introducing the familiar things of Home: sentimental favourites such as thrushes and skylarks, and game such as pheasants and deer'.[90] The acclimatisation societies also made great efforts to introduce and establish British sporting fish, particularly trout and salmon.

By the 1890s the focus of the acclimatisation societies had begun to shift from introducing new fish and game to the management of the deer, birds and trout already established. This change of emphasis continued into the 20th century, accompanied by a growing and belated concern for the protection of native species, especially birds.

The themes that dominate the histories of acclimatisation societies tend to be subjects like brown and rainbow trout, hatcheries and game farms, pheasant rearing and liberation, the preservation of wetlands and waterfowl, artificial duck ponds, shooting licences, society objectives and statutory duties, staffing and office costs, and society finances. Access to rivers, lakes and shooting country, though, was also something that the societies took an interest in. 'From very early times the societies pursued a philosophy of making angling and hunting available to everyone without favour or bias based on wealth or position in the colonial society, and they wanted everyone to be able to participate at low cost.'[91]

Writing in the 1990s, Bill Sullivan compressed a century of acclimatisation-society access issues into two paragraphs:

> That year [1896] also saw the Auckland Acclimatisation Society ask the Secretary of Lands about right of access with concern for riparian right of way on streams, lakes and rivers. The Secretary replied by November that right of way for fishing existed on all Crown lands and waterways and efforts would be made to obtain similar rights when subdividing private estates.
>
> That wrangle over access was to carry on for another 95 years, until the passing of the Resource Management Act in 1991 which currently allows the Crown or Local Authorities to take strips of land, without compensation to owners when properties are subdivided, and to use this alienated land to set up esplanades that guarantee public right of way.[92]

Sullivan could usefully have expanded the second paragraph to mention other, pre-existing Queen's Chain reserves. But that's a minor point. The essence he was getting at was that access issues existed, in the region covered by the Auckland society, for most of the 20th century.

The acclimatisation societies held a conference in Wellington on 31 September 1897. One of the matters discussed was access to riverbanks.

The delegates decided to ask the government to 'arrange in the case of resumed estates that on river banks a chain on each side should be reserved for the use of anglers, sportsmen, and camping parties, the owners of the land of course having access.'[93]

Resumed estates, in this context, were lands of which the government had taken back possession. A week after the conference, the *Evening Post* drew attention to the river-access issue:

> A correspondent has written to us at some length with reference to an important subject which came up before the recent Conference of delegates from Acclimatisation Societies. The subject – namely, the reservation of rights-of-way along the banks of our streams – is one of such great public interest that we feel confident it must appeal strongly to the people of the colony if it is clearly laid before them, and this cannot be done better than in the words of the letter before us. 'It will,' says our correspondent, 'probably surprise many dwellers in New Zealand when I affirm that the evils rightly or wrongly supposed to be attached to territorial landlordism in the Old Country are in the future likely to be immensely aggravated in this country. In Great Britain the exclusive powers of the owners of the soil are largely tempered by the powers conferred by 'ancient rights-of-way.' It is rare that the pedestrian in the country there finds himself confined to the prosaic high road – sometimes dusty, sometimes muddy, and mostly tame and uninteresting. Even in the immediate vicinity of London, and much more so throughout the country, a short walk along the highway will bring the pedestrian to a gate or stile opening on one of these rights-of-way, and he will find himself traversing a footpath leading through green fields by blooming hedges, and often close to trim pastures and gardens belonging to country houses, villas, and sometimes great mansions. To attempt to close these ancient rights-of-way would bring a hornet's nest about the ears of any landed proprietor, there being several societies ready to take up the defence of such rights, which are justly looked upon as a precious public inheritance, while the right of access to some of the finest scenery in Scotland and to some of the loveliest passes has only in many cases been retained in this nineteenth century by the fortunate existence of these ancient rights.'
>
> 'Now here,' proceeds the writer, 'nothing of this kind can be said to exist. It is true that late in the day, when much land containing many lovely streams has become private property, reservations of rights-of-way are being made by the Lands Department, but there are some exceptions, and these I submit should be swept away. Such reservations do not, I understand, apply to lands acquired by Government under the Land for Settlements Act.[94] The Act should be amended. Much land will probably come in from this source, and the errors of the past can then be amended. Within my own knowledge where lands have been selected before survey, and the survey made by the selector, such reservation has not been made. All lands also that come into occupation through the Native Lands Courts appear to be exempt from such reservation. There are also large areas,

> more especially in the North around the head waters of the Thames and Waikato, belonging to the Assets Board of the Bank of New Zealand; these are virtually under the control of the Government, and I trust that the Minister of Lands will see to the rights-of-way when these estates are dealt with, as all the streams there have been well stocked by the Auckland Acclimatisation Society.' It is then urged that the reservation is not a 'fad of the acclimatisation societies solely in the interests of anglers,' but a national provision in the interests of future schoolboys and schoolgirls, of our naturalists, our botanists and artists, whereby also 'the tired and weary brain will find peace and health in communion with nature in her loveliest haunts.' The pleas advanced are very strong, and the question of thus early providing for the future should meet with the serious attention of the Minister for Lands. Should the Government, however, not move in the matter, we hope that some private members interested in the welfare of the colony will be found to bring it before the notice of the House.[95]

It was true, as this letter-writer claimed, that the abundant public footpaths of England and Wales counterbalanced the British landowner's absolute right to exclude people. But from the perspective of an angler of limited means, the letter's rosy view of the Old Country was unwarranted. Although many English riverbanks possessed public footpaths, many others did not. More importantly, even when a public footpath ran along a riverbank, the public did not necessarily have the right to fish. In Britain the right to fish could be bought or sold totally separately from the land in question. Fishing rights were often privately owned. Salmon and trout fishing had become popular with the rich during the 19th century, and fishing rights had become extremely valuable. Along rights of way, NO FISHING notices were common.[96]

In 1897 anglers of average income in New Zealand enjoyed better fishing circumstances than their British counterparts. The history of the cost of and of the laws relating to angling licences in New Zealand is complex;[97] the picture that emerges, however, is that it was far cheaper to fish rivers here than in Britain. Even so, as the letter said, New Zealand anglers needed to continue to push for the creation of rights of way or reserves along all rivers.

Which they did. Some newspapers allocated regular columns to reporting the business of the local acclimatisation societies or to covering the angling and hunting news in general. In February 1864, for example, the *Otago Witness* had expressed confidence 'that the Otago Acclimatisation Society [would] be liberally supported and that it [would] be in a position speedily to set about its labors'.[98] From June 1878 to October 1909 the acclimatisation-society news in the *Otago Witness* often appeared with other sporting items under the heading 'Land and Water'.

These newspaper reports mainly concerned matters other than access. But one can find occasional references to access to rivers. So, for example, in September 1901 an angler wrote to the *Evening Post*:

> Sir, – I learn that a Mr. Elder, one of the owners of land at Waikanae, has caused notices to be placed upon his property prohibiting fishing in the Waikanae River. Now, sir, seeing that this river has been stocked out of funds mainly derived from sportsmen, it seems to me, and I feel I am not alone in the assumption, that the action of the gentleman above referred to is rather hasty.
>
> Long before Mr. Elder became the owner of the property through which the river runs, the Acclimatisation Society had been continually placing fry in the stream, and for one man to prevent licenseholders from angling in any stream which has been stocked for their benefit and with their money, seems to me grossly unfair.
>
> I consider it the duty of the Acclimatisation Society to ascertain the position Mr. Elder intends to take up, and if he insists upon closing his portion of the river, then the society should refuse to stock that river. And, further, if Mr. Elder wishes to control the water absolutely, let him find out what it has cost the society to stock the river from the beginning, and if he wishes to act fairly he will forward to it a proportion of the amount so expended, so that no one may say that he has taken advantage of the efforts of the society to stock the river for the benefit of anglers. – I am, etc., Independent.[99]

Sprinkled among the often generous allotment of column-inches are occasional references to work on tracks. At a meeting of the council of the Westland Acclimatisation Society in October 1902, a subcommittee replied 'that Mt. Tuhua Track would be put in order at once'.[100] At a meeting of the Otago Acclimatisation Society in July 1903, 'a request from Mr Hodgkinson for £10 towards repairs to the track from the Ahuriri River to the top of the Dingle was deferred for further information'.[101]

Walking Access to Lake Taupo, 1920s

A fishing access problem, which had implications for recreation and tourism, arose at Lake Taupo in the 1920s. The legal position on the access to the fish of Lake Taupo and its tributaries became unclear. Also, there was concern about the practice by some Maori of exacting a toll from anglers who walked across their land. The government negotiated an agreement with Ngati Tuwharetoa under which the Tuwharetoa Trust Board would receive part of the income from licence fees.[102] The subsequent Maori Land Amendment and Maori Land Claims Adjustment Act 1926 established a public right of way up to twenty metres wide around the margin of the lake. The act also created foot access for licensed anglers to most of the rivers and streams flowing into Lake Taupo[103].

Great Hopes for Tourism in the Tararua, 1895–1912

I shall describe the development of the first Tararua tracks – the first Pakeha ones, that is – in some detail because it typified a voluntary community-driven process that started in several parts of New Zealand in the late 19th century, that carried on through the 20th, and that continues today under the management of such bodies as Te Araroa Trust (a national organisation) and the Bay of Islands Walkways Trust (a local organisation). The following account is based mainly on the

information in Chris Maclean's detailed history, *Tararua: The Story of a Mountain Range*.

The Tararua form part of New Zealand's backbone, covering three thousand square kilometres from the Manawatu Gorge to the Rimutaka Road a hundred kilometres to the south. Many of the peaks rise to more than 1,500 metres, providing an alpine paradise. Car-borne trampers from the capital can reach the road ends in an hour or two. The range has an extensive network of recreational huts and tracks; this wasn't always so.

The development of tracks through the Tararua for recreational users – hunters, energetic settlers, walker-tourists and botanists – began in the 1890s, initially as ideas rather than actualities. This happened simultaneously with the continued explorations of prospectors, farmer-adventurers and geologists, which had carried on since the 1840s. It also took place at a time of increasing interest in forest conservation and a time of change in the general attitude towards indigenous plants and animals. In 1874, conservation had briefly taken centre stage in New Zealand politics, in the form of Julius Vogel's Forest Bill, passed in an emasculated form but nevertheless a significant national development. In Europe a leisured middle class had taken a liking to walking in the mountains or rambling in the countryside. In the United States, hiking had become popular, the Sierra Club being founded by John Muir in 1892. The enthusiasm for walking soon spread to New Zealand,

> where [walking] was quickly taken up by those who had championed conservation of the forests for aesthetic, as well as practical reasons. Here, as in Europe, walkers benefited from the development of a national rail network, which for the first time made travel throughout the colony feasible.[104]

For the minority with the inclination to walk and the time and energy to spare, walking became *de rigueur*. You could indulge in it to various degrees: in town, after dinner perhaps; or in the country at weekends, maybe combined with the romance of rail. In 1890 a Dunedin guidebook romanticised on a local walk that is still well used today:

> … the visitor to the locality finds himself in a secluded glen which might be miles from 'the busy haunts of men.' A wide, well-made footpath … , raised above the creek bed by a retaining wall, leads up this sequestered gully, whose steep sides are clothed with native-bush, still the home of many a luxuriant fern, while the streamlet in its stony bed below murmurs on its downward way.[105]

In 1891 an article in the *Tuapeka Times*, titled 'The Pleasure and Benefit of Walking', advised the paper's readers: 'Do not walk and think hard at the same time; what you want is an easy stroll'.[106]

The Southern Crossing, 1895–1909: Just an Idea

In 1895 an Otaki businessman Byron Brown, a veteran surveyor Morgan Carkeek, and a local publican George McBeath, formed the Otaki track committee. On the other side of the range, Thomas Drummond, another of the original Tararua surveyors, set up the Greytown track committee.

Both groups aimed to reconnoitre and construct a transalpine route across the southern Tararua ranges. In 1896 A H Murray, an engineer, and two colleagues crossed from Greytown to Otaki. Murray reported that 'a stock track could be easily obtained' and that 'the scenery is of the finest description and would attract all sections of tourists'.[107] The two track committees approached the government for funds, but no money was granted. Without financial support from the crown, for ten years the track remained just an idea.

In 1906 the member of parliament for Otaki, Willie Field, took up the cause. He wrote to the prime minister, Richard Seddon, drawing attention to the scenery of the Tararua range and emphasising the area's tourist potential:

> The native bush and the Tararua Mountains constitute practically the only tourist attraction in this part of the colony. Taking the one instance of the Otaki Gorge, I am satisfied that if this magnificent scenic spot, and the surrounding bush, were preserved, and a track made to one of the peaks of the Tararua behind … a valuable scenic and pleasure resort would be thus formed, and would be visited by a large and increasing number of tourists and sightseers every year.[108]

The government did not reply. Undeterred, in 1907 Field wrote again, this time to the minister of lands. Again he argued that the Tararua range had tourist possibilities, especially if a track across the mountains could be linked to the railway network:

> The people of this part of the Colony have at present no opportunity of seeing Alpine Scenery without going to other parts of the Colony, whereas if my [track] proposal was carried out, they would have it at their doors, comparatively speaking. If a route could be found which would enable tourist[s] to go up the Tararuas on one side and come down on the other so as to include both the Wairarapa and [the] Manawatu lines in the trip it would, of course, be a great advantage.[109]

Again the government did not respond, but Willie Field's vision of Tararua tourism met fulfilment within six months, although not at Otaki Forks but at Mount Holdsworth.

In 1907 Charles Bannister, a Wairarapa farmer and seasoned Tararua explorer, and a group of Masterton trampers formed the Mount Holdsworth track committee. They quickly built an accommodation hut, called Mountain House, halfway up Mount Holdsworth. Bannister produced a pamphlet, *Mount Holdsworth – Valuable Hints for Intending Climbers*. The walk to the top of Mount Holdsworth, the most accessible peak in the Tararua, soon became popular. 'Many settlers took the opportunity to visit the mountains that formed the backdrop to their lives.'[110] By 1910, the walk was attracting a thousand visitors a year. That same year, the Mountain House was extended to sleep forty.

The Southern Crossing, 1909–12: Perseverance Pays Off

Meanwhile Willie Field remained determined to develop a tourist track from Otaki to Greytown. In 1909 he escorted James Cowan of the Department of Tourist and Health Resorts to the summit of Mount Hector. Cowan's report, tabled in parliament, cautiously supported Field's dream:

> I am of the opinion that this is a trip that could very well be added to our tourist routes. To a large extent it is of local importance, concerning chiefly the Otaki district, but there is a good deal of interest for visitors in and about Otaki and Waikanae, and there is very good fishing in the streams; and a mountain excursion of this sort would be an additional and important attraction. The scenery is so fine it deserves to be made more accessible.[111]

In 1910 the Department of Tourist and Health Resorts granted £50 towards the building of the Mount Hector track. This would not fund the whole southern route across the Tararua, but it was a start. The Greytown track committee and the Otaki track committee, which had become dormant, were re-established with different names, the Greytown Mount Hector Committee and the Otaki Mount Hector Committee. Buoyed up by the tourist department's acceptance of the worth of the undertaking, Field joined Walter Buchanan, the Wairarapa member of parliament, in asking the prime minister for more money. They argued that the government had neglected the tourist potential of the Wairarapa. The government responded favourably, allocating £200 for a track from Woodside to Mount Hector.

The two committees began cutting tracks from their respective sides. In 1912, as soon as the two tracks were joinable, Field crossed the range with three friends, taking two days. The Southern Crossing, as it became known, was complete, except for the need for several huts and a topographic map.

The necessary bespoke trampers' map soon became available. In 1911 a young government surveyor and mountain enthusiast, Hubert Girdlestone, had produced a map of the route between Levin and Masterton.[112] At some point he also produced a basic but informative topographic map of the Southern Crossing. The Department of Lands and Survey published an edition of this map in 1915, *Topographical Plan of the Mount Hector Track over the Tararua Ranges from Greytown to Otaki*. The scale was half an inch to one mile. By modern standards Girdlestone's maps lacked detail, especially contours, but for the small band of Wellington mountaineers they were indispensable route guides. This wheel had turned full circle by 2005, when Geoff Aitken self-published his state-of-the-art 1:75,000 topographic map *Tararua Tramps*.

Stiff Competition for the Tourist Pound

We should view these early Tararua developments against what was happening nationally. Willie Field's Southern Crossing faced some stiff competition for the tourist pound or dollar. A mild form of adventure tourism – walking over mountain passes – was already in full swing in some parts of the South Island.

Track developments in the Wakatipu, for instance, had not stood still since tourists had first travelled up the Routeburn in the early 1880s. In 1899 the Lake county council drew up plans for tourist tracks up the Rock Burn and Mount Earnslaw.[113] In 1904–7 the Department of Tourist and Health Resorts assisted in upgrading the Routeburn Track, improving it into 'a good three foot track that made access easier to Lake Harris'.[114] In about 1908 a tourist-standard track became available linking the Greenstone valley to Lake Te Anau. In 1912 Thomas McKenzie, the minister for tourism and health resorts, oversaw the extension of the Routeburn Track to Lake Howden. In 1913 his department hired men to link several of these tracks, producing a four-day round trip for tourists.[115]

The popularity and renown of the Milford Track, too, had increased since its first tourist season of 1888–9. In 1902–3 the Department of Tourist and Health Resorts allocated money for this track's maintenance.[116] Thomas Donne, the department's superintendent, was not entirely happy with the contractual arrangements:

> A contract for keeping in repair the track from Te Anau to Milford has been let from year to year, costing £400 last year [1902–3] … For this outlay the Government receives no financial return whatever, the whole guiding-fees going to the contractors. I am convinced that it can be maintained for a lesser amount than that now paid.[117]

In October 1903 the department took over the track's management, 'developing the huts and bridges and formalising the Milford Track as an officially endorsed and supported tourist activity'.[118] The department's annual report for 1903–4 raised again the issue of the fees connected with the track:

> The bulk of tourists who passed over the [Milford] track did so without guides, and the question of abolishing guiding-fees and substituting a smaller charge, to be applied to all persons leaving Glade House for Milford Sound, is now under consideration, such charge to cover use of track, ferrying across the Clinton River, and for the use of the chair or boat on Arthur River.[119]

In 1908 the London *Spectator* printed Blanche Baughan's Milford Track essay 'Finest Walk in the World'.[120] The next year Whitcomb & Tombs of Christchurch published Baughan's article as a thirty-six-page booklet. The year 1913 saw a second edition, of forty pages. Several further editions were to follow, each larger than the previous one.

The early walkers of the Milford Track left numerous accounts of their treks. Lydia Wevers writes: 'Recreational walking achieved its colonial apogee in the iconic Milford Track and in their accounts of how they found it, early walkers revealed the complex of cultural and social attitudes that shaped their experience of landscape, tourism and physical activity.'[121]

By 1913 Baughan was implementing purple prose to entice the more hardy visitors into taking guided walks up the Copland valley and over the Copland Pass. She reported that the government was grading the

bush-track and was building several huts in the uninhabited valley.[122] She described her acquaintance with the hot springs, before Welcome Flats:

> And yet … strange … the features are the features of the Alps, but the breath is the breath of very Rotorua! Let us follow our questing noses … why, yes, see! in this small flat off the track here is all the 'uncanny country' in a pocket edition! Nothing is wanting – veils of steam, terraced incrustations of orange and rust colour, a boiling hot spring beautifully clear, a warm bathing-pool redolent of chemicals … Ah, but what a bathroom! Its hangings are of ribbonwood blossom and holly of the mountains: it has the blue sky for a ceiling, and Sefton for a picture on its wall … The bath, though, is of true witch-water. You hesitate at first to get in, because it looks so dingy, and smells so … medicinal? … and then you hesitate to get out, because it is so beguilingly comfortable.[123]

The Tararua's attractions would be hard pressed to compete with such a turgid extravagance of exclamation marks. So it was doubtful, in the second decade of the 20th century, whether many international or even domestic tourists would head for Tararua's alpine wilderness: but Wellington's trampers would, and in increasing numbers. By the 1920s, recreational walking was a well-established leisure activity in New Zealand, encompassing a range of physical demands including picnics, days at the seaside, walks for nature study and strenuous, invigorating tramps.[124] At this time, the links between townspeople and country people were still strong compared with those of today, but were probably already weaker than those of the 19th century. In 1881, about 40 per cent of the non-Maori population had been urban based and about 60 per cent had been rural based.[125] By 1923 those proportions had reversed. Towns were growing, and the recreational needs of townsfolk were increasing. On 1 April 1925 it became illegal to pilot a motor vehicle without a driver's licence.[126] For the rest of the 20th century, the dominance of urban living would gradually become more pronounced.[127]

1921, Seven National Parks, Various State Track-builders

The history of walking tracks in New Zealand between 1880 and 1970 contains elements of the histories of tourism, of outdoor recreation, of farming, logging and pest control, and of national parks and forest parks. The history of national parks and forest parks is, in turn, part of the history of conservation. Not that the Tararua, as far as we have reached (the 1920s), demonstrate this last aspect; the conservation of the Tararua still had to unfold and would do so over the next half-century. But elsewhere in New Zealand 'an immense surge of progress with land reservation in the period 1900 to 1920 [had arisen] paradoxically from a decade of enormous forest destruction in the 1890s … In 1921 the Department of Lands and Survey was reporting that there were seven national parks in well over a million hectares of reservation.'[128] They were Egmont, Tongariro, Hooker Glacier, Tasman Park (Mount Cook), Arthur's Pass, Otira Gorge and The Sounds (Fiordland).[129] The concept of 'national

park', however, was not yet fully defined in legislation; it remained rather flexible and there was a mixture of objectives and administrations.

The administrative bodies of these national parks had become, and would remain, principal track-planners, track-builders and track-managers, complementing the work being done by voluntary groups such as trampers and hunters. Exactly who administered the seven national parks in 1921 was more varied than one might imagine. Egmont National Park had its board, whereas Tongariro National Park and the Mount Cook reserves did not have boards but instead were administered by the Department of Tourist and Health Resorts.[130] Arthur's Pass National Park would not have a board of control until after the Public Reserves, Domains and National Parks Act 1928. So the main state track-managers of 1921 included Egmont National Park board, the Department of Tourist and Health Resorts, and the Department of Lands and Survey.

The latter two departments also managed some foot-tracks outside national parks. Many tracks, some nationally important and others obscure, were in areas not yet protected by the still-evolving national-park status. Examples include the Matemateaonga Track (now in Whanganui National Park), the Heaphy Track (now in Kahurangi National Park), and the Copland Track (now in Westland Tai Poutini National Park). Unravelling the administrative history of a track can be complicated. We have already seen, for example, that although the zeal to build the Copland Track came from the Department of Tourist and Health Resorts, subdepartments of the Department of Lands and Survey did the work, from 1901 to 1913. Between 1911 and 1930 Peter Graham, the chief guide at the Hermitage, frequently reported the Copland Track to be in poor condition. He seems to have addressed his reports in equal measure to the tourist-and-health department and the lands-and-survey department.[131] In 1930 the Copland valley was included in a large scenic reserve, yet even after this formalising of the land's status, both of the government departments retained roles in the management of the Copland Track.[132]

The State Forest Service – later renamed the New Zealand Forest Service – always acknowledged the attractions of its forests, but it did not encourage the recreational use of them until the 1950s. Even in the 50s, it was still 'an offence involving a fine not exceeding £50 to enter any State Forest land without a permit or other lawful authority'.[133]

Ten Shillings a Day, 1919–24

In some areas, volunteers and minimally paid enthusiasts were playing a significant part in track-cutting and track-building. In a celebrated effort over six summers in 1919–24, a handful of mainly medical students cut miles of tracks in the Howden Hut–Milford Sound area. The Department of Tourist and Health Resorts paid each man ten shillings a day (which rose to twelve shillings in 1920), out of which he had to pay for his food.

For the first two seasons, every two weeks packhorses from Queenstown delivered foodstuffs to the Howden Hut. The students, based at a camp in the upper Hollyford valley, slogged up to the Howden Hut, collected these supplies and then lugged sixty-five-pound loads back to their camp, about three to four hours downhill. Here they lived self-reliantly, taking turns to bake the camp bread, occasionally hunting rabbits to supplement their diet, and coping with the afflictions of life

in Fiordland: sandflies, blowflies, drizzle, two-day storms, floods, wet firewood, swamps, tortuous subalpine scrub, and fallen trees across their newly made tracks.

For the third and subsequent seasons, the students were based at Milford Sound. Their stores and equipment were delivered by steamer. In the 1920 season, while the students were working in the Esperance valley,

> their track cutting became more difficult and exasperating because the boulders in the scrub they were trying to cut through blunted their axes, slashers and grubbers. They were regularly resorting to the grind-stone and file to restore cutting edges.[134]

Jack Ede, commenting on the students' six seasons of track-cutting, wrote that 'it is difficult to appreciate the problems associated with the incredibly rough terrain, abominable weather and a shortage of food'.[135] Strictly speaking, the students were not volunteers, but their motivation was obviously love rather than money. There was a large element of volunteerism in their six-year enterprise.

By 1921, track-building for tourism or recreation had been under way for various lengths of time, twenty years in some cases, in all these state-owned lands. It had also occurred in scenic areas yet to be preserved. In mentioning the Routeburn Track, the Milford Track, the Copland Track, the first Tongariro National Park tracks and the work on tracks in the Egmont National Park, and in examining the Tararua's Southern Crossing, I have merely hinted at the general ways in which tracks grew.

Harry Ell and the Port Hills, 1899–1934

Numerous other tracks and track-builders of the early 1900s deserve a mention. But this chapter offers just a few selective sketches. I will squeeze in one more fragment of that scene. The life story and achievements of the Christchurch politician and conservationist Henry George Ell are a book in themselves.[136] Harry Ell, as he was known, gave thirty years of his life to the self-appointed task of laying a scenic road along the crest of the Port Hills.

In 1873 William Rolleston, the minister of lands, had earmarked much of the Port Hills skyline as a road reserve, 'a visionary decision … because the dominant attitudes of this time involved individual ownership and use of land'.[137] But then, as now, public roads could be stopped (permanently closed) and sometimes were. Harry Ell's crusade began in 1899–1900 with success in halting the stopping of various public roads on the Port Hills and around Banks Peninsula.[138] In 1903 his parliamentary campaign to preserve scenery under threat from expanding settlement resulted in the Scenery Preservation Act (parliament's willingness to listen having been influenced by a decade of lobbying by scenery preservation societies[139]). In 1906 his fund-raising and a government subsidy led to the creation of a scenic reserve at Kennedys Bush, one of the few healthy areas of native forest left on Banks Peninsula.

> Ell's initial concept was for a continuous footpath along the top of the Port Hills from Godley Head to Gebbies Pass, linking a series

> of scenic bush reserves. Although his concern was primarily for the pedestrian, he envisaged the ultimate widening of the path for motor vehicles (still a rarity at that time). A complementary network of tracks would ensure walkers continued to be catered for.[140]

In August 1907 the *Star* reported that the district surveyor had completed a survey for the Dyers Pass to Kennedys Bush section of the proposed Summit Road. If the government sanctioned the construction of the road, the writer said, Christchurch would gain an added scenic attraction:

> The Summit Road, if formed, would be for the most part level. It would command a magnificent view of the harbour, including Lyttelton, Godley Head, Mount Cook, and the plains, being 1400 or 1500 feet above sea level. The suggestion has been made that a four feet walking track should be made, and it could be widened when funds permitted to an admirable driving road.[141]

The word 'road' in 19th- and early-20th-century New Zealand writing was used nonselectively for bush tracks, bridle tracks and formed roads; the word 'driving' in the above quotation meant controlling or being transported in a horse-drawn vehicle.

Decades of toil, dispute and funding difficulties were to follow, driven by Ell's dogged pursuit of a dream but always coloured by what some people saw as his financial and managerial recklessness. Regarding his national legacy, by the time that he left parliament in 1919, more than five hundred reserves had been created throughout the country; there had been fewer than a hundred when he had entered.[142] As regards his local contribution, by the early 1930s there would be a string of reserves along the proposed road line of the Summit Road. Over the rest of the 20th century the Port Hills would gradually emerge as a New Zealand example of a place with a fair amount of public access despite there being only partial public ownership of the whole area. But the Port Hills are no access utopia. We will return to this point later.

In the same year as Ell left parliament and threw himself ever more fervently into his Port Hills projects, Fred Vosseler, a Wellington businessman and outdoor enthusiast, inspired the formation of the Tararua Tramping Club. This club is recognised as having been 'a model in a new era of outdoor recreation'.[143] From 1919 onwards, New Zealand's track-building efforts would diversify in origin, with outdoor recreation instigating and pushing many new tracks, as well as tourism remaining an important driver in some locations.

The Tararua Tramping Club, 1920s: Gregariousness and Conviviality

In 1911 the urban population of New Zealand had exceeded the rural for the first time since the earliest years of British colonisation.[144] Society and culture were becoming more influenced by people who lived in towns. It was one of those towns that gave birth to New Zealand's first tramping club.

Tramping's serious cousin, alpine mountaineering, had already tried the club idea but with limited success. A P Harper and Guy Mannering had founded the New Zealand Alpine Club in 1891, and three Waimate men had made the first ascent of Aoraki-Mount Cook in 1894, but the New Zealand Alpine Club had soon lapsed into inactivity, to be re-formed twenty years later.

As regards the arranging of tramping, in the years before the formation of the Tararua Tramping Club in 1919, 'trips into the Tararua Range were organised by individuals and usually consisted of fewer than half a dozen people'.[145] Exploration was still a matter of personal initiative. The situation on other New Zealand mountain ranges was similar: informal private tramping trips were usual; organised club outings, involving larger groups, were rare.

In 1919 in the Wellington area, this rather solitary and exclusive form of tramping was about to give way to a more clubby approach. Willie Field, now fifty-eight, had partly achieved his vision of a tourist track across the Tararua Range, but new energy was needed to complete it. Fred Vosseler became the catalyst. 'Vosseler visualised an organisation that would encourage tramping in the Tararua mountains, a club that would "foster and popularise the love of our flora and fauna and the great outdoors" '. Vosseler and Field teamed up. On 3 July 1919, the *Dominion* carried the advertisement:

> PROPOSED TARARUA CLUB
> Those interested in the delightful tramping ground that exists between Greytown and Otaki, across the Tararua Range, are invited to attend a meeting at Messrs. Alcock's Offices, Baker's Buildings, Featherston Street, TO-DAY (THURSDAY), JULY 3, at 5 p.m.
> Objects: Popularising the route; preservation of flora and fauna; expansion of existing huts and tracks; stimulating winter sports; election of officers, etc.
> W. H. FIELD, F. W. VOSSELER. Conveners.

Twenty-one like-minded souls attended the meeting and agreed to form the Tararua Tramping Club. These founding members were mainly prominent businessmen and professional men. Most were middle-aged. No women were present at the inaugural meeting, but women were encouraged to join the club and go on Sunday walks. The members' walking clothes reflected the formal society of the time. 'Men tramped in worsted suits, frequently with ties, and Willie Field always wore a waistcoat and a Homburg hat.'[146]

The aims of the club were

> to encourage a love of the out-of-doors and nature, to encourage tramping, mountaineering and skiing, to train the young to enjoy the hills in safety; to open up and develop attractive areas and provide tracks, huts and maps; to protect native flora, fauna and natural features, and to co-operate with others having similar ideals.[147]

From 1919 onwards, for a decade or so, gregariousness and conviviality became much in vogue in New Zealand tramping. In her book *Going Bush*, Kirstie Ross interprets the then meaning of the word 'tramping' as signifying 'a new pastime: organised social walking'.[148] Large and sometimes very large club groups featured prominently in the 1920s. There was safety in numbers. Ninety-nine people joined a Tararua Tramping Club canoe trip down the Whanganui River and a similar number travelled to the Mount Cook area.[149]

Looking back at this phase, John Pascoe, a climber and writer on New Zealand mountaineering, referred to the Tararua Tramping Club's 'alarming caravanserai that gave the unfortunate leader months of preparation before the trip'. The safety-in-numbers thinking did not apply to all terrain: 'If the Tararua mountaineers had a fault peculiar to themselves it was that they took some thirty years to learn that efficient climbing and tough pass crossing was best done by small mobile parties of three or four.'[150]

Ross provides a concise discussion on the difference between tramping and mountaineering. For some people, tramping was part of their physical and technical progression towards alpine mountaineering. For others, however, tramping was geographically and practically different from mountaineering:

> A serious climber needed great reserves of time, money and patience. Usually an entire summer was set aside for climbing, with time spent waiting at mountain hotels, like the Hermitage at Mount Cook, until the weather was suitable for an ascent. Tramping, though, was a year-round group activity usually done in short bursts, often in the weekends. This made it particularly appealing to young people with city jobs and limited free time. Although strong leadership was required on tramps, professional guides – commonplace in climbing – were unnecessary. This made the sport cheaper and reinforced trampers' independence.[151]

Perhaps the most succinct explanation of the difference between tramping and climbing was provided by George Moir who wrote that the purpose of his guidebook was to encourage people to go where they could look at mountains rather than climb them; the book was to be a *Tramper's Guide to the Tracks* rather than a *Climber's Guide to the Peaks*.[152]

Trampers Cutting Tracks for Trampers, 1920s

As regards the Tararua Tramping Club's track-making, one of the earliest initiatives seems to have involved not the ageing founder members of that club but a much younger group of Wellington trampers:

> During the summer of 1921 a group of students from Victoria University College … spent their holidays recutting the track from Otaki Forks to the bushline, which had become overgrown during the war. When they returned to the university at the end of that summer, their enthusiasm led to the formation of the Victoria College Tramping Club. In many ways it was the antithesis of the Tararua Club. Except for those who had worked on the track, the

> students had little experience but they were keen. They cared little about the social and sartorial conventions that limited the larger, more conservative Tararua Club in its early years.[153]

As well as arranging ambitiously large meets, the sage organisers of the Tararua Tramping Club promoted fitness and safe leadership. In keeping with the club's aims, club members constructed several huts including – in response to the death of a fellow member in a tramping tragedy – an emergency shelter on the saddle between Hector and Field Peak.

By the mid-1920s the Tararua Tramping Club had 260 members and was collaborating with other bodies to fund and carry out work on tracks. The club's main track project in 1925–6 was the upgrading of the track down Smiths Creek to its confluence with the Tauherenikau River. In June 1926 the club's annual report recorded the joint effort involved:

> Aided with grants obtained from the Acclimatisation Society, the Forestry Department, and our own club, a subsidy was obtained from the Government, and the Public Works Department organised a gang under our friend Mr. J. H. Gibbs, which succeeded, with the money available, in re-forming the balance of the track right down Smith's Creek to the Tauherenikau. Mr. Gibbs and his gang made an excellent job of this piece of the track, and there is now an easy and unmistakable track right through to the Smith's Creek hut.[154]

Other clubs were formed on similar lines to the Tararua Tramping Club. In 1927 ninety people attended the public meeting that established the Levin-Waiopehu Tramping Club. Someone 'suggested that the club's first task should be the cutting of a track up to Waiopehu, a prominent peak behind Levin, to provide an alternative route out of the range when the Ohau River was in flood. Within a year the track had been cut.'[155]

The story here, at the end of the 1920s, was of Levin trampers – volunteers – cutting tracks primarily for Levin trampers and hunters and only secondarily, if at all, for commercial use connected with tourism. A significant change had occurred. Track-cutting and track maintenance would remain an occasional function of many tramping clubs throughout the 20th century. Ross Kerr's *A Chronology of the Tararua and Rimutaka Ranges* contains many references to track-cutting and hut-building by Wellington trampers.[156]

Most of the tramping clubs included in their objectives the need to foster the appreciation and protection of native flora and fauna. Because, in many places, trampers had no legal right of free access to foot-tracks, 'a demonstration of environmental stewardship was essential for trampers' ongoing access to state forests and the back country'.[157]

As the 1920s passed, some of the Tararua Tramping Club's more hardened and experienced trampers began to explore the little known northern Tararua. In 1929–30 the club had 330 members. The cooperation between the Tararua Tramping Club and the Wellington Acclimatisation Society seems to have been eager and mutually productive at this time. In October 1929 the club wrote to the society 'asking in view of the benefits done [by the club for] the society in opening up inaccessible country, for a further

grant of $50 towards track extensions'. Members of the acclimatisation society agreed that the tracks might be useful for culling purposes and also to stalkers. The society decided to grant the money subject to the society's rangers approving the proposed new tracks.[158] The club's annual report of June 1930 acknowledged the progress resulting from this subsidy:

> We have also to thank the Wellington Acclimatisation Society for a grant of £50, originally offered on a £1 for 10s basis, for track-cutting purposes. The demands on our finances (drawn on to cover Government subsidies) precluded us from taking immediate advantage of this offer. But with a keenness that is to be commended most highly, members of the club offered voluntarily to undertake track-cutting work during week-ends, provided that the club would assist by finding [a] portion, of the transport and food charges. On the Acclimatisation Society being approached their assent was readily given to the grant being expended in this fashion, the labour of the workers being accepted as the club's equivalent for the subsidy. As a result we are pleased to report that a good walking track has now been cut from the Akatarawa road to the Dress Circle, via Renata, with a branch track extending to Mount Kapakapanui, and a further track has been cut from the Cone Saddle to the top of the Cone. The thanks of members are due to Mr. G. B. Wilson and those members of the Hutt Valley Club and our own club who have assisted him for the fine work they have done on these tracks.[159]

The responsible attitude towards the bush and farmland, mentioned earlier, was not so evident in the behaviour of the New Zealand Railways picnic-day and mystery-tramp excursionists, who may have popularised easy hiking but who sometimes 'took urban disorder into the countryside and destroyed it'.[160] After introducing its hikers' mystery trains in August 1932, the New Zealand Railways Department found it necessary to produce a TEN POINTS FOR HIKERS rule card to reform and edify the behaviour of the tramper-vandals.[161]

While informed urban New Zealanders were promoting responsible behaviour in the countryside, Maori resentment over the Pakeha's acquisition of that countryside burned angrily. In June 1927 the Sim Commission had reported on the confiscation of Maori lands after the New Zealand Wars. It had found fault with many instances of government behaviour.[162]

Moir's Guidebook, 1925

We have seen that by the 1920s, walking was a recognised recreational activity for New Zealanders. Tourism, however, remained an important driver for track development. The year 1925 saw the publication of George Moir's seminal *Guide Book to the Tourist Routes of the Great Southern Lakes: Including Te Anau, Wakatipu, Manapouri, Wanaka, Hawea, Monowai, Hauroto* [Hauroko], *etc. and the Fiords of Western Otago, N.Z.* It may be significant that although Moir saw his book as a guide for trampers, the word used in the title was 'tourist'. His publishers, the Otago Expansion League, may have influenced this wording. This would change. The book,

whose eighty-five pages reprinted and augmented descriptions previously published in the *Otago Daily Times*, would become the bible of Otago tramping.

Increasingly the townspeople and city people who used Moir's guide were travelling to the southern lakes by train and motorcar. People were becoming more mobile. As the 1920s progressed, motorcars replaced horses on the roads, and steel-wheeled tractors replaced horses in heavy farmwork.[163]

It's worth our jumping ahead through the years to notice how this guidebook would reflect the growth of tracks and tramping routes, a result of increased mobility and leisure. The 1948 edition, published by the New Zealand Alpine Club in conjunction with the Otago Expansion League and others, had 103 pages, only slightly more than the first edition. The book's production, however, had acquired two editors, and the title now leant towards tramping: *Moir's Guide Book to the Tramping Tracks and Routes of the Great Southern Lakes and Fiords of Western Otago and Southland*.

In the 1950s an influx of additional information necessitated doubling the book in size and splitting it into two: a southern section, 1959, 154 pages; and a northern section, 1961, 94 pages.

In 2010 this guidebook was in its seventh edition, *Moir's Guide North* (2005) and *Moir's Guide South* (2007), adding up to nearly 600 pages.

Chapter 5

Well-tracked Wastelands, 1930–1970

Before we leave the 1920s, an update on the tracks in the national parks will keep our background knowledge up to date. By the late 1920s the two oldest national parks, Tongariro and Egmont, had passed their childhood. By 1927 James Cowan had written a comprehensive guide to the Tongariro National Park, describing the area's topography, geology, alpine and volcanic features, history and Maori folklore. His book included two detailed topographic maps folded into the rear cover. It also contained descriptions of the tracks, such as this:

> The old track from Whakapapa to Waihohonu has been 'poled' in order that visitors may readily find their way across the ridge down to the eastern camp. The track during recent years became rather difficult to follow, and it was felt that this method of erecting poles to distinguish it was the most practicable and in the meantime the least costly. The track may now be followed with ease and points of interest identified.[1]

The central North Island volcanoes and their surrounds were now well known. Surveyors and trampers had followed their rivers and climbed their ridges and lava flows. Tourists had photographed their waterfalls, craters and precipices. Botanists had studied the trees, shrubs, ferns, mosses, flowers and grasses of their subalpine forests and tussock tablelands. A Mr Blyth, the headmaster of Ohakune School, had climbed Ruapehu eighty-nine times.[2]

David Thom writes that 'the common factors of national park activity during the period [1920–40] were increasing numbers of visitors, track-making (which was often assisted by mountain clubs) and the introduction of skiing.'[3] Around about 1930, Arthur's Pass was the most heavily visited national park, excursion trains sometimes bringing a thousand people for a weekend – equalling Tongariro's total visitors for a year.[4] On the other hand, New Zealand in 1930 was still twenty-three years away from the coming of unified administration of its national parks,

and many disparate reserves all over the country had yet to evolve into the fully fledged national parks that we know today.

We have several times mentioned the coming of motor cars and trains. One other event of the 1920s rates a mention. On 11 September 1928 Charles Kingsford Smith and his crew landed at Wigram in the *Southern Cross* after the first successful trans-Tasman flight.[5] Later in the 20th century, air travel would vastly increase the number of tourists who visited New Zealand and this in turn would greatly increase the usage of some of our finest walking tracks.

*

The last chapter followed a broadly chronological path from 1880 to 1930. The subjects of the rest of this chapter suit a more thematic approach. Federated Mountain Clubs's involvement in forest parks stretched over most of the period 1930–70, as also did its concerns about access to publicly owned lands in general, and similarly its protracted opposition to track fees in national parks. We will look at each of these themes separately. Then we will jump backwards again to mention the deer-cullers of the Department of Internal Affairs, who were fully occupied shooting animals, and blazing the occasional track, for twenty-five years or so. We'll not forget the fleeting, forgettable track-network ambitions of the national council of physical welfare and recreation, a branch of that same department. Finally we will note the loss of access to tracks in water catchments.

Federated Mountain Clubs of New Zealand (FMC)

By 1930 there were at least fifteen tramping or climbing or skiing clubs in New Zealand. The time was opportune for a discussion of matters of common interest. Arthur Harper, the president of the New Zealand Alpine Club, circulated a letter proposing an association of the clubs. Nineteen people from twelve clubs attended the inaugural meeting on 11 September 1930. The first general meeting took place in March 1931. The representatives agreed that 'the general aim of the Federation was to constitute an association of mountain clubs in New Zealand, united together for the external purpose of safeguarding and advancing their common interests, while at the same time preserving to each individual club its own identity and the right to conduct its internal domestic affairs independent of the Federation.'[6]

Two of the early tasks that the federation set itself were to improve the availability and completeness of topographic maps and to collect particulars of huts available to trampers and climbers. At the time of the first general meeting, the federation had compiled the details of fifty-three huts. During the 1930s, the number of tracks and huts continued to grow. The following extract from the 1937 annual report of the Arthur[7] Pass National Park Board typifies the many references to tracks and huts in official papers from that period:

> *Kelly's Range Hut*. – As the Board will understand, there is a great lack of labour offering for casual work such as this, as well as for track-making. Men who formerly could be readily procured are now engaged in more permanent positions. Your Committee has

> approached the Grey Alpine Club and the Westland Tramping Club concerning this hut, and is pleased to report that both these clubs have expressed their willingness to help in the way of transporting material to the tops. All that now remains is to decide on cost, and to secure the services of a suitable builder.
>
> *Tracks*. – Two new tracks were recommended by the Committee, one being an alternate approach to Avalanche Peak and the other ascending Mount Aitken from near the Punchbowl.
>
> It is pleasing to record that in spite of the rains, our Honorary Ranger, Mr. R. Scott, has devoted considerable time and energy to roughly forming a graded track to Avalanche Peak. Already negotiable for quite half the distance from highway to tussock-land, this track opens up some new and pleasant prospects across the pass towards the West Coast. Throughout the work, Mr. Scott has been very loyally and effectively aided by Mrs. Scott. In this self-help policy, both of them have shown a spirit well worthy of emulation by others, and one that calls for recognition by both the Board and the general public. The Committee is endeavouring to secure a suitable workman to carry out the benching and heavier cutting necessary to consummate the labour so enthusiastically undertaken by Mr. and Mrs. Scott.[8]

By 1938 the federation had gathered information on 114 huts and on the tracks associated with them. Over the next thirty years, FMC would contribute much hut and track data to the Department of Lands and Survey.[9]

FMC's Policy on National Reserves, 1936

Concurrently with its collecting of information about huts and tracks, in 1931 the federation set up a reserves subcommittee to collate information on publicly owned reserves, including for each reserve the name of the controlling authority and the details of any tracks. This work led to concerns over restrictions imposed upon the use of some of these reserves. These concerns in turn led to the drawing-up of a federation policy on national reserves, adopted by the annual general meeting of 1936. The policy stated:

1. That the public right of access to national reserves must be preserved.
2. That the right of authenticated clubs to erect huts in such reserves must not be restricted.
3. That the public right of camping in such reserves must be maintained.
4. That no national reserves should be leased to private interests and that no existing leases should be renewed on their present terms.
5. That before any lease of any reserve be granted, the Federation should be consulted.
6. That the Federation is entitled as of right, to representation on all Park Boards controlling mountain areas.

7. That the existing areas of bush must be preserved and subsidies should be granted to the bodies concerned to ensure such preservation.[10]

This policy, with minor modifications and broadened to include a reference to introduced plants and animals, became the federation's national parks policy, adopted by the annual general meeting of 1938. FMC's national parks policy would, in time, significantly influence the purpose and provisions of the National Parks Act 1952.[11]

FMC, the New Zealand Forest Service, and Forest Parks, 1937–1980s

Back in 1920 Leon Ellis, the inaugural director of forestry for the State Forest Service, had presented a report to parliament, *Forest Conditions in New Zealand*, containing his proposals for a New Zealand forest policy. His far-sighted analysis of future policy needs had included the proposition that the government should promote the recreational use of forests and should dedicate some forests for amenity use.[12] But the infant State Forest Service had more-pressing priorities than catering for hunters and trampers. It had to reconcile the dilemma posed by the desire to continue to exploit the timber resources of the native forests and the need to preserve those same forests. Also, after his 1925 annual report, Ellis concluded that if New Zealand was to remain self-sufficient in timber supplies, it would need a huge expansion of its plantation forests. He set in train one of the most ambitious tree-planting programmes in the world.[13] Until the 1950s the State Forest Service (renamed the New Zealand Forest Service in 1949) would be preoccupied with its core businesses: firstly, regulating timber production from native forests; and secondly, establishing exotic plantations – nursery planting, tree-planting, thinning, pruning, road-making, logging, sawing, timber preservation, pest control, forest mapping, forest research and training.

In May 1937 representatives of tramping clubs of the Wellington region held a conference on the future of the Tararua Range. The conference approved a proposal that the government declare the Tararua State Forest a national park as a centennial memorial. 'The essential features of the [proposed] scheme were the reconstitution and improvement of two hundred miles of tracks, the provision of four access roads to the lower bush line, and the erection of four bunkhouse hostels.'[14] The Wellington clubs then asked Federated Mountain Clubs to support their proposal. The federation agreed to back the plan, which resurfaced after World War II, helped by the Forest Act 1949, which allowed for recreational use of state forests. The idea of a national park for the Tararua Range, however, met some government opposition. Then in 1953 the New Zealand Forest Service produced a plan for the Tararua to be managed partly for recreation and partly for soil and water conservation, under the label of a 'forest park'. This administrative plan, including the name Tararua Forest Park, came into operation on 1 January 1954. About two years later, at the instigation of the federation and with the agreement of the forest service, representatives of Wellington clubs formed the Tararua Forest Park advisory committee to guide the forest service on recreational matters.

The Tararua administrative plan was initially looked upon as a ten-year trial. Its early success led to other forest management plans being drawn up on multiple-use lines.[15] In 1964 FMC representatives pushed for legislation establishing forest parks on a permanent basis. A year later, the government so amended the Forest Act. Further forest parks were subsequently created, among the earlier being Craigieburn, North-West Nelson, Coromandel, Lake Sumner and Kaimanawa.

In 1973 F Allsop, a former director of the management division of the New Zealand Forest Service, provided a forester's viewpoint on the way that forest parks had evolved:

> Although the Forest Service had claimed throughout its earlier history [since its establishment in 1919] that it recognised the attractions of the public lands in its charge for recreational use, it had tended to place obstacles in the path of those wishing to enjoy them. Entry permits were required by visitors to indigenous forests, a legal restriction usually loosely enforced, and access to exotic forests was barred, allegedly because of fears of forest fires. Popular demand for greater freedom for leisure pursuits in Tararua State Forest … led to a change of attitude … No untoward results followed the liberalisation [of the Tararua State Forest] and the experience gained led later to the State forest park concept – with freedom of entry and recreational use incorporated into the development planning of specified forests – being given legislative sanction and [being] more widely applied.[16]

According to David Young,

> most trampers supported this [multiple-use] approach. This gave the Forest Service another alternative in its rivalry with the Department of Lands and Survey for control over use of public land. The Service consolidated its position with such generous provision of tracks and huts that it provoked concern even among some users.[17]

By the 1960s the Tararua Forest Park had nearly thirty club huts and more than twenty forest-service huts and bivouacs, linked by a network of cut tracks.[18] The forest service required its copious huts and tracks for deer and goat control, but some trampers thought that the amount of development had spoilt the quality of the wilderness. In 1965 M M Benjamin wrote that 'the trampers are aghast at the idea of the mountain tracks being signposted like a city block, at the range being interlaced with roads and huts, or even tracks'.[19] Similar complaints arose later in other parts of New Zealand.

From the mid-1960s, and until its disestablishment and the birth of the Department of Conservation on 1 April 1987, the New Zealand Forest Service was an important builder and manager of walking tracks for the public.

Throughout the 1960s and 70s many representatives nominated by FMC served on forest park advisory committees, contributing trampers' and mountaineers' perspectives to the recurring discussions on balancing

the demands of production, protection and recreation. In about 1970 the federation formulated a policy on the administration of forest parks and presented it to the director-general of forests. Among the seventeen recommendations was one on walking tracks:

> A few main line walking tracks should be established; the rest should be well disced and the New Zealand Forest Service should accept the responsibility of maintaining the main line tracks, the others by voluntary labour. Tracks in Forest Parks should be planned and maintained by the N.Z. Forest Service in the following categories:
> (a) benched tracks maintained to a high standard;
> (b) disced and cleared tracks;
> (c) disced and/or poled access routes, although assistance may be obtained from voluntary labour.[20]

Notice, incidentally, the several mentions of using discs as waymarks. Throughout the 19th century and until the 1940s, people had marked bush tracks by cutting blazes into tree trunks. This practice was going out of fashion. For a while, painted tin lids replaced blazes. Then the technology progressed to a white aluminium strip like a piece of Venetian blind. The most common waymarks nowadays are orange plastic triangles. Sometimes, in open country, painted marker poles are used.

During the 1970s and 80s, the forest service opened a series of high-quality walking tracks suitable for family use.[21] These developments were often accompanied by the production of information leaflets or booklets. Perhaps typical was the little booklet *Walks and Tracks in the Catlins*, which described nineteen 'opportunities available in the Catlins area to enjoy the rural scene on foot'. Most of these nineteen tracks were situated in scenic reserves, administered by the South East Otago Reserves Board, or in the Catlins State Forest Park, administered by the New Zealand Forest Service. A few crossed private land and some of these required the asking for permission.[22]

Many of the forest-service tracks, such as those in Hanmer Forest Park, would survive the dramatic public-policy reforms that led in 1987 to the end of the New Zealand Forest Service; some of these tracks remain open today. But some others, such as the fine network of tracks in Berwick Forest (near Waihola), would become casualties of Rogernomics (the neoliberal reforms), falling into disrepair soon after the privatising of the production forests in which they were situated.[23]

Today's forest parks owe much to the advocating by Federated Mountain Clubs. Writing in the early 1980s, Ray Burrell was able to say:

> As the major user of mountain lands of New Zealand, the Federation has always supported the Forest Park system as being generally complementary to land areas set aside as National Parks. The Federation can rightly claim that discussion, interchange of ideas and advocacy for setting aside various areas with N.Z. Forest Service has improved and strengthened the administrative role for a balanced management of the overall system.[24]

FMC and Access to Mountain Lands, 1936–74

From its earliest days, Federated Mountain Clubs recognised the importance of preserving 'the privilege of crossing private property' to reach publicly owned lands such as state forests.[25] This matter was discussed at the annual general meeting of 1936. The FMC executive recommended that clubs continue with the usual approach of obtaining access by consent of the landowner. The executive also 'urged the maintenance of a standard of behaviour that would enable a landowner to allow such concessions indefinitely'.[26] If necessary, however, clubs were to refer specific access difficulties to the federation. Also, the federation advised club members to check the public notices for advertisements relating to the stopping (the permanent closure) of public roads that provided access to tramping or mountaineering areas.

The second edition of *Moir's Guide Book* was published in 1948, but its notes on tramping in the mountains partly reflected pre-war practice. These notes included some advice that indicates the genteelness of tramper–farmer relationships and access arrangements in Central Otago in the 1930s:

> The men and women [who live in Central Otago] often have to work very hard, perhaps without the facilities associated with city life. While they may be pleased to see visitors and to entertain them to a cup of tea, they appreciate due acknowledgement of favours and hospitality. Respect for property, especially animals, gates and fences, is very important. This includes asking for permission to use huts, and also due care of the huts and equipment. Payment should be offered for any provisions obtained and for the hire of pack-horses, and if not accepted some present, e.g. a book, may be sent later. On return to town a note of thanks together with a few photographs are worth sending.[27]

The rural-urban relationships, in Central Otago at least, were friendly and cooperative.

An example from Canterbury repeats this theme. As a young man in the early 1930s, John Pascoe cut his teeth on the Rakaia mountains.[28] While doing so, he came to know and admire the people at Manuka Point Station. He revisited the station on occasions throughout the 1930s and 40s, and in 1938 he wrote an affectionate article about the station's characters and their lives in the high country.[29] Pascoe was then living in Wellington, but if there was any rural-urban divide, he seems to have crossed it easily:

> The community is isolated. In New Zealand hospitality, in its broadest natural and most spontaneous sense, is synonymous with isolation … Travellers to the back-country are confined to trampers, mountaineers, adventurous artists, deer-hunters and Government deer-killers. Always they get a real welcome at the homesteads; never an effusive one. 'Bit wet aren't you?' is the greeting. It is followed by 'There's a feed in the bunkhouse.'[30]

Change, though, was coming. On 30 March 1937 the Pan-American flying boat *Samoan Clipper* arrived in Auckland after the first survey flight from San Francisco. This arrival began 'the bridging of the travel gap between New Zealand and the rest of the world'.[31]

The second world war then intervened, followed by the recovery phase of the 1950s and then the 1960s, a time of rapid social change and perhaps a widening of the gap between town and country. In March 1959 the *FMC Bulletin* requested club members to report any access problems:

> Access to the Mountains and to Tramping and Stalking Areas
> The Federation Secretary would be pleased to have details of genuine instances where access to country has been unlawfully or unreasonably denied to tramping, stalking or mountaineering parties; more especially in the North Island, at the present time, but in the South Island as well if worthy of mention.
>
> Any complaints, if backed with adequate written evidence and information, will be investigated thoroughly by the Federation Sub-Committee to which this task has been assigned.[32]

By 1965 the old convention of landholders granting entry when asked was fraying. Mavis Davidson discussed the problem of crossing farmland to reach state forest:

> A type of access [about] which trampers and climbers are becoming concerned is that to forest areas by way of private property. Before the advent of radio and radio-telephones in isolated back country homesteads, and the construction of good access roads, trampers and climbers were warmly welcomed, but nowadays wayfarers may be regarded with some hostility. Nor can the property owners be blamed, for more people are requiring such access and in some instances persons in transit have interfered with stock and destroyed property; as always, the abuses of a minority cause the withdrawal of privileges to all.[33]

In 1966 the executive of FMC surveyed by questionnaire recreational users of national parks and forest parks. Responders identified access as 'the main problem'.[34] The federation stressed that clubs were the bodies best able to arrange for access over individual properties. The cooperation of neighbouring landowners remained an essential requirement for the recreational use of publicly owned lands. In 1968, when deer farming was growing, the federation expressed its concerns that deer fences could inhibit access to mountain lands. At the National Development Conference in 1969, the federation recommended that 'all possible steps be taken to ensure reasonable public access to New Zealand's bush and mountain country, much of which is locked in by privately owned or leasehold farmland'.[35]

In the same year, the issue of preserving the access to unformed public roads thrust itself into prominence when the new owner of Poronui Station denied trampers the use of Taharua Road, an unformed public road. But Poronui Station, to which we will return in a moment, was not

the only trouble spot. In April 1970, page 1 of the *FMC Bulletin* raised the problem of blocked public roads:

> Access to Mountain Land
> It has been reported from many areas that fences are being erected across land which is legally public road without a defined boundary. The difficulty lies in the definition of the road line and in many cases this can only be determined by survey, which may be a costly process in back country stations.[36]

In its *Bulletin* of July 1971, the federation published an article about the legal ins and outs of public roads, waterways and riverbeds, marginal strips on crown land under the Land Act 1948, access tracks under the Counties Act 1956, and tracks or roads under the Public Works Act 1928. Writing about the practical imperfections of some unformed public roads, the author made a point that is just as relevant – and as problematic – now as it was then: 'Alternative tracks are available, or routes are desirable, which can and would provide more satisfactory and safer access'.[37]

In 1983 Ray Burrell would sum up the national access situation:

> Although the Federation has enjoyed the co-operation over the years of many landowners who have allowed club members access over their land, some instances have been known where access to mountain areas has been unreasonably withheld in the Federation's view. Some definite form of protection or legislation to ensure access is required in many areas.

In the case of Poronui Station, a permanent solution to recurrent access problems would not be engineered until 2007.

Poronui Station, Phase One, 1969–74

Ray Burrell described in some detail the first Poronui Station access rigmarole. It is interesting, and a little depressing because progress nationally is only now occurring, that forty years ago trampers were already working resolutely on the problem of locating and waymarking unformed public roads:

> The crunch point [of the general problem of access to unformed public roads] had come in 1969 when the new owner of Poronui Station denied the use of an unformed road, Taharua Road, for access into the Kaimanawa Ranges. A deputation of A.J. Heine, R.W. Burrell, and B.R. Hunt waited on the Minister of Forests and Lands to discuss ways and means of marking and identifying unformed legal roads to National Parks, Unoccupied Crown Lands and other relevant recreational lands. Officers of Forest Service, with the Federation and its affiliated clubs using the area, combined to try to resolve the conflict by negotiation, but by the annual general meeting of 1971 it was evident that it would be necessary for the Federation to take forceful action to obtain right of access and to press for the 'paper' road to be established by peg line. By 1972

> surveyors were establishing the line with the assistance of club working parties.[38]

This wasn't, however, the end of Poronui phase one. In March 1973 the Taupo county council declared that any construction of roads within the county must be up to council standards. In response Federated Mountain Clubs argued that this requirement was unreasonable for just an unformed public road providing access to Kaimanawa Forest Park. The federation petitioned the council, seeking the removal of fences across Taharua Road. The council rejected this petition. The federation and the New Zealand Deerstalkers' Association appealed to the magistrates' court, which in 1974 upheld the request for the removal of the fences. Fifteen gates subsequently replaced the fences, and two hundred trampers took part in a celebratory opening walk.

But Poronui Station was an access problem that would not lie down. It will enjoy brief reappearances in Chapters 9, 19 and 32.

FMC's Opposition to Track Fees in National Parks, 1947–80

Throughout its existence Federated Mountain Clubs has opposed any suggestions or proposals that walkers should pay to use tracks in national parks. Perhaps the best illustration of the development of this policy is the story of the Milford Track after World War II. We saw in Chapter 4 that tourists first walked the Milford Track in 1889–9 and that its notability increased steadily after the publication in 1908 of 'Finest Walk in the World'. By the late 1940s, therefore, the Milford Track had attracted tourists for fifty years. Also, its use had become carefully regulated. In 1947 the federation enquired into the rules governing the use of the track. 'The Tourist Department was adamant that many years previously a policy was adopted that all persons using the track must stay at the huts provided by the Department and pay the full daily tariff.'[39] This restrictive policy was contentious, some trampers arguing that access should be free to fully equipped self-sufficient tramping groups. But the federation was unable to take any further action in connection with the issue.

To put this impasse into a historical perspective, we should note that in 1947 the management of national parks and reserves in New Zealand was minimal compared with what we are used to today. Noel Coad, a director-general of lands, wrote that

> until [the early 1950s], management of parks and reserves for public enjoyment and outdoor recreation was limited. Some huts were built and track work was done but there were few park rangers and [there was] little money.[40]

The Milford Track, however, enjoyed a postwar revival and indicated the general growth and developments and access issues that were to come. The 1949 annual report of the Department of Tourist and Health Resorts said that

> overseas visitors formed a fair proportion of the greatly increased numbers of trampers who walked the entire [Milford] track. Glade House was completely renovated and all buildings were painted. This

> hostel is now very comfortable again and will be used increasingly next season to accommodate those who undertake the 'World's Wonder Walk'.[41]

In 1953 there were only five park rangers in the whole of New Zealand.[42] They worked mainly on track-making and the control of introduced animals. Their number soon grew. By 1964 the ranging staff totalled thirty-eight, if trainees and assistants were included. Track systems in the established national parks at Tongariro, Egmont and Arthur's Pass had been or were being upgraded and extended. By 1976 the Department of Lands and Survey was employing about 120 national parks and reserves rangers and landscape staff.[43]

> Track planning, with due regard to existing routes (and, on occasions, the needs of wild-animal control), closely followed the establishment of new parks. In 1958 good progress in Abel Tasman National Park was reported towards 'opening the main network of tracks approved by the National Parks Authority'. Here, as in many other parks, local tramping clubs were helping with the work. The walk around Lake Waikaremoana in Urewera National Park, under construction in 1963, was cut by volunteer parties of secondary-school pupils, 'acceptance of requests from schools to participate [being] limited only by the amount of supervision the ranging staff [could] undertake'.[44]

In 1964 the relatively new Fiordland National Park Board recommended to the National Parks Authority that the Tourist Hotel Corporation should take control of the Milford Track. FMC opposed this proposal. FMC's protestations led to the formation of a joint committee of the Tourist Hotel Corporation and the National Parks Authority. The federation hoped that through this body the Tourist Hotel Corporation would become more aware of its responsibilities to other uses of the national parks.

More hiccups, however, followed. Proposals to charge track fees drew further protests from clubs. Then in 1966 the Fiordland National Park Board erected three huts for the use of 'freedom walkers'. The track became open to the general public, with a limit of sixteen imposed on groups.

In 1978 the Fiordland National Park Board proposed to assume responsibility for the track. FMC reaffirmed its policy that there should be no charge for walking tracks in national parks. Finally, after some uncertainty, in 1980 the National Parks Authority agreed to recommend to the Fiordland National Park Board that no track fees be charged, that hut fees be charged separately, and that maintenance costs be shared by the Tourist Hotel Corporation and the park board, with the board paying the hut wardens from its revenue.

To further restate the federation's long-held views, the executive of Federated Mountain Clubs then adopted three clear, no-nonsense policies dealing with track fees in national parks:

1. The Federation does not regard tracks or bridges of any type as special facilities.
2. The Federation re-affirms its National Park Policy of user pays only for special facilities.
3. The Federation opposes a track fee for Milford Track walkers.[45]

More Tracks for Hunters and Anglers

Acclimatisation Societies: Ever-changing Role

In 1930 the acclimatisation societies were a little past the mid-point of their 129 years of existence. They remained always aware that their role was changing.[46] Robert McDowall's *Gamekeepers for the Nation* (1994) describes the multiplicity of things the societies did over their lifespan. McDowall says that, in the view of many commentators, the role of the societies changed so much over the decades that the name 'acclimatisation' became an anachronism. 'Ultimately [by the 1980s] they identified their key role as the protection of habitats needed to support the game and fish species that they valued for recreation.'[47]

Some of this reshaping of the societies' aims and priorities, however, happened extremely slowly. The Auckland acclimatisation societies spent 123 years – from December 1867 to 31 May 1990 (when the societies were abolished) – trying to introduce the partridge; several varieties proved to be reluctant immigrants.[48] Not until the late 1980s did the red-legged partridge become established.

McDowall's 508-page history says little about the societies' interest in access to land and to water margins. He mentions that 'some societies worked hard at helping sportsmen find access, especially to fishing'.[49]

Newspapers continued to report the concerns and doings of acclimatisation societies, with generous column-space given to such things as the depredations of seagulls on trout, the battle over the German owl, the planting of eucalypti in Wanganui, and the supply of ducks in south Canterbury. These reports also show that an interest in access to rivers and land remained a part of the societies' eternally evolving roles.

At a meeting of the Auckland acclimatisation council in February 1935, the councillors discussed some suggestions for improved access by anglers to fishing waters on the Waikato River, Lake Taupo and Lake Rotorua:

> It was suggested that the Land Act should be amended so that no future alienations of Crown lands fronting a trout-bearing stream could be made without the reservation of a strip one chain wide on the banks. Easements, it was held, might be taken by the Crown along banks already alienated, the compensation to be assessed purely on the lessened value of the land, without taking account of the accretion in value by the presence of trout, which were recognised as the property of the general public. Relief workers could be employed in the making of fishing tracks from existing roads to river bank reserves. Below Taupo such roads often entailed merely the cutting of manuka along a graded track.
>
> Another suggestion was an amendment to the Fisheries Act, prohibiting fishing from all private lands which were closed to the

> public. The fish did not belong to the landowner, and the right existed to demand that the fish should be taken only by the public.
>
> There could be a small increase in the cost of licences, the increased amount to be spent by acclimatisation societies on providing access in their respective districts.[50]

Three months later the Auckland Acclimatisation Society circulated a petition that asked the government to secure better access for anglers to trout streams and lakes. The society also wrote to other acclimatisation societies suggesting that they organise similar petitions in their districts.[51]

Although issues of access to rivers and land cropped up occasionally in the work of acclimatisation societies between 1930 and 1970, anglers and hunters generally enjoyed fairly reliable access by permission. This would begin to change in the 1970s.

Tracks for Government Deer-cullers, 1930–70

At the same time as the acclimatisation societies were beginning to think more about the management of wildlife, national sentiment about preserving native forests was mounting up. During the first decade of the 20th century, some of the work of the acclimatisation societies was taken up by government departments, such as the Department of Agriculture, the Department of Tourist and Health Resorts, the Marine Department and the Department of Internal Affairs.[52]

The lessons that had been learnt, though, were hard ones. 'Between 1861 and 1909, some 111 head of deer had been imported with the government's blessing and support. From these, numbers had risen [by the 1920s] to an estimated 300,000, seriously affecting farming and silviculture.'[53] By the 1930s, the harmful impacts of deer on the indigenous flora had become apparent to a few influential scientists and naturalists, although some deerstalkers argued that deer did little damage. Ken Francis, a government deer-hunter in the 1930s, recollected station owners being driven off their land by deer and rabbit infestation. He and others laid much of the blame on the acclimatisation societies, which gained part of their revenue from deer-shooting licences.[54] As regards deer causing accelerated erosion of the back country, the ecology was complex; scientific investigation of this, and argument over it, would continue through the 20th century.[55]

In the early 1920s the Department of Internal Affairs had come under increasing pressure to act against what the newspapers called 'The Deer Menace'. In 1929 the department instructed one of its junior officers, George Yerex, to investigate the deer problem. Yerex, a former captain in Britain's Imperial Camel Corps, had joined the department in 1927 as a fisheries ranger at Taupo. In 1930 the government staged the bluntly named Deer Menace Conference.[56] After this conference, the department appointed Yerex to run its deer-control section. Skipper Yerex, as he was known by his men, proceeded to direct the deer destruction operations like a military campaign, 'engaging the enemy first where they were found to be in concentrations'.[57]

He set about recruiting men who were fit, had some background of living in the bush, and could handle a rifle. These muscular and self-reliant marksmen – part hunters, part mountaineers – became known as the

government cullers, although 'cullers' was a misnomer; the hunters were paid to kill as many deer as possible rather than to select and kill weak animals. Operations began vigorously in southwest Otago in 1930.[58] Thus started a twenty-five-year national campaign that, in the mid-1950s, some experts would call a waste of time and effort.[59] 'The hundreds who took part in the programme contributed more to national character than they did to conservation.'[60]

At first the cullers worked from tent camps, blazing tracks through the back country. They skinned the deer, carried the skins back to base camp, and hung them out to dry, before lugging them out to the nearest roadhead and collecting 1s 6d (15 cents) and three bullets for each hide. This limited the time spent on the main job of killing deer.[61]

For much of their time, the Good Keen Men, immortalised by Barry Crump, worked off-track. Even so, inevitably they must have accomplished, out of necessity, a considerable amount of track-improving and track-cutting. Everywhere that the deer went, the deer-cullers followed. For Ken Francis during one season in the 1930s, this meant pushing on, sometimes alone, into the higher and more remote parts of Molesworth Station: 'We found new passes and discovered flagrant errors in the maps and we cut tracks back into valleys which hitherto had been only legends.'[62]

Even when the men were following existing tracks, the terrain could be technically taxing, in a mountaineering sense, and dangerous. Francis wore tricouni-nailed mountaineering boots that enabled precise and confident foot-placement on steep slopes of frozen earth or hard snow.[63] Damaged or destroyed sections of track in exposed places demanded capable mountaincraft or advanced horsemanship. One day he had a harrowing time crossing a washout while following an almost disused track that sidled high above the right-hand branch of the Maruia River. The following extract is only part of the incident, which also involved Nap, his horse:

> Then, suddenly, no track! Nothing but a gap where it had slipped away down into the river, leaving a steep chute gouged out of the mountainside. It looked like the end of my journey. I should have camped in the pass and probed out from there as soon as I found the track neglected. Peering over the broken edge, I shuddered as I looked down. Yet deer, with their unfailing persistence, had beaten a faint track across the chute face. I crossed the deer track without looking, dislodging rocks that crashed headlong down into the abyss. At least the uphill side was not sheer.[64]

The preferred accommodation soon became huts, when available. When the first big government culling in south Westland took place, in 1933–4, the gangs set up bases in tourist-department huts at Makarora, Haast Pass and Burke River, and at Forbes' Castle hut at Landsborough Flats and at a hut at Clarke River. South Westland presented problems 'more difficult than anything previously attempted'.[65] Tracks and river crossings had yet to be established. Hunters working at a distance from the huts lived in tents. Supplies were brought in by packhorse or carried in on foot.[66]

By the mid-1930s it had become apparent that '[the] more remote areas were not being shot effectively because cullers were spending a considerable amount of time getting to and from base camp, establishing camp, and packing goods to camps'. The need for more huts, tracks and safe river crossings was frequently discussed at Department of Internal Affairs staff conferences.[67] In 1939 at a conference of department field staff, Yerex said:

> The remedy appears to be, to build more huts, and to build them in the more remote places … and even in places like the Landsborough we must try to get horses up there. If we could put a horse track over Harper's Bluff we could run our stores right up to the head of the valley … We do not want to make pack horses of our men. They will work better if they have less carrying to do.[68]

Yerex wanted to eradicate deer as completely as possible. He saw the need for a well- planned network of huts and tracks. To improve the efficiency of the deer destruction, the huts needed to be located so that all parts of the ranges would be within about three hours' walk from a hut.[69] Also in 1939, the deer-control section began to establish permanent stations where a field officer and a deer-hunter were stationed all the year round, spending the winter on track work, hut-building and equipment maintenance. In 1941 the section established ten huts specifically to facilitate more effective deer control.[70] In 2006 the Landsborough Rangers Hut was one of the three huts built for the deer-cullers of this era that still survived.[71]

Ross Galbreath has described the contradictory scientific aspects and the complex departmental rivalries of the deer-destruction campaign.[72] Suffice to say that in 1939 the Department of Internal Affairs had over a hundred deer-cullers in the field at any one time. They were shooting over 30,000 deer and 10,000 other pest animals each season.[73] The outbreak of war caused an initial drop in the number of deer-cullers, but then the Army agreed to release a number of men each season to serve as hunters. By 1948–9 the annual tally of deer killed had reached 30,000 again.[74]

The 1948 edition of *Moir's Guide Book* credited deer-cullers with the blazing of some trails, especially in the southern half of the area covered by the guide.[75] Nationally, by 1950 the field officers of the deer-control section had explored every corner of back country where deer might exist, recording where huts were available and where tracks existed, as well as the number of deer seen.[76]

*

In April 1956 the responsibility for deer destruction and possum control was transferred from the Department of Internal Affairs to the New Zealand Forest Service.[77] 'The Forest Service was at last able to adopt the strategy they had always wanted to see in place, with deer control operations concentrated on critical forest catchments'.[78] In the 1956 season, the Internal Affairs hunters killed 56,000 deer and the Forest Service hunters more than 35,000. 'Impressive figures perhaps, but still it was a case of "too little, too late".'[79] The deer had increased faster than they could be shot. Deer numbers had reached pest proportions.

The forest service needed the help of recreational hunters. So it tried to entice deerstalkers into the more remote areas by providing more facilities. 'By 1972 they had built, on state land, 644 huts, 36 shelters, 26 vehicle bridges, 142 footbridges, 22 cableways, 29 vehicle fords, 2,900 kilometres of roads, 1,400 km of four-wheel-drive track, and 4,000 km of walking tracks.'[80] Perhaps trampers were the only winners: in the late 1960s and 1970s, helicopters replaced bushbashing for the killing and recovery of deer, and the huts and tracks built for deer-cullers became recreational facilities.[81]

*

The Department of Internal Affairs had formed a named wildlife division, the Wildlife Branch, in 1945-6.[82] This subsection had its roots way back in the acclimatisation societies of the 1860s. In 1974 the wildlife branch was renamed the New Zealand Wildlife Service.[83] By the 1980s the wildlife service was high in public esteem, especially for its achievements in the conservation of native birds. 'Even so, in 1987 it was disestablished and superseded by [the] Department of Conservation, which also took over conservation functions from the forest service in relation to indigenous forests, and from the Department of Lands and Survey in relation to national parks and reserves'.[84] DOC also absorbed the New Zealand Walkway Commission. In time, these reforms would be seen as a reasonable deal for native birds but, as regards the furtherance of foot-tracks across private land, a dead loss for walkers.

Davey Gunn, a Pioneer in Diversification

David (Davey) Gunn, a Hollyford runholder, bushman and guide from 1926 to 1955, cut and maintained many kilometres of track, sometimes for cattle-droving, sometimes for tourists, sometimes for forestry, and sometimes for a mix of these uses. In the farming sense, he was a pioneer in diversification.

In June and July 1926 Davey Gunn and Patrick Fraser purchased six bush-covered cattle-grazing leases in the Martins Bay area, totalling 46,060 acres (18,640 hectares). Less than 1,000 acres (405 hectares) was open country. The rest comprised wetlands, heavily forested flats, and steep bush-clad mountainsides.[85]

Fraser left the Hollyford after just one year. In November 1927 his share of the leases was transferred to Gunn. Gunn fell in love with the Hollyford. He had great plans for improving his cattle-raising business and for making the area accessible to tourists.[86] He set about clearing scrub, building huts and cutting tracks. Then an opportunity arose for him to increase the area of his grazing rights. The additional run, if he obtained it, would carry with it the responsibility for looking after some tracks and huts:

> In 1927 the Forest Service was planning to lease out its land in the new state forest at Martins Bay. They were keen for the land to be occupied, even if the rent received was very low, because they were interested in the timber potential of the area, and needed tracks and huts to work from. As the Conservator explained: 'The lessee must for his own purposes keep open and maintain approximately

> 110 miles [177 kilometres] of tracks, some six or eight huts and two boats', and these would be of great benefit to the Forest Service.[87]

Gunn's tender for the lease was the only one. He took on the extra 20,450 acres, bringing his total holdings to over 65,000 acres (26,300 hectares).[88]

Gunn was uninterested in making money and no good at it – which comes first is always difficult to tell – but 'he became a superb bushman … cutting tracks to give access to river flats, and building a chain of huts'.[89] In January 1929 a small group of horse-trekkers arrived at Martins Bay, having ridden down the coast from Haast. 'Wherever the riding party went they saw evidence of new or re-cut tracks, found huts well stocked with provisions and utensils, and saw recently cleared areas that had been sown with clover and cocksfoot.'[90]

Among Gunn's early priorities was the building of tracks around Lake Alabaster and Lake Wilmot. On some parts of the route around Lake Wilmot, he used explosives to carve a path through solid rock. In other parts of the Pyke valley, he found routes around several large swamps. Julia Bradshaw writes that 'between 1927 and 1931 Davey received government grants totalling £250 for making and repairing tracks, and most of this work was carried on in the Pyke Valley'.[91]

In 1936 Gunn began to guide groups of walkers and riders through the Hollyford. This successful venture continued for nearly twenty years, assisted later by guides whom he employed. Gunn and a twelve-year-old boy were drowned when their horse stumbled while crossing the Hollyford River on Christmas Day 1955.[92] He left behind a Hollyford opened up with tracks and huts, facilities that had not existed when he had first seen the valley in August 1926.

Track-building for a State Recreation Programme, 1939–40

An idealised but ill-fated and short-lived episode of track-building took place in 1939–40 as a result of the Physical Welfare and Recreation Act 1937. This act set up the national council of physical welfare and recreation, a branch of the Department of Internal Affairs. The council's intended function was 'to advise the Government on matters relating to the maintenance and improvement of the physical well-being of the people by means of physical training, exercise, sport and recreation, and social activities related thereto'.[93] The minister of internal affairs, Bill Parry, was an ardent shooter and angler. In 1939 he thought up a plan to direct more New Zealanders into the backcountry for healthy recreation.[94] He proposed that his department would supervise the construction and use of a network of tracks and huts. Walkers would pay a modest daily fee to use the facilities. Officers of the physical welfare and recreation branch would supervise the trips.[95] The branch would advertise the backcountry walks as being midway between deluxe tourism and spartan club tramping. The proposed network of new tracks and huts would cater for the inexperienced young tramper or the average tourist. These users would not need to be members of tramping clubs.

The full proposal was ambitious. Parry or the council planned:

1. to make easy, well-defined tracks in interesting but safe country;
2. to build accommodation huts at places, not too far apart, so that the tracks would be accessible to most people;
3. to build slightly more elaborate huts [than was normal] giving reasonable comfort in all weathers, and to maintain them in good order;
4. to organise the mountain track system so that whole families, including the mothers, can go out for an ideal holiday at suitable cost and in reasonable comfort; and
5. to publish a reliable guide booklet to each track, including route notes, maps with full recreation legend, photographs, and notes on mountain flowers, trees, birds, geology, animals, insects, weather, and history of the locality, including the story of its pioneer exploration.[96]

Parry proposed an economical way to build the tracks: deer-cullers hired seasonally by the Department of Internal Affairs would work over the winter to cut the tracks and build the huts, returning to culling in the spring. The first two tracks, therefore, would be built in the Southern Alps and the Tararua Ranges in areas being overrun with deer and well-known to the deer-cullers. Parry's scheme was approved in May 1939.[97]

The practical track-building soon ran into institutional and conceptual difficulties. In the Tararua State Forest, the director of forestry was suspicious of outside workers; he trusted only track-building supervised by his own officers.[98]

In the South Island, work proceeded on a track over Harper Pass, from Waikari to Aickens via the Hurunui River, Lake Taylor and Lake Sumner. Inexperienced contractors and bad weather delayed the track's completion. The Department of Internal Affairs did not draw on the track-making and hut-building expertise of local tramping clubs.[99] Despite the setbacks, and although only one hut out of five had been completed, forty trampers followed the Harper Pass track over Easter 1940. 'The trip cost each tramper 42s 6d – a very fair price for so much pleasure.'[100]

But leading and supervising such a large group had not been pleasurable for the officer involved. The small army of trampers had been boisterous and difficult to control. Behind the scenes, the contractor finishing the huts, the resident deer-culler, and the officer guiding the group all registered dissatisfaction with some aspect of this inaugural trip.[101]

Then war intervened. The Tararua track – running through the Tauherenikau valley, then over Cone Saddle to Totara Flats, and from there to Mount Holdsworth and out to Masterton or Carterton – was well advanced when the war forced the suspension of the track-building.[102] The deer-cullers and contractors did not complete the track and huts in the Tararua.

Groups used the Harper Pass route occasionally. In November 1941 John Pascoe led a group of travel consultants and physical welfare and recreation branch staff over the pass and he made notes for a route guide.[103] Then the rains destroyed sections of the track. As late as 1950, though,

the Department of Internal Affairs was still optimistic about the future of this route, reporting that

> the chain of huts through the Harper Pass (from Canterbury to Westland) has not been used as much during the past year as previously. This has been due to the non-replacement, as yet, of a key hut which was destroyed early last year by floodwaters. Negotiations for the completion of this chain are at present in hand, and it is hoped that the public will be able to make full use of the huts again in the near future.[104]

But it seems that the floodwaters had done too much damage. And perhaps they had swept away mental constructions as well as physical structures. Washed away, apparently, was the grand idea of officially supervised tramping for its health benefits.[105]

Access to Tracks in Drinking-water Catchments

During the second half of the 19th century, typhoid fever became increasingly common in New Zealand, peaking in the 1870s.[106] One of the major 'filth' diseases, typhoid was associated with poor housing and inadequate sanitation and polluted water. At the end of the century, many of the growing towns of New Zealand were striving to secure supplies of clean water for their anticipated future needs. Gisborne was perhaps typical. Between 1879 and 1906 the Gisborne borough council examined about fourteen engineering reports on possible water-supply schemes. Finally, on 30 April 1906, the council accepted tenders for a plan to pipe water from the headwaters of Te Arai stream.[107] Other towns were taking similar measures.

For the first half of the 20th century, it was the policy of many administrating bodies, somewhat controversially, to exclude the public from drinking-water catchments.[108] Tracks in these areas, even if previously heavily used, were unavailable to picnickers, trampers and hunters. The signs saying WATER SUPPLY – NO ACCESS began to appear early in the century, and so this section should have started in Chapter 4. But the story suits a telling in one go.

The closed water catchments either were lands owned by local authorities and managed by water boards or were state forests managed by the State Forest Service (renamed the New Zealand Forest Service in 1949).

Nicols Falls Walk, Dunedin

For an example of a water board's closing of a foot-track, we'll go to Dunedin. Firstly, some background will help to explain the reasons for later policies. By 1863, in Dunedin, 'the evils of an unsatisfactory water supply [had] already made themselves known … Sickness and death [had] resulted from the use of impure water, flowing in channels polluted often from their sources'.[109] The death rate in 1863–4 was an alarming 35.3 deaths for each 1000 people, a higher rate than many of the industrial cities of Europe. Doctors blamed bad drainage, poor-quality domestic water and inattention to sanitary precautions. The town did not have underground sewerage until the 1870s.[110]

On the outskirts of Dunedin there is the short walk to Nicols Falls, on Nicols Creek. In the 1880s this fifteen-metre-high waterfall was a popular destination for visitors to Dunedin, who reached it by a walk or ride along the Leith valley and a half-hour walk up the hillside. In 1888 a writer in the *Otago Witness* promoted the trip's literary credentials:

> Visitors should choose a cool day and take the tram as far as the Water of Leith. The walk thence is delightful till the tug of war comes. It is no use putting on thin shoes and a smart dress; any old costume will do, for there is a great clamber over the boulders of the gorge – higher, higher, higher up, like the steps in the belfrey Dickens tells us of in one of his Christmas stories; but when one is up, there are no ghosts or elfs at the falls; only Nature, fresh, sweet, and beautiful, laughing water tumbling over stones, dancing and leaping among the bush. Murmuring on till it is hidden from sight by trees and ferns.[111]

In the late 1890s the city council commissioned several engineers to investigate the potential water supply available from the Leith valley and Waitati direction.[112] In 1899 Leslie Reynolds reported that

> there is … a magnificent supply available from those tributaries flowing into the Leith from the westward, and in the head waters of the Waitati, having their source in the Flagstaff hills, and up to the present absolutely free from pollution due to settlement. I propose to show that very nearly double the population now drawing upon the city mains can be supplied from these streams with water of the very first quality and purity, and at an altitude sufficient to command the highest outlying suburbs of the town.[113]

In July 1903 the city council appointed an engineer to construct the Leith–Waitati water scheme. Nicols Creek became part of a water catchment.[114] A 1906 account of an official inspection of the waterworks said: 'The City Council has acquired large areas of land above the intakes and these, with the reserves set aside by the Government, form an extensive area, which [at] all time will be kept free of the pollution incidental to settlement.'[115] A 1914 booklet listed the Nicols Falls track as being on private property, with an admission charge of sixpence.[116] By 1920 there was no longer any public walking access to the catchment.[117]

The city council was still enforcing this KEEP OUT policy in the early 1950s. During a parliamentary debate on a Dunedin waterworks bill in November 1951, the member for Mornington, Walter Hudson, said: 'In Dunedin we have put our main reliance on the securing and maintaining of a catchment area free of human pollution – the first line of defence to which all other methods are subsidiary'.[118] (Hudson was arguing, unsuccessfully, against a proposal to take water from the Taieri River. He said that human sources had contaminated the river.)

A H Reed, in a 1954 book, described the walk to Nicols Falls as private.[119] A relaxing of the ban on walkers began in the mid-1970s when the city council's water and baths committee approved the proposed route

of a walkway (initially named the Pineapple–Flagstaff Walkway) that would cross the water catchment.[120] Even so, a 1980 guidebook, lagging behind the developments, said that Nicols Creek was 'now closed to the public because it lies in a water catchment area'. The authors hoped 'that at some future date the public may again be admitted'.[121]

We are now admitted. Sometime in the 1980s, Dunedin's evening strollers began again to visit Nicols Falls, and muscular trampers began to visit other streams in the catchment. In 1993 the first edition of the walking guidebook *From Sea to Silver Peaks* included the Nicols Falls walk.[122] The December 2004 issue of *City Talk* (Dunedin City Council's magazine) mentioned Nicols Creek in an article about the city's tracks. On 8 April 2005, during a Tracks Week organised by the city council and DOC, about forty night-walkers visited the creek, spotlighting its glow-worms and its waterfall.

Water Catchments in State Forests

For the first half of the 20th century, recreational access to state forests was either barred or by permit. If the State Forest Service needed to keep people out of water catchments, it had the legal means to do so. But the emergence of Tararua Forest Park in 1954 and of the other forest parks that followed introduced a potential for conflict between trampers and hunters on the one hand and health and water-supply authorities on the other.[123]

On the eastern side of the Tararua Range, that potential became real. Carterton Borough drew water from the forested Kaipaitangata Stream in the Tararua Forest Park. The popular Sayer's Track, a tramping route used for decades, traversed this catchment. But the health department, in approving the water supply, demanded the exclusion of the public from the catchment. 'Tararua trampers recognized the necessity for this action and respected the restriction imposed, but they did begin to think fearfully of the future when growing cities on the plains would, in their demands for water, encroach piecemeal on the former tramping areas until citizens could no longer enjoy the solace of the forests.'[124]

This local Tararua issue presaged a pending national problem. In the 1950s and 60s many small boroughs that drew water from bush-covered catchments could not afford full filtration and sterilisation plants.[125] Because of the lack of water treatment, the health department insisted that the public be excluded from the catchments.

Recreational access to water catchments, and the wider issues of managing public access to indigenous and exotic forests, received some attention in the *New Zealand Journal of Forestry* in 1965. In a paper on managing the Tararua Forest Park, M M Benjamin indicated that increased public access to water catchments would eventually occur:

> The recreational users of the Park generally realize the inevitability of some degree of encroachment on their amenities, but they are entitled to expect that such encroachment will be restricted to the essential minimum. Some of the catchments that are used, or planned to be used, are quite extensive and the exclusion of the public therefrom is practically impossible. Restriction of entry becomes increasingly

> difficult as population grows, and local authorities will ultimately have to face up to water treatment.[126]

In a similar vein, discussing water catchments in indigenous state forests, the forester Peter McKelvey wrote: 'Until domestic water is filtered and sterilised, the public must be excluded from the supply catchments in the interests of public health. There are thus strong reasons for the setting up of regional water supply authorities so that scattered small communities will be able corporately to install and operate treatment plants.'[127]

In March 1967, Lindsay Poole, the director-general of forests, argued bluntly that local authorities should treat all drinking water and that this practice would reduce or eliminate the need to restrict recreational access to water catchments:

> Domestic Water Supplies from State Forests
> Rivers originating in State forests are more and more coming into use for domestic water supplies, a completely legitimate use and one which the protection forests are intended to safeguard. However, there does arise a clash of interests when those forests are also popular with trampers and hunters. The authorities responsible for the water supplies naturally aim for the highest standards of purity; to ensure it they stipulate, in some cases, that the public be excluded from the catchments concerned. This creates difficulties of access, because entry to the hinterland is usually by way of the river valleys. In a particular case which arose [in 1966] on the eastern side of the Tararua State Forest Park it seems probable that the Forest Service will need to buy extra land to provide an alternative access to one closed in the interests of a borough water supply.
>
> This type of restriction cannot continue indefinitely. Much closer cooperation is needed between the local authority planning to use the water, the Department of Health, and the Forest Service when water-supply projects are under consideration. It is conceded that public health considerations are paramount. While human entry into water-gathering areas can possibly be controlled, entry of wild animals cannot. It therefore seems unrealistic to assume that freedom from contamination can be assured without treatment of natural water supplies. It is hoped that appropriate treatment can be undertaken so that [recreational] use of water in the forests can be as liberal as in so many other countries.[128]

Looking back in 1995 at the opposing requirements in the Tararua Forest Park, Peter McKelvey wrote:

> The arguments between the recreational users of the park and the Health Department persisted for a number of years, with the [New Zealand Forest Service] as piggy in the middle. An unofficial and *de facto* compromise, in which tramping parties were adjured not to camp overnight in the catchment, enabled both tramping and the water-supply developments to proceed in the short term.[129]

The demand for recreational entry to state forests increased markedly in the 1960s and 70s.[130] It seems likely that from the 1970s onwards the Forest Service relaxed its restrictions on recreational access to water catchments; I have yet to gather the evidence to confirm this.

Recreational Access to Water Catchments: an International Issue

The environmental histories of reservoirs and their catchments are a subject in themselves, of which walking entry to the catchments is only one aspect. Scholars have examined internationally the management policies applied to individual catchments and the ecological, social, agricultural, and engineering issues involved. A vast multidisciplinary literature on the topic exists. In weight of knowledge, there must be hundreds of tons. Harriet Ritvo's *The Dawn of Green*, for example, reveals the details of the life of Thirlmere reservoir in the heart of England's Lake District.[131] Similarly, Erica Nathan's *Lost Waters* charts the history of a Moorabool River catchment in the central highlands of western Victoria, Australia.[132]

In Britain, for large parts of the 20th century the policies on recreational access to water catchments mirrored those in New Zealand. In 1935 water boards controlled large areas of moorland in and around the Peak District. The boards barred these lands to the general public on the grounds that people might infect the water with typhoid. These restrictions had contributed, with other influences, to the tension that had led to the famous mass trespass over Kinder Scout one spring Sunday in 1932.[133]

By the late 1960s, improvements in the technology of water purification had reduced the need to exclude the public from water catchments. The concept of multiple use was becoming established.[134] A new reservoir in the Midlands, Rutland Water, became 'an important site for environmental education and conservation, Olympic-class sailing, trout fishing, rambling and sightseeing'.[135]

In the early 1970s, arguments about recreational access to the catchments and waters of some Lake District lakes still raged.[136] In 1983, following improvements to the water-treatment works, the public gained access to the waters of Lake Thirlmere for canoeing, sailboarding and dinghy sailing.

While, for a century, the recreational access to Thirlmere reservoir and its catchment was firstly rigorously restricted and was then gradually freed up – representing a general trend in Britain – elsewhere the management policies sometimes drifted towards wider and tighter controls. Early settlers in the Ballarat area in Victoria enjoyed reasonably good access to the West Moorabool River and its tributaries.[137] But the mid-19th-century brought 'significant water battles' in the river's catchment, between pastoralists, gold-miners, sawmillers and townsfolk. In the post-gold landscape, access to waterways diminished. Later generations of Ballaratians met a series of restrictions that pushed them away from the water.[138] Describing the attractions of Lal Lal Reservoir in 2006, Nathan wrote:

> There is the granite-bouldered Lal Lal Creek as it tumbles into the reservoir, best seen from a weathered cart-track that runs along the gully. There is the wonderful Moorabool Falls, with its sixty-foot drop and basin pool, now choked with unseen weeds … There is the

shaded Baker's Track that connected Mt Egerton to Lal Lal, crossing at what was once a highly contested water reserve near Tynes. All this waterscape is hidden and quite lost to collective memory, ready to surprise the few that venture beyond the numerous 'No Trespass' signs.[139]

Remnants of a Great Logging

Sprinkled through today's descriptions of walks in New Zealand's scenic reserves and forest parks is the term 'logging track'. Sometimes it is 'old logging track', which could mean anything between, say, 40 years old and 160 years old. And there are variations, such as 'loggers' road'.

I will list a few random examples. Among some walking tracks listed by Rodney District Council is one in McElroy Scenic Reserve that in one place follows an old logging track along the top of a ridge.[140] In Northland's Puketi kauri forest, the southern end of the Waipapa River Track follows the muddy and broken remains of a benched logging road.[141] Among DOC-managed walks in the Warkworth area is Mount Auckland Atuanui Walkway, which 'follows an airstrip and logging track along the ridge to the Atuanui forest'.[142] In the Waitakere Ranges, loggers' routes to kauri dams have become recreational trails.[143] In the Tongariro Forest is the 42 Traverse, which is either a 42-kilometre off-road run or a 45-kilometre mountain-bike ride; one of the most popular mountain-bike outings in the North Island, 'it involves brilliant biking on old logging tracks through remote native bush'.[144] A Greater Wellington regional council webpage about the walking tracks of the Wainuiomata recreation area says that part of Sledge Track follows the path of a historic logging track put in by the Sinclair family in the mid-1800s.[145] (The early settlers sometimes used wooden sledges, pulled by bullocks, for transporting heavy loads.)

A few of the surviving loggers' tracks may be based on foot-tracks that bushmen once used to walk to work and which have never been anything more than narrow tracks. Many of the surviving tracks, however, are based on the wider and far more substantial bush tramways. We are fortunate to have an excellent record of these primitive railways: Paul Mahoney put twenty years of research into his book *The Era of the Bush Tram in New Zealand*, from which I have drawn much of the following information.

Bush trams were in use in New Zealand by the 1850s. The early trams ran on wooden rails and were pulled by up to eight horses. In 1871 William Brownlee of Havelock introduced steel rails and the small steam locomotive, known as a lokey. In 1901, 334 sawmills were operating. At one point, there were over 500 bush tramways; the longest had eighty-one kilometres of mainline and twenty-eight kilometres of branch lines. For almost a century, the bush trams played a major role transporting logs and sawn timber in remote locations.[146]

Environmental historians have exhaustively examined the place of logging in New Zealand's environmental history. Mahoney does not try to repeat this critical scholarship. Instead, he concentrates on the place of tramways in New Zealand's logging history. They featured universally and, according to one observer in 1877, no sawmiller ever dreamt of working a forest without one. 'Timber industry railways were not unique to New

Zealand; they were found in forests throughout the world. However, New Zealand, with its extensive covering of bush, may have had a greater relative concentration than any other country.'[147]

In the 1930s an increasing use of motor trucks on roads began a decline in the use of bush tramways. The last New Zealand bush tramway closed on 19 October 1974 at Mamaku, near Rotorua.[148]

Farming developments, commercial forestry, the regeneration of bush, and erosion have obliterated most bush tramways. The loss, says Mahoney, means that the few classic tramways that survive are all the more significant.[149] He lists fifteen heritage sites. At nine of these places, the Department of Conservation maintained, in 1998, all or part of a bush tramway as a walkway or a tramping track. These nine were: Great Barrier Island tramway, Whangaparapara; Billy Goat Incline, Kauaeranga; Waitawheta tramway, Kaimai-Mamaku Forest Park; Waitatapia tramway, Otaki Forks; Charming Creek tramway, Ngakawau; Mahinapua tramway, Hokitika; Stopforth's tramway, Toaroha; Port Craig tramway, Waitutu Forest; Maori Beach tramway, Stewart Island.[150]

The supreme award goes to Charming Creek tramway. Devotees of bush-tram history who visit Charming Creek's cuttings, bridges and tunnels may not be able to hide their state of ecstasy. 'The route, hewn up a gorge, was one of the most spectacular and rugged used by any bush tram … Of all the bush tram walks in New Zealand, this is the most memorable'.[151]

The Recreational Use of Exotic Forests

Earlier in this chapter we touched upon plantation forests and on the extensive tree-planting that Leon Ellis began in the late 1920s. By the 1960s the total area of planted exotic (non-native) trees was considerable, and foresters were beginning to think about the pros and cons of allowing recreational access to these pine forests. In 1965 an issue of the *New Zealand Journal of Forestry* contained three discussion papers on the recreational use of exotic forests. Now, in 2011 – with an increase in commercial forests a possibility in some areas – these old papers make interesting reading. Mick O'Neill's opening paragraph reflected the general drift of thought, which was cautiously progressive:

> Exotic forests have for many years been recognized as suitable recreation areas for the hunting, shooting and fishing fraternity, although access has been restricted for reasons of fire protection, public safety and in many cases personal preference. However, these forests have other recreation values, and an aesthetic appeal to quite a wide section of the community. It is necessary, therefore, to recognize these values, determine how they can best be exploited and decide how the forest can be used for recreation without disrupting normal productive operations.[152]

O'Neill, a future director-general of forests (1978–83), saw the primary role of exotic forests to be 'to produce the maximum volume of quality wood in the shortest possible time'.[153] Achieving this requirement, he said, would necessitate some restrictions on public access. Despite these

limitations, he still thought it would be possible to extend the recreational use of New Zealand's pine plantations. In a section titled 'Freedom of Access', he recognised the reshaping of attitudes that such a relaxing of controls would require:

> Recreational use of exotic forests depends entirely on access. The question of how freely the public should be allowed access gives rise to many and varied opinions. In the past the policy has been to close all exotic forests to the public and legislation provides that trespassers may be fined. To date the attitude has been to exclude the public.[154]

E Manktelow, a forest ranger for the Kaingaroa Logging Company, thought that although it could be some time before recreators exerted any great pressure to open the exotic forests of the South Island, an increasing public demand for access to some of the plantation forests of the North Island was likely to develop in the near future.[155] Taking the example of Tarawera Forest, near Kawerau, he described the successful arrangements made by the managers of Tasman Pulp and Paper Company to allow controlled recreational access to the forest while still meeting the needs of production. One of his conclusions was that the managers of exotic forests should plan future forests with recreation as one of the aims of their plantation management.[156]

The 1970s and 1980s would see some easing of the controls on walking access to crown-owned commercial forests. But the near-universal privatisation of the timber cutting rights in these forests that was to begin in 1990 would in some places reverse or jeopardise the relatively new liberal policies on recreational access. Appendix 2 includes some notes on the fate of the walking tracks in the privatised Berwick Forest.

Best Behaviour on the Trails

Several writers have identified a streak of paternalism in the senior levels of some outdoor groups of the 1930s, 40s and 50s. In the early 1930s, 'trampers saw themselves as leaders in the community, able to ensure that good citizens were created through recreation'.[157] At the 1935 annual general meeting of the Hutt Valley Tramping Club, Miss H G Niven, the club's vice-president, 'criticised emphatically the cut and brevity of the women's "shorts" and made reference to the "eyesore" of amorous couples on tramps'. Sir Alexander Roberts agreed that 'if there was any of "that sort of thing" to disturb other trampers, it was distinctly to be deprecated'. In response to newspaper enquiries, Niven backtracked slightly, denying that any amorousness had occurred, heaven forbid. But she still wanted female trampers to wear navy-blue shorts, not pink ones.[158]

A booklet on safety in the mountains, published in 1937 by Federated Mountain Clubs, strayed didactically into the mores of the time:

> Tramping Etiquette. 9. Conduct when Travelling in Public Conveyances and when Occupying Huts: The conduct of members of affiliated clubs while travelling to and from expeditions in trains, buses, etc … should be such as to reflect credit on their Clubs and

> on the tramping and climbing fraternity in general … avoid undue noise or freedom of language.[159]

Some national-park administrators, too, were anxious to create true citizens.[160] At the inaugural meeting of the National Parks Authority on 15 April 1953, the five members discussed draft bylaws that required the users of the parks to behave in a 'cleanly and decent manner'. They were not to use 'foul, abusive, indecent or obscene language, or be intoxicated, noisy or riotous, or in any way misbehave'.[161] Trampers who swam in streams along the trails were always to wear bathing suits.

In 1957 the National Parks Authority published the booklet *New Zealand National Parks*, at the end of which was a 'simple code of good conduct' comprising ten rules that would 'commend themselves to every responsible citizen'. The first half of rule number six might have disturbed the grave of Mr Explorer Douglas: 'Let us camp only on approved sites and leave camping places tidy.' A concern for safety may have been part of the thinking behind the apparent restrictions of rule number seven: 'Let us keep to tracks and trails and leave virgin ground uninjured.'[162]

The historian James Belich has pointed out that this moralism and rule-making was probably not universally popular:

> As late as 1972, environmentalists objected to campers drinking and dancing rather than 'national parking' (their phrase) in a restrained and moral way. Populists engaged in hunting, fishing, camping and amoral tramping, are unlikely to have been impressed by attitudes of this kind. Barry Crump, for example, was surely a 'national parker's' nightmare.[163]

Unrealised Plans for a Centennial Atlas, 1938–52

In 1936 Joe Heenan, the under-secretary of internal affairs, and Bill Parry, the minister of internal affairs, put together a cabinet paper proposing several ways of celebrating the year 1940, New Zealand's centennial. Their suggestions included commemorative events, the commissioning of historical surveys, and a Wellington exhibition. On 23 May 1936 the cabinet accepted the recommendations and agreed to make available up to £250,000 for the centennial.[164]

Continuing discussion led to ideas for two more publications: a biographical dictionary and a historical atlas. Early in 1938 the cabinet approved final centennial proposals that included the atlas.[165] Heenan expected the atlas to become, next to the dictionary of national biography, the most important historical publication of the centennial. It would be lavishly coloured and big: eighty-eight map pages, each map plate being 16½ inches by 13½ inches.[166] Among the atlas's contents were to be maps identifying Maori trails throughout New Zealand.[167] The Department of Lands and Survey and the centennial branch of the Department of Internal Affairs would jointly produce the atlas.

Maps of Maori Tracks

The two people most prominent in the early deliberations on the atlas were Professor James Rutherford of the history department of Auckland University College and Harry Walshe, the surveyor-general. E H McCor-

mick, the secretary of the national historical committee, attended to the research requirements. He initially expected that established scholars would be able to supply the required facts. But officials at the Native Department and at the Maori Purposes Trust Fund said that they did not have the information on Maori tracks and on principal battlegrounds that was needed for the atlas.[168]

Internal Affairs sought a researcher to 'obtain within a definite time the information required for the maps of early Maori and other history of the Centennial Atlas'.[169] In May 1938 Jim Davidson, a talented young graduate of Victoria University, was appointed. Several other people were drawn in to work on research; John Pascoe from the centennial branch looked into battle sites. Among others who worked on the atlas was John Beaglehole of Victoria University College, who was Heenan's main adviser on the historical publications.

Heenan was an outstanding civil servant with a passion for sport and a love of literature. Beaglehole was an exceptional historian with left-wing leanings and a liking for tramping. In 1921 he had been a founder member of Victoria University College mountaineering club.[170] The energetic Pascoe was a mountaineer and photographer with historical interests.

By early 1939, research for the historical atlas had begun. The Ngati Porou leader and land-reformer Apirana Ngata was deeply involved in the work on the maps of Maori trails and tribal history.[171] Among other Maori who assisted him were Tupito Maruera from Taranaki, Tai Mitchell of Te Arawa, Sam Maioha from Te Tai Tokerau, and Pei Te Hurinui Jones of Ngati Maniapoto.[172] But the war slowed progress and brought uncertainty. As 1940 passed, Beaglehole became anxious that the work on the atlas 'should not simply be put on hold until hostilities were over. This was due partly to his belief in the uniqueness of the group of staff that had been brought together … and partly to a recognition of how the work already started could be built on and expanded'.[173]

It became apparent that the atlas would not be finished by the end of 1940. Undaunted, Beaglehole hoped that work on it would continue so that the atlas would be ready for production at the end of the war. The work did proceed, but sporadically.

By 1948 he was recognising that the Department of Lands and Survey had never been able to give sufficient priority to the drafting of the historical maps. The project had reached a point where a great deal of preliminary drafting was necessary. Yet nothing was being done.[174]

In December 1949 the National Party came to power determined to cut government spending. In 1950 the annual report of the Department of Internal Affairs said that 'the Historical Atlas continues to be dogged by lack of draughtsmen and the nomadic nature of its own staff'.[175] By late 1950, work on the atlas had virtually ceased. Early in 1952 the minister of internal affairs, W A Bodkin, terminated Beaglehole's advisory role on the historical atlas.[176] The fruits of ten years of research were destined for the archives, to await the curiosity of future historians. Beaglehole's second son and biographer, Tim Beaglehole, pointed out that the government's changes had been predictable:

> Joe Heenan had always recognised that the work of the Historical Branch, together with his other schemes for supporting the arts, depended very largely on the continuation of the Labour government in office, as 'the re-acquisition of a true-blue farmers' Government would, I fear, write finis to this particular chapter'.[177]

For the scholar John Beaglehole, the predictability of the National government's lack of support for historical research did not make that lack any less distressing. The way in which the government brought the historical atlas to an end left him feeling exceedingly bitter.[178]

After the war John Pascoe continued to work for the Department of Internal Affairs, illustrating official war histories. Then in 1955 he became the inaugural secretary of the newly created National Historic Places Trust.[179] In July 1956 the trust drew up guiding principles for its marking and recording of places and things of national or local historic interest. Pascoe's influence is obvious in one particular recommendation: 'Tracks of outstanding historical significance, Maori and pakeha, with those which subsequently became important national highways could be marked at strategic points such as mountain passes or river crossings.'[180]

In 1960 Pascoe contributed a four-page appendix to the trust's annual report. Titled 'Marking Explorers' Routes', it listed tracks and routes worthy of a plaque or other marker. His selection includes Maori trails, missionary wanderings, major trials of hardship and endurance, stock routes and gold-prospectors' routes.[181]

*

The atlas project had been too ambitious and might have foundered even had the war not intervened. More than half the planned cartography remained to be done. But many draft maps had been produced, and some of these would be useful during the preparation of the *New Zealand Historical Atlas* about forty years later.[182]

A decision to embark on a new historical-atlas project was taken in 1988–9 with the encouragement of the minister of internal affairs, Michael Bassett. The historical branch administered the project in collaboration with the Department of Survey and Land Information until June 1996 and then with Terralink. The six-year enterprise produced a beautiful and scholarly work, benefiting from technological versatility and cartographic innovation.[183]

The *New Zealand Historical Atlas* is an atlas of Maori as well as Pakeha history. The ten 'Papatuanuku' plates (17–26) display traditional information spatially that was previously only available in spoken or written words.[184] Maori routes appear on several of the other plates, such as 'Stone Resources' (plate 14), which shows the ways followed by stone-traders throughout the New Zealand islands.

A small-scale atlas map, however, cannot provide the same detail as a topographic sheet. One of the abandoned tasks of the centennial-atlas project had involved the hand drawing of Maori tracks and waterways onto thirty-seven four-mile-to-the-inch sheets (of the NZMS 10 series) that covered the whole of New Zealand. These annotated maps were never published at their original scale of four miles to the inch (1: 253,440). They are held at the Alexander Turnbull Library, Wellington.[185]

1970, Well-tracked Wastelands, Little Progress Elsewhere

By 1970, the improving or building of tracks in New Zealand for trampers and tourists had continued, especially in the publicly owned wilder parts of the country, for ninety years. The more majestic landscapes, which attracted international tourists, had gradually acquired their high-quality networks of walking tracks. Much of the track-building had taken place on publicly owned lands. The bulk of those lands were mountains or marginal lowlands, sometimes referred to as wastelands, unsuited to any form of agricultural development. In 1980 a Department of Scientific and Industrial Research paper would state that

> looking back, it is hard to escape the conclusion that most of our parks and reserves were established on country for which no 'better' use could be demonstrated … In real terms … less than 0.5% of New Zealand's area has been designated National Park or Reserve in preference to a use foregone; there has been very little real sacrifice.[186]

Since 1980 this statement 'has become a little less true, with national park extensions and new designations made in areas of lowland native forest and downland … It remains the case, however, that the national park system is overwhelmingly mountainous in nature'.[187]

In 1970 many – probably the majority – of New Zealand's legally secure public foot-tracks were situated at least an hour's drive, and often several hours' drive, from the main centres of population. Even where walking opportunities had eventuated near the cities – such as the foot-tracks of the Silver Peaks (Dunedin), those of the Port Hills (Christchurch), those of Mount Richmond (Nelson), those of the Rimutaka Range (Wellington), those of Egmont National Park (New Plymouth), those of the Waitakere Ranges and the Hunua Ranges (Auckland), and those of minor scenic or recreation reserves – these local opportunities, broadly speaking, provided access to mountains and native bush or to commercial forests on public land rather than to the pastoral landscape.

In acute contrast to the steady evolutionary progress in building tracks in our remote wildlands and in some local reserves, little progress in establishing legally secure walking tracks across the working countryside – across farmland and through private forestry plantations – would occur until the New Zealand Walkways Act 1975. Some progress would happen from 1975 onwards but would not all lend itself to a researcher's analysis. Between 1975 and 2007, the walkways acts would lead to about thirty-one gazetted walkways, nine of which would be entirely on publicly owned land; well before 2007, some access advocates would be saying that the walkways acts had created too few gazetted walkways over private farmland, too slowly.[188] More encouraging, but difficult to measure nationally, in the second half of this period, track trusts, local authorities and other groups would establish a considerable number of new foot-tracks outside the Walkways Act and of various legal statuses.

Chapter 6

Walkways, Gazetted and Ungazetted, 1975–2003

We need to put the government's access examinations of 2003–8 into a historical perspective. The issue of walking tracks across private land did not first arise in January 2003, when Jim Sutton set up his Land Access Ministerial Reference Group. It reached the newspapers, in the context of walkways, thirty years earlier.

Until the mid-1970s, private farmland in New Zealand possessed few publicly open foot-tracks. We saw in Chapters 4 and 5 that various state bodies, such as the Department of Tourist and Health Resorts, national park boards, the Department of Lands and Survey, and since the mid-1950s the New Zealand Forest Service, had built and promoted walking and tramping tracks on public lands, mainly in national parks and forest parks. Volunteers from tramping clubs had also developed tracks on public lands. The acclimatisation societies had involved themselves in access issues and in occasional track-making. Recreational hunters too had cut some tracks. So had the deer-cullers, possum-baiters, and stoat- and rat-catchers of the Department of Internal Affairs and especially, since 1945, those of its wildlife branch. Some unformed public roads and Queen's Chain reserves possessed tracks. But access to tracks that crossed private land was almost exclusively by permission, which users obtained on each occasion.

FMC's Scenic Trails Project

The walkways idea evolved in the late 1960s. In May 1967, at the annual general meeting of Federated Mountain Clubs, the Alpine Sports Club of Auckland proposed a 1,200-mile national trail. Federated Mountain Clubs appointed a subcommittee 'to investigate the feasibility of a scenic walking route'. The first meeting of the subcommittee resolved five main points:

1. Outside the National Parks, Forest Parks and Regional Reserves, which appeared to contain adequate legal safeguards for usage

by the general public, there was a very real need to look to the future provision of access to areas of scenic or historic values by means of walking tracks, pony trails, causeways and similar recreational outlets.
2. The need could best be served by a national organisation (e.g. Scenic Trails Board) whose object would be to investigate proposed plans submitted by any local authority, club or organisation and where feasible, bring these plans to a working conclusion.
3. The Scenic Trails Board would require legal standing which could be gained by promoting legislation by an Act of Parliament similar perhaps to that provided by the Town and Country Planning Act.
4. In order that the subject can be approached with concrete facts, an assessment of potential must be made throughout the country, preferably by means of a questionnaire to all interested organisations.
5. Although there might be a few people who would wish to walk from Cape Reinga to the Bluff, the description illustrates the scope of thinking required for such a project.[1]

The subcommittee 'saw the main task as the early establishment of adequate legal safeguards for access'.[2] The subcommittee was also concerned about the possibility of inexperienced members of the public attempting sections of the trail that might be exacting tramping routes.

One Long-distance Trail

Initially the emphasis remained on planning one long-distance trail. Each member of the Auckland-based subcommittee took responsibility for an area. They contacted clubs and organisations throughout the country, requesting information about existing trails, details of access and possible routes. Files of information accumulated. Lines on maps, tentatively drawn at first, became more definite.

> Although every effort was made to site the [proposed] trail through Crown Land, National and Forest Parks and Scenic Reserves, it was inevitable that certain sections would need to traverse private land. The subcommittee believed that this could be achieved without sacrificing the interests or the goodwill of private land owners. To this aim every effort would need to be made to obtain their cooperation and some education of trail-users would be necessary to ensure that they did not abuse the generosity of those though whose land the trail would pass.[3]

The Federated Mountain Clubs trail-planning records of 1968–85 occupy twenty-two folders at the Alexander Turnbull Library, many of them being labelled 'Scenic Trails Project'.[4]

In December 1970 representatives of Federated Mountain Clubs presented its subcommittee's report to Duncan MacIntyre, the minister of lands in the Holyoake government of 1966–72, who had been a farm-owner and a provincial Federated Farmers delegate. The comprehensive report covered the finance, administration, legislating and maintenance

of scenic trails. It also covered the history of such trails in the United States and the United Kingdom. It also mapped out a suggested route from North Cape to Bluff. MacIntyre thought that the whole idea had definite merit and was worth pursuing.

The Department of Lands and Survey carried out a pilot study in the Wellington area. This study, apparently, proved the scenic-trails concept to be feasible.[5]

A National Network of Walkways

In October 1971 MacIntyre proposed a national network of walkways. This proposal generated at least one pocket of derisive and self-inflammatory farmer reaction:

> Otago Daily Times, 16 December 1971.
> Walkway Scheme Opposed.
> A network of walkways throughout New Zealand, which would give the public access to private property as well as national parks and reserves is 'not on' as far as farmers in the Auckland province are concerned. At a meeting of the provincial executive of Auckland Federated Farmers yesterday, members were reported to be strongly opposed to the scheme, which had been proposed in October, by the Minister of Lands, the Hon D. MacIntyre. Members of Federated Farmers in the Auckland province had received circulars about the possibility of establishing the network, and many had replied through their executive members opposing the proposal. Concern was expressed by farmers at the possibility of the public bringing firearms and dogs on to their properties. The chairman, Mr W. R. Martin, who is Auckland provincial president, described the proposal as a frivolous move by the Government. There were far more important issues at hand to be dealt with.

This narrow-minded antagonism – albeit with valid concerns about guns and dogs – did not come from nouveau-riche fugitives from the city, nor from wealthy foreign land-buyers, but from farmers steeped in the New Zealand access traditions. Yet not all farmers were preoccupied with more-captivating issues. Over the next two decades many farmers were to support the walkways scheme. On the other hand, some landowners would decline to agree easements. The statistics that could possibly provide an accurate idea of how many landowners rejected requests for access lie buried in the annals of the New Zealand Walkway Commission.

The first two walkways opened on 7 December 1973, anticipating the New Zealand Walkways Act of 1975. The *Otago Daily Times* reported that

> the first northern section of what will eventually become a continuous nationwide network of walking trails was opened yesterday by the Minister of Forests, the Hon C. J. Moyle. More than 300 school children and members of the Federated Mountain Clubs attended the opening of the Mount Auckland walkway, 55 miles north of Auckland, and set off afterwards to tramp the five-mile route.

Mount Auckland Walkway traversed mainly publicly owned land but included a short section over private land, based on a spoken agreement with the landowner.[6] A 1982 guidebook said that 'across Glorit Farm, painted posts mark the route and stiles have been erected at most fences'.[7] Gates were to be left as they were found.

This walkway still exists today (2011), providing a walk through the regenerating podocarps and kauri of Atuanui forest and giving spectacular views over Kaipara Harbour. Like many walkways, although approved by the New Zealand Walkway Commission it was never gazetted and therefore does not have the legal status of walkway under the former New Zealand Walkways Act or the Walking Access Act 2008.[8] Also it remains an isolated fragment. Whether it will ever be linked into a 'nationwide network of walking trails' remains to be seen. Te Araroa (the Long Pathway) passes twelve kilometres to the east, using Moirs Hill Walkway.

In total four pilot walkways, traversing mainly publicly owned land, were opened before the enactment of the walkways legislation. They were Mount Auckland Walkway, Hakarimata Walkway near Ngaruawahia, Colonial Knob Walkway at Porirua, and Pineapple-Flagstaff Walkway near Dunedin.[9]

New Zealand Walkways Act 1975

Commenting in 2006 on New Zealand's leisure statutes, Kay Booth wrote that 'all reforms of the state's involvement in leisure have been initiated by Labour administrations'.[10] The total accuracy of this statement might depend on how you interpret 'initiate'. We have seen that in 1971 Duncan MacIntyre, the minister of lands in a National government, had proposed creating a national network of walkways. He enthusiastically contributed much to the early discussions on walkways, over several years. Perhaps this was a political aberration on his part. Labour gained power in December 1972 and saw MacIntyre's idea through to fruition.

Matiu Rata, the minister of lands and one of the architects of the Treaty of Waitangi Act 1975, introduced the New Zealand Walkways Bill to the House on 11 April 1975. Replying for the opposition, Venn Young welcomed the bill, adding that 'after all, as early as 1972 a previous Minister of Lands, the Hon. Duncan MacIntyre, promoted this very idea'.[11]

Right from the outset of the parliamentary debates on the bill, it was clear that the government's emphasis had shifted from building a national trail to developing local walks. Rata said that 'the commission will concentrate mainly on land close to areas of high population, such as Wellington, Auckland and Christchurch, which would benefit most from this legislation.'[12] Another member spoke of needing walks 'at a less demanding level than that sought by trampers and hunters'.[13]

All three main parliamentary debates on the bill were noticeably equable and free of serious disagreement, thanks to the legislation containing no element of compulsion:

> Hon. M. RATA (Minister of Lands) – […] The whole exercise is dependent upon voluntary and free negotiations with private landowners.
>
> Hon. David Thomson – No compulsion?
>
> Hon. M. RATA – None whatsoever. The success of the proposal will depend on the negotiations of the commission and the committees with private landowners … The Government is particularly grateful to Federated Farmers and the members of the working party for their help in getting the Bill to this stage. Had it not been for the co-operation of Federated Farmers and many others, the Bill would not have been possible.[14]

Looking back now, thirty-five years later, some people might argue that the 1975 act's total reliance upon chatting to landowners contributed, with other factors, to the act's limited success in gaining enduring access over private land. Back then, though, the mood of parliament was optimistic, and both the government and the opposition claimed the credit for the walkways idea.

The bill's third reading took place on 5 September 1975. Matiu Rata had the last word in the debate, in the male-oriented language of those times:

> What we will do is to make certain that the New Zealand citizen and his family will be able to share his own countryside. That is the important feature, and it can be achieved only by the continuing good will and cooperation of private landowners. I hope that this will be forthcoming, and there is nothing to suggest that it will not.[15]

The New Zealand Walkways Act 1975 came into force on 10 September 1975. A month later the Treaty of Waitangi Act passed into law, setting up the Waitangi Tribunal to hear Maori grievances over the treaty and to recommend government action. The latter act would have its critics but would prove to be far more influential and durable than the former.

The New Zealand Walkways Act 1975 recognised the importance of rural walkways for recreational access to the outdoors. The act set up the New Zealand Walkway Commission as the national administering body, serviced by the Department of Lands and Survey. The seven-member Walkway Commission comprised three representatives of government departments, two representatives of local authorities, and two of farming and recreational interests.

The act led to the formation of twelve district walkway committees, which planned, transacted the access for, and arranged the building of the walkways. Each district walkway committee consisted of a similar membership to that of the Walkway Commission, typically including representatives of the Department of Lands and Survey, the New Zealand Forest Service, local government, Federated Farmers and Federated Mountain Clubs. The district committees seem to have contained an adequate representation of farmers, who appear, from the records, to have served with a variety of eagerness and commitment.

The century-old Department of Lands and Survey in 1976 was a vast and scattered organisation employing about 2,500 people.[16] It performed two main functions: the administration of land owned by the crown; and the technical surveying and mapping work for the state. The administration of national parks, reserves and domains – a huge assignment – was just one of the department's seven main land-administration chores.[17] The business of the Walkway Commission occupied just half a page in the department's sixty-eight page 1977 annual report.[18]

There are differing views today on the effectiveness of the internal workings of the Walkway Commission and the district walkway committees. Hugh Barr, who had considerable contact with the Walkway Commission over its fifteen-year life, has said that 'direct recreational user representation never really existed, and the [commission] was dominated by farming interests … the Walkway Commission at the national level was unsuccessful, and was finally abolished and readily forgotten. Some of the local committees which did have local recreational users, were more successful.'[19]

Section 22 of the act set down the process to be followed to establish a walkway over private land. It authorised the Walkway Commission to request the commissioner of crown lands to negotiate and agree the purchase or gift of an easement over, or of a lease of, the land to be used for a walkway. Section 22(4) directed that the purchase price of any easement or lease was to be paid by the Department of Lands and Survey. In some cases these easements or leases would be for a limited period of time and might carry restrictions, such as lambing breaks.

In practice, it seems that paying a landowner who agreed to an easement or lease would seldom happen, but confirmation of this awaits further research. Implementing the aims of the act would rely mainly on successfully rousing the landowner's public-spirited largesse. Traditionally, access over private land had usually been granted, at no charge, on each occasion that it was requested. So there was an argument that creating a public foot-track across private countryside would merely amount to the formalising of traditional access; why should the public purse pay for something that had always been free? Whatever the moral soundness of this argument, and despite its persuasiveness when presented to landowners favourably disposed towards public access, when presented to hesitant landowners it was to prove feeble and unconvincing.

Superimposing Gazetted Walkways onto Unformed Public Roads

In 1977 parliament amended the New Zealand Walkways Act, making a minor change that would receive little publicity but which would survive into the Walking Access Bill 2008 and cause some controversy. The New Zealand Walkways Amendment Act 1977 applied to the superimposing of gazetted walkways onto unformed public roads (a rare happening). It introduced a requirement for the Walkway Commission, in these circumstances, to obtain 'the prior consent of the local authority and every owner of land having a legal frontage' on the unformed public road. Before consenting to the creation of the walkway, a landowner could stipulate conditions favourable to themselves.

Writing in his annual report of 1978, the director-general of lands hoped that the amendment would make landowners more ready to support the overlaying of gazetted walkways onto unformed public roads:

> The work of walkway committees is still being frustrated to some degree by the understandable reluctance of land owners and local authorities to support road-closing action over unformed legal roads on which walkways could be formed. Hopefully, this problem has been alleviated by the amendment to the New Zealand Walkways Act that allows the underlying status of roads to remain but for walkway status to be superimposed to enable control to be exercised over off-road vehicles.[20]

The amendment little affected the growth of walkways; no great expansion of gazetted walkways onto unformed public roads occurred. Perhaps there was little demand for such pairings. In the Bay of Plenty area, the county council opposed the creation of the Kohi Point Walkway, apparently because 'a councillor feared that a walkway over an unformed legal road could jeopardise the use of the road in the future for vehicles'.[21] During the New Zealand Walkways Seminar in May 1979, the delegates agreed that 'the whole concept of creating walkways over unformed legal roads and the Crown's power in respect of resuming these roads required discussion and clarification with Federated Farmers of NZ and [the] NZ Counties Association'.[22] Discussion of this matter with recreational representatives, one is left to assume, was not thought to be important or necessary.

For the Enjoyment of the Areas They Pass Through

There was one basic aspect of the walkways legislation, and of its intention, that sometimes has been forgotten and which contrasts sharply with the approach to improving our walking access that the government followed in 2003–8. The purpose of the 1975 act talked of 'unimpeded foot access to the countryside' in general. Nowhere did the act envisage or prioritise the provision of walkways merely as accessways across private land to reach water margins or to reach publicly owned lands; on the contrary, the act explicitly stated that walkways would be 'for the enjoyment of … the natural and pastoral beauty and historical and cultural qualities *of the areas they pass through*' (my italics).

Although the original idea that had led to the New Zealand Walkways Act 1975 had been a dream of one long-distance track, the emphasis had soon shifted to the need for a national web of tracks, and especially the need for tracks near population centres. In 1973 the estimated population of New Zealand had broken through the three-million mark.[23] About 82 per cent of these people were urban based and 18 per cent were rural based.[24] In August 1975, a few weeks before the commencement of the act, Noel Coad, the director-general of lands and the chairman of the National Parks Authority wrote: 'The importance of recreation, and particularly outdoor recreation, increases with urbanisation and affluence, and the emphasis must be on providing recreational opportunities in or near cities or towns.'[25]

Within a year of the birth of the Walkway Commission, Brian Hunt, FMC's representative on the commission, stated publicly:

> Initially the concept was for a series of connecting walkways from Cape Reinga to Bluff. However, it soon became apparent that it was more important to concentrate on shorter walkways adjacent to large centres of population with the idea that these shorter walks would ultimately become part of the overall trail network.[26]

This change in direction was a notable and apparently widely favoured development in the early history of walkways. Behind the scenes, though, there may have been some uncertainty or disagreement over the priorities of the new direction. Contradictory ideas emerged on the desirability of gaining entry to the farmed countryside for its own sake. In April 1977 the Walkway Commission produced a pamphlet outlining its functions and plans. A section titled 'Negotiation of Access Rights' began:

> Wherever possible, walkways will be routed to traverse public land such as public reserve, national park, and State forest land. However, there will be many occasions where it will be necessary to cross privately owned land to give continuity on selected routes, and it is here where the success of the whole concept relies heavily on the mutual co-operation of landowners and users.[27]

This official statement implied that access across private land was important merely to provide ways to reach public land. The statement completely ignored, by omission, the need for linear access to farmland to enjoy that landscape itself. In doing so, it became one half of a mixed message. The New Zealand Walkways Act 1975, as we saw earlier, did not say that walkways should keep mostly to public land; nor did it say that walkways should cross private land only when such routeing was essential to reach neighbouring public land.

The reluctance or inability to recognise that people needed walking tracks across farms to enjoy the working countryside would become common in the thinking of many outdoor New Zealanders. The sentiment will reappear in several quotations spread through this book. We will also meet the matter again under 'National Blind-spot' in Chapter 26.

A 1979 article, published in North America but written by Walkway Commission staff, more faithfully reflected the purpose of the act and neatly encapsulated how the walkways idea had sprouted and then evolved:

> Inevitably, practical difficulties and the lessons of experience have brought about some rethinking. The original concept of providing a walking track from North Cape to Bluff has not been lost sight of. But the first priority is now the development of walkways close to urban centers, where they can be most used. This puts into most immediate effect the prime aim of the legislation, which is to provide walking access to the countryside for as many people as possible.

> Unlike the older established European countries, New Zealand has no traditional rights-of-way established by the custom of centuries across farm and forest land. The first settlers brought with them ideas of exclusive land ownership which have persisted down the years. Public pathways across farm fields had little place in a system whose symbol was the NO TRESPASSING sign. So an Act of Parliament, providing safeguards for landowners and a promise of governmental control, was in many ways a necessity for opening up the countryside.[28]

For over seventy years, before the 1970s, New Zealanders had enjoyed *area* access to their national parks and other crown lands. The walkway developments of the 1970s had now emphasised the need to tackle and correct the recognised deficiency: *linear* access across the working countryside.

Rural-urban Relationships

The 1979 article (quoted above) also contained a revealing passage on rural-urban relations in the 1970s. Before we read it, we should leap forward briefly to bear in mind 2003–5, a time that saw impassioned farmer opposition to the government's plans for walking access, constant denigration of the activity of walking in the countryside, acrimonious debate between agricultural and recreational representatives, and at one point a Fish and Game New Zealand comment that 'the relationship between town and country has been steadily eroded over the years and this [government walking-access] strategy, we believe, will be the platform for improved relations between land owners and the public.'[29]

Twenty-five years earlier, the staff of the New Zealand Walkway Commission had expressed a similar optimism:

> The Commission has seen one of its tasks as being to develop understanding between farmers and town dwellers. Although New Zealand is viewed as a largely agricultural country, in fact only 17 percent of the people are rural dwellers, and there is a noticeable population drift to the cities and towns. At the same time the rate of population growth is much higher in the urban areas. Thus New Zealand is faced with a population largely divorced from the farming sector on which its livelihood is based.
>
> The walkway system is seen as one way of bridging the gap which is now developing between farmers and 'townies' and promoting a healthy respect for farmers and their problems.
>
> As most walkways will cross farm land the goodwill of farmers is crucial to the success of the programme. There has been some initial reluctance from private landowners to embrace the walkway system, but that is being gradually overcome.
>
> The Department of Lands and Survey, which services the commission, is also the country's largest single farmer, and as such, is leading the way by opening up its own farms. Its own farm managers, though hesitant about the scheme at the beginning, have found their fears groundless. In some cases, where trespassers were a problem

> in the past, walkways have been a boon to farm management, by encouraging people to keep to the defined path.[30]

Another mention of rural-urban relations appeared in the 1984 annual report of the Southland Acclimatisation Society. In a minor item titled 'Access to Hunting', the game and wildlife committee wrote:

> As there are relatively few public hunting areas in Southland the majority of hunting takes place on privately controlled land. The Society is anxious to encourage a better relationship between land occupiers and licence holders, but it is largely up to the hunter himself. Do you have to restrict your visits to the farm [to] opening weekend only[?] A summer visit to help with the hay making could help build better relationships, and promote mutual respect.[31]

This wasn't a bad idea. If there was a miracle cure for rural-urban relationships, the New Zealand Walkways Act 1975 was not to be it. Cynics could argue that the efforts of the Walkway Commission merely revealed the reluctance of private landowners to grant permanent access. Among recreators, the knowledge of this resistance to change may have widened the gap between farmers and townsfolk.

New Zealand Walkways Seminar, 1979

In May 1979 the New Zealand Walkways Seminar was held at Lincoln College, bringing together members of the Walkway Commission, representatives from the district walkway committees, officers from the Department of Lands and Survey, and representatives from various other bodies. The commission had been established for three years. It had opened sixteen walkways. John Kneebone, a past president of Federated Farmers, delivered the keynote address. Earlier I showed that in 1971 a few members of Federated Farmers of New Zealand had ridiculed the idea of a network of walkways. But Kneebone's constructive approach to access was warm-hearted and generous:

> I am pleased at the way the farming community in general has accepted the concept of walkways. At a regional level, well known and respected people have become involved and have allayed farmers fears that they were about to be overrun by hordes of people …
>
> The concept of walkways is attractive to people. The mention of tramping tends to put a majority of people off, but anyone who is physically able has no qualms about walking. Walking is physically within the scope of ordinary people.[32]

On the subject of improved information, Kneebone prophetically pinpointed some basic needs:

> With a walkway the most important thing is access. We must find out where people can go and it concerns me that there is no single source where this information is available. A central inventory of tracks and walkways is essential … The dissemination of information

> to people is also very important. My view is that the best method is the visual one of using a map, preferably showing the status of the land as well as the tracking systems.[33]

Twenty-eight years later, the Walking Access Consultation Panel would echo Kneebone's comments on information, recommending that the proposed access agency 'be responsible for facilitating and coordinating the provision of information about access. Maps should be available both through the internet and as printed copies, at a reasonable cost.'[34]

Staffing and Costs

The financing of the building, administration and maintenance of walkways does not seem to have been a big issue at the seminar. The seminar report included a copy of the commission's draft policy statement, which had a section on finance. Money for the administration of walkways came from an annual appropriation from the government. The draft policy required district walkway committees to 'submit information to the Commission each year to enable it to justify an adequate allocation of Government funds for the development, maintenance, protection and administration of walkways'.[35] One of the workshop reports described the commission's role, a part of which was 'to ensure that the walkway concept was fulfilling the public need while at the same time not proceeding at a rate which may be beyond the resources of the Commission to maintain'.[36] One or two delegates mentioned a shortage of qualified staff.

The staff of the Walkway Commission thought that its running costs for the first four years had been reasonable. They wrote that 'so far [up to 1979] the system had not been expensive to set up. The first year cost $25,000, the second – $50,000, the third – $125,000, and this year the estimated cost is about $200,000.'[37]

Two years later, in 1981, the annual report of the Department of Lands and Survey indicated that funding had become a matter of concern:

> The rapid increase in the number of walkways continues to place strain on the commission's financial resources. [Sixty walkways, totalling 514 kilometres, had been opened since 1976.] The availability of labour under special employment schemes has once again proved invaluable in easing the financial burden. A major success of the walkway concept can be attributed to … this labour supply. The commission is concerned [about] its ability to provide resources to maintain the existing number of walkways when this labour supply is no longer available and has a policy of seeking [the] co-operation of interested organisations in sharing future responsibility for maintenance.[38]

AA Book of New Zealand Walkways, 1982

In 1982 Lansdowne Press published a large-format illustrated guide to New Zealand's walkways. The *AA Book of New Zealand Walkways* was compiled by the Automobile Association (Auckland) in cooperation with the New Zealand Walkway Commission. It described the then sixty-four walkways that the commission had 'officially opened'. (At the time of publication, only about nine of these had been gazetted.)

The eye-catching book was 'intended as a planner and a guide to New Zealand's Walkway system, to encourage people of all ages and shapes to "go for a walk" '. It advised readers that they would not need to take the book with them, as 'pamphlets on each individual Walkway [could] be obtained from the District Offices of the Department of Lands and Survey'.[39]

Forty-eight of the sixty-four walkways were walks of ten kilometres or less, typically taking three or four hours. The shortest, at 2.2 kilometres, was Te Mata Peak Walkway near Havelock North, a forty-five-minute walk along the crest of a dramatic limestone escarpment. St James Walkway, at sixty-six kilometres and taking five days, was the longest. Some of the walkways described in the book were clusters of two or three separate walkways that people could combine. So, for example, the Cape Reinga entry detailed several sections of walkway whose combined length was listed as 132 kilometres.

Each walkway received a classification of Walk or Track or Route (or a combination of two of these), indicating varying degrees of physical difficulty and susceptibility to extremes of weather. Forty of the sixty-four were classified as Walk. Only five were classified as Route (Mangamuka Gorge Walkway, Matemateaonga Walkway, the coastal part of Makara Walkway, some parts of St James Walkway, and Silverpeaks Walkway).

The presence of some serious tramping routes within the stock of walkways officially recognised by the Walkway Commission was debatable. (This issue could crop up again, under the New Zealand Walking Access Commission.) What the commission called the Silverpeaks Walkway, for example, included Rocky Ridge, the high and exposed backbone of Dunedin's Silver Peaks: a demanding tramp, rising to 767 metres, mainly unwaymarked, requiring competent navigation (especially when attempted in poor visibility), and utterly open to any wind, rain or snow. The term 'walkway' ill-suited this unmaintained route. Yet the *AA Book of New Zealand Walkways*, sticking to the official name, called it the Silverpeaks Walkway.[40] After the formal opening of this route during a national walk week in March 1983, Otago district walkway committee papers continued to refer to it as the Silverpeaks Walkway.[41] A couple of months later, three teenagers lost their lives when caught in a blizzard near The Gap. A route leaflet produced in 1993 by the Department of Conservation adopted the more appropriate name the Silverpeaks Route.[42] Nowadays, many Dunedin trampers are probably unaware that this route was ever called, bizarrely, a walkway.

Some controversy over the Silver Peaks tracks reached the newspapers in 2009. Five searches for lost trampers in five months led to calls for the tracks and routes to be better marked. But traditionally the consensus among Dunedin trampers had been against the waymarking of tracks in the Silver Peaks, except for some marked tracks to Jubilee Hut and Yellow Hut. In September 2009 David Barnes of the Otago Tramping and Mountaineering Club argued that the unwaymarked tracks of the Silver Peaks – including and especially Rocky Ridge – should remain unmarked. The Silver Peaks Scenic Reserve deserved, he said, 'to keep its place at the challenging end of our range of walking opportunities'.[43]

Finally, before we leave the etymology of the word 'walkway', a point worth noting is that the word carried a capital W throughout the *AA Book of New Zealand Walkways*, in what seems to have been a futile attempt to restrict the use of this word to walking tracks approved by the Walkway Commission.

Written during the initial optimistic and quite rapid sprouting of walkways, this impressive book portrayed an upbeat, heady image of the developing so-called national walkway system. Walkways were still on an upwards trajectory. The book remains an attractive and inspiring read. Of the sixty-four early walkways that it covered, about fifty-five survived to make it into DOC's 2003 book, *New Zealand's Walkways*. All or most of these are probably still open today, although when I checked in 2009 only about sixteen of them had been gazetted.

AA Guide to Walkways, 1987

In 1987 Lansdowne Press published a revised edition of its guide, splitting it into two volumes of a portable, pocket-sized format. They contained a total of 116 commission-approved walkways. The blurb on their inside covers included the comment that 'the tremendous growth in the walkway system has meant that the number of walkways has almost doubled since the original edition of this book was published in 1982'.

Interestingly, and of more significance than meets the eye, the editors seem to have worked through the whole of the original text, replacing occurrences of the capitalised 'Walkway' (except in track titles) with 'walkway' or 'walk' or 'track' or 'trail'.

A note in the front matter of these two books was impartial but now reads like an omen: 'After 1 April 1987, [the walkway] pamphlets will be available from the regional and district offices of the Department of Conservation, which is taking over the walkway function of the Department of Lands and Survey'.

Mixed Fortunes in the Negotiating of Walkways, 1975–90

Consulting landowners and negotiating with them on access, rather than imposing it, was central to the New Zealand Walkways Act 1975. Negotiation was a civil way of doing things and a political necessity. The most crucial aspects of the work of the district committees were twofold. Firstly, the committee members had to try to persuade the landowners that walkways were desirable recreational amenities for society in general. Secondly, they had to try to coax the landowners to agree to formalise the access; only by proper gazettal of the walkways would the landowners gain the protection of the act, such as compensation for damage or losses.

John Kneebone, at the New Zealand Walkways Seminar of 1979, forecast that obtaining access across peri-urban land would take a long time:

> I now would like to comment on access though private land. Rural land is bought for a variety of reasons. A considerable portion of land on the outskirts of urban centres is bought by city people for rural retreats, and these people generally do not welcome others onto

> their properties. Their main aim in buying this land is to get away from people. It is also very valuable land. It is generally owned by wealthy people and as a rule, wealthy people are not generous people. Getting access onto some of that land will be a slow process but it is essential that this aspect continues to be pursued.[44]

The records of the 1979 seminar refer frequently to negotiating. At this seminar, delegates from each of the twelve district walkway committees presented district reports.[45] Nine of the twelve reports mentioned negotiating with landowners. These references to negotiating reflect mixed fortunes. I have extracted the following quotations from within numbered lists and I reproduce them here in the order they occur:

> Canterbury – Mr B K Sly
> A problem has also occurred with landowners in the Canterbury district particularly on Banks Peninsula in that landowners were quite happy to accept the unofficial use of their land by the public for walking but were unhappy when it came to the preparation and execution of a legal agreement which was binding over the title of the land. As a result, although the Port Hills have been a traditional playground for the public of the Christchurch area there has unfortunately been little progress in securing land in this area for walkways. However, it has been found that … making initial contact with landowners at an early stage of development has increased the chances of permission for the walkway being more forthcoming. [The Port Hills walking tracks subsequently developed satisfactorily, although with no easements over private land. See Chapter 7.]
>
> Gisborne – Mr A Webster
> The Committee has experienced landowner problems particularly at Kaiki Beach. These problems have been overcome by a personal approach from the walkway administration. In the case of Otoko, a former railway line, landowners had been brought together for a one-day discussion.
>
> Marlborough – Mr D Dean
> The landowners in this district had been very co-operative with walkway development, because people were already crossing their properties regardless of whether or not they were walkways.
>
> The Committee had experienced a problem of obtaining qualified and experienced personnel. This was in two fields: one, the supervision of work staff, both special employment and voluntary, and two, in negotiating with landowners. The Committee considered that negotiations must be carried out by a senior officer of the Department of Lands and Survey.
>
> Nelson – Dr F E Gallas
> Negotiations with landowners had been no problem in this district.
>
> North Auckland – Mr A W Conway

> Problems with landowners in the district had been minimal because of prior planning and a personal approach to landowners prior to the walkway development. However, some problems had been experienced due to the changes in ownership of land.
>
> Otago – Mr J R Gleave
> Farmers in the district were happy to give informal rights for the public to pass over their properties but they had not been happy to have these rights formalised, as in the case of the Dunedin Peninsula Trust.
>
> Wellington – Mrs H Capper
> The Committee considered there was a need to provide a brochure setting out the rights of landowners regarding walkways, and the protection that landowners are afforded in terms of the Walkways Act.
>
> Westland – Mrs M Bryant
> Landowners in the Westland district had been very co-operative with walkway development.

The district reports were followed by a discussion, a summary of which appears in the seminar records. The summary confirmed that one of the main issues to come out of the district reports was the varied results from the negotiating of access:

> Regarding the obtaining of landowners' approval to walkways across their properties, Mr Edmonds (Lands and Survey, Planner) advised that it was apparent that there had been mixed success in obtaining this approval. He asked whether it was the technique used, or the people concerned.
>
> Mr Conway (North Auckland) advised that the liaison in his area had been good. The procedure which had been adopted was:
> (1) Planning of the proposed walkway.
> (2) Reserves Ranger to look at the feasibility of the walkway.
> (3) The Committee then considered the proposal, and if private land was involved, the Chairman and a Committee member went personally to see the owner. At this stage it had been early enough to re-route the walkway if difficulties arose.[46]

Ten years later, in 1989, came the First New Zealand Walkways Conference (this name ignored the 1979 seminar). Again the written records that touch on landowner attitudes reveal contrasting impressions:

> It will continue to be a delicate selling job, requiring considerable enthusiasm, to persuade private landowners to consent to Walkways.[47]

> D Crawford [FMC president] said that many questions [about the walkways system] remained unanswered … Access across private land was of major concern.[48]

> Landowners' Views
> Richard Drake, [of] Federated Farmers and North Auckland Walkways Committee, introduced himself as a farmer from Kirikopuni … He said from the start there had been nothing but enthusiasm towards the concept of Walkways, allowing access to the countryside with the co-operation of Landowners. There had been no problems with landowners on Walkways – he thought there might have been one or two isolated instances.[49]

At the same conference, Hugh Barr reviewed the achievements of the New Zealand Walkway Commission, which had been negotiating access for fourteen years:

> Walkways 1975–89
> Up to mid-February 1989 some 132 Walks covering more than 1350 km have been established … [A table shows that 72 of these walkways were on the North Island, covering an estimated 733 km.] An estimated 202 km out of a 733 km total is across private land. More than half of all North Island Walkways appear to cross private land. [No equivalent statistics were available for the South Island.] … However, there are still many potential walks partly on private land, that should or could be included.[50]

Although these figures provided a concrete record of progress, they did not show the flaws in that concrete: many of the 132 walkways had not been gazetted and some of them were based on informal agreements. In tolerating ungazetted walkways, the well-meaning members of the Walkway Commission built into the official thinking a regrettable she'll-be-rightness that would persist until the Walking Access Act 2008.

At the end of this conference, Tom Watson of the Walkway Commission 'concluded by saying that he thought the North Cape to Bluff concept would not happen for about 50 years, but it was a goal to achieve'.[51]

The Necessity for and Permanence of Easements

We will step back now to 1975. For each walkway over private land, the 1975 act required the district walkway committees to consult and negotiate with landowners to obtain the necessary easements or leases.

Easements are specified rights or restrictions placed on titles. They are typically used to grant access over land; the landholder is said to be burdened with the easement. In New Zealand, right-of-way easements are a common means of providing limited access across private land.[52] The transfer document registering the easement on the title defines the level of access, which may be limited to neighbours, by time, or by means of travel. A landowner cannot obstruct a right of way. Users must normally stay on the right of way to avoid trespassing, but they are entitled to deviate around an obstruction.[53]

Although easements could in some circumstances provide quite robust legal rights of way, two aspects of easements posed problems.

Firstly, many landowners were reluctant to agree to any easement whatsoever, even one with farmer-friendly restrictions or liberal termination clauses. Secondly, when the landowners did sign easements, some of those easements may have been, and may remain, legally insecure or deliberately impermanent. Lawyers can tailor easements to fit individual circumstances. This characteristic of easements can be a strength or a weakness. An easement drawn up to end at a stated time or in certain circumstances may gain the approval of the landowner but may not meet the long-term requirements of walkers.

The written proceedings of the 1979 New Zealand Walkways Seminar mention landowners' reservations about easements. During the discussion that followed the district walkway reports, Dr Heather of the Walkway Commission 'asked whether informal access could be sought. This would mean the sign posting, etc, of a walkway, but there would be no legal protection for the landowner.' Mr Hunt of the Walkway Commission 'considered that problems could arise with farmers discussing easements with solicitors'. Mr Watson of the Taranaki district walkway committee 'asked whether the Commission would allow money to be spent on a path if approval to an easement could not be obtained'.[54]

The seminar delegates again discussed landowners' misgivings about easements during a workshop on the legal requirements of the Walkways Act. The delegates asked the Walkway Commission to clarify whether informal access agreements would fit within the scope of the act:

> The apprehension of some landowners in signing an agreement declaring part of their properties as walkways was raised. The [New Zealand Walkway] Commission was requested to consider the practicalities in terms of the Act of negotiating informal access rights over private property.[55]

So, already, just a few years after the birth of walkways, people were contemplating half-baked arrangements, or working out pragmatic solutions, depending on how you view it.

We wonder now, Did anyone say, 'Hold on! Why did we need the Walkways Act if we're going to ignore it?' If anyone did raise doubts, it seems that they were outvoted. Informal arrangements were to quickly become part of the Walkway Commission's realistic but short-sighted flexibility. In accepting or tolerating this informality, the commission was not administering the New Zealand Walkways Act 1975 in the way that parliament had intended.

Just one year after the Walkways Seminar, the Department of Lands and Survey produced a pamphlet, *New Zealand Walkways Act: A Guide to Landowners*. The pamphlet's advice was presented in a question-and-answer format, and it included the following:

> 3. What are the legal procedures involved?
> [The opening paragraph briefly explains the procedures laid down in the New Zealand Walkways Act.] … In some instances you may

> not wish to enter into legal agreements by way of an easement or a lease, although you may have no objections to a walkway being formed across your property. This being the case, you should discuss the matter with your local district walkway committee chairman.
>
> 4. How permanent is the walkway?
> The length of time a walkway may exist is something to be negotiated with you – it can be permanent, or limited for a definite period of time, or it may cease on sale of your property.[56]

This pragmatism was remarkably clever, in my view, and it may have paved the way for something that no European country can boast, a brainwave from New Zealand: a national walkway system of which some parts are legally programmed to gradually vanish.

Some walkways may cease to exist because they are based only on informal agreements. We know, for example, that in 2007 twenty-four of the twenty-five Canterbury walkways approved by the Department of Conservation were based on casual, potentially wobbly arrangements; only one was founded on an easement. (See Chapter 32.)

Other walkways may disappear because their easements are legally vulnerable or are designed to end at a stated time or in certain circumstances. Obtaining the details of these easements is difficult (in 2011) without access to Land*online*. Such access is usually only available to land professionals, such as lawyers, surveyors and estate agents, who pay for each item of cadastral information they request. So the general public, and even serious researchers, are shut out of this important aspect of the continuing walking-access debate.

Deposited Plan 18914

A copy of one walkway easement, negotiated in the 1980s by the Otago district walkway committee, has come into my possession. Grahams Bush Scenic Reserve lies on a hillside about ten kilometres northeast of Dunedin. Slightly further northeast lies Mount Pleasant Reserve. The land separating these two reserves is private. The easement to which I refer provides a short walkway across this private land, linking the reserves. Until its rediscovery in 2007, this public right of way lay forgotten and disused, possibly for over twenty years. The LINZ 1:50,000 *Dunedin* maps of 1997 and 2002 did not mark it. Neither did any guidebooks mention it.

The title of the three-page easement document is 'Memorandum of Transfer by Way of Grant of Easement in Gross for the Purposes of the New Zealand Walkways Act 1975'. The pages carry the signatures of the joint landowners and the assistant commissioner of crown lands for the land district of Otago, dated 20 October 1986.

I wouldn't give this obscure legal document full marks for plain English – the first sentence has about four hundred words – yet a careful reader can decipher it. Although the document does not use the phrase 'in perpetuity', one passage does appear to establish a permanent right of pedestrian access to the foot-track:

> the Grantors do hereby jointly and severally transfer and grant unto the Crown a full free uninterrupted and unrestricted right liberty

> and privilege from time to time and at all times by day and by night for any member of the public at their will and pleasure to go pass and repass on foot over and along the right of way (hereinafter called 'the walkway') shown and marked 'B' and 'C' on the copy of Deposited Plan 18914 attached hereto (hereinafter called 'the said plan') to the end and intent that the walkway shall be forever subject to the said rights as and in the nature of an easement in gross for the purposes of the New Zealand Walkways Act 1975 …

If the above sounds satisfactory to you – it did to me, too, until I read on. Firstly, the phrase 'uninterrupted and unrestricted' does not mean exactly what it says. Other provisions of the agreement provide for assorted interruptions, such as a six-week closure for lambing.

Secondly, the declaration 'shall be forever subject to the said rights' does not necessarily mean for ever. The document makes the crown liable for repairing any damage caused by visitors. It also makes the crown responsible for keeping the walkway 'clean tidy and free from all debris rubbish noxious plants dried vegetation and other unsightly offensive or inflammable matter'. Should the crown not attend to these duties, all the rights granted to the crown could end:

> if the Crown shall make default in performance or observance of any of the covenants conditions or provisos herein expressed or implied and on the part of the Crown to be observed or performed and shall fail to remedy in such reasonable period as may be specified in any written notice given to the Commissioner of Crown Lands for the land district of Otago by the Grantors then the Grantors may by notice in writing to the said Commissioner of Crown Lands determine these presents and thereupon all the rights of the Crown shall absolutely cease and determine but without prejudice to the right of the Grantors to damages for any antecedent breach of the said covenants conditions or provisos.

As the crown had apparently not paid heed to its track-maintenance duties for many years, in 2007 this walkway appeared to be living on borrowed time. One other aspect: theoretically, the terms of the easement did not seem to sanction maintenance by voluntary track-clearing groups.

Throughout the 1990s, and up to the present day, Public Access New Zealand would be avowedly sceptical about the reliability of easements as mechanisms for providing walking access to the New Zealand countryside. We will look at the PANZ strictures on easements in Chapter 7.

At the time of writing, there still seem to be justified doubts about the legal security of some of the easements underlying some of our older walkways. With all easements, the devil is in the detail. In June 2010 the New Zealand Walking Access Commission Commission agreed on a format for the easements that would underlie any new gazetted walkways.[57]

Differing Views on the Necessity for Gazettal

For each walkway, whether over public land or private land, the New Zealand Walkways Act 1975 required the minister of lands to place a notice in the *New Zealand Gazette* declaring the establishment of the walkway. Without that notice, the walkway would not meet the requirements of the act. (Although, if it were a walking track over publicly owned land, it might receive protection from other acts or policies.)

Gazettal of Walkways over Private Land

During the 1979 New Zealand Walkways Seminar, several delegates disagreed with each other on the need for gazettal before the opening of a walkway over private land. In the discussion that followed the district walkway committee reports, Mr Phillips of the Walkway Commission 'commented that there was a danger in opening a walkway prior to gazettal because the provisions of the Act, especially with regard to compensation, were not applicable'.[58] But Mr Mitchell of the Marlborough district walkway committee 'did not see a need to wait until gazettal. He felt farmers saw the signs and general authority as being sufficient'. Mr Scherer of the South Auckland district walkway committee favoured waiting for gazettal.

Gazettal of Walkways over Public Land

The arguments for and against the gazettal of walkways over public land differed from the ones surrounding gazettal and private land. Section 20 of the New Zealand Walkways Act 1975 seemed to demand the gazettal of all walkways over public land:

> 20. Walkways over public land—
> (1) If the [New Zealand Walkway] Commission, after consultation with the administering authority of any public land, considers that any part of the land should be made available for use by the public as a walkway for recreational purposes, it may recommend to the Minister [of Lands] that that part be declared a walkway.
> (2) On receiving a recommendation under subsection (1) of this section, the Minister may, with the written consent of the Minister charged with the administration of the land to which the recommendation relates, by notice in the *Gazette* declare that land to be a walkway, and by the same or a subsequent notice shall assign a distinctive name to the walkway.

In practice, however, walkways over public land were frequently opened and named but were left ungazetted, like illegitimate children. The workshop reports of the 1979 New Zealand Walkways Seminar questioned the sense of gazetting such walkways:

> 4. Gazettal of a Walkway
> – where a walkway passes through public land i.e. National Parks, Reserves, local body land, etc, is gazettal necessary, or should the Minister only need to declare these areas for walkways …
> – our concern was [that] the seemingly unnecessary administration requirements caused delays and expense that seem unreasonable.[59]

After discussing this matter, the delegates agreed to seek an amendment to the Walkways Act to enable the minister of lands to declare ungazetted walkways over public land. As far as I am aware, no such amendment was passed. Instead, as we shall see in Chapter 9, DOC's New Zealand Walkways Policy of 1995 would formally consolidate the practice of not gazetting walkways that lay wholly on crown-owned protected natural areas.

Doubts about the Department of Conservation's Likely Commitment to Walkways, 1989

In 1987, when the Department of Lands and Survey was disestablished, the New Zealand Walkway Commission remained precariously in existence but was absorbed into the Department of Conservation. Writing in the *FMC Bulletin* in June 1988, Hugh Barr reported the beginning of what would turn into a twenty-one year institutional failure surrounding walkways:

> Since DOC took over responsibility for Walkways in April 1987, there has been a definite slowdown. The New Zealand Walkways [*sic*] Commission has met only three times, instead of its normal six meetings a year … Walkways are one of DOC's lowest priorities.[60]

Bear in mind, here, the wider picture. Radical changes in economic policies were affecting the lives of many New Zealanders. On 5 February 1988, for instance, New Zealand Post closed 432 post offices. The minister for state-owned enterprises said that no-one would be disadvantaged.[61]

In May 1989 Peter Clough commented on how the change of April 1987 had reduced the money available to be spent on walkways while at the same time other changes had ended the supply of work-programme labour:

> Walkways funding, which was previously allocated to the [Walkway] Commission, was absorbed into DOC's general budget, where it could be diverted to other purposes at the discretion of the department's regional managers.
>
> With a stable budget allocation over the years, the Commission had always faced a situation where the more tracks it created and the more it spent on repairs and maintenance, the less capital it had for development of new tracks. This constraint had been lessened by the use of work programmes such as the STEP and PEP schemes, but these were also discontinued about the same time as the commission lost its funding.[62]

It looked likely that the government would scrap the New Zealand Walkway Commission and would transfer the responsibility for walkways to the New Zealand Conservation Authority (NZCA). From being the responsibility of a customised, single-purpose organisation, the promotion and management of walkways would become merely one responsibility of many for the NZCA. 'What representation would private landowners and casual walkway users have in the new quangos, whose prime concern

would be conservation of national parks and other Crown land?'[63] Doubts about DOC's likely dedication to walkways precipitated the First New Zealand Walkways Conference of February 1989:

> What has sparked this First Conference on Walkways has been concern about DOC's commitment to Walkways … New Conservation Minister Philip Woollaston is said to favour adding Walkways to the myriad of responsibilities of the yet-to-be constituted Conservation Authority and Regional Conservation Boards. FMC [Federated Mountain Clubs] and many others fear this will be the death knell of Walkways, or at least of effective user group involvement.[64]

Reading the conference report leaves you with an impression that feelings must have been running fairly high:

> User Views
> [ECO, an environmental group, felt that] to disband the Walkway Commission and Committees and not replace them with equivalent Bodies would be to ignore the knowledge, skills and natural enthusiasm of volunteers. DOC and the Walkways System would both suffer and ultimately the Nation would be the loser.[65]

But the Labour government had already made up its mind to make the changes that had been talked about. The instrument to do this, the New Zealand Walkways Bill, began as a part of the complex Conservation Law Reform Bill. During the committee stage of the Conservation Law Reform Bill, the New Zealand Walkways Bill became a separate bill because it had the form of a complete act of parliament, replacing rather than amending the existing walkways legislation.

At their third readings on 5 April 1990, the Conservation Law Reform Bill and the New Zealand Walkways Bill were dealt with together. Much of the debate that day centred on the complicated legislation of the former, and especially on its controversial provisions relating to marginal strips and on the new fish-and-game councils. There was relatively little discussion about the New Zealand Walkways Bill. Philip Woollaston expressed confidence in the future of walkways: 'I commend the Walkway Commission and the district walkway committees for the excellent work they have done over the years to build up the walkways. The conservation boards will look after the walkways very well.'[66]

The only significant note of dissent came from the Taranaki member Venn Young, worried mainly about landowners' representation:

> I take issue with the Minister's claim that the administration of walkways is still intact. In the Bill the Conservation Authority is expected to take over the responsibilities of the New Zealand Walkway Commission. The special structure of the commission provided special seats on that commission – a voice for rural landowners and Federated Farmers, as an integral part of any plans to extend walkways. The commission has gone. There is no special place for those seats on the Conservation Authority. If walkways on private

> and public land are to be extended – as we know they must be – it is very important that private landowners are properly represented.[67]

Section 30 of the New Zealand Walkways Act 1990 abolished the New Zealand Walkway Commission and every district walkway committee. The director-general of conservation and the conservation boards became responsible for implementing the walkways legislation. The new act, however, retained the negotiatory emphasis of the 1975 act. From 1990 onwards the initial enthusiasm and energy for the negotiating on and establishing of new walkways would need to come from the members of the conservation boards and the officers of the Department of Conservation.

A gloomy note at the end of the 1989 walkways conference report now reads prophetically:

> Post-script – Walkways One Year On
> It is the view of Federated Mountain Clubs that the new legislation [the Conservation Law Reform Bill] does not provide a clear link between the new conservation quango structure and the Department of Conservation's day-to-day management … of Walkways.[68]

It was obvious to informed people that walkways were heading for the doldrums. Sceptics suspected that, given a choice between creating a new walkway on private land and a track on crown land, DOC would inherently favour the latter regardless of the expected level of use, because establishing walkways across private land involved the extra cost of surveying and gazettal, which in some cases could exceed the cost of construction materials.[69]

At the time of the abolition of the New Zealand Walkway Commission, its annual expenditure was over $800,000. The commission had approved '149 walkways – about half of them on the Department of Conservation estate, with the other half being on lands of other tenure, principally private land'.[70] From 1990 onwards, equivalent statistics would be elusive, being just fragments of DOC's wide-ranging financial statements and reports.

Thirteen years later, the 2003 Acland report was to suggest that the Department of Conservation's implementation of the New Zealand Walkways Act 1990 had been poor and that the act's administration needed a thorough appraisal.

1980s: Rogernomics, the Personal Computer and the Internet

Earlier we mentioned the wider 1980s picture: the sweeping neoliberal reforms started by Roger Douglas, the minister of finance, in 1984, and continued by the Labour government until November 1990. The government removed or reduced agricultural subsidies, dismantled trade barriers, deregulated the financial market, and privatised many publicly owned assets. In five years between 1987 and 1992, New Zealand lost about 76,000 jobs in the manufacturing sector.[71] We can look back and recognise the 1980s and early 90s as a time of enormous change within

New Zealand. 'The late twentieth century', wrote Michael King, 'was the period in which New Zealanders dismantled many of the traditional certainties which had been their foundation for a coherent and national view of the world'.[72]

Another momentous change, of a completely different sort and with far-reaching global repercussions, started in the US in the early 1980s. In 1981 IBM Corporation introduced the IBM Personal Computer. The IBM PC was only slightly faster than rival machines, but it had about ten times their memory capacity.[73] By the late 1980s, personal computers were entering the homes of middle-income earners in New Zealand. Then, in the early 1990s, the internet became visible to the general public.[74] The information revolution had begun. Computers and the internet would dramatically transform many aspects of our lives, including the availability of information about our foot-tracks.

Repercussions of the New Zealand Walkways Act 1990

The New Zealand Walkways Act 1990 retained the general purpose of the 1975 act. Note the words I have emphasised:

> 3. General purpose of Act … The provisions of this Act shall have the aim of establishing walking tracks over public and *private land* so that the people of New Zealand shall have safe, unimpeded foot access to the countryside for the benefit of physical recreation as well as for the enjoyment of the outdoor environment and the natural and *pastoral beauty* and *historical and cultural qualities* of the areas they pass through.

In 1995 the Department of Conservation's New Zealand Walkways Policy emphasised the need for walking tracks over private land. In doing so it implicitly acknowledged the pastoral-beauty aspect and therefore the right of all New Zealanders to appreciate the farmed landscape as well as the wilderness:

> The primary purpose of establishing walkways is to facilitate public access across land for walking … As many walking opportunities already exist on land administered by the Department and on other public lands, priority will be given to establishing new walkways over private land.[75]

Section 8.2 of the Walkways Policy firstly listed the factors to be considered in establishing or extending a walkway and then it stated an order of precedence:

> … the following order of priorities in the development of walkways will apply:
> 1. The establishment of walkways readily accessible from or within urban population centres.
> 2. The establishment of walkways over private land with or providing access to significant recreational, scenic, historic, cultural and natural values.

3. The establishment of walkways with circular or near-circular routes.
4. The establishment of walkways where they will form a link in the national walkway from North Cape to Bluff and any east/west links.[76]

Priority number one recognised that people needed walks near where they lived. By the mid-1990s it was becoming obvious, from intuition and research, that most outdoor recreation was taking place relatively close to urban areas in a casual way for relatively short periods of time.[77] In 1998 two researchers reminded us that 'we must remember that it is the countless streams, lakes, beaches, coastlines, and open spaces in and near urban areas which support most outdoor recreation participation'.[78] The far-off national parks and conservation parks and the remote state-owned forests were no use for spontaneous afternoon walks. Linear routes close to homes were needed.

A few outstanding tracks near tourist towns, such as the Alexandra–Clyde 150th Anniversary Walk (opened in 1998), were attracting a mix of locals and tourists. But in most peri-urban places, the chief users of tracks were probably locals rather than tourists. A 1999 study of the 9.6-kilometre Manawatu Riverside Walkway and Bridle Track in Palmerston North found that most users lived within three kilometres of the walkway, suggesting that it had more of a local recreational use than a significant tourist use.[79] One respondent to this survey wrote: '[The walkway] is a source of great pleasure for all including the quite elderly. Handy to town its something to enjoy.'[80] Another said: 'I think we are very lucky to have such a peaceful area so close to the city.'[81]

Walkways Legislation Falls into Disuse, 1990–2003

The Walkways Policy's emphasis on creating walkways over private countryside became theoretical rather than actual. Sections 6 and 8 of the New Zealand Walkways Act 1990 made the conservation boards responsible for establishing walkways over public and private land. But from 1990 to 2003, DOC's extending of New Zealand's laughably patchy scattering of gazetted walkways over private farmland proceeded very slowly and, more importantly, half-heartedly.

Between 1990 and 2000, DOC gazetted twenty walkways totalling 136.2 kilometres, which was an average of only 12.4 kilometres a year. Some of these gazettals, such as for Colonial Knob, merely amounted to the formalising of walkways that had existed before 1990 but had never been gazetted. Two of the twenty 'new' walkways were wholly on the public conservation estate and three were partly on it.[82]

In 1997 the English conservationist Marion Shoard, in discussing the footpaths and bridleways of England and Wales, raised an aspect of New Zealand that never appeared in New Zealand's tourist brochures:

> To appreciate what a remarkable amenity [England and Wales's] rights of way represent we have only to consider the situation in less favoured lands. In many respects, New Zealand is more like England than any other country in the world. But not in this. There, the absence of a tradition of rights of way makes it virtually impossible

> for many New Zealanders to walk in the ordinary countryside near their homes. They can approach a landowner to ask permission to walk on his land but this may well be refused. If they are found on private land without permission they can be prosecuted (under the 1980 Trespass Act). They can even be prosecuted for failing to give their names and addresses to a landowner to enable him to launch proceedings against them … In the face of these difficulties, many New Zealanders forget about their countryside altogether and head for the beach instead.[83]

In February 1998, *Forest & Bird* reported that some members of the New Zealand Conservation Authority considered that 'the national walkways system [needed] a shake-up if it [was] to provide the public with better access to the countryside'.[84] Craig Potton, the Federated Mountain Clubs nominee on the Authority, had said:

> There is no longer enough commitment to walkways. The department does not have enough resources and the potential values of walkways to the community are being lost. There are very good reasons why we should give walkways a kick along. They are really appreciated where they work.[85]

Another member of the New Zealand Conservation Authority, Gordon Ell of Forest and Bird, had said:

> There's been so much work to do in conservation planning that we've lost the initiative to create new walkways in many districts, and indeed we've lost some [walkways] … The walkways legislation is falling into disuse because there isn't the political will to advance it. It's obvious the resources aren't there.[86]

The Department of Conservation, for its part, said that it had budgeted about $637,000 and 20,000 hours of staff time for the maintenance and administration of walkways in the 1997–8 financial year.[87] But in an interview in 2000, Hugh Logan, the director-general of conservation, confirmed that DOC was creating few if any new walkways:

> We are not active in creating new walkways. And what constrains that? Resources. We are more than over-committed simply maintaining what's already there. So there's a degree of reluctance, from the Department's point of view, to actively manage walkways ourselves. We support the concept of walkways, and we'll advise people on how to go about [establishing] them, but we are very reluctant now to be drawn into new walkway developments ourselves, because of the pressure upon us to maintain our existing infrastructure on public conservation lands.[88]

To take this discussion further, we will use the term 'approved walkway', meaning one of two things: either a pre-1990 walkway approved by the Walkway Commission and subsequently 'inherited' by DOC; or a walkway

established after 1990 and approved by DOC. Some approved walkways were gazetted; many were not. You won't find the term 'approved walkway' in the New Zealand Walkways Act 1975. The act did not envisage or allow for a dual-status system of gazetted and ungazetted walkways, all of them being approved by the Walkway Commission. Yet this is what developed, and so we need an overall term for the shambolic mixture.

A 2003 New Zealand Conservation Authority booklet, *New Zealand's Walkways*, gave a figure of 'over 125 [approved] walkways totalling about 1200 kilometres'. (The booklet listed 127.) If these numbers were correct, then since the 1989 walkways conference there had been a reduction in the total length of approved walkways of about 150 kilometres. This underachievement had borne out the predictions made at this conference, where several delegates had doubted the logic of transferring the responsibility for walkways from the New Zealand Walkway Commission to the New Zealand Conservation Authority.[89]

The above statistics need a note of caution. There seems little doubt that, in terms of approved walkways over private countryside (many of which were ungazetted), the germinal network that DOC had inherited in 1990 stagnated or regressed from 1990 to 2003. As predicted in 1989, the optimistic and exciting walkways idea of the 1970s had become a casualty of institutional failure. But regarding other foot-tracks over private land that were not commission-approved or DOC-approved, there were no national statistics with which to measure nationwide developments.

Walkways Act Overdue for Review, 2003

By 2003, when the Land Access Ministerial Reference Group began its investigations, several important questions about walkways needed asking and answering. Had the pace of walkway development slowed since the New Zealand Conservation Authority had become responsible for implementing the Walkways Act? Why were many walkways never gazetted? Was non-gazettal productive pragmatism or a classic fudge? Landowners who signed informal walkway agreements would not receive the protection of the Walkways Act; did this matter? Was informality a wise solution or a sop to uncommitted landowners? Were the survey costs for new walkways higher than those for other forms of access? For a country the size of New Zealand, did the total of 'over 125' walkways represent a generous provision or was it a small fraction of what was required? Was DOC putting any emphasis, in practice, on gaining access to farmland so that people could enjoy the working countryside, as opposed to gaining accessways across farms merely to reach public lands? How secure were easements? How many of the easements were for a fixed term? Over the twenty-eight-year history of walkways, what proportion of requests for access had been declined? Ought the state to pay the landowners compensation for the walkway easements?

Several of these questions had been around since the New Zealand Walkways Act 1975. A new twist to negotiating had been added during the Otago Peninsula land-access row of the early 1990s, when 'submissions from the Federated Farmers group outlined a reluctance to simply gift a lease or easement over their land without adequate compensation'.[90]

Also a 1999 survey of the views of Otago Peninsula landholders had suggested 'that landholders are not in favour [of using] private rural lands for public recreation'.[91] It appeared, in 2003, that without new legislation there might never be any more public foot-tracks on the Otago Peninsula.

Elsewhere, some track-promoters were successfully negotiating access, although with various legal statuses and seldom for walkways under the Walkways Act. A determined and resourceful Geoff Chapple of Te Araroa Trust was breaking all the records in the *Guinness Book of Negotiating*. Armed at first with little more than persuasive ebullience, he had won the backing of several prime ministers, a profusion of mayors and scores of landowners. Chapple is a practiced and talented professional writer, adept at capturing the human angle. His 2002 book about his trial walk, *Te Araroa: The New Zealand Trail*, had already been reprinted and had given the trail a fillip. Te Araroa (the Long Pathway) was rousing public enthusiasm and was attracting substantial public and private funds.

Taking a more local example, the Wakatipu Trails Trust seemed to be achieving significant additions to the network of trails around Queenstown and the Wakatipu, partly by improving the coordination between different public agencies but also by cooperating with private landowners. Press reports had spoken of enthusiastic public support.

Even so, despite the impressive achievements of Te Araroa Trust and some local authorities, it was hard in 2003 to be optimistic about the future growth of the walkway network over private farmland. We had to bear in mind, for a start, the limited success of the efforts to negotiate such access since the New Zealand Walkways Act 1975. We also had to remember cautiously the British examples, which did not justify hopefulness about landowners' benevolence.

Negotiating Access, the British Fifty-year Experiment

The access stories from the UK did not provide us with strict comparisons of like for like, but they did say something about the difficulties of negotiating access with private landowners. The National Parks and Access to the Countryside Act 1949 had assumed that planning authorities in England and Wales would negotiate with private landowners to establish access land, typically comprising open moorland rather than enclosed fields. In these agreed areas of uncultivated land, whose boundaries would be shown on the topographic maps, the public would have the 'right to roam'. Nearly forty years later, only about 100,000 acres or just 0.3 per cent of the total area of England and Wales was covered by access arrangements.[92] Several planning authorities had not made any access agreements whatsoever. Reasoned discussion had largely not fulfilled the vision of the 1949 act (or of the two acts that had replaced it). Finally the Countryside and Rights of Way Act 2000 had set in motion the mandatory creation of areas of open countryside known as 'access land'.

The story from Scotland was similar to that from England and Wales. Attempts to negotiate improved access to the Scottish mountains and also to lowland countryside had often failed. In 2001, in a note setting out the background to the Land Reform (Scotland) Bill, the officials of Scottish Natural Heritage wrote that

> working to improve access through the voluntary principle has only had mixed success. While some land managers have been generous in welcoming use of their land or water, it has been difficult to agree, provide and promote better access opportunities for the public on low ground close to where most people live – the main area of need.[93]

By 2003 New Zealand's own and far less ambitious access experiment – its Walkways Act, in two versions – had been on the go for twenty-eight years. It had taught us to expect occasional islets of negotiatory success in a sea of resounding nonfulfilment.

I had one other reservation about negotiated access. I did not see much point in spending public money and officers' time in negotiating access that might lack permanence. The access plan, if adopted, would need to recognise that long-lasting solutions are preferable to short-term expedients.

Jim Sutton's ministerial reference group now had the chance to ask questions about walkways, report the answers, and if necessary recommend changes. In the event, the group's recommendations on walkways would be fairly sketchy and in one respect badly thought out. Not until the report of the Walking Access Consultation Panel in 2007 would we hear any specific suggestions for revitalising the spirit of the walkways legislation.

DOC and the Great Walks

The main focus of this book, as I said in the Introduction, is not on the nearly 13,000 kilometres of foot-track that DOC maintains in the national parks and other publicly owned lands. However, DOC's decision in 1992 to select eight of our finest walking tracks and to promote them as the Great Walks demands a mention. I cannot improve on Alistair Hall's *Wilderness* article of July 2004:

> In 1992 the Department of Conservation had a dream – to nominate eight walks that it would look after and manage and elevate to the status of 'Great' and make as pleasant for trampers as possible.
>
> It involved giving every tramper a bunk for the night or a campsite space; it meant clearing the path of tree roots and debris; it meant making the huts clean and providing sanitation and heating; It meant limiting numbers walking the tracks at any one time. It also meant lessening the backcountry experience that many trampers prefer when going into the bush.
>
> The targeted tracks – long familiar to trampers throughout the country and now increasingly throughout the world – were the Milford, Routeburn, Kepler, Abel Tasman, Heaphy, Rakiura, Tongariro Northern Circuit and Lake Waikaremoana …
>
> There was resistance to labelling these tracks as 'Great'. They were the most popular tracks in the country and they were effectively being taken out of the track system, given increased hut fees where an annual hut pass didn't apply and lumbered with restrictions such as no camping within 50m of the track.[94]

The Department of Conservation argued that even if it had not tagged the eight tracks 'Great Walks', it would still have had to introduce restrictions and booking systems. Backcountry trampers said that DOC was making the tracks more like walking down the High Street than wilderness tracks.

In 2004, according to Hall, most people walking the so-called great walks were overseas visitors. The Milford Track was running at about 98 per cent capacity. In some respects, especially that of sales and marketing, the great walks were a thriving success. But many Kiwi trampers felt pushed off and they still opposed what they considered to be DOC's overmanagement.[95] DOC's promotion, some said, had sacrificed the country's finest walks, making them into honey pots, well worth avoiding.

In the 2010–11 season, the peak-season hut tickets for an adult varied from $15 a night for the Rakiura Track to $50 a night for the Milford, Routeburn and Kepler tracks.

Negotiating Access, the Geoff Chapple Way

In May 1993 Geoff Chapple, the books editor of the *Sunday Star*, reviewed Jane Kelsey's *Rolling Back the State*, which was the latest in a handful of books that examined New Zealand's economic and political crisis of the 1980s. Kelsey's 'excellently researched compendium' and others like it, he said, were 'okay in their slightly desiccated, conceptual way'. But it was time, Chapple suggested, for New Zealanders to stop moaning and to move on, with some unity of purpose. He wrote of 'the country's confused sense of itself which spawns complaint and books' and of 'the need for some new idea, big enough, simple enough, to move the nation'.[96]

Chapple then proposed a fittingly big and galvanising idea: a path stretching from Cape Reinga to Bluff:

> It would pass near the coast, or through bush, but might strike inland and cross the fields, and be, in parts, paralleled by a horse trail, in parts by a sealed bike track.
>
> Its route need not be fully secured before the work begins. Like any highway system, it is begun along pre-existing routes or where the necessary land is easily acquired.
>
> It runs, in its blueprint, the length of the country. [The building] can be begun at any point along that route, and labour mobilised there for the local sections. It is labour-intensive, but necessarily so. Machines lay down roads, and railways. For trails you need work teams.
>
> Overall, the labour will be as intense as that which produced the canals of England, and as the path emerges, with its camps and occasional marae stops, it will define just as clearly as those English waterways, much of the character of New Zealand.[97]

He named the proposed route Te Aranui (the Great Path). Years later he said: 'Soon as I saw that [name] in print I knew it was wrong, and in the newspaper campaign that followed, I reverted to Te Araroa.'[98]

The rate of unemployment in May 1993 was 9.8 per cent. The unofficial figure for the number of people out of work was 200,000. Chapple envisaged the jobless working on building the walking track for pay not

much above the dole. He kept his financial estimates expediently brief and vague: 'Money. The Te Aranui budget may be little higher, year by year, than the present allocation for unemployment, which it largely replaces.'

His projected timescale was necessarily imprecise:

> At worst, as with the Great Wall to the Emperor Qin, Te Aranui will not be completed in my lifetime, yet will still steadily extend [New Zealand's] famous walk-ways. This result would not in itself be a failure, for it would signal an actual pickup of the job market.
>
> At best, the final junction of the southern and northern Te Aranui teams will be attended, perhaps five years from now, by one of New Zealand's greatest celebrations.[99]

This exuberant *Sunday Star* article caught the imagination of many readers, among them the Waitakere mayor, Bob Harvey. On the following Tuesday, Chapple received a phone call: 'Geoff – Bob Harvey. That's a great idea, mate, why don't you get a trust together. Let's get this trail under way. If you like, I'll be the first chair.'[100] Chapple's idea had taken root.

Two days later he discovered that the idea wasn't new.[101] In 1967 Bob Ussher of the Alpine Sports Club had proposed a scenic trail the length of New Zealand. But the focus of the New Zealand Walkway Commission, set up in 1975, had quickly turned to the provision of short walks close to populations. The New Zealand Walkways Act 1990 had abolished the New Zealand Walkway Commission. The act had also transferred the overall responsibility for walkways to the director-general of conservation and the conservation boards. The Department of Conservation had inherited the day-to-day management of the walkways that came under this act.

Was DOC then the inheritor of a long trail? asked Chapple.[102] Everyone he talked to in government said that DOC couldn't do such a trail. Its budgets were too low. But Chapple thought that some local authorities did have the money and, if coordinated, would support the concept. Also, readers' reactions to his *Sunday Star* story had showed that the twenty-six-year-old dream of a national trail had never been completely extinguished.

Chapple, a courageous individualist with immense energy and ardour and seemingly innumerable connections in high places, soon found some able potential trustees: two or three trampers with business or legal expertise, some former walkways people, and the editor of the *Sunday Star*. Sir Edmund Hillary and Wilson Whineray agreed to be patrons. To get the trust started, Chapple sought $35,000 from the community employment group in Auckland. Confident that this money would come through, he resigned from his newspaper job to take a half-time job with Auckland DOC, which left him some free time for trust work.[103] Unforeseen by him, that work would occupy him for at least eighteen years. But Chapple was the right man with the right ideas – and the charisma and guile – for tackling and completing the huge project that a large government department had shunned. 'Te Araroa [was] just the latest step on the life

path that [had] seen Chapple as a journalist, socialist, protestor, painter, author, musician, film and opera writer and traveller.'[104]

Te Araroa Trust came into being on 28 August 1994. On 7 February 1995 the prime minister, Jim Bolger, opened the first section of trail, a forestry road connecting Waitangi almost through to Kerikeri.[105] But not a lot happened immediately after this auspicious and optimistic start. Chapple explains the lack of progress:

> The trust continued to meet, it fought to keep some trails in the north open, it chased sponsors and kept the idea of the trail alive, but it had little money and was fundamentally just ticking over … We'd expected the trail to roll, it hadn't and I believe the reason was simple – no-one had a trail route, and we were expecting too much of councils to plan the route themselves.[106]

North Island Reconnaissance Walk

The solution, to Chapple, seemed obvious: Te Araroa Trust would need to plan a trial route and then someone would have to walk it. By this time Chapple had resigned as executive secretary of Te Araroa Trust to become a trustee and had returned to full-time journalism as deputy editor of the *Listener*. In mid-1997 he resigned from his trusteeship and from the *Listener*, fired up to walk every step from Cape Reinga to Bluff.[107] The pilot walk would prove viability, test the responses of landowners, raise funds and heighten the project's profile.

Firstly, though, the route needed roughing out. Chapple drove around the North Island 'for two months, talking with DoC people at the conservancies and planners within the city, district and regional councils'.[108] He wrote and published a report with maps, *Te Araroa – North Island Foot Trail*, which went out to the councils, to iwi and to DOC.[109] With the theory completed, he readied his boots and backpack for the practical.

One day in December 1997 Chapple 'kissed his wife Miriam goodbye, pushed off from the north's sentinel lighthouse and headed down Ninety Mile Beach, all walking poles and water bottles'.[110] As well as tramping equipment, his backpack contained a laptop, a mobile phone and a digital camera: crucial parts of his plan to send stories from the trail. This North Island reconnaissance walk, over possible tracks and approximate routes, took seventy-nine days. Throughout it he kept a log on Te Araroa Trust's website, recording 'meetings with passionate pig farmers and sportscar fancying mayors; mist-teased mountains and surf swept beaches; electric fences and Taranaki gates; pigeons, pungas and possums'.[111]

Chapple's blog, one of the first of its kind in New Zealand, generated much interest. The trail idea began to take hold nationally. Te Araroa's profile rose:

> People's support soothed his doubts over the mission. From the farmers who promised to allow passage across their land to the unemployed bloke near Wanganui who insisted the broke Chapple take $20, he felt New Zealanders were behind him and the concept of Te Araroa inspired them.[112]

After Chapple's North Island trial walk, the attention of Te Araroa Trust turned to the coming new millennium and the $20 million put aside by the government to mark the occasion. In 1999 the Millennium Office awarded $111,965 to the trust, specifically for a Waikato River trail, a salary for Chapple, and a survey of the potential South Island route.[113] Chapple recollects: 'We had enough to keep going. Through that grant, though we hardly realised it, we would become trail builders.'[114]

The trust hired a construction manager and workers. Chapple joined the work gang, erecting stiles at points along the Waikato River stopbanks. People rallied to the cause:

> Bruce Posthill from Hamilton DoC organised the timber and tools at discount rates, and found big weatherproof toolboxes with five locks where we could safely leave the tools at the end of every day. He even threw in a DoC quad[-bike] …
>
> And finally we completed it. An 18-km trail, 65 fences now stiled, electric wires at the cross-points sheaved with PVC, the swamp boardwalked, the drainage canals bridged, the signage in place.[115]

Long Trails in North America and the UK

In 2000 the Winston Churchill Memorial Trust awarded Chapple a year-2000 fellowship 'to investigate voluntary participation by citizens in the financing and maintenance of long foot trails in Canada, the USA, and the United Kingdom, and also the role played by Government agencies in the protection, financing and maintenance of such trails.'[116] Chapple went to North America and investigated the history, financing, usage and management of the Appalachian Trail, the Bruce Trail and the Trans Canada Trail. In Britain he met the managers of the Offa's Dyke Path and the then new Hadrian's Wall Path.

In April 2001 Chapple completed a report on his research. Regarding the specific requirements of establishing and managing long trails, Chapple noted that in the United States, at its opening in 1937 the Appalachian Trail – about 2,000 miles (3,400 kilometres) long – had been the longest footpath in the world.[117] Volunteers had created it. Until 1968 it was not dependent on any legislation or any government agency. But many parts of it were 'sustained by handshake agreements' and were vulnerable to road developments and subdivision.[118] In 1968 the Johnson administration passed the National Trails System Act, which recognised two categories of trail: National Recreation Trails near urban areas and long, outlying National Scenic Trails.[119]

For the Appalachian Trail this act was a watershed, moving the trail from volunteer to federal control. Yet the act was careful to acknowledge the importance of continued volunteer involvement:

> Section 2 (c):
> The Congress recognises the valuable contributions that volunteers and private non-profit trail groups have made to the development and maintenance of the Nation's trails. In recognition of these contributions, it is further the purpose of this Act to encourage and assist volunteer citizen involvement in the planning, development, maintenance, and management, where appropriate, of trails.[120]

At the time of Chapple's visit, volunteers from thirty-one clubs had a role in land management along the Appalachian Trail, as well as in trail maintenance and shelter-building. In Maine, for example, 113 members of a dedicated trail-maintainers' club had each adopted a section of trail to be their own.[121]

In England and Wales, provisions in the National Parks and Access to the Countryside Act 1949 had assisted the planning and stringing together of continuous long-distance footpaths. The National Parks Commission had opened the Pennine Way in 1965. Similarly the 1967 Countryside (Scotland) Act had empowered the Countryside Commission for Scotland to designate long-distance routes and regional councils to put them into effect.[122] In 2000, England and Wales had fourteen long-distance walking routes, Scotland had three, and the combined length of all of them was 4,375 kilometres.[123]

Britain's main long-distance paths were entirely funded by various levels of government. Although many had volunteer wardens, few had a strong volunteer structure. The Offa's Dyke Path on the English-Welsh border provided the best example of a volunteer organisation working successfully with the national track-management system. The Offa's Dyke Association allocated sections of the trail to volunteer lengthsmen. Each of twenty-eight lengthsmen walked their specified bit of footpath every few months, completing a 'State of the Path' report.[124]

In contrast to the US and Britain, Canada had no federal trail legislation or national trails programme. However, even without any supportive federal legislation, the Bruce Trail, which follows the ridgeline of the Niagara Escarpment for 769 kilometres, had progressed from an idea in the early 1960s to a trail corridor forty-seven per cent publicly owned in 2000.[125] Landowner goodwill had been an important aspect in the initial negotiating of the route, but within a few years the informal agreements had begun to disintegrate as landownership changed and subdivisions proliferated. In 2000 fifty-three per cent was still not legally secure or was on unwanted routes such as public roads.

Seven hundred volunteers were doing much of the work along the Bruce Trail. This volunteerism was highly organised, each enthusiast having a job description, a title and a recognised skill. Also nine hiking clubs along the trail each maintained a section. The driving force behind the trail was an NGO, the Bruce Trail Association, which in 1999–2000 had 'an income of [CA]$484,810, generated almost entirely by its own efforts, and with a notable absence of government grants'.[126]

Canada was also building, gradually, the mother of all tracks: the Trans Canada Trail, a coast-to-coast multi-use route across the continent for 16,000 kilometres. In 2000 this route was a work in progress, being achieved with diverse approaches and varying success in different provinces. The British Columbia organisation Trail BC was one of the more successful trail councils, aided by the provincial government's active support. Trail BC relied heavily on volunteers, but several agencies of the provincial government also were involved in financing and constructing the province's section of the Trans Canada Trail.[127]

Like Canada, New Zealand had not developed any national trails policy splicing a lead government agency with the various levels of regional and local government. But Chapple had great confidence in the strength of Kiwi volunteerism. He argued that New Zealand's walkways acts had not capitalized on that national trait. He pointed out that section 26 of the New Zealand Walkways Act 1975 had allowed the Walkway Commission to appoint any statutory body to be the controlling authority of a walkway, but that this had 'effectively excluded any voluntary organisation, including any incorporated society, from becoming a Controlling Authority'.[128] The 1975 act had not encouraged volunteers. The 1990 act had not improved things in this respect.

Chapple concluded that the New Zealand Walkways Act 1990

> was probably moribund even as it reached the statute books. As an underpinning structure for long trails it was particularly deficient. Long trails need to yoke together the various levels of government and provide volunteer participation. The old idea [a national scenic trail] remained, in vestigial form, but Walkways in general had come to a dead stop – had even begun to shrink.[129]

Chapple also expected that, because Te Araroa's 'linking trails' (ie, stretches over private land) would be outside DOC, regional council, or local council authority, these private links would need volunteers to maintain them. Volunteers might also assist in the upkeep of publicly owned sections, in cooperation with the administering bodies. DOC already used volunteers for such work, the most successful tramping-club model being the Tararua Aorangi huts committee.[130]

In its expected use of volunteers, Te Araroa would, Chapple thought, be most obviously similar to the Canadian models. He did not favour pressing for national trail law as powerful as America's National Trails System Act. But he did propose an examination of New Zealand's track system, which would report on:

- trends;
- track categories and track standards that should prevail across DOC, regional authority, local authority, and privately-administered trails;
- areas of possible co-operation between the administering bodies; and
- funding opportunities.[131]

He also called for walkways legislation that would enable Te Araroa Trust to be appointed a controlling authority of a walkway. (Our parliamentarians could have incorporated this suggestion into section 35 of the Walking Access Act 2008, but they did not.)

Te Araroa Trust's task, in the meantime, would be 'to accomplish by persuasion exactly what is provided for by trail legislation overseas – the co-ordination of levels of Government to a project larger than any one of them could bear, and the encouragement of volunteers'.[132]

A Quiet but Sustained Upsurge in Track-building

In March 2001 the Mayors Taskforce for Jobs, an alliance of over fifty councils, adopted Te Araroa as a priority project. Over twenty councils along its route began to cooperate. In November of the same year the Department of Labour's community employment group named Geoff Chapple the first social entrepreneur under a new scheme that awarded grants to applicants who had a record of developing community employment. The group granted Chapple $27,000 for the Te Araroa project, money which he planned to use to develop tracks in the South Island.[133]

Two thousand and two was an eventful year for Te Araroa Trust. It mapped a likely South Island route, extensively consulting the Department of Conservation and local and regional councils. Chapple walked this route, testing landowner responses en route. He reached Bluff on 3 May, the trial walk having taken seventy-seven days.[134] On 4 October the trust signed a memorandum of understanding with DOC, under which DOC agreed to assist the trust with stringing together a continuous north-south tramping corridor east of the Southern Alps.[135] Te Araroa Trust began to set up local sub-trusts to coordinate volunteer effort, seek funds and initiate trail-building in the regions; there were likely to be eight of these.[136]

On 18 November Chapple's book *Te Araroa: The New Zealand Trail* went on sale. All copies of the first print-run were sold by Christmas.

In June 2003 this book won the environment category of the Montana book awards, the judges saying that 'Chapple's eye for detail, his descriptive flair, his sense of humour and understanding of others turned a long walk into a highly readable epic adventure'.[137] Here he is, crossing a field:

> Difficult meadow. The grass was often as high as my chest and it grew on cut-over pine forest, an invisible cross-hatching of branches and trunks where my boots slipped and jammed. It was high summer, the country was sweltering in a heat wave, and it was around 3 pm, the hottest part of the day. My legs were already carrying a fair cargo of the little hooked seeds of the native sedge and now I was so drenched in sweat that every other loose grass seed the meadow could shake over me stuck fast as well. Even the delicate thistle seeds, which usually, like so many ethereal tumbleweeds, do no more than kiss and begone, plastered themselves by the dozen onto my face as I struggled across the diabolical meadow.[138]

Looking at Chapple's 2002 book in retrospect, we can see that it marked the halfway point of a quiet but sustained upsurge in track-building in New Zealand: a Te Araroa Trust programme of track-making and waymarking that had started in 1995 and would continue steadily and uncontroversially until completion in 2011, and which – although mainly on publicly owned land – included many sections of route on private land. Meanwhile, in contrast, in 2003–5 the *theoretical* issue of walking access across private land was to arouse a stormy public debate that would stagger to an inconclusive hiatus.

Chapter 7

PANZ and Public Ownership

We saw in Chapter 6 that the need for walking tracks across the farmed countryside was recognised, at least by some people, in the early 1970s. We also learnt that in 2003, twenty-eight years after the first New Zealand Walkways Act, there were over 125 DOC-recognised walkways totalling about 1,200 kilometres. Unknown to most people in 2003, only about 30 per cent of these walkways were gazetted. (We would not see a clear figure for the number of gazetted walkways until 2007, and even then it would not be exact.) Only the gazetted ones could be considered legal walkways under the New Zealand Walkways Act 1990.

We should keep in mind the relative importance of the walkways acts; they were just one way of establishing foot-tracks. New Zealand in 2003 also had tens of thousands of kilometres of unformed public roads (in 2006 officially estimated to total 56,900 kilometres). Public roads provided a wide access right, as that right usually included any means of travel – on foot, by bicycle, horse or motor vehicle – and the liberty to take dogs or to carry guns (dependent on other laws).[1] Some of these unformed roads were already used by walkers. Many were not. Even if only a quarter of these unused roads would ever be located and waymarked for walking, that would still produce 14,225 kilometres of foot-track.

A Right of Passage

From the beginning of colonial times until 1973, public roads in New Zealand belonged to the crown. Under section 316 of the Local Government Act 1974, all public roads (excluding state highways) now belong to the district council or city council in which they are situated.[2] In the case of an unformed public road, the owning council is *not* required either to form it or maintain it.[3] But the council *is* required to defend the unformed road against obstruction.

Brian Hayes, an ex-registrar-general of land, has summed up the nitty-gritty of the present-day New Zealand version of the time-honoured law of highways:

> The essence of a public road, whether formed or unformed, is that it offers a right of passage to all members of the public who want to use it. The territorial local authority in which a road is vested holds title to the road in trust for the public and is obliged to see that the right of passage is preserved – not for the council or its ratepayers, but for the public.[4]

Taking this legal theory one stage further, to protect a right of passage along a public road, a city or district council should use its powers to ensure that any blockage, such as a fence across the road, is removed. Although adjoining landowners frequently use unformed public roads for grazing, in effect incorporating the land into their farms, the landowners do not acquire any rights of occupation. The law is clear. 'There is no possibility of the occupier acquiring any rights of ownership or possession through occupancy, use, or care of any unformed road because section 172(2) of the Land Act 1948 absolutely excludes any such rights.'[5]

That, for what it's worth, is the legal position. In practice, despite the obligation on the road-controlling authorities to uphold Joe Public's right of passage, the frustrating reality has been that many city and district councils have ignored, or been unable to accept and meet, their responsibilities. The philosophies of councils on their duties regarding unformed public roads have varied greatly. The blocking of unformed legal roads by fences or locked gates or other objects has been and remains one of the commonest causes of difficulty in accessing the New Zealand outdoors.[6] Walkers who try to follow public roads may encounter not merely eight-wire fences, able to be climbed over by most people, but also deer fences, forbidding – because people often associate deer fences with private land – and awkward to surmount. At the same time, the New Zealand Outdoor Access Code encourages road-users to 'be considerate of others, including adjoining landowners and their property'.[7]

Formed and Unformed Public Roads

In 2003 about 62 per cent of New Zealand's public roads were formed and maintained carriageways, either gravelled or tarsealed. We often refer to all the remainder as 'unformed public roads'. In fact, some of this remainder were vaguely formed or semi-formed tracks. Some had been, long ago, bridle tracks or bullock tracks or cart-tracks. Some were in regular use as foot-tracks or farmtracks or four-wheel-drive tracks. Others, whether initially pegged or not, had always remained merely roads on paper, never to be anything more than parallel lines on survey plans and cadastral maps. On the ground, these completely unformed and often unused public roads may be unfenced and indistinguishable from the surrounding land; yet they are still subject to all the legal rights and obligations that apply to formed roads, including the right to pass and re-pass with or without vehicles and animals – even if, as sometimes happens, the unformed road goes over a waterfall or a sea cliff. 'The essential law relating to roads and highways does not differentiate, and never has differentiated, between formed and unformed roads.'[8]

Despite the impracticalities of some unformed public roads, some access promoters in 2003 validly saw unformed public roads as potentially producing far more foot-tracks than the New Zealand Walkways Act

1990. Some people also stressed the legal advantages of public ownership of the foot-track strip of land, as compared with the real or perceived disadvantages of easements. One such champion of public ownership was Bruce Mason.

The Essential Bruce Mason

Had he chosen to pursue his interests and use his talents in a conventional and obvious way, Bruce James Mason could probably have fashioned a comfortable career in law. Instead he became a lifelong advocate for recreational access to public lands. New Zealand would have been the poorer for it if he had become just another High-Street lawyer. His thirty years of indefatigable access promotion and industrious legal research ought to have earned him some endorsement of public service. Official accolades, though, have yet to come. He will appear in nearly every chapter of this book from now onwards. By the end of the book, the picture that will emerge – without necessarily endorsing all aspects of Mason's thinking – will illustrate his immense contribution to the defence and improvement of walking and cycling access to the outdoors. An admirer has called him one of the best bush lawyers that New Zealand has produced. On the other hand, responding to some of his writing of 2007, a detractor I spoke with was less flattering. By then, however, Mason's legal knowledge and unflagging commitment had already served the cause of access influentially on hundreds of occasions.

For a while, until some point in 1973, Mason was president of Otago Tramping and Mountaineering Club. His published writing on outdoor matters started in 1974 with *Back Country Boom*, which reported on six months of travel through the national parks and forest parks of north America. Overuse and conflicting use were becoming issues, posing widespread management problems. Mason's report discussed these issues and the lessons that New Zealand could learn from north America.

Always an independent thinker, even if it meant rejecting a fashionable direction, Mason warned that 'the creation and resultant heavy use of long distance foot paths (Walkways) [would be] incompatible with National Parks and wilderness values'.[9] In a visionary passage still relevant today, he argued for 'the legalisation of foot-only right[s] of way through rural and other multiple use lands' and for 'a priority of constructing trails … as walkway networks in close proximity to urban areas'.[10]

In 1975–82, as a national parks and reserves ranger, Mason worked on establishing the Otago Goldfields Park. He also took a Diploma in Parks and Recreation at Lincoln College of the University of Canterbury. His dissertation for this diploma was titled 'Skifield Potential in the Wakatipu District : An Evaluation of the Potential for and the On-slope Constraints to Skifield Development, Principally at Coronet Peak and in the Rastus Burn Basin of the Remarkables'. He also served as a Federated Mountain Clubs representative on the Otago district walkway committee.

In the 1980s he researched for the Public Lands Coalition, of which Federated Mountain Clubs and the Royal Forest and Bird Protection Society of New Zealand were members. The Acclimatisation Societies of New Zealand (which became the regional fish-and-game councils) was also a member of this coalition. The Public Lands Coalition represented

and pleaded for these bodies' 'common interests in the protection of nature conservation and recreation values on lands of the Crown'. Its primary concern was that 'where important public recreation or conservation values [existed] the Crown should retain ownership of the resource and control of its management'.[11]

During the 1970s, for the acclimatisation societies, the rate of occurrence of land-access and river-access problems – historically low – had begun to rise. In 1977 John Milligan, a Christchurch barrister, had written a timely and perceptive article, 'Public Access to Water: A New Zealand Mirage'. We can now see that this article was alertly prescient. 'In New Zealand,' he said, 'water is part of the public landscape – if only the public can get to it.'[12]

In response to the growing number of access problems, some societies had increased their efforts to prevent or solve such problems constructively. The 1981 annual report of the Southland Acclimatisation Society said that field staff had reviewed the society's system of angler access points and had prepared a new anglers' access pamphlet.[13] By 1987 there were forty-four signposted access points in the Southland society's district, signifying agreed accessways for anglers to reach the rivers. Many of these routes were for vehicular access. The society reported being 'indebted to farmers and landowners who allow [fishing] licence holders vehicle access across their respective properties to gain access to rivers.'[14]

Positive approaches, however, would not solve all access difficulties. Through necessity the Public Lands Coalition sometimes took a confrontational and adversarial stance. The coalition was a powerful and important forerunner to Public Access New Zealand. It defended the Queen's Chain and it promoted the continued public ownership of any South Island high country that possessed strong conservational or recreational values. In 2010 the PANZ website still contained about fifty Public Lands Coalition documents from 1987–91. Many of these commentaries, letters, press releases, newspaper articles, fact sheets, updates and submissions were written by Bruce Mason: an indication of his enterprise on public access and his position at the forefront of the debates.

In 1988–89, Federated Mountain Clubs published Mason's impressive two-volume study *Outdoor Recreation in Otago*, which remains an informative book.

Between 1989 and 1992, as a trustee of the Otago Peninsula Walkers, he played a prominent role in the locating and waymarking of a number of unformed public roads on the Otago Peninsula. These developments demonstrated the formidable legal right of the public to use public roads. Yet the upshot also showed the deficiencies of foot-track networks based solely on public roads. We will take a closer look at these happenings, as they illustrated some basic issues surrounding the bringing-into-use of unformed public roads. For a start, to join in the game you seemed to need a professional knowledge of land law or land-surveying.

The Public Roads of the Otago Peninsula, 1989–92

In many circumstances, unformed public roads may offer the most practical and secure solution for creating foot-tracks across private rural land. An extensive web exists, the roads are public land, and they provide

centuries-old rights of unhindered passage. More than a third of New Zealand's 156,000 kilometres of public roads remain unformed or only partly formed, being therefore highly suitable for walkers.[15] Why bother at all with walkways based on easements?

In 1992–3 David Allen asked this question in relation to the Otago Peninsula. His thesis, 'Paper Roads and Walkways on the Otago Peninsula', analysed the situation from the viewpoint of a land-surveyor. I shall turn to it, and rely on it, extensively. Allen ventured onto the slopes and pastures of the peninsula, with his camera and a cadastral map, partway through a highly publicised squabble over the opening-up of unformed roads.

In 1990 the Otago Peninsula Walkers had cleared and signposted some routes that followed unformed or partly formed public roads. Where fence-lines crossed the public roads, the group had built stiles. Some of the rediscovered public roads were already walking tracks. Hardwicke Knight, writing in 1979, had mentioned Paradise Road and Camp Road as being among 'the many characteristic "green roads" of the Peninsula' that were used by walkers.[16] A few of the rediscovered roads, however, were truly paper roads: virgin territory. In each case – whether tracked or untracked – the Otago Peninsula Walkers clarified the legal status of the route and removed obstructions from it. They also publicised the existence of the unformed and partly formed public roads.

On 10 June 1990 about 450 people attended the opening day of the tracks. Some of the new signposts had been vandalised, allegedly by landowners. On 13 June the *Dunedin Star* filled its front page with a story titled 'Walkers Upset Farmers'. This included a photograph of Bruce Mason standing beside a dismembered signpost. The Otago Peninsula Walkers, keen to get on with the job, had not obtained the permission of Dunedin city council for the work on the tracks, a necessary step, and some equally passionate landowners had opposed the development.

The Otago Peninsula land war that followed lasted two and a half years and produced a Shakespearean panoply 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 the city council of favouring the other side and impeding the negotiations. David Allen summarised the main issues and the opposing views:

> There is a land war being waged in Otago. The Peninsula is in turmoil. A growing tourist destination with the popular royal albatross colony and Yellow-Eyed penguins, it is also a well known haunt for trampers and ramblers. However pressure of numbers and encroachment on farmland has raised the ire of property owners, and at the same time uncovered an unresolved issue about the public's right of access to paper roads … This country has an invaluable system of formed and unformed legal roads that provide public access to places which would otherwise be difficult to get to. Outdoor recreation is of major importance to a large part of the populace and people expect

> to have access to the countryside and coastlines. Recent undertakings to close unformed paper roads on the Otago Peninsula and replace them with negotiated accessways have met with a storm of protest. Many of these unformed roads were created in the mid-1800s, their only purpose [being] to provide legal frontage to parcels of land. Most have never been, or are ever likely to be formed due to the steep terrain, and their physical alignment on the ground is often indistinguishable from the surrounding land. Certain groups see these roads as providing recreational walking opportunities on the Peninsula whereas landowners view such activities as trespass across private property.[17]

The 'recent undertakings' Allen referred to were the proposals in the city council's draft accessways plan of about 1991.[18] The council's suggestions aimed to improve and regularise the access for walkers. Many responders to this draft supported the establishment of the walking tracks but strongly opposed the accompanying permanent closure – ie the stopping – of the public roads.[19] The Otago Peninsula Walkers argued, successfully, for the retention of the roads and the upholding of the common-law rights of passage, rights bestowed under the law of highways. In contrast, Federated Farmers of New Zealand, representing many of the landowners, supported the road-closure proposals, which if implemented would probably have resulted in the road-land being sold to adjoining owners.

You might conclude that local authorities that want to avoid uprisings should be wary of bargaining with public roads. The swapping of public roads for walkways based on easements may not be viewed as a fair exchange, except by the landowner who acquires a twenty-metre-wide strip of real estate. There's something sacrosanct about public roads, even if you cannot find them; meddling with them can be meddling with freedom of movement and civil liberties.

The Legality of Roads, and Road Definition

The access situation on the Otago Peninsula was to quieten after the early 1990s, but Allen's analysis would remain relevant to the national access debate that was to follow ten years later. Part 1 of his second chapter dealt with establishing the legality of roads. The process is abstruse enough to drive a layperson to road-therapy: inspect the relevant crown grants, certificates of title, cadastral record maps, and warrants from the governor-general; ascertain whether the local body regards the road as public by user, or has spent public money on it; or ascertain whether there has been an implied dedication by the placement of occupation along the road boundaries allowing a strip to be used by the public.

In some cases, implied dedication 'by public user' decides the outcome. If the physical position of the road is not evident, it can sometimes be difficult to establish long-term usage as proof of legality.

Occasionally a cadastral map will show a road-like strip of land that might have been intended to be a public road but which was never dedicated as a public road.

Part 2 of the same chapter dealt with the difficulties of road definition, the locating of the road on the ground:

> The general public have rights of pass and repass on legal roads but it is difficult to exercise this right if the intended user cannot visibly identify the road in question. Uncertainty as to the true position of some paper roads on the Peninsula has in some cases led to confrontations and heated exchanges between rival groups. In a number of cases certain parties have insisted on exercising their rights without clear evidence of the correct alignment. Therefore the true position of the road becomes a key issue … Assuming the legality of the particular road in question has been established, ascertaining clearly and concisely its location on the ground requires the skills of a trained land surveyor proficient in cadastral definition. Consequently the expertise of the current Chief Surveyor (C.S.) for the Otago Land District, Mr Mark Smith, was sought.[20]

Allen said that the definition of any road depended on the quality of the underlying surveys. When these surveys were unreliable, as most of them were for the paper roads on the Otago Peninsula, the surveyor resorted to a hierarchy of other evidence: old survey pegs; occupation (fences, hedges, etc); documentation (plans, titles, old deeds, cadastral record maps, original surveyors' field-books); and the opinions of long-established residents. Where the paper-road definition was difficult, the cost of re-establishment was often prohibitively expensive.

One could not read about these many professional complications without thinking, What chance Joe Public, even with hand-held global positioning? What hope was there for recreators, without a joint initiative from the local authorities and the government? Furthermore, what hope was there for this joint initiative, without firm leadership from the government?

Ten years after Allen completed his thesis, the 2003 Acland report would state that territorial authorities (the district and city councils) were reluctant to enter into disputes because of the cost to ratepayers of surveying the roads.[21] Nor was this reluctance confined to local bodies; the report would say that local *and central government agencies* were mostly unwilling to assist the public to exercise their rights on unformed roads.[22]

The Outcome of the Otago Peninsula Tracks Controversy

Having examined the legal and practical difficulties of bringing the paper roads of the peninsula into use, Allen then summarised the history and principles of walkways. He also compared the legislation affecting roads with that governing walkways. He then covered the city council's walkway-system proposals of 1990–1 and the different public viewpoints. Finally he recommended – the thesis was dated 1993 – that the council implement its overall recreational plan for walking opportunities on the peninsula. One of his conclusions was that 'the provisions of the Walkways Act offer an alternative solution to the problems caused by paper roads'.[23]

Events seem to have overtaken Allen's thesis-writing. The city council's proposal to establish walkways under the Walkways Act was never enacted. The accompanying proposal to stop the public roads – the combustible issue behind the Otago Peninsula land war of the early 1990s – was never enacted. No Walkways Act walkways were established. No public

roads were stopped. Instead, on 4 November 1991 the full Dunedin city council approved a plan for public access based largely on the public roads that Bruce Mason of the Otago Peninsula Walkers had rediscovered.[24] Walking tracks (the word 'accessways' might describe some of them better) would be officially waymarked on the public roads.

Emotions, however, remained blustery. Perhaps access historians will hold the climax of the hostilities 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. This action led to the front-page newspaper headline 'Row Over Land Access Escalates'.[25] (The reverberations from this incident would still be detectable in November 1996, when *The Press* devoted nearly a full page to an examination of rights of public access, titled 'Wirecutters – Walkers' Option'.[26])

In 1992 the city council, working with the Otago Peninsula Track Working Party, began signposting the tracks, thus acknowledging and protecting people's common-law rights of passage.[27] Protests from landowners continued sporadically. 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 …
>
> 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.

In reality, however, the signposts and waymarks would become permanent. The Otago Peninsula Walkers had won the land war decisively.

Or had they? What sort of a track network had evolved? A second-class one.

In 1997 the city council's leaflet *Otago Peninsula Tracks* listed nineteen tracks, which sounds an ample number to produce an uninterrupted web.[28] But these accessways tended to be isolated fragments. In some places these fragments were joinable into continuous sections by using gravel roads, yet these combinations provided only an indirect and inefficient route down the peninsula. And who wanted to walk along gravel roads? None of the nineteen tracks followed the ridge-line of the peninsula. There was no access, in 1997, to any of the high-points of the ridge-line, except to the Soldier's Memorial. There was no continuous and efficient

coastal foot-track; this was especially so along the easternmost third of the peninsula, which offered walkers some awesome trespassing. (It still does.)

Two serious researchers have written that 'the development of a series of walking tracks in 1992 and 1997 successfully opened up much of the Peninsula'.[29] I would qualify this statement considerably. What had evolved on the peninsula, with the waymarking of the unformed public roads, was a patchy sprinkling of accessways that illustrated the drawbacks of track networks based largely on randomly sited public roads. I am not the first person to say this. In the early 1990s the Department of Conservation was involved in the initial planning stages of Dunedin city council's accessways plan:

> It was felt [by the Department of Conservation] that the design of any walkways network based on existing paper roads would not achieve the desire of the public for access to areas of significant interest of [*sic*] natural beauty. [The Department's] preference was to see walking opportunities established to the '*highlights*' of the Peninsula rather than via a series of random paper roads.[30]

High-quality foot-tracks provide rational routes from A to B and evolve, or are designed, to be in sympathy with the landforms. They often wind with the rivers or curve with the contours. They seldom run in absolutely straight lines; even when they follow straight ridges, they tend to weave around, pushed this way and that way by minor features. What the peninsula needed was a coherent network of tracks, designed to high aesthetic standards, fit for countryside of national importance. Random accessways, though, is what we ended up with. Some of these bludgeoned their way down hillsides, compelled to follow dead straight lines drawn on maps using a ruler but little reasoning or local knowledge.

Hoopers Inlet Track became a well-known ludicrous route, forced upon walkers by the necessity to keep precisely to the line of an unformed public road. In one place this road went straight down the face of a short rocky step in the hillside. Although there was an easier way to one side of the bluff, using this alternative way would have been trespass. So walkers had to descend or climb the outcrop, using a wire rope as an aid.[31]

Nationally, trampers and government officials had been aware of the problem of unsuitably sited unformed roads for decades. In 1965, discussing the need to improve public access to forest parks, Peter McKelvey had written: 'The provision of better access, both legal and physical, is the key to the development of forest parks. In some cases "paper roads" exist but are not in suitable locations.'[32]

By 1997 the peninsula's rudimentary track network had stabilised as a fragmented pattern, frozen in time, a time that probably dated from land allocations of the mid-1800s. The warfare of the early 1990s had subsided to the level of occasional skirmishes involving mountain-bikers. The peninsula was heading nowhere except the university textbooks, as a complex planning dilemma involving privately owned land, conservation, the needs of outdoor recreation and tourism, and the impotence of the New Zealand Walkways Act 1990. Until 2008, no further public

foot-tracks had been added to bridge the obvious gaps in the inadequate broken tracery. Further support for a critical view of the peninsula's tracks arrived in October 2008, with the publication of Antony Hamel's new guidebook to Dunedin's tracks: 'The rolling hills [of the peninsula] and variety of land ownership has led to the creation of a set of short, but strenuous tracks that are not very well linked together.'[33]

The Otago Peninsula access controversy of the early 1990s held lessons for the whole country. New Zealand did need to forge ahead to open many unformed public roads for pedestrians and mountain-bikers. But each road would need to be considered on it merits. Some early public roads have little connection with the shape of the land or with journeying from A to B. They had been marked on maps merely to comply with the law in connection with the granting of sections. Having delineated a road on the map, the crown was then able to sell the land fronting the road. Now, a hundred and fifty years later, it was increasingly likely that some recreation groups or local communities would seek to relocate some of these roads. The government would need to detail exactly how negotiation might achieve this, bearing in mind that many local authorities had been reluctant to signpost and waymark even uncomplicated, usefully sited roads.

Perhaps it is too easy, though, for an onlooker like me to be wise in retrospect. We should view Bruce Mason's achievements on the Otago Peninsula against the prevailing attitudes of some landowners and officialdom of those times. In 1996, when the Otago Peninsula episode was still relatively fresh in the memory, Neil Clarkson reminded us of the situation that Mason had confronted:

> Bruce Mason is not afraid to use wirecutters on a stubborn farmer's fence to press home his message about public rights of access. He and other members of the Otago Peninsula Walkers found themselves at the centre of a battle over a series of unformed roads. They got out their wirecutters after wooden stiles the members had built on farm fences obstructing the peninsula's paper roads were smashed.[34]

Today, thanks largely to Mason's efforts, there is widespread agreement that the public should be able to obtain inexpensive maps that show all public roads. On the Otago Peninsula in the early 1990s, Mason had faced a different official view. As late as 1994, after the main row had quietened, the city council's roading manager, Peter Morton, reportedly said that 'there is no benefit to ratepayers in knowing where paper roads are generally. It is not an issue they need to know about.'[35]

Further Afield

The need for walking access to the countryside, and the associated need to locate and waymark unformed public roads, was an important issue for at least the 450 Dunedinites who had attended the opening day of the Otago Peninsula tracks in June 1990. But this issue was not peculiar to the Otago Peninsula. Had Bruce Mason lived anywhere else in New Zealand, he could probably have picked out unformed public roads on the cadastral maps, to be located and signposted and if necessary fought over.

In the area administered by the Far North district council, for example, the cadastral maps show an estimated 1,940 kilometres of unformed public roads. South Wairarapa district council's area, in comparison, has only an estimated 320 kilometres of these roads.[36] So some places have more of these roads than others. But their density does not necessarily indicate their potential usefulness. Each road must be considered on its merits. What is of interest is whether a road offers a logical, attractive route across the landscape or could provide a useful accessway to reach some destination – or both of these.

In May 1991, while Mason was embroiled in the Otago Peninsula dispute, commercial fishers and some schoolchildren were facing similar access problems along the Wairarapa coast. In a story titled 'Trouble Looms on "Paper Roads" ', the *Dominion Sunday Times* reported that

> trouble is brewing in some parts of New Zealand over public rights of access to the coast and rivers where … formed roads do not exist. Hundreds of roads exist on maps but have not been developed by local authorities and have been farmed for decades by adjoining landowners.
>
> Claims have been made that commercial fishers are being held to ransom by farmers who want big payments for access rights to boat launching sites on the Wairarapa coast …
>
> Restaurant owner Tom Rogers said he and his wife helped to take a group of 60 schoolchildren to a camp at Pahaoa [River], east of Martinborough, last summer. On a day walk around the coast they had to lift supplies and some of the children over two barbed wire fences that ran into the sea.[37]

In the decade that was to follow, cadastral maps would become increasingly difficult for members of the public to obtain, while at the same time – according to Bruce Mason, who was in a well-informed position from which to judge – the blocking of unformed public roads would reach plague proportions.

A Basic Guide for the Layperson

The courts in New Zealand have steadfastly upheld the principle of free and unhindered passage over public roads. A private individual, such as an adjoining landowner, cannot lawfully obstruct a public road. The territorial authorities that own the public roads cannot easily stop (permanently close) the roads, especially if a member of the public objects to the stopping.

Bruce Mason knew the laws governing the use and management of public roads. The Otago Peninsula had provided a sound reason for him to use this expertise. We can look back on this period in Mason's work for access as being an early high-profile, and in some respects triumphant, application of his legal research abilities. It also demonstrated his unwavering determination.

In July 1991 the Public Lands Coalition published Mason's *Public Roads: A Guide to Rights of Access to the Countryside*. This basic guide for the layperson included an explanation of people's rights to use public

roads, an outline of the legislative threats hanging over public roads (in 1991), and advice on researching the existence of public roads.

The *Dominion* reported on the book launch. One of the issues mentioned in the *Dominion* would not be tackled and solved until 2008–11: '[Bruce Mason said the Public Lands Coalition] believed that improved public pedestrian access to the countryside could be achieved through telling people of their rights and by showing them how to find the roads'.[38] Bryce Johnson, the director of Fish and Game New Zealand, said the guide was badly needed.

The book's title was perhaps a deliberate and excusable simplification; public roads were not the only access routes across the countryside, but they were potentially the most numerous and the most secure. In beating the drum for public roads, Mason was also exclaiming his central philosophy: public access through public ownership. In alerting the public to legislative changes that could erode their access rights, Mason warned that

> recent times have seen public rights of access to the countryside under attack on a scale never before contemplated. Vigorous opposition to any further weakening of public rights will be necessary otherwise much of what is special to the New Zealand outdoors will be lost.[39]

In 1992 Mason contributed an informative section, 'Public Access to Land', to the Royal Forest and Bird Protection Society's *Handbook of Environmental Law*.

PANZ's Goals and Interests

Also in 1992, after the Public Lands Coalition fell apart in disunity, Mason became the researcher for the newly formed trust Public Access New Zealand. He was one of two spokespeople for the trust, the other being Brian Turner, the journalist, playwright and poet. Turner, a founder member of PANZ, came to be a backroom influence, occasionally contributing polished articles to PANZ's newsletter. Mason, 'the instigating founder of PANZ' and the main passion behind its inception (though not the only one), grew into the public face of the trust, a role he was to fill for thirteen busy and combative years.[40] For him, the trust was a full-time job:

> The need is so great it can't be any other way. If you want to do it well you have to do it full time, and that means you have to be remunerated. I'm not getting rich on it. It's been at considerable personal cost. My rewards come from the very positive feedback we get. Hopefully, we might turn around this thrust of private grabbing for public resources.[41]

The goals and interests of Public Access New Zealand fanned out far wider than just a caring about public roads. PANZ's overall aim was to promote 'the preservation and improvement of public access to public lands and waters and throughout the New Zealand countryside in general and the

retention in public ownership and control of all publicly owned lands and waters with value for public recreation and/or nature conservation, [and] all inland and coastal waters, and recreational resource therein'.[42] In addition, PANZ's deed of trust contained the specific objectives:

- To promote recognition of [the] protection and enhancement of public recreational access as matters of national importance in law, official policy, and governmental practice.
- To promote public recognition of [the] recreational, health, inspirational and other benefits … to New Zealand of freely available recreational access for all.
- To monitor, research, and advocate public ownership and management [of] resources suited for public recreational use.
- To research the origin and status of public access rights, privileges, and public ownership and management [of] publicly held lands and waters, and to disseminate and publish the results of such research.
- To investigate mechanisms for public recreational access overseas that might have application to New Zealand.
- To establish links with organisations sharing interests in common with the Trust.
- To formulate policies for the better provision and management of public recreational access and use.
- To promote recreational practices conducive to the protection of natural and recreational resources.
- To encourage different outdoor recreational codes to work cooperatively towards furtherance of the objects of the Trust.
- To co-operate with other organisations or persons for the promotion of the above objectives in particular areas or generally.
- To seek and disburse funds for the promotion of the above objectives.[43]

The first PANZ newsletter appeared in September 1992. The trustees were concerned about political trends towards privatising. The opening paragraphs of *Public Access New Zealand* no. 1 explained why PANZ existed:

> A national campaign has been launched to preserve access over public lands and waters. This is in response to rapidly growing privatisation pressures from a multitude of commercial interests, land claimants, and free market ideologists. 'Public Access New Zealand' intends to remind politicians why our outdoor heritage must remain in direct public ownership and control.
>
> The campaign believes that loss of public ownership [of] and control over New Zealand's outdoors will inevitably result in loss of public access. What most New Zealanders have justifiably believed was an enduring heritage of all the people of New Zealand, is no longer so in the current political climate.

Pages 1 and 2 then summarised PANZ's goals, listed the extent of PANZ's interests, and outlined the most immediate threats, as PANZ saw them, to public ownership.

Regarding the conservation estate in general, PANZ criticised 'the Government's apparent willingness to consider divesting ownership to Maori claimants over national parks, conservation areas, [and] reserves'. Other PANZ concerns about conservation areas included a 'failure of the Department of Conservation to defend [the] concept of public ownership' and 'commercial interests vying for control or ownership of natural resources, public facilities and tracks in Parks'.

On the South Island pastoral high country, the newsletter's summary of threats contained five worries, such as 'runholders pushing for total freeholding of the land or the privatisation of natural and recreational values such as fishing, walking and skiing opportunities'.

On the Queen's Chain, PANZ argued against proposed law changes that would have detrimentally affected esplanade reserves.

Deeper into this inaugural issue, detailed articles put forward the PANZ views on the Ngai Tahu land claims; on the national parks' need for 'the highest degree of protection from human avariceness [*sic*] and political amnesia'; on the commercial pressures on conservation areas; on land degradation and public recreation in the South Island high country; and on government-initiated attacks on the Queen's Chain concept.

Bruce Mason and the Queen's Chain

Looking back from 2008, after two Acland reports that had tenaciously supported the Queen's Chain, access advocates tended to forget that in the late 1980s and early 1990s the law changes proposed by Labour and National governments had threatened to weaken the state's commitment to public ownership of water margins.

On 10 August 1989 the Labour government introduced into the House the Conservation Law Reform Bill, controversially empowering the minister of conservation to dispose of existing marginal strips created under the land acts.[44] This bill gave rise to widespread public concern over the lack of protection for the Queen's Chain. The Public Lands Coalition, whose driving force was Bruce Mason, began a campaign in defence of the Queen's Chain.[45] In November 1989 a statement by the prime minister, Geoffrey Palmer, reflected the Chain's growing national importance:

> The Government has no intention of restricting the public's right of access to the Queen's Chain … I want to assure everybody that the Queen's Chain is secure. The Government isn't going to take it away. It's an important part of New Zealand's history. We want it. We're going to have it. We're going to keep it.[46]

Public outrage forced the Labour government to moderate its proposed reforms. To appease public sentiment, the government dropped the contentious marginal-strip sections of the bill.

Then in November 1990 the National Party, led by Jim Bolger, gained power. The Queen's Chain again became vulnerable. The government

began to consider changes that would have reduced the number of esplanade reserves created during subdivision. The Public Lands Coalition, which had considerable political clout, continued to campaign against any changes that would undermine the Queen's Chain.

The Public Lands Coalition dissolved in discord in about 1991–2. In 1992 Public Access New Zealand was formed, and the Queen's Chain gained another redoubtable defender. From then on, any government that proposed law changes potentially damaging to the Queen's Chain would have to contend with informative PANZ press releases and a well-written PANZ newsletter that disseminated reliable information to outdoor recreators nationwide. Legislative threats to the Queen's Chain would receive authoritative critical examination and considerable publicity.

Issue number one of *Public Access New Zealand* aimed straight for the ministerial jugular:

> The present Government has its own designs on the Queen's Chain. It is not surprising that demands from Federated Farmers to water down the requirements for esplanade reserves under the Resource Management Act have been favourably received by the National Government … The importance that the government attaches to public access is perhaps summed up by [Minister for the Environment] Mr Storey's woefully out-of-touch statement to Federated Farmers this year: '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'. (Hon. Rob Storey. Speech to Dairy Section, Federated Farmers. 20/2/92.)

The National Party was to remain in power until December 1999. The PANZ newsletters of the 1990s were to become frequent defenders of the Queen's Chain.

PANZ Presents Its Central Belief

In an important but too short section of *Public Access New Zealand* no. 1, titled 'Why is Public Ownership Necessary?', PANZ sketched out the advantages of public access through public ownership. The writer also covered the disadvantages of some alternative approaches, such as access provision written into covenants. This laying down of PANZ's philosophy would have been more explanatory and complete – and productive of further debate – if it had explicitly reasoned firstly on the need for public ownership of *areas*, such as national parks and forest parks, and secondly on the need for public ownership of all *foot-tracks*, such as by having a national track network based entirely on public roads, marginal strips and other publicly owned strips. But the article did not distinguish between area access and linear access. It was an incomplete analysis that oversimplified a complex heap of considerations and which, over the following decade, few observers were to examine critically or dissentingly. On the contrary, PANZ's uncompromising promotion of public access through total public ownership would be accepted by many recreators as compelling and even self-evident.

Which in some ways it was. Regarding the ownership of areas like national parks, held for conservation, public use and enjoyment, PANZ argued that the free-market notions then in vogue were a complete fallacy. If individuals came to own public reserves, PANZ said, there would be a conflict of interest between the landowners' self-advancement aspirations and the reserves' community purposes. 'The availability of natural and recreational areas for public use has to be beyond the fickle or capricious control of private individuals who may ration [parts] or exclude segments [from] public use.'[47] Public ownership would allow maximum flexibility to amend resource management to adapt to ecological, social, and recreational needs.

Covenants versus Public Ownership

If we stay, for a moment, within the context of the ownership of areas, some politicians in the early 1990s were touting covenants as the cure-all for environmental protection and for the provision of public access to private land. A covenant is 'an obligation that attaches to the land and has to be observed by all owners, even after changes of ownership'.[48] A covenant forms an agreement between the landowner and some other party about the management of portions of the property. Typically the other party may be the crown or a local authority or a trust. Some covenants are limited in term; others have no time limit and endure unless removed by a legal process. Environmentally aimed covenants in New Zealand include open space covenants under the Queen Elizabeth the Second National Trust Act 1977, conservation covenants under the Reserves Act 1977, and covenants for conservation purposes under the Conservation Act 1987.

PANZ detailed a number of reasons why covenants would not on the whole provide secure public access. For these reasons, PANZ said, recreators should not consider covenants to be an acceptable alternative to public ownership of land. A conservation covenant, for example, which usually restricts grazing, may also restrict public access. Fifteen years later the report of the Walking Access Consultation Panel would mirror Bruce Mason's far-seeing concerns. Commenting on the covenants established by the Queen Elizabeth the Second National Trust, the panel wrote that

> public access provision in the Queen Elizabeth the Second statute is almost always negated in covenants. The Queen Elizabeth the Second National Trust website states that private property rights are not jeopardised by a covenant – the landholder retains ownership and management of the land. Visitor access is available only with the landholder's prior permission.[49]

European Imports: For and Against

If my comments here are sounding like an unrestrained endorsement of PANZ's unshakeable and almost besotted belief in public access through public ownership, I should slightly qualify my approval. Overseas there are some long-established models of public access without public ownership of the land. Scandinavians enjoy abundant area access to expanses of privately-owned countryside including farmland and commercial forests; pastoral farmers in the Nordic countries have to fit their activities around the public right of access.[50] Germans in what used to be the Federal

Republic enjoy a right of passage along all roads and paths except those which pass close to a dwelling; in practice this linear access opens up most riverbanks and lakesides.[51] These Germans also have a right of access to uncultivated areas such as heaths and sand dunes and to fields that are not in use. Austrians have a traditional right to roam throughout Austria and a legal right of access to forests, with conditions and restrictions. The Swiss have a right of access over uncultivated land and also have ancient rights of entry to forests and woodlands.[52] Most of the Alps are summer pastures for cattle; foot-tracks routinely cross these seasonal meadows. The English and Welsh use public footpaths and bridleways to cross farmland and imposingly private country estates. Since 9 February 2005, when the Land Reform (Scotland) Act 2003 came into effect, the Scots have enjoyed a fundamental freedom to walk, cycle and ride horses over uncultivated countryside.

In all these European countries, walkers leave gates as they find them. The walkers do not eat or cut or damage the grass. Nor do they disturb newborn lambs or their mothers. Nor do they disrupt nibbling sheep or grazing cattle. Nor do they distract the eager sheep dogs. Nor do they interrupt the whistles and calls of the farmer. The walkers go about their walking and the farmers go about their farming and the two groups coexist admirably.

Whoa! Stop there, PANZ would say … We don't need European imports! Access through public ownership, PANZ would argue, is an indigenous solution that suits New Zealand. 'Surely it is more befitting our culture and traditions to reinforce our public open spaces law than to try to supplant it with foreign mechanisms.'[53] Concentrating on improving our access to public lands will avoid confronting the landowners' fierce territoriality.

There are several counter-arguments to this PANZ reasoning. Firstly, concentrating on gaining or maintaining our access to public land will not improve our access to those parts of the working countryside where there are no public roads or no water-margin reserves.

Secondly, why shouldn't access advocates directly challenge the entrenched private property rights of the New Zealand landowner? Isn't this exactly what access organisations ought to be doing? Furthermore, in choosing to avoid such confrontation, you could argue, PANZ capitulates to the opponents of reform; it says, Oh dear, there's no hope of moderating the gushingly conservative landownership, let's not even try.

Thirdly, just because New Zealand has relatively few examples of linear access without ownership does not mean that such an arrangement cannot work anywhere here. Rights of way founded on easements can function usefully in New Zealand in some circumstances. They already do wherever there are gazetted walkways that cross privately owned land and are based on easements in perpetuity.

Later in this chapter we will look at an absurdly routed easement established during the tenure review of Ben Avon Station in 2002–5. In 2005 Bruce Mason roundly condemned the impracticability of this right of way. He also expressed general concerns about the easements resulting from tenure reviews. But five years later he would write that in the South Island high country the foot-tracks based on Conservation Act

easements or Reserves Act easements had mostly performed as intended; a few had been obstructed by landowners or had acquired misleading and intimidating signage.[54]

The Port Hills: a Dual Approach to Access

One example of a dual approach to access is in the Port Hills, 'perhaps Christchurch's greatest landscape asset' and a key recreation resource.[55] Over a century a heavily used network of walking and mountain-biking tracks has developed. In his 2002 guidebook, Mark Pickering wrote that 'there are unparalleled opportunities for walking and recreation on the Port Hills, with a complexity of tracks and bush reserves that would take many weekends to explore'.[56] Walkers can choose one-hour walks, half-day walks or full-day walks. Yet in 2004 only 13 per cent of the Port Hills was public land.[57] Trusts owned just another 3 per cent. Superficially, therefore, the Port Hills appeared to be an ideal New Zealand model of ample public access with sparse public ownership. It seemed to demonstrate a successful and much needed alternative to PANZ's one-method-fits-all approach.

When you took a deeper look, however, some aspects of the then Port Hills track network, which was still evolving, were far from perfect. Most of the tracks were in publicly owned reserves or were based on public roads, thus conforming to the widely accepted but over-simple PANZ ideal. According to information I received from Christchurch city council, in 2007 only a few of the Port Hills tracks were on private land. Furthermore, public access to these privately owned tracks was based on informal agreements between city-council officers and the landowners; none of this access derived from easements.[58] Walkers should therefore have viewed the Port Hills in 2007 not as a sparkling example of a dual approach to access but as an example of the failure of the New Zealand Walkways Act to establish certain and enduring walking tracks over private land.

In 1996 Reuben Peterson wrote about access problems occurring on some parts of the 84 per cent of the Port Hills that was privately owned:

> Trespassing is a major problem and results from people either assuming they have rights where they do not, [or from people] trying to stick to their rightful access ways (such as paper roads) but deviating for whatever reason or [from people] blatantly using private land because … they cannot find what they need in the public reserves. Land owners are increasingly restricting the use of their land by recreationists because of the problems they cause. Mr Scott no longer allows people to access his land and Mr Graham is very opposed to people freely wandering over his land. Inconsiderate users of hang-gliders are scaring stock over fences on Mr Grahams' [*sic*] property and startling horses which has resulted in their severe injury on Mr Scotts' [*sic*] property. From my observations this ill feeling is likely to increase until land owners prohibit all use of their land. A solution needs to be found before this happens.[59]

Peterson suggested that a part of that solution would be the use of section 8 of the New Zealand Walkways Act 1990 to create gazetted walkways

over private land. The Crater Rim Walkway already existed, having been opened on 10 December 1978 as Canterbury's first commission-approved walkway.[60] (But it had not been gazetted.) More walkways could be negotiated and built, perhaps bridging some of the gaps between publicly owned reserves. Twelve years later, in 2008, this proposal was still waiting to be taken up.

Development on the Port Hills, such as for housing, was and remains another issue. PANZ I suspect would ask the question: if 84 per cent of the Port Hills is privately owned, what is to stop the landowners developing much of the land in ways harmful to recreation and conservation? Access without ownership, PANZ would add, may not respect or preserve recreational values.

In part, the Port Hills Recreation Strategy of 2004 recognised and responded to this concern:

> The future of recreation on the Port Hills will rely to a large extent on protecting the existing open spaces from residential and other forms of inappropriate development, ensuring access by recreational users to all available areas. Council's operative acquisitions strategy … is a direct response to this issue … This strategy proposes that the public land on the Port Hills should be protected and developed as park for existing and future generations, and proposes a strategy for acquiring private land on a 'willing seller, willing buyer' basis.[61]

Acquisition by local authorities or the government, however, is not the only way to protect recreational resources. Planning controls, such as those of the Resource Management Act, could also play a part, provided that they are designed for the job intended. Large parts of Britain's national parks are privately owned yet are staunchly preserved by planning regulations and procedures. The Port Hills are already a makeshift type of New Zealand country park, in being if not in name. It remains to be seen, in the long term, whether preserving their rural character will depend on increased public ownership or on formalising their park status to provide an extra degree of planning control over and above the acts of parliament that already bear upon the hills' management. It seems unlikely that the Port Hills will ever become thickly dotted with country residences; but the lesson of Belmont Regional Park, near Wellington, where such a fate briefly loomed large, is that this possibility cannot yet be ruled out.

Belmont Regional Park: Public Ownership Replaces a Dual Approach

Belmont Regional Park lies in the hills between Porirua and the Hutt valley. Its views from open tops, combined with its hidden bush-clad valleys, make it a popular area for walking, running, mountain-biking and horse-riding. In 2005 the park received an estimated 110,000 visits a year.[62]

In February 2005 a Greater Wellington regional council report said – accurately only in a general sense – that Belmont Regional Park had been modelled on the national parks of England and Wales, which include both publicly and privately owned countryside.[63] Applying this concept to Belmont Regional Park was originally seen as a means of protecting and managing the landscape values and recreational opportunities while

providing for its continued use and occupation by private landowners. Wishful thinking. It turned out that the vague planning controls governing Belmont Regional Park, such as the zonings in district plans, were insufficient to preserve adequately its pastoral character; they were hardly comparable to the strict laws that prevent property magnates building houses in the Peak District National Park.

The following historical notes exploit the above-mentioned report. On 26 April 1977, the minister of lands agreed in principle to the inclusion of Waitangirua Farm into Belmont Regional Park. The Belmont Regional Park Management Plan records that although it was not formally stated at the time, it was implied that the farm would become part of the park provided that farming operations remained viable.

In 1986 the newly created state-owned enterprise Landcorp Farming Limited took over ownership of Waitangirua Farm from the Department of Lands and Survey. The transfer of part of the farm from the crown to Landcorp was conditional on providing for covenants to protect shrubland and forest remnants. Also as a condition of the transfer, two walkways across the farm were created by easements (but, it appears, may not have been gazetted until 2000[64]). Subsequently, an informal management partnership developed between Landcorp and Greater Wellington regional council.

Over the 1980s and 90s, most of the public got used to sticking to the tracks, where required to. The farmers, some of whom had initially opposed the walkways, became adept at managing public access.

In March 2003, during a meeting between the regional council and Landcorp officers, Landcorp indicated that it was considering closing its operation on Waitangirua Farm. A ten-year exit strategy was discussed. Landcorp indicated that it would be desirable for Waitangirua Farm to remain part of the regional park and that Landcorp could assist that process by continuing to farm the land until the exit was complete.

In February 2005, before the public purchase of the central third of the park, Belmont Regional Park was described as

> unique in the network of regional parks. It is the only regional park to encompass land in both private and public ownership. While the public perception is that Greater Wellington owns and manages the land within Belmont Regional Park the reality has been quite different. Land contained within the park's boundary is owned by 6 agencies. Greater Wellington has formal rights to manage around 60% of the land in the park. Our management role in the other 40% is based around long standing good relationships between the landowners and our parks staff.[65]

Unfortunately, excellent relationships between all the parties can be irrelevant when a landowner is enticed by the potential profits of subdivision for housing development. To prevent the building of houses, and thus preserve an area for farming and recreation, requires either planning controls or public ownership. In 2003–5 this sort of situation arose in Belmont Regional Park when Landcorp Farming Limited confirmed its decision to dispose of Waitangirua Farm. Landcorp was a state-owned

enterprise, expected by the government to pay its own way, show a profit and not drain state coffers. The farm occupied 1,243 hectares, 35 per cent of the area of the park. It straddled the main ridgeline in the centre of the park, thus forming 'a strategic linchpin that glues all the other pieces of land together'.[66]

Even if the farm were to have been sold to a private buyer, the walkways based on easements, the tracks based on public roads, and the covenanted areas of native forest would have remained. But in the event of such a sale, some of the farmland might have been developed for housing or lifestyle blocks; this would have adversely affected the landscape, the values of the walkways, and the character of the park.

On 19 April 2005 the Friends of Belmont Regional Park presented a petition to Greater Wellington regional council. The petition asked the council to 'secure into public ownership for the purposes of conservation and recreation, that part of the Belmont Regional Park currently owned outright by Landcorp and known as the Waitangirua Farm'. The petition contained 12,771 signatures, indicating considerable community support for the demand.

Events moved unusually quickly. On 19 August 2005 the minister of conservation, Chris Carter, announced that more than three-quarters of Waitangirua Farm would be bought for $6.27 million.[67] The government would shell out $3.1 million of this. Greater Wellington regional council would contribute $2.8 million. Porirua city council would provide $335,000. Waitangirua Farm was 'a spectacular [area] of open space on the doorstep of our capital city … and the Labour-Progressive government believes [it] should remain in public ownership'.

What was the lesson to learn from this Belmont Regional Park story? The chosen solution was public access – and the preservation of the area's rural character – through public ownership: an apparent vindication of Public Access New Zealand's basic philosophy. But the episode also revealed the inadequacy of New Zealand's planning controls: the nonsense of having an important regional park whose essential rurality was insufficiently protected by laws. The purchase of Waitangirua Farm was a good result for Wellingtonians – yet the government could hardly buy up all the farmland in New Zealand. The bulk of our farmland would remain privately owned. Examples such as Waitangirua Farm and Molesworth Station[68], where the local authority or government had bought farmland or changed its status to secure recreational access to it, were exceptions. They did demonstrate one or two ways to gain free and lasting walking tracks across the panoramas of *Country Calendar*, but track advocates also needed to pursue other ways, such as easements, that did not require public ownership of the land.

PANZ's Scepticism about Easements and Covenants

The trouble with the seductive logic of PANZ's public-ownership evangelism was that it said little about how to obtain certain and durable linear access across those parts of New Zealand's working countryside that lacked public roads or Queen's Chain reserves. Our farms in 2004 covered 11.7 million hectares of grazing, arable, fodder and fallow land.[69] This amounted to 43 per cent of our land area. Granted, in many places

in this countryside, unformed public roads awaited ferreting out and waymarking. Along many water margins, there was the prospect of basing walking tracks on unformed public roads or marginal strips or other reserves. Yet how were planners to create linear access across farmland that was 100 per cent privately owned? How were New Zealanders to gain walking and cycling access to their countryside's snaking farmtracks, the nation's greatest hoard of prospective accessways, already physically real? Was it beyond imagination to hope that New Zealanders would gradually obtain permanent access to farmtracks without the state having to buy the farms and the farm animals?

PANZ's snappy answer to these questions, in 1992 and religiously thereafter until at least 2003, was that all foot-tracks across private countryside should be based on publicly owned strips rather than on easements or covenants.

Even before PANZ existed, Bruce Mason had written, with some justification but also a dash of Utopianism, that Walkways Act walkways based on easements would be 'an inferior substitute to the common law right of passage without hindrance provided by public roads'.[70]

Little Confidence in Easements (in General)

Although PANZ saved its most severe criticism for covenants, it also frequently expressed little confidence in easements. We saw in Chapter 6 that in New Zealand, right-of-way easements are a common means of providing limited access across private land. The transfer document registering the easement on the title defines the level of access. For example, the right of way may be for pedestrians only. Or access rights granted, say, to the public, may cease after a certain time or if conditions are not met. In 1992 PANZ argued that easements across recently privatised parts of Raukumara Forest Park would

> lack security for the conservation or public access purposes for which they are established. They can be varied or extinguished at any time, without any provisions for public notification or objection.[71]

In part, PANZ's dismissal of easements probably stemmed from a collective knowledge of actual happenings. Take, for example, Papuni Station near Te Urewera National Park. For many years trampers, hunters and anglers relied on walking access across Papuni Station to reach Waitangi Falls on the Ruakituri River and hence the national park itself, above the falls. In about 1980 the landowner closed this vital accessway. The Department of Lands and Survey and Te Urewera National Park Board called an on-site meeting, which drew over sixty people. This led to an access agreement in the form of an easement. The historically-used track to Waitangi Falls was officially surveyed, benched and signposted at considerable cost to the taxpayer.[72] But the easement was only for a five-year period. After it expired, the station-owners declined to renew it. Informal access continued, often cordially but sometimes tenuously and acrimoniously. The final solution, reached in 1999, involved not another easement, with restrictions and inconveniences (such as compulsorily signing a visitors' book), but an unformed public road, Papuni Road.[73]

In 2003, PANZ was still maintaining its critical stance on easements. The PANZ submission to the Land Access Ministerial Reference Group was compiled by Bruce Mason.[74] It said:

> Most easements fail the essential public expectation of secure access. They can be modified or extinguished without public process (section 126G Property Law Act 1952). This is despite often being registered 'in perpetuity' against property titles and appearing legally secure on paper. These provide true 'paper access'. Most have highly variable conditions attached to entry and can be closed from time to time. There are no lawful remedies available to the public when obstructed. The public is totally dependent on the authorities to uphold their rights. However most authorities are reluctant to enforce the terms of agreements, more often ignoring breaches or amending the terms to suit the new situation. Under the Crimes Act (section 58) the public is liable to eviction notwithstanding rights under any easement. In effect these arrangements last for only as long as the current landowner's goodwill remains. The reality is that these are private lands notwithstanding any public privileges granted. This is in marked contrast to the protections and certain rights afforded by public roads which are wholly public property.[75]

Where there were no public roads or other public strips, the Mason-compiled submission argued, local authorities could create new unformed public roads three metres wide; these would be solely for pedestrians, or pedestrians and bicycles, or pedestrians, bicycles and horses.[76] (Brian Hayes would later dispute this latter possibility, saying that 'there is no statute now in force which authorises the dedication of an unformed road'.[77] Mason would respond determinedly, saying that section 114 of the Public Works Act 1981 provides for the dedication of a new public road.[78]) In Mason's eyes, foot-tracks based on public roads or on marginal strips or on esplanade reserves or on other publicly owned strips would be worthwhile and admissible. But esplanade strips, which are easements over private land, would grant variable rights of public access, prone to obstruction and with extensive provision for closure to the public. All esplanade strips, Mason said, should be converted to esplanade reserves, and the ability to create further esplanade strips should be repealed.[79]

We will look more closely at esplanade reserves, esplanade strips and access strips in Chapter 9. The 2003 Acland report, some parts of which we will cover in Chapter 9, would not adopt Mason's idea of converting esplanade strips to esplanade reserves. As for his concern that easements could be modified or terminated without any public procedure (under section 126G Property Law Act 1952[80]), the 2003 Acland report would specifically comment on and contest this possibility, the reference group having received advice that such alteration or extinguishment was unlikely to happen.[81]

PANZ on the Easements Resulting from Tenure Reviews

There are easements and easements. Much depends on the legal small-print and the practicality of a particular easement. Throughout the 1990s, PANZ cautiously welcomed the prospect of accessways across freeholded

pastoral leasehold land, which would be based on easements. But the tenure review of Ben Avon Station led to scathing Bruce Mason criticism of the quality of one of the resulting easements, intended to provide foot, cycle and horse access from Birchwood Road to the Ahuriri River, near the southern boundary of the freeholded land.

In March 2002 the commissioner of crown lands invited the public to make submissions on a preliminary proposal for the tenure review of Ben Avon Station. Mason examined the proposal. He later wrote:

> The official plan showing the proposals was cause for bewilderment. The southern easement … headed in a straight line across a paddock to the lip of a terrace, then continued for another couple of hundred metres to join the marginal strip not far from the edge of the river. The plan showed contours close together indicating a steep slope, with a drop of approximately 50 metres. Inspection by myself revealed a cliff, impassable to not only human beings, but bicycles and beasts as well! I initially thought someone had merely drawn a straight line on a map without bothering to inspect the site. However, I could not explain how anyone, in particular LINZ and DOC, for whom maps and map reading is their stock-in-trade, could possibly miss this barrier to public access, even in the absence of field inspection.[82]

The PANZ Ben Avon Station submission of May 2002 recommended an adjustment to the line of the easement, to avoid the cliff. After all, the government had stressed that public access was a key objective of tenure review. Yet in July 2003 the final agreement with the runholder still showed the accessway going over the cliff. According to Mason, 'the most extraordinary aspect of officials' behaviour [had] been their determination to deny the existence of a cliff on the alignment of the proposed access'.[83]

After the July 2003 agreement, Mason repeatedly raised the matter during tenure-review policy meetings with LINZ and DOC. His persistence led to an official rethink, of sorts. The finally approved survey plan of March 2004 showed a realignment of the easement. But on inspecting this new route on the ground, Mason discovered it to be a clumsy effort to create a practical accessway; it was usable on foot, but not by bicycle or horse. Furthermore, a part of the new route was legally iffy; a section along the clifftop, marked with wooden stakes, went across freehold land; it did not follow either a registered easement or a marginal strip. Mason was blunt:

> So the best that officials could come up with … were a few markers sitting in someone else's paddock. In the absence of any security for this route, public access is, and will remain, at the pleasure of present and future [land]owners.[84]

In Mason's opinion, expressed in 2007, the Ben Avon Station case was not an isolated departure from normally satisfactory outcomes. Rather, it illustrated a widespread problem of inadequate access results from tenure

reviews. And it was 'a symptom of institutional indifference'.[85] PANZ had made detailed submissions on over thirty tenure reviews, but Mason was unaware of any improvement to the official proposals as a result. Easements, Mason claimed, continued to thread along steep and unusable routes on many properties. 'Without drastic reform of the organisation calling the shots – Land Information New Zealand – further idiotic and inadequate public access outcomes [were] inevitable.'[86]

The Ben Avon Station was eventually resolved, but after the freeholding. Mason wrote that 'DOC was left with having to negotiate alternative access to the river. This was dependent on the goodwill of the new landowner. It was fortunate that the owner was amenable to negotiation, as the bargaining strength that the Crown enjoyed during tenure review had been lost.'[87]

The issue of access through public ownership as against access by such means as easements remained an ingredient of the access debate throughout the 1990s and through to the present day, although seldom in a way that directly and explicitly contested PANZ's declared conviction.

The PANZ Website

In 1996 some PANZ material was available on the website of Fish and Game New Zealand, evidence of a cooperative relationship between these two organisations.[88] Over the years, the ties between them have probably more often been close than strained.

In July 1997 the PANZ newsletter announced that PANZ had established a comprehensive website 'with over a hundred [web] pages and masses of information about the outdoors'. The website had immediately proved useful for researchers, journalists and students. PANZ had received highly complimentary comments.

In about October 1997 the website gained its own domain name. Almost everything that PANZ had written – newsletters, research monographs, press releases, tenure-review submissions, etc – became available at http://www.publicaccessnewzealand.org. The website also contained much material that predated the establishment of PANZ, such as thirty-six documents relating to the Public Lands Coalition's Queen's Chain campaign of 1989–91. The site became, in a sense, New Zealand's online library of land access. It contained a profundity of information. Samuel Johnson once said that knowledge is of two kinds: we know a subject ourselves, or we know where we can find information upon it. From 1997 onwards, New Zealand's outdoor recreators knew where they could find some of the more important facts on access. (In October 2006 the website's address changed to http://www.publicaccessnewzealand.com.)

The Council of Outdoor Recreation Associations of New Zealand (CORANZ)

Also in 1997, another national recreational body with an interest in access was formed. Early newspaper reports gave its name as the New Zealand Council of Outdoor Recreation Associations; at some point it became the Council of Outdoor Recreation Associations of New Zealand (CORANZ). The *Evening Post* reported that CORANZ would become an advocate for backcountry recreation.[89] CORANZ aimed to represent

the collective interests of national bodies in deerstalking, recreational canoeing, salmon and trout fishing, recreational skiing and hunting. Its co-chairman Tony Orman said:

> The combined numerical strength of these outdoor sports interests that have come together is hundreds of thousands. About a million New Zealanders are conservatively estimated to take part in outdoor recreation. The country is as much an outdoor recreation nation as it is an organised sports nation. Despite this, recreational interests are not adequately recognised by politicians, sports-funding organisations and other sectors … it's time our combined viewpoint was pushed.[90]

Orman said that the goals of CORANZ included promoting backcountry recreation, protecting public land and public resources, maintaining and enhancing public access to public lands and achieving a full say in management plans.[91] The council was concerned about the increasing privatising of waterways and land. A case in point, Orman said, was the Ngai Tahu settlement, particularly the way that the government had used public lands 'as bargaining chips without consultation with user groups'.[92]

In August 1999, CORANZ announced its intention to lobby and campaign to keep recreational issues in front of politicians and voters until the general election, due in November 1999. The recreational groups belonging to CORANZ put together what they called an election charter, which contained eighty policies.[93] Among the key issues were tourism and development that conflicted with the public's outdoor resources (such as game animals and freshwater fish) and with people's access to publicly owned land. CORANZ was apolitical, unaffiliated to any political party, but it intended to present its election charter to all political parties for their responses.

CORANZ repeated its election-charter exercise before the general election of July 2002. The *Press* reported that CORANZ wanted government policies to reflect the importance of outdoor recreation. Too often, argued Tony Orman, government policies neglected outdoor recreation. CORANZ suggested that the Department of Conservation's name be changed to the Department of Conservation and Recreation. This new name would help to create awareness, among the public and among DOC staff, of the department's dual roles. Orman said: 'Unfortunately, recreation is DOC's Cinderella to tourism and nature protection. DOC had neglected back-country facilities such as huts and tracks in its focus on tourism-based work.'[94]

At the general election of 27 July 2002, the Labour Party achieved fifty-two seats, the National Party twenty-seven. This result led to a Labour-Progressive coalition government, supported on confidence and supply by United Future. Helen Clark continued as prime minister for a second term, heading a minority government but likely to enjoy a comfortable majority on quite a few issues.

Chapter 8

Tenure Review, 1994–2003

The term 'South Island high country' has already appeared in this book several times but without any formal definition. Although no such definition exists, there is a common understanding of what the high country is and of what it represents:

> Essentially, it comprises a central region of medium to high altitude more or less natural grassland running the length of the South Island between the Alpine ranges and the coastal plains and downlands of the East coast. This land is sometimes known as 'the tussock grasslands', 'rangelands' or 'run country' and may be as low as 300 metres above sea level. It is closely linked with the extent of a system of Crown Pastoral Leases that restrict the use of the area to pastoral activity and no other use. The region has a central role in images of New Zealand, portraying down to earth values that contrast with city sophistication and which, through advertising campaigns such as the 'Southern Man' beer promotion, create a distinctively Kiwi sense of place and of belonging.[1]

The tussock country supports grazing sheep and cattle but is unsuitable for arable farming. Crown South Island high country pastoral leases have a thirty-three-year term with a perpetual right of renewal. The leases allow grazing of the land for pastoral farming purposes but put a range of restrictions on other land uses.

Tenure review is a legal process, entered into voluntarily, that reassesses a pastoral lease and gives the leaseholder the potential to own part of his or her leasehold land.

A 2003 cabinet paper summarised the history behind the pastoral leases of the South Island high country:

> At the time of European settlement, the high country was regarded as 'waste lands' suitable only for extensive grazing. From the 1850s a succession of rights of pastoral occupation was granted by the

> provincial governments and, later, by the Crown. Tenure arrangements varied over time.
>
> There was widespread land degradation (overgrazing, burning, erosion, rabbits) in the 19th and early 20th centuries, although there have been more recent and successful initiatives by the government and lessees to implement sustainable land management practices.
>
> The Land Act 1948 … created the current perpetual pastoral lease tenure to provide occupiers with the confidence to invest in long-term management strategies, and to enable the Crown to exercise control over leased lands for soil conservation and erosion control purposes. Leaseholders were granted exclusive occupation rights and fixed rentals but no right of freehold.
>
> Pastoral lease arrangements were comprehensively reviewed by the Clayton Committee of Inquiry in 1982. The Committee recognised that there are wider values attached to pastoral lands and proposed a process of tenure review, and concluded that pastoral lease tenure had 'outlived its usefulness'.[2]

Argument about the future of the South Island high country rumbled on through the 1980s. By the mid-1980s, many pastoral leaseholders 'had come to see themselves almost as de facto owners of the land'.[3] By the late 1980s, 'the High Country Committee of Federated Farmers was rocking the boat strongly … for freehold'.[4]

Most recreational bodies, too, favoured land reform. In November 1988 the Public Lands Coalition devoted a four-page newsletter to an account of the main issues surrounding the pastoral leases. The newsletter included a statement of the Public Lands Coalition's aims in this regard:

> PLC's goals for pastoral leases and other Crown lands
>
> 1. To retain all lands of important conservation and recreation value in Crown ownership with public control through central Government.
> 2. To ensure the survival of native ecosystems, species, and landscapes which in the aggregate give special value to the high country.
> 3. To protect fish and game bird habitats for the use and enjoyment of the public.
> 4. To provide unobstructed public access rights to conservation lands and enhanced public recreational opportunities generally.
> 5. To create wider public and political recognition of the special significance of the high country, and coastal, river, and lakeside reserves to New Zealand.[5]

Jim Bolger's National government developed tenure review in the mid-1990s. In February 1994 the minister of lands, Denis Marshall, released a discussion paper on the issues and options for changing the tenure of crown pastoral land in the South Island high country.[6] The paper outlined six options ranging from the freeholding of all pastoral leasehold land to the total resumption of all leases to the crown estate, both of these fringe possibilities being dismissed as extreme choices.

People held different opinions on who should own the high-country pastoral lands. Some runholders wanted to retain pastoral leases. Others argued for the freeholding of all pastoral-lease land. Recreation advocates, such as Public Access New Zealand, favoured reforms that would transfer the more fertile land into freehold ownership while shifting ecologically and recreationally important marginal land into the public conservation estate.

Fervour

The issue of land ownership in New Zealand excites fervent emotions. Some corners of the public debate on tenure review and on other access issues soon became the display-boards for immoderate or ill-informed comments and personal attacks. Writing in the *New Zealand Farmer* in April 1994, during a period of privatisation and user-pays trends, the journalist Maurice Dick pilloried Bruce Mason in an article titled 'Zealot Stalks the Hillsides':

> The man is a believer in the right of the public to have access and the need to preserve all public land for the public. Believer under-states the case. He's a zealot.
>
> By his logic, Department of Conservation causes equate with hospital beds for kids and heart operations for oldies as legitimate claims on the public purse.[7]

In defence of Mason and PANZ, Brian Turner wrote:

> Sir, Your virulent attack on Bruce Mason … is a discredit to both yourself and your paper. Snide, contemptuous, derisive copy is not what one expects from thinking journalists. The piece reads like the work of an opinionated bigot, a lapse, one hopes, and in no way typical. Or is it?
>
> Mr Mason works to protect the public interest in public lands and waters, especially in regard to access for recreational users. Neither he, nor other members of Public Access New Zealand wish to capture private lands. So why the vilification? …
>
> Before Mr Dick starts wading into Bruce Mason, and PANZ, … it would help if he showed some signs of having read and understood PANZ's arguments. Then we might just get some reasoned debate.[8]

The first explicit mention of tenure review in a Public Access New Zealand newsletter occurred in a three-page article in *Public Access* no. 4, May 1994. The article said that PANZ and most conservation and recreation groups supported 'negotiated exchanges of property rights between lessees and the Crown to create public lands on areas of high natural and recreation value, and rights of access to them, with, as a quid pro quo, freehold offered over the better farm land'. PANZ also argued that special leases should be created over the extensive 'in-between lands', such as Molesworth Station, where there were over-lapping conservation and grazing values.

The newsletter article welcomed the handful of tenure-review deals that had already taken place, most of the outcomes having proved 'sensible and acceptable from both pastoral and conservation-recreation perspectives'. At the same time, looking suspiciously ahead, the article implied that the options in Denis Marshall's discussion paper had been skewed by 'pre-determined preferences to privatise as much Crown land as possible'.

Government Objectives for Tenure Review, 1994

In 1994 the cabinet agreed objectives for tenure review. The objectives were to:

- promote sustainable land management;
- release the State's productive assets where these can be more efficiently used by the private sector;
- safeguard the long term public interest in nature conservation, recreation, access, landscape, cultural and historical values;
- take account of other Crown purposes including the Treaty of Waitangi; and
- make decisions about each negotiated pastoral lease tenure review as to the best use to which the land should be put.[9]

In the years that were to follow, every PANZ newsletter from number 5 (November 1994) to number 12 (November 1999) would carry news of or articles on tenure review. These were still early days, though, in the lengthy analysis, debate and negotiation over the future of more than two million hectares of South Island high country. The argument was set to continue not just until the Crown Pastoral Land Act of 1998 but also for at least a decade after the passing of that act.

Land tenure review was controversial because it involved the last big allocation of crown land. The disputed issues included ecologically sustainable management; the freeholding or covenanting of areas with significant conservation and recreation values, especially lower altitude tussock and shrublands and lakeside lands; the adequacy of the new accessways across freeholded land; the size of the rents that leaseholders paid; and the fairness and objectivity of the financial terms of agreements that led to the splitting of properties into publicly owned conservation land and freehold title.

Free the High Country Farmer from History's Hobbles

On 13 April 1995 the weekly business newspaper *The Independent* published an article written by Paul Jackman, the public relations manager of Federated Farmers of New Zealand, and titled 'Free the High Country Farmer from History's Hobbles'. The article implied that it was 'time to ease the rules for freeholding of high country pastoral lease farms'. It also seemed to accuse Public Access New Zealand of resisting tenure reform, a blatant misconstruction. It said almost nothing about creating public access to recreational areas.

This article led to an indirect exchange of acrimonious letters between Bruce Mason of PANZ and Paul Jackman, published as letters to *The Independent* in June, July and August 1995. Federated Farmers was

supporting the Crown Pastoral Land Bill. PANZ too was supporting the idea of tenure reform but it mistrusted the National government's real intentions. Jackman implied, inaccurately, that PANZ was hostile to tenure reform. Mason condemned 'Federated Farmers' propaganda on high country tenure reform'.[10] He accused Jackman of using 'false arguments based on repeated misrepresentation of others' positions'. He reiterated PANZ's stance:

> PANZ has never stated or implied that there are rights of public access over pastoral leases, or that we are opposed to tenure reform. All our words and actions defy Mr Jackman's interpretations. We want rights of access created as a result of tenure review. To achieve public access there must be reform. To constantly bleat otherwise [accusing PANZ of resisting the tenure reforms], as Mr Jackson does, is hogwash.[11]

Hogwash can sometimes very effectively mislead people. Repeated misrepresentation of others' plans was a technique that Federated Farmers would use devastatingly well nine years later, in connection with the government's proposals to create footways along water margins.

The plain truth was that both the majority of farmers and the recreation-conservation groups wanted land-tenure reform, but for different reasons.[12] Many people at this time saw tenure review as a win-win process; it would be 2006 before this view would be convincingly challenged.[13]

Crown Pastoral Land Act 1998

Jenny Shipley's National government passed the Crown Pastoral Land Act (CPLA) in 1998. The act included objectives for tenure review that were stronger on ecology and inherent-value protection than the 1994 objectives. The act set down the primary goal of tenure review to be ecologically sustainable land management in the high country. Subject to this main goal, the CPLA specified that land 'capable of economic use' would be privatised into freehold ownership, and land with 'significant inherent values' would be protected. This protection would be achieved preferably by full crown ownership or, presumably less preferably, by another protective instrument such as a covenant.[14]

A general election took place in November 1999. As a result, a Labour-Alliance coalition took office, led by Helen Clark. In 2001, in response to an update on the tenure-review programme, the cabinet agreed that a 'key objective' of tenure review should be to 'ensure public access to areas administered by the Department of Conservation'.[15]

The Fairness of Tenure Review

Articles connected with tenure review appeared in a wider range of publications than just farming magazines, business periodicals and the newsletters of recreational organisations. In March 2002 the *Listener* ran a six-page feature examining the sale of high-country lands to overseas buyers.[16] One of the examples that the *Listener* described was Glencoe Station, 9,315 hectares of terrace, tussock, lofty hills and river valleys between Arrowtown and the Crown Range Road. Bruce Ansley, the

writer of the article, called this land 'seriously spectacular country'. Most – 8,500 hectares – of Glencoe Station was pastoral lease. But some locals had complained that the leaseholder, a recent French immigrant Jean-Francois Taquet, would not allow trampers across the leasehold land. This keep-out policy, if the allegation was true, directly contravened the tradition of always granting recreational access when asked. Taquet claimed to Ansley that he did allow access 'most of the time', but Ansley wrote that it was evident that Taquet was 'uncomfortable with the New Zealand tradition of public access'.

Ansley's conclusion to this high-country article was ambivalent. Firstly he wrote:

> Tenure review is acclaimed on all sides. It gives much of the high country back to the public, while farmers keep the better country below. It should end friction over access once and for all.[17]

But then he added:

> Many [outdoor recreators] feel the agencies involved – DOC and the Commissioner of Crown Lands – are driving a poor bargain on behalf of the public in deals that make station-owners rich but still provide insufficient public access.

A year later Bruce Ansley plunged gallantly back into the tenure-review controversy with another lengthy and carefully researched *Listener* article. Under the Labour-led government, he said, tenure review had accelerated. Some 165 leases of the remaining 304 were in the programme. But people were disputing the fairness of the outcomes:

> High-country users and environmental groups are complaining to the government that the public are getting a bad deal. They say that tenure review has become a de facto privatisation of public land. Farmers, they say, are getting full ownership of public land at bargain prices and the public are not getting enough back in terms of conservation land and access. They see this as their best and last shot at getting a vast tract of country into the conservation estate.
>
> The question is, are we privatising the high country by virtually giving it away, or are we getting a huge new conservation park dirt cheap?[18]

Over the following six years – up to 2009 – a number of university analysts and researchers, as well as farmers and trampers, would disagree on these basic questions.

New Government Objectives for the South Island High Country, 2003

In August 2003 John Tamihere, the minister for land information, announced that the government had agreed new objectives for the South Island high country. These objectives, he said, would 'take into account the sometimes competing economic, social, cultural, ecological and rec-

reational interests concerning the high country' and would '[balance] those natural tensions accordingly'.[19]

At this time the crown owned 2.37 million hectares of South Island high-country land under lease (or licence), comprising 304 high-country leases (2.17 million hectares), five Pastoral Occupation Licences (0.02 million hectares), and Molesworth Station (0.18 million hectares).[20] This land was located from Southland to Marlborough. Much of the land had been grazed since the mid-19th century and was environmentally sensitive.

The government's press release listed the new objectives:

> The Objectives
> Objectives derived from the Crown Pastoral Land Act:
> 1. To promote the management of the Crown's high country land in a way that is ecologically sustainable.
> 2. To enable reviewable land that is capable of economic use to be freed of current management constraints.
> 3. To protect significant inherent values of reviewable land by the creation of protective measures; or preferably by restoration of the land concerned to full Crown ownership and control.
> 4. To secure public access to [and] enjoyment of high country land.
> 5. To take into account the principles of the Treaty of Waitangi.
> 6. To take into account any particular purpose for which the Crown uses, or intends to use, the land.
>
> New complementary objectives:
> 1. To ensure that conservation outcomes for the high country are consistent with the New Zealand Biodiversity Strategy.
> 2. To progressively establish a network of high country parks and reserves.
> 3. To foster sustainability of communities, infrastructure and economic growth and the contribution of the high country to the economy of New Zealand.
> 4. To obtain a fair financial return to the Crown on its high country land assets.
>
> (Note: 'reviewable land' refers to lease and licence land.)[21]

It was one thing to formulate a list of objectives; it would be another thing to put them into practice. One point that John Tamihere's press release avoided was the sharp disagreement between farmers and environmentalists on the issue of the lower-altitude tussock country. The farmers wanted it for grazing. They said that too much of it was becoming conservation estate. The environmentalists said the opposite: too much of the lower country was being freeholded. The conservation estate did not merely need mountains and wetlands; it also needed montane and lowland ecosystems and habitats. Lower-altitude lands were essential for biodiversity but were under-represented in the areas coming into the conservation estate.

It is time to move on to Part Two and to January 2003, the start of six years of government scrutiny of walking access to the New Zealand outdoors. Although tenure review is not the main focus of this book,

we will occasionally return to it, as seldom would a month pass without some development to do with or shrill controversy over the South Island high country. By 2003, a number of informed trampers and anglers and hunters were expressing concern about the adequacy of the access routes that were being created across freeholded land. At stake was the integrity and practicality of the public foot-track network of a tenth of the land area of New Zealand.

PART TWO

Report, Consultation and Delay, 2003–2004

Chapter 9

Land Access Ministerial Reference Group

On 29 August 2001 the cabinet finance, infrastructure and environment committee had invited Jim Sutton, the minister for rural affairs, 'to report on public access to rural land provisions applying in Europe ("right to roam" provisions) and the possibility of adopting this approach in New Zealand'.[1] In March 2002 and again in September Sutton had presented papers to the cabinet, proposing that the government should review rights of public access. These papers were titled 'Public Access over Private Land'.

The cabinet had accepted Sutton's proposal. In January 2003 he set up the Land Access Ministerial Reference Group to examine walking access to land.[2] The terms of reference specified three broad topics to be looked at:

> The minister considers that three matters require review:
> - 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.[3]

It was clear from these topics that the problem, whether imaginary or real, was associated with private rural lands. The phrase 'right to roam', used in the cabinet committee's invitation to Sutton in 2001, did not reappear in the group's terms of reference in January 2003, but that phrase was by then already at large and it would lodge and rankle in seemingly every farmhouse kitchen in New Zealand.

Had Sutton been able to foresee the political difficulties ahead, he might have stayed with matters less domestically divisive, such as trade negotiations in Jakarta. The warning signs were already present. Opposition to Sutton's ambition of improved access would come not only from farmers and the National Party but also from within the government itself. The March 2002 cabinet paper shows that, even before the review started, some arms of the government didn't think we needed it and were wary of establishing new access rights across private land. The paper included a

joint departmental comment from the Treasury, Land Information New Zealand and Te Puni Kokiri (Ministry of Maori Affairs):

> Insufficient evidence is presented in this paper to confirm that the public's current ability to access land is deficient. There is also insufficient analysis of the implications of creating new rights of access over private land. There is a risk that remedies to this undefined problem would require significant expenditure and complex legislative review. As the benefits of change are unspecified, we are concerned that the proposal will create fiscal risks to the Crown and have negative implications for the Crown's Treaty of Waitangi obligations and the contemporary Crown/Maori relationship.[4]

The Ministry of Tourism added its own narrowly focused slant: 'Any changes to public access over private land should not limit current or future opportunities for landowners to operate commercial rural tourism ventures that rely on the right to restrict access.'[5]

The chair of the reference group was John Acland, a Canterbury farmer and descendant of J B A Acland, a lawyer from London who with C G Tripp had taken up 115,000 acres in the high country in 1856.[6] John Acland had had a long association with the primary sector through holding office in Meat New Zealand and Federated Farmers. The other members were:

- Sally Millar (Hamilton), an environmental consultant with a wide range of experience in the agricultural and horticultural sectors, including involvement on the Reference Group for Biodiversity on Private Land;
- Penny Mudford, who had been an active member of the farming community and was chief executive of the Arbitrators' and Mediators' Institute of New Zealand and director of the New Zealand International Arbitration Centre Limited;
- Claire Mulcock (Christchurch), who had strong personal connections with the rural community and was a resource management consultant with a policy background, focusing on agriculture in the South Island high country and on environmental issues;
- Gottlieb Braun-Elwert, a professional mountain guide;
- Bob Cottrell (Taupo), who was of Ngati Kahungungu, Ngati Raukawa and Ngati Awa iwi; a retired farmer, he had been heavily involved with Maori trusts and in particular Te Awahohonu Forest Trust and Tarawera Station;
- Edward Ellison (Otakou), who was of Ngai Tahu and Te Atiawa descent and was farming on the Otago Peninsula; he had represented Maori interests on a number of committees and trusts including the University of Otago council, the Otago regional council, the Otago conservation board and the New Zealand Conservation Authority;
- Brian Hayes, a former registrar-general of land who had an extensive background in land law, including thirty-nine years' experience in land registration;
- Simon Kennett (Wellington), a mountain-biker, tramper, co-author of a guide to mountain-biking routes in New Zealand, and organiser

of a number of mountain-biking events; he had worked closely with landowners on access;
- Kevin Prime (Northland), who was of Ngati Hine descent and was living at the family farm at Motatau; he was highly regarded for his conservation and environmental work, as well as social development of Maori;
- Eric Roy, who had been a National Party MP for nine years and was farming near Gore; he had an interest in the primary production sector and also in recreation, especially angling and access to waterways.

One name was conspicuously absent. Jim Sutton had apparently rejected the possibility of including Bruce Mason of Public Access New Zealand.[7] Mason's omission from the reference group was understandable; his substantive philosophy of public access through public ownership was incompatible with Sutton's ambition of achieving water-margin access without ownership. Also, Sutton might have viewed Mason's tough approach on access issues as too acerbic and uncompromising to fit harmoniously into the group.

Right to Roam and Pie in the Sky

Each of the three matters requiring the group's attention raised, directly or indirectly, questions about linear access across private land. A literal interpretation of its third field of enquiry – the consideration of access to private rural land (the wording did not distinguish between linear access and area access) – could have led the group to toy with the idea of the right to roam. If any such toying took place, it seems to have been cursory and rejective. It later transpired that early in its deliberations the group had ditched any intention to call for the freedom to range around. Despite the group's dismissal of the idea, though, the words 'right to roam' would bedevil the access debate for several years.

It is interesting to recall that Public Access New Zealand viewed the terms of reference as too wide and as so potentially troublesome 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.'[8]

Mason's pugnacious criticism had little effect. Jim Sutton had already said I'll-do-it-my-way. His way, which had been shaped by his own preconceived ideas, was to lead to a thorough debate on access to private land – although, more's the pity, the media coverage of land access was seldom to reflect either the complexity of the issues or the comprehensiveness of the debate.

Consultations Undertaken

The ministerial reference group met first in late January 2003. To assist its work it undertook informal consultations and information-gathering to help it understand the community perspectives on access. It invited organisations with a long-standing interest in access to provide written comment and to meet the group. (The group's report lists forty-eight iwi or organisations approached in this way.) At a two-day meeting in Wellington in April, a number of organisations and individuals made presentations to the group and joined in wide-ranging discussions. Members of the group attended meetings of rural community groups and local events in numerous places. The full group visited the Turangi-Taupo area to help it find out the access views held by freshwater anglers and by Maori. The group received and considered about 231 letters.

Officials in the Background

The ministry officials who worked with the ministerial reference group stayed protocolicly in the background. Their names seldom appeared in press reports. The group's terms of reference had left the civil servants nameless: 'The Minister's officials servicing the Reference Group will assist the Reference Group in its report to the Minister on its deliberations.'[9] But the names of three of these discreet officials – Mark Neeson, Grant King and Sharon Thurlow – would eventually materialise, as contacts for enquiries, in a letter that accompanied the group's report. Neeson, a manager with the Ministry of Agriculture and Forestry policy group, was to remain closely involved in MAF's work on walking access for the full duration of the project, 2001–8.

A ministry official works for his or her minister. In the normal course of parliamentary business, the officials write briefing papers, advise their ministers, write speeches, deal with lobbyists, assist with research, advise select committees and draft bills. In theory, bills arise from instructions from the minister. In practice, the original suggestion for a bill might sometimes have come from the minister's party or from his or her department: ie from the officials, perhaps after consulting interested groups or the public in general. From the outside it is impossible to tell how much pull the shadowy public servants have in any particular situation. Commenting on the recommendations of the ministerial reference group, Kay Booth wrote: 'Given that bureaucrats play a key role in developing public policy … the involvement of MAF officials, based within a ministry with a rural production ethos, was likely to have been influential on the shape of the subsequent land access policy.'[10]

The 2003 Acland Report

In August 2003 the Ministry of Agriculture and Forestry published the reference group's report, *Walking Access in the New Zealand Outdoors*. This report, which I will refer to as the 2003 Acland report, examined access to public land and to private land.

The report proposed the drawing up of a New Zealand access strategy with five objectives. Over the following seven years, official documents would refer to this plan as the New Zealand Access Strategy, the New

Zealand Land Access Strategy, the New Zealand Walking Access Strategy, the National Walking Access Strategy, the National Strategy on Walking Access and, finally and permanently, the National Strategy for Walking Access.

It is worth reproducing the five broad aims recommended by the reference group, because events were to sidetrack the public's attention onto just one of the aims (that of accepting the spirit of the Queen's Chain), while diverting the public's attention from the other four aims:

> The [New Zealand access] strategy would have five objectives:
> - strengthening leadership;
> - improving certainty;
> - embracing the Queen's Chain ethos;
> - encouraging negotiated solutions; and
> - improving current legislation.[11]

On the potentially controversial matter of the right to roam, the report 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.' According to the *New Zealand Farmers Weekly*, John Acland later remarked that

> despite adverse perception the right to roam, or 'wander at will', has never been an issue. 'That was off the table from day one. I don't know why people are going on about it. It simply is not an issue.'[12]

Much later, Gottlieb Braun-Elwert, another member of the reference group, confirmed Acland's statement: 'We didn't want to push for "free roaming" or similar, just for [linear] access through farm land to public land'.[13]

But the freedom to roam most definitely was an issue. Although the right to roam had no place in New Zealand, the right to lie remained ensconced, and the phrase 'right to roam' was to retain its importance in the mendacious propagandising that Federated Farmers was already engaged in. That phrase would remain an effective missile in the federation's armoury, a masterpiece of disinformation.

Unsurprisingly, the 2003 Acland report's most controversial aspects were those involving private land. Regarding the embracing of the Queen's Chain ethos, the report suggested the possibility of deeming linear pedestrian access to exist 'along all waterways of a specific size or width, the margins of lakes and the coast in order to complete the Queen's Chain'. This contentious option was to dominate the torrid debate that followed the report, drawing people's attention away from less vexed but equally important matters.

In the rest of this chapter, I will pick out from the report some salient issues that demand inclusion here and now: access leadership, unformed public roads, the New Zealand Walkways Act 1990, existing mechanisms for extending the Queen's Chain, erosion and accretion, exclusive capture, Maori aspects of walking access to the outdoors, and the proposed code

of conduct. All the other issues, I will drip-feed to you over the eleven chapters of Part Three.

The 2003 Acland Report: Access Leadership

The 2003 Acland report's discussion of and recommendations on leadership spread over four pages. Hindsight allows us to look back at this report and recognise that its leadership section formed not a final blueprint for an access organisation but just a preliminary exploration of what sort of organisation might be suitable. Even so, many of the reference group's suggestions were to survive to become in 2008 important functions or goals of the New Zealand Walking Access Commission. In total the group's suggestions numbered eight:

> The functions of an access agency could be to:
> - build a relationship with tangata whenua (i.e., the people of the land; the Maori iwi, hapu or whanau that has manawhenua over a particular area);
> - develop a national plan for access – with regional and/or district components;
> - administer any relevant access legislation;
> - ensure that useful codes of conduct are developed in conjunction with tangata whenua, landowners, users, and central and local government;
> - negotiate for the provision of access (and possibly any compensation);
> - promote the need for access with local government and other agencies to ensure local solutions for the provision of access;
> - provide for, and support, the dissemination of information on access for users and the general public; and
> - provide a mediation service where problems associated with access arise.[14]

The reference group envisaged the access agency requiring a statutory charter and having a strong link to a ministerial portfolio. The report briefly discussed whether the proposed agency ought to be an independent organisation or part of an existing government agency. This discussion was inconclusive. The New Zealand Walking Access Commission was still embryonic. There would be ample time for further deliberation on its functions and form: gestation would take four years.

What did the interested parties think about these suggestions on access leadership?

PANZ's View on Access Leadership

A frequent theme of statements by Public Access New Zealand had been that no existing government organisation – neither the Department of Conservation nor local authorities nor Land Information New Zealand – could be relied upon to champion the cause of walking access. There was, according to PANZ, widespread institutional uninterest in access. For example, even though the law guaranteed to everyone rights of unhindered passage along public roads, the local authorities that administered these roads had 'generally condoned obstructive private

occupation'.[15] Regarding easements intended to grant walking access over private land, PANZ said that when the landowners breached the terms of the agreements, the managing authorities were reluctant to enforce those terms.[16]

So you might have expected PANZ to have welcomed the idea of a government access agency. But PANZ's July 2003 access action plan, submitted to the reference group, had been ambivalent on this need. On public roads, PANZ had argued that 'no national plan is required, just local action. However[,] national impetus is needed to encourage action.'[17] The main thrust of PANZ's submission had centred on the improved applying of existing law, the extending of existing law, and the passing of new law. There seemed to be no room in PANZ's thinking for a government access agency or a government access strategy.

In October 2003 PANZ posted on its website a hastily written analysis of what it saw as the good points and bad points of the Acland report. The comments were clumsily composed but they included some valid concerns as well as perhaps some undue pessimism. The Acland report had envisaged the creation of

> a small stand-alone agency to give the profile, national leadership and focus that is missing at present. To administer legislation, develop access plan, codes of conduct, negotiate provision of access, promote local solutions, provide information, mediation.

Responding to this idea, PANZ expressing many doubts, born of bitter experience and therefore forgivably gloomy. PANZ questioned the need for an access agency, but saw a place for a parliamentary commissioner for access:

> To function separate from other land management rolls [*sic*] of DOC etc – how is this agency and DOC etc. to have overlapping jurisdiction on the same lands? Implied removal of DOC's current duty to foster recreation, and district councils' jurisdiction over roads and reserves.
>
> A contradiction that the Group wants the agency to be small, but with local capability. All on-the-ground access issues are local. How can a national body hope to attend to thousands of access issues at any one time?
>
> The local capability is already present, just not performing. The primary reason for current difficulties is that existing agencies (local authorities, DOC) have not been doing their jobs adequately. Most don't want greater role in access provision or upholding public rights. The challenge is to require better performance, not taking these functions away from them. A separate agency will likely marginalise access issues by providing a very convenient out for existing agencies – they will jump at it – the central danger from this proposal.
>
> A new bureaucracy will be captured by vested interests with non-access agendas, including the Ministry of Agriculture and Forestry (MAF), and will not be driven by users (already happening with review of access provisions from tenure review, delegated to MAF

> rather than DOC or LINZ). It will be a Jim Sutton hand-picked group – unlikely to get recreation NGO representatives on …
>
> The need is for improved performance by existing agencies, brought about by leadership at Ministerial level across Lands, Conservation and Local Government portfolios, and not from just from Mr. Sutton's office, leading to amendments in law, review of some performance areas (eg., esplanades under RMA), possibly national policy statements, and direction and additional resources to agencies if necessary for information provision etc.
>
> There is a need to consider all options for giving national focus and direction, rather than set up a separate bureaucracy with uncertain consequences. One option is for a Parliamentary Commissioner for Access, to have a policy, review and reporting role. Must not have an operational role. Existing agencies must not be let off their existing responsibilities. Most need some carrot, and a large measure of stick. The Commissioner, and motivated Ministers, could do this. Such an approach would not jeapardise [*sic*] citizen access to, accountability and remedies from land management agencies, and would provide a welcome national focus to bring to government attention issues requiring legislative action.[18]

PANZ wasn't of course the only NGO representing the interests of outdoor recreators. But it had a knack of making the biggest noise.

CORANZ's View on Access Leadership

The Council of Outdoor Recreation Associations broadly supported the Acland report's proposals for a national access strategy and an access agency. CORANZ's bulleted list of the agency's possible roles was quite similar to the report's bulleted list. But CORANZ argued against modelling the access agency on the New Zealand Walkway Commission, which, according to Hugh Barr of CORANZ, had been 'ineffective [at the national level], fraught with stakeholder conflict, and ultimately had the support of no-one'.[19] CORANZ also questioned the reference group's belief that the access body would require a strong link to a ministerial portfolio:

> Having a strong link to a Ministerial portfolio does not seem a good idea. It raises the question of what Minister? Land Information? Conservation? Local Government? Agriculture and Forestry? Each has its own axe to grind, and has not performed on public access matters to date.[20]

CORANZ, like PANZ, favoured a parliamentary commissioner for access, who would report directly to parliament. This commissioner, CORANZ suggested, could obtain staff either by advertising within the public service or by seconding people from key government agencies.

Federated Mountain Clubs, too, supported the idea of an access commissioner.[21] The New Zealand Fish and Game Council agreed that there was a need to strengthen access leadership nationwide; it favoured the creation of an access agency in the form of an access commissioner.[22]

Federated Farmers's View on Access Leadership

Federated Farmers opposed the idea of a national access strategy and the idea of an access agency:

> Federated Farmers does not support the establishment of a new central organization or access ombudsman. There are already agencies responsible for all publicly owned land including DoC, LINZ, and district and regional councils. Many of these agencies already fulfil an advocacy role for access to and across private land. It also risks imposing another cost on landowners who already invest considerable time and energy communicating with such agencies.
>
> A central Access Agency would likely duplicate functions of existing agencies, be open to capture by vested interest groups, create overlapping responsibilities, and create potential for 'passing the buck'.
>
> The Federation supports local solutions to local problems with priorities set by those living in the community. Thus it is for local bodies and DoC to take the leadership role in negotiating enhanced access to or across private land if needed.
>
> Money that would be used for a new agency would be better spent assisting existing agencies to enhance access. It could also be used as a contestable pool from which local communities can draw to develop and maintain access where necessary.[23]

We can see, therefore, that the initial views on needing an access agency varied from total support, through lukewarm qualified backing, to outright antipathy. Few people would have predicted that four year later John Acland's second cohort of the good and the wise would find a consensus in favour of establishing a national access organisation.

The 2003 Acland Report: Unformed Public Roads

Together with the long history of the king's highway, there is an equally long history of its blocking. In AD 750 the traffic cops of Bavaria could fine highway-blockers a standard amount:

> If anyone illegally closes against another the public road, where the duke travels, or a road equal to it, he should pay a fine of twelve *solidi* and remove the obstruction. And if he wants to deny the charge, let him swear with twelve oath-helpers. Concerning the local or country road, if someone illegally closes it against another, let him pay a fine of six *solidi* and open it, or swear with six oath-helpers.[24] [From *Lex Baiwariorum*, or Law of the Bavarians, an eighth-century law code blending barbarian and Roman traditions.]

In Chapters 2 and 7 we discussed the exasperating paradox that was New Zealand's unformed public roads. There were over 50,000 kilometres of such roads, on which each and every member of the public had the right to pass and repass without hindrance. But, and this was a big 'but', many of these roads followed illogical lines divorced from the topography. Even when the roads did offer rational ways, such as beside rivers, fences or

gorse or other obstacles often blocked them. Sometimes, misleading signage deterred potential users. The following example, taken from a 2002 walkers' guidebook to the Port Hills, shows why unformed public roads needed waymarking:

> Worsleys Track
> Worsley Road starts off Cashmere Road, and climbs a surprising height to a car-turning area. There's no track signposts at present and some odd warning signs (such as 'security cameras operating' [and] 'access to private property beyond this point') seem to positively discourage access – however this is a public road. Go for it.[25]

In 2003, according to PANZ, obstruction of public roads was epidemic, the largest access problem in New Zealand. PANZ dealt with such cases on a daily basis. 'The biggest obstacle to resolution [was] invariably official reluctance to bat for the public interest. Despite having extensive powers to deal with illegal obstruction, most councils [were] very reluctant to exercise these.'[26] Many councils saw unformed public roads as liabilities rather than as assets providing, or latently providing, a means of access to the countryside. Moreover, in 2003 there were no up-to-date paper maps showing all public roads; digital cadastral maps were becoming available, but only from commercial suppliers and at a considerable cost.

The 2003 Acland report did not contain a stand-alone section that comprehensively examined all the issues surrounding unformed public road and the possible solutions to those issues. But if you carefully sifted through the whole of the report, you could locate most of these matters, scattered around in bits.

The report acknowledged that 'public roads offer the greatest degree of public access of all the reservations and the highest level of rights'.[27] It also said that 'the network of roads provides scope to greatly improve access to sites of interest or other areas of public land'. Elsewhere in the report, however, the reference group pointed out that the 'public right of access along "paper" roads … cannot be exercised properly if information on the whereabouts of these roads is not known'. The group also remarked that 'territorial authorities are reluctant to enter into disputes [over roads] because of the cost – to ratepayers – of surveying the roads and the fact that benefits often accrue to visitors rather than ratepayers'. Submitters had informed the group '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'.

Submitters to the reference group had requested that 'information regarding the network of unformed roads be collated and made more readily available'. Also submitters had asked that 'where access is denied on these roads, councils are required to be proactive in ensuring that the situation is rectified'.

The first three-quarters of the 2003 Acland report dwelt on the existing walking access arrangements and their associated problems. Only about twenty pages – Chapters 10 and 12 – were devoted to what the reference group considered to be the main objectives for enhancing this access. Again, the references to public roads were sprinkled around. The report

remarked that an access agency could have a role in resolving problems of blocked public roads. Such an agency could also 'be responsible for providing adequate and usable information through printed and electronic systems'. Finally, the report tentatively floated the possibilities of relocating some public roads or using them to 'provide leverage in negotiations for improving access'.

Regarding unformed public roads, therefore, the 2003 Acland report was a brief and partial first look rather than a thorough analysis of all the aspects. On the minus side, the report seemed to only recognise the potential worth of public roads in the context of reaching or following water margins or reaching public lands; it did not emphasise the enormous recreational potential, as ends in themselves, of the many unformed public roads that are situated well away from rivers, lakes and the coast. On the plus side, for patient observers, the reference group's preparatory probe into public roads in 2003 undoubtedly laid the foundations for the far deeper examination of them conducted by the Walking Access Consultation Panel in 2005–7.

The 2003 Acland Report: the New Zealand Walkways Act 1990

In Chapter 6 we covered the development of walkways from 1975 to 2003. The chapter ended with a list of walkway issues ripe for investigation by the Land Access Ministerial Reference Group. These matters included the sluggish growth of gazetted walkways over the working countryside; the possibility that some walkways were based on easements for periods less than in perpetuity; the non-gazettal of many walkways; and the potential impermanence of informal walkways. Perhaps the most basic question was whether the state should compensate a landowner who agreed a walkway easement. But the 2003 Acland report did not examine any of those walkway questions in depth. The report remarked that the Department of Conservation's implementation of the New Zealand Walkways Act was 'heavily deficient'. The reference group considered that the act and its administration needed 'a fundamental review'.[28] That was all. If people were to form fact-based opinions on the walkway issues, a far more detailed look at walkways, and at foot-tracks in general, would be required.

Despite the brevity of its look at the New Zealand Walkways Act, the 2003 Acland report did reveal some crucial facts about DOC's derelict overseeing of the act. The report also suggested an ill-advised solution to the sluggish growth of walkways over private land. We will examine both of these aspects now, where they occurred chronologically.

DOC's Stewardship of the New Zealand Walkways Act 1990

Firstly, as evidenced in Chapter 6, and bearing in mind how we defined 'approved walkway', between 1989 and 2003 the total length of approved walkways had dropped by 150 kilometres – or so it appeared. Some of these officially approved walkways had been gazetted, others had not.

During the same period, other bodies, such as local authorities, had sometimes established foot-tracks outside the Walkways Act. Sometimes these were called walkways. Typically these tracks crossed council-owned land or private land and were managed by the local authorities or the

private landowners. They ranged from tracks based on easements to tracks based on nothing more than spoken agreements. No national statistics on the length and legal statuses of these tracks were available.

Secondly, the 2003 Acland report mentioned that DOC had advised the reference group that it had put a relatively low priority on creating new walkways over private land. DOC seemed to be ignoring its own New Zealand Walkways Policy, which stated that 'priority will be given to establishing new walkways over private land'.[29] The inconsistency became even sharper when we read, in a 2003 New Zealand Conservation Authority publication, that 'a major benefit [of New Zealand's walkways system] has been that many of the walkways cross (partly or wholly) privately-owned land not normally accessible to the public'.[30]

Instead of focusing on expanding the walkways system nationally, the Acland report said, DOC negotiated informal written agreements with adjoining landowners to establish accessways to the DOC estate; these agreements were not binding on subsequent landowners and could be revoked at any time. In other words, when DOC did add a few kilometres to the national walkways network, the agreements underpinning those kilometres were less secure than many of us might have assumed. DOC appeared again to be disregarding its New Zealand Walkways Policy, which said that 'it is crucial that the walkways be given permanent legal protection whenever possible. The best available protection is gazettal as provided for in the New Zealand Walkways Act 1990'.[31]

A portion of the renowned Queen Charlotte Track in the Marlborough Sounds illustrated DOC's failure to negotiate gazetted walkways over private countryside, although perhaps the rarity of progress was a defect of the Walkways Act 1990 rather than a result of wilful departmental inaction. The Queen Charlotte Track was managed by the Nelson-Marlborough Conservancy. In 2003, according to a newspaper report, about half of the section of track between Kenepuru Head and Portage was on private land.[32] Access across the private land existed on a goodwill basis, unprotected by any easements. The landowners received no payment for allowing the access. DOC liaised with them over track issues. So far, this landowner-DOC partnership had been successful, a credit to DOC and the landowners. Thousands of walkers and mountain-bikers had benefited from the landowners' charity.

In one sense these crucial arrangements with the landowners demonstrated the virtue of informal collaboration; in another sense they demonstrated its pitfall, for the landowners could close the private parts of the track at any time. Two years after the 2003 Acland report, some landowners were to become unsettled about commercial tourism operators profiting from the Queen Charlotte Track. DOC's area manager for the Marlborough Sounds, Roy Grose, was to comment that 'the backbone of the track wouldn't exist if landowners withdrew their support'.[33] (Chapter 32 will include further discussion on the Queen Charlotte Track.)

A different aspect of DOC's stewardship of the Walkways Act 1990 involved the question of the gazettal of walkways over public land. In Chapter 6 we saw that delegates to the 1979 New Zealand Walkways Seminar had questioned the point of gazetting walkways over public land. They thought that walkways over public land would be secure and

enduring without the expensive surveying of easements and without the legal costs and delays involved in gazettal. But the 1990 act had retained the gazettal requirements of the 1975 act. For each walkway over public land, section 6 of the Walkways Act 1990 required the minister of conservation to place a notice in the *New Zealand Gazette* declaring the establishment of the walkway. Without that notice, the walkway would not meet the requirements of the act.

Not all of New Zealand's publicly owned land was managed by the Department of Conservation, but a large proportion of it was. DOC's New Zealand Walkways Policy of 1995 officially consolidated the pre-existing practice of not gazetting walkways that lay completely on crown-owned protected natural areas:

> 8.11.1
> Tracks designated as walkways and wholly over land administered by the Department will not be gazetted. The walkway route would still receive protection from the Act underlying its designation (Conservation [Act], National Parks [Act], Reserves [Act]).[34]

In one sense, gazettal of a walkway based on public land would have added an extra element of protection to that walkway. The walkway could not be permanently closed without a ministerial revocation in the *Gazette*. If after the establishment of the walkway the land, such as state forest, were to be sold to a private buyer, the walkway would remain (but would still be vulnerable to revocation). In a different sense, such gazettal might have imposed restrictions, such as lambing breaks or no dogs or no bicycles, that in some situations might have undermined pre-existing rights of public access.

In practice, consideration of these complex benefits and snags remained academic. (It would resurface in 2008 with the Walking Access Bill.) Gazettal of a walkway on public land seems to have been a rare event, especially under the Department of Conservation but also perhaps, in some districts, under the Walkway Commission. The 2003 Acland report implied that in Canterbury non-gazettal of walkways over public land (and over private land) had always been the norm:

> There are over 150 walkways in New Zealand … A large number of walkways have been approved but many are not formally surveyed or gazetted. For example, Canterbury Conservancy has 25 approved walkways but only one [the Waihao River Walkway] has been formalised under the Walkways Act … Most official walkways cross public land because there are fewer legal difficulties and management issues to overcome and the process of establishing walkways [over private land] is time consuming and costly (survey costs).[35]

Not surprisingly, the report suggested that the Department of Conservation's implementation of the New Zealand Walkways Act was defective and that the act's administration needed a basic overhaul. Sometimes a country has to learn by failing. The Walkways Act 1990 had resulted in

a thirteen-year lesson in failure. Whether New Zealanders would learn from that lesson remained to be seen.

*

On 30 September 2003, a month after the publication of the Acland report, the minister of conservation, Chris Carter, announced that DOC proposed to build 250 kilometres of new walking tracks across New Zealand over the next ten years.[36] This 250 kilometres would include about eighty kilometres of 'new day walks … in line with the shorter time-frame of many people's recreational opportunities'. DOC was also proposing to upgrade or replace another 499 tracks spanning over 1,900 kilometres.

These proposals, and others, were part of a thoroughgoing review of recreational opportunities. The start of this review had resulted, in May 2002, in dramatically more money 'for outdoor recreation facilities *on public conservation land* in New Zealand'.[37] (My italics.) Over the next ten years, DOC would be spending an extra $349 million on refurbishing its own huts, tracks and other facilities.

This development had only marginal relevance to the issue of linear access to private land. The $349 million would not open up New Zealand's extensive network of unformed public roads. The money might not create more than a few kilometres of walkway across private land. It would not be DOC that would unlock New Zealand's farmtracks.

The 2003 Acland report's most damning comment on DOC's administration of the Walkways Act occurred not in the report's section on the need to improve current legislation but instead in its section on the need to strengthen leadership:

> The Group believes that the disestablishment of [the Walkway] Commission and its local committee system, and its incorporation into the day-to-day work of DOC and the NZCA, has been a contributing factor to access no longer being a 'serious' policy issue. Important conservation tasks such as endangered species recovery are higher priorities than access, for both DOC and the NZCA.[38]

Fourteen years earlier, delegates to the New Zealand Walkways Conference had lacked confidence in DOC's commitment to walkways. Their concerns had proved to be dismally well justified.

The Legal Security and Permanence of Walkways

Sometime in the first half of 2003, the reference group must have discussed the New Zealand Walkways Act. When it did so, it should have identified two concerns about the lifespans of walkways. Firstly, it ought to have pinpointed well-justified worries about the legal security and permanence of walkways based on informal, happy-go-lucky agreements. Secondly, it ought to have recognised the anxieties, expressed by Public Access New Zealand, over the legal security of easements, leases and covenants. Whether the group fully appreciated the first of these concerns, before people responded to the 2003 Acland report, is doubtful. As for the second, if we judge from the report, the group did not share PANZ's acute distrust of easements, leases and covenants.

Chapter 6 showed that, right from the start of walkways in the mid-1970s, walkway developers had tended to tolerate access arrangements less formal than those prescribed in the Walkways Act. This flexibility had led to some insecure and potentially impermanent foot-tracks over private land. In a parallel development, the word 'walkway' had gradually come to be applied indiscriminately to all manner of foot-tracks ranging from gazetted walkways to permitted tracks based on oral agreements. In 1998 in the area administered by Dunedin city council, forty-eight of 167 tracks were based on casual or fixed-term agreements, exposed to changes in the landowner's attitude to public use.[39]

One of these vulnerable Dunedin tracks, Cleghorn Street Track, typified how the word 'walkway' had gained a far wider meaning than its original meaning under the Walkways Act 1975. Cleghorn Street Track crossed farmland on the edge of Dunedin. It formed an essential two and a half kilometres of a classic skyline walk over Signal Hill and McGregors Hill. The track provided splendid views. Ten minutes' drive from the city, the area is typical urban-fringe open space. In 2003 a city council sign at the south end of the track correctly said 'Walking Route to Cleghorn Street'. Similarly, one at the north end said 'Walking Route to Signal Hill Road'. But finger-posts indicating where the track left the roads said 'Walkway'. The public's access to Cleghorn Street Track was based merely on an oral agreement with the landowner – one which, three years later (in 2006) was to become somewhat fragile.[40]

The blanket use of the word 'walkway' is probably now too well established for us to tighten the word's meaning. As a consequence of the word's broad connotation, a signpost saying 'Walkway' (with no further information) does not necessarily imply the existence of any de jure public access rights. In some contexts, when we are talking or writing about walkways, we need to refine our meaning by using terms such as 'gazetted walkway', 'informal walkway' and 'private walkway'.

In comparison with an oral contract, an easement over the land, registered against the title, is a much sounder arrangement but may be far from perfect, for reasons we discussed in earlier chapters. Bruce Mason of Public Access New Zealand frequently emphasised that public rights of way over private land in New Zealand, based on easements or covenants or leases, were not as dependable a form of access as public roads. A common theme of PANZ statements was that crown ownership was essential to protect public access. The forty-five-page PANZ access strategy, submitted to the reference group, contained only a couple of paragraphs on walkways.[41] Walkways, according to PANZ, were relatively insecure access mechanisms. Thirty years of effort had resulted in 'only 170 established nationwide'. (Other sources gave lower totals.) We may as well forget them, PANZ implied. Much better to open up the green roads. Or create new roads dedicated to pedestrians and cyclists.

It was difficult for a layperson like me to form an opinion, in mid-2003, on the alleged vulnerability of public rights of way over private land. But the reference group would have access to expert legal advice. It would be able to examine the security of easements, leases, and covenants. The group would be free to scrutinise Mason's warning that easements were 'liable to extinguishment without public process', despite being registered

in perpetuity.[42] It might also examine his claim that walkways established under the walkways acts could 'be closed at any time at the instigation of the controlling authority or adjacent landowners'.[43] If it was true that public rights of way were less than impregnable, then maybe the legislation surrounding them could be fortified.

The imperfections of rights of way, it seemed to me, lay not in a general inherent flimsiness but rather in the details of each easement or lease. An easement may not necessarily be written in perpetuity.

One expected, therefore, that the reference group would stress that all walkways should be legally secure and enduring. Some hope! The Acland report headed in the opposite direction, towards short-lived solutions:

> The Group considers that the creation of walkways under the NZWA is a useful option for achieving access on private land. These need, however, to be undertaken in a less costly and more flexible manner. A reduction in the survey costs and the need for more flexible options including shorter-term registrations or arrangements (with lower survey and legal costs) are required if the Act is to be useful in the future. The question of permanence creates concerns for some landowners and the lack of flexibility is a hindrance. The ability to use global positioning systems and aerial photographs for surveying and registering walkways against the title provides more opportunities for reducing the survey costs associated with walkways.[44]

In my view, and probably in the minds of many other access advocates, this recommendation of shorter-term agreements was a lapse in an otherwise well-argued report. Yes, lower the survey costs and the legal costs. But creating impermanent walkways would use public money inefficiently and might lead to future access problems.

In the last section I mentioned the report's disclosure that the Department of Conservation had been creating accessways with informal written agreements. It seems, though, that this perturbing information from DOC had not sounded the reference group's warning bells, for the report talked of 'more-flexible options' and 'shorter-term registrations or arrangements'. Such changes, had they been implemented, would have continued the informalising of walkways, a process that was not a recent DOC invention but was an adaptation that dated back to the infancy of walkways and which stemmed from a combination of circumstances – including a misguided pragmatism – discussed in Chapter 6.

What was meant by flexible? How short was short? Were we talking decades or centuries? Even without this information, I opposed the suggestion for shorter-term arrangements.[45] It was a rare blemish in the report. The proposal also contradicted other statements in the report, such as 'the amount of time and resources (especially public) that will be invested in the process need to result in long-term access arrangements'.[46]

I live in Dunedin. One or two people down here – possibly more than that – dreamt of a high-level Otago Peninsula walkway or multi-use track, the missing backbone of the fragmented network of tracks on the Peninsula. I wondered whether this development would happen in my

lifetime. Even so, the idea of short-term arrangements that didn't frighten the landowners did not seem a sensible compromise.

Regarding the disadvantages of public rights of way based on easements, alleged by PANZ, compared with public ownership of the foot-track strip, the report did touch upon the security of easements resulting from tenure reviews. The group had been advised that the courts were unlikely to alter or extinguish these accessways without involving the public.[47] But the group did not examine the virtues and flaws of easements, leases and covenants comprehensively and in a more general context. The report's brief mentions of covenants as a means of providing public access were sketchy and did not answer PANZ's criticisms of such mechanisms.

*

Following the release of the 2003 Acland report, a four-month consultation began, during which anyone could tell the government their views on walking access to land. On walkways, I took the opportunity to oppose the reference group's short-termism:

> Walkways, once established, should be virtually permanent: as close to perpetuity as it's possible to [achieve in] law. They should also be fiercely guarded both by the access agency, if set up, and by private recreational groups. I'd rather have one permanent walkway than ten temporary ones, the lives of which could not be extended without the landowners' permissions. How can planners make long-term network plans if vital links in the network might only be around a short while? [48]

If we judged from the Otago Peninsula saga, it could take ten years or more for a foot-track to appear on the printed topographic maps; were we to wait patiently for a walkway to be added to the map, only to have that walkway close a few years later? Developing Dunedin's Skyline Walkway had taken twenty-nine years, and people were still contemplating various extensions. The national trail, now called Te Araroa, had taken thirty-six years to progress from an idea to its still-unfinished 2003 state.

Anything less than permanence would be a recipe for a repeat of the Queen's Chain confusion. Access advocates needed to learn from that experience. Were we to think that we had a walkway, only to learn thirty years later that we did not? Would New Zealanders wake up, in a century's time, and discover that many walkways have vanished because a cabinet of easements and leases have run their course? Our descendants would not thank us if we handed down to them legally messy walkway situations from which only the lawyers would benefit.

Some people might have argued that this was all very fine and ideal, but that walkways occasionally needed to be closed. For example, excessive maintenance costs might make it difficult for a controlling authority to keep a walkway safe. No problem. Several procedures already existed to close walkways. There was no need to make closure any easier.

Other submitters, too, criticised the group's suggestion of shorter-term arrangements and greater flexibility. Public Access New Zealand said that this way of obtaining more walkways over private land would be

'contrary to public expectations of security of access'.[49] In the long term, emasculating the protections for the access would not achieve more access.

These things take time. In March 2007, another report – that of the Walking Access Consultation Panel – would identify five principles that ought to guide the solutions for walking access. The first of these principles, on the quality of access, would state that 'walking access should be free, certain, enduring and practical'.

The 2003 Acland Report: the Crown Pastoral Land Act 1998

Tenure review formed, and was to remain, an active and controversial circus in one corner of the walking-access fairground. Two perspectives are important here. Firstly, tenure review was only one area of the many areas into which the Land Access Ministerial Reference Group enquired. Secondly, walking entry to recreational land was only one of several basic objectives that tenure-reviewing took into account. When you entered the frenetic ring of the tenure-review circus you did not merely encounter complaints about inadequate accessways; you also bumped into environmental argument, elevated economic discourse, abstruse legal discussion and political machinations. Interest in tenure review extended over several ministries: land information, conservation, agriculture, rural affairs, and sport and recreation.

In reporting on the Crown Pastoral Land Act (CPLA) and on tenure review, the reference group confined its comments to the matter of public access. Information provided to the group had suggested that leaseholders had traditionally permitted access to the high country on their pastoral leases and access across their pastoral leases to reach high country beyond, with few exceptions. But when ownership passed from long-established farming families to new owners who did not hold this traditional view, entry was becoming increasingly restricted.[50] The Federated Mountain Clubs submission to the reference group had commented carefully on this weakening of a crucial convention:

> The mere fact of foreign ownership of pastoral leases is no business either of FMC or of this [Ministerial Reference] Group. But, allowing for exceptions on both sides, it is possible to observe that foreign owners tend to have less understanding and sympathy for the accepted New Zealand tradition of allowing access to high lands for responsible trampers and climbers, access to waterways for anglers and access to game animals which belong to the Crown.[51]

Other concerns relating to pastoral leases were mainly those around the tenure-review process, carried out under the Crown Pastoral Land Act 1998. Many outdoor recreators expected tenure reviews to deliver certain and permanent public access to the South Island high country. One of the objectives of the tenure-reviewing was to secure public access, especially to crown conservation land that would lie beyond the land being converted to freehold title. But submitters had advised the reference group that access routes (eg marginal strips or easements) created during tenure reviews were not always being adequately marked or publicised.[52]

There were information and certainty issues relating to the extent and exact location of these routes. In Chapter 7 we discussed the Ben Avon Station accessway that went over a cliff.

In conclusion the 2003 Acland report categorised the tenure-review issues as 'pertinent, although not core to the access debate'. The report suggested two measures that, if taken, had the potential to improve access to the high country:

> The Group considers that the Commissioner for Crown Lands should review the use of 'access easements' to confirm whether or not this mechanism provides secure ongoing access as required under the CPLA.
>
> The Group also considers that better information needs to be made available about formal access easements that are being provided under tenure review. This would require resources to be provided to implement and maintain access over the longer term.[53]

Tenure review was on the periphery of the reference group's concerns. Yet it was a decidedly prominent issue on that periphery, possessing its own walking-access ingredients, and it would remain an ever-present and polarising topic on the edge of the continuing walking-access debate. In Chapter 33 we will again catch up with events in the South Island high country.

Existing Mechanisms for Extending the Queen's Chain

In 2003, subdivision was one of the main triggers for extending the Queen's Chain. This remains so at the time of writing, 2011. The Resource Management Act (RMA) governs the way that local authorities conduct subdivision. Esplanade reserves, esplanade strips and access strips are established during subdivision and are administered by local authorities. They are generally open to public access, but there may be restrictions.

Esplanade Reserves

When a local authority consents to the subdivision of private land it can sometimes require, through rules in the district plan, the creation of esplanade reserves along water margins. They are usually twenty metres wide or less. Their boundaries are surveyed and are fixed. Once esplanade reserves are formed, they are managed as set down in the Reserves Act 1977. They are usually owned by the local authority. Esplanade reserves allow public access or recreational use where it is compatible with conservation values. The council is responsible for the maintenance costs associated with the reserves.

For subdivision into lots of four hectares and less, the setting aside of esplanade reserves is essentially mandatory.

For subdivision into lots of over four hectares, the setting aside of esplanade reserves depends on a rule in the district plan; furthermore, territorial authorities have the discretion to make provisions in their district plans to waive the district-plan requirement to provide a reserve. If the council does want an esplanade reserve, and if the lots will be larger than four hectares, the council must compensate the registered proprietor.[54] This requirement to compensate the landowner greatly limits the

likelihood of the creation of esplanade reserves on subdividing land into parcels that exceed four hectares.

In rural areas, where lot sizes are typically over four hectares, there may not be an esplanade reserve on water margins because past subdivision may not have triggered the requirement to create a reserve. There is an argument that access may be just as necessary or desirable across parcels of land greater than four hectares than less than four hectares and that the four-hectare rule makes no sense. Also the rule encourages subdividing into lifestyle blocks of just over four hectares to avoid the taking of esplanade reserves or esplanade strips, even though subdivision into smaller lots could use the land more efficiently.

At the time of the 2003 Acland report and during the controversy that followed it, views on this issue varied.

Some recreators, particularly anglers, thought that local authorities had too much discretion to waive the requirements. Because of this discretion, in rural areas the opportunity to provide for public assess was often lost. Many anglers viewed the creation of water-margin access by creating esplanade reserves or strips as unacceptably slow and fragmentary. The New Zealand Fish and Game Council's submission on the 2003 Acland report proposed a radical, big-bang solution: 'all margins of water bodies wider than 3 metres and greater in area than 4 hectares, and not currently bounded by Queen's Chain, should be deemed by statute to have a Queen's Chain'.[55] Public Access New Zealand saw no need to go to such politically controversial extremes. PANZ favoured a review of the exemption provisions of the Resource Management Act to ensure greater provision of esplanade reserves.[56]

On the other hand, Rob Greenaway, a consultant on leisure-planning, pointed out that many councils '[had] clear policies on the taking of esplanade reserves under the RMA to support their long-term strategies of creating some wonderful urban and peri-urban walking and cycling routes'.[57]

Esplanade Strips

Esplanade strips under the Resource Management Act (section 232, amended in 1993) are also, like esplanade reserves, triggered by subdivision. These strips provide public access along privately owned water margins by creating an easement that is registered on the land title. They are usually twenty metres wide or less. The local authority can choose whether to require an esplanade reserve or to negotiate an esplanade strip, without public involvement. With esplanade strips, the landowner retains ownership and usually remains responsible for managing the land. There is no recourse for the district council if esplanade strips are not managed in a manner that allows foot access, such as if the strip becomes overgrown with vegetation. Closures may be written into the conditions of the easement, such as for lambing or rahui (a form of prohibition on access to protect a resource).

Esplanade strips are unusual – this is a positive aspect – in that the strip boundary moves simultaneously with every alteration to the bank of a river or margin of a lake. No surveying is required; however, the water bodies adjacent to the strip are identified in the legal plan.

The Difference between an Esplanade Reserve and an Esplanade Strip

The key difference between an esplanade reserve and an esplanade strip is that an esplanade reserve is owned by the local authority whereas an esplanade strip remains in private ownership.

The 2003 Acland report said that local authorities commonly negotiated esplanade strips in preference to establishing esplanade reserves, which had a high initial capital expenditure (because of survey costs) and ongoing maintenance costs for the council.[58]

The report did not venture far into the pros and cons of esplanade reserves and esplanade strips as means of providing walking access. However, a disapproving Bruce Mason had been on the trail of esplanade strips, sleuth-like, since September 1992, before the 1993 Resource Management Act amendment that created them. In the first PANZ newsletter he warned that the National government had favourably received 'demands from Federated Farmers to water down the requirements for esplanade reserves under the Resource Management Act'.[59] As alternatives to esplanade reserves, the government was proposing 'esplanade covenants'. The government would also be encouraging local authorities to negotiate 'public (pedestrian) accessways'. Neither of these access mechanisms fitted into PANZ's rigid philosophy of public access through public ownership. Mason wrote that 'access covenants and accessways, besides lacking the security of public reservation, will add nothing to the state's ability to improve public access to water bodies. The reverse appears to be the intent, as it is proposed to create general powers of closure, as well as specific prohibitions for those carrying guns or with dogs.'[60]

By 2003 nothing had happened to diminish Bruce Mason's withering criticism of esplanade strips. PANZ's submission to the reference group, compiled by Mason, had blitzed these supposedly imperfect devices:

> Esplanade strips consist of easements over private land, granting variable rights of public access along shorelines, if at all. The strips remain in private ownership, as do the beds of adjoining private water courses. There are no restraints on land use or potential obstructions within esplanade strips. Consequently many are obstructed and serve no public purpose. There are extensive provisions for closure to the public. The terms of the agreements for strips can be modified or even extinguished in total without public notification or objection procedures. These are effectively private arrangements between local authorities and individual land owners. If local councils are disinterested in upholding their terms there is little disaffected members of the public can do. They are proving to be no more than 'paper access'.[61]

In summary, according to Mason, esplanade strips were 'the antitheses of what the "Queen's Chain" [was] supposed to be about – reservation in public ownership and control of water margins for a variety of public purposes, including access'.[62]

Access Strips

Access strips are strips of land 'created by the registration of an easement in accordance with section 237B [of the Resource Management Act

1991] for the purpose of allowing public access to or along any river, or lake, or the coast, or to any esplanade reserve, esplanade strip, other reserve, or land owned by the local authority or by the Crown … '[63] They can be established either on subdivision or at some other time by negotiated agreement with the landholder. The strips are surveyed and recorded on the land title. They do not move if an adjoining water margin moves. Ownership of the strip remains with the landowner.[64]

Access strips can sometimes provide workable access across private land to reach publicly owned water margins or other public land. However, many access strips are created for purposes connected with conservation and may not be open to the public.

Establishing an access strip may involve compensating the landowner. The cost of reaching an agreement often stops councils pursuing this option. Some councils arrange their access needs in order of priority and, for an important accessway, may pay compensation.[65]

Erosion and Accretion

Over time, rivers and coasts move. Erosion is the process of gradually wearing away the land, commonly by the action of water, such as a river or the sea. Accretion is the process by which soil and sediments accumulate, increasing the area of land; we usually apply the term 'accretion' to deposits formed in river valleys and deltas. Erosion and accretion may cut off the legal access to or along a river. Erosion of a coast may result in a new coastline to which there is no legal access. A piece of privately owned land whose title includes foreshore or seabed is sometimes called a blue water title.

So far in this book, we have skipped over this subject. I have merely mentioned that although Queen's Chain reserves are said to exist along about 70 per cent of our water margins, some sizeable parts of this 70 per cent have no practical use because of river movement or coastal erosion. But if we were to leave it there, with no deeper look, the anglers and beach-goers would never forgive me. So we ought to examine this erosion-and-accretion problem slightly more closely, while still avoiding miring in thick sediments of legal history.

A good start to understanding the access consequences of erosion and accretion is to ask the question: when a river or a coastline moves, does the Queen's Chain move too? Bruce Mason has written on this subject accessibly for the legal layperson, simplifying the unsimplifiable:

> Since 1990, newly created marginal strips move automatically with any changes to foreshore, lake and river margins. Roads, other reserves, and earlier marginal strips remain fixed in position with many becoming isolated from current watercourses and shores. This is an obvious area for legislative reform.[66]

Writing in PANZ's detailed submission to the ministerial reference group, Mason pointed out that natural water boundaries in New Zealand are susceptible to change. Our braided rivers tend to snake back and forth as the years pass; and occasionally, during floods, they dance swiftly into some new meanders. Also, some of our coastline suffers geologically rapid

erosion. But, for example, pre-1990 marginal strips remain obstinately in position. This means that when a river changes its course, any pre-1990 marginal strips alongside it do not move with its banks. They can be left high and dry or submerged. This, argued Mason, defeats their public-access and riparian-management purposes.[67]

As with many access issues, the deeper you penetrate into the issues of erosion and accretion, the more complex and individual become the legal considerations. As noted in Chapter 2, water-margin reserves take various forms, including public roads, marginal strips, esplanade reserves, esplanade strips, access strips and several kinds of public reserves. Each of these legal types presents its own problems regarding realignment to the water margin. (An authoritative scrutiny of some of the complexities is available in Brian Hayes's *Elements of the Law on Movable Water Boundaries*.)

The PANZ submission touched upon one of these complexities when it pointed out the weird fact that public roads are fixed in position but can grow in width by accretion. The original road becomes separated from the river, but the land between the new riverbank and the original road becomes a part of that road. Few landholders were aware of this legal oddity.

Another complexity of accretion involves the right of *ad medium filum aquae* (literally, to the centre line of the water). If a non-navigable river abuts a property and the connection is not interrupted by a public road or other form of public land, the landowner may own the riverbed to the middle line of the river. If the riverbed becomes dry land by accretion, it may provide valuable grazing. 'Under the *ad medium filum aquae* principle … there is a presumption made that an owner of land whose title boundary is the water's edge may claim any land which becomes permanently dry, up to the centre of the river.'[68] The registrar-general of land considers such claims and decides whether to issue a crown guaranteed title for the accretion.

Navigable rivers are in a different category. Their beds are vested in the crown, statute law having overridden the *ad medium filum aquae* presumption of common lawn. However, 'in these days of jet-boats, jet-skis and hovercraft, the definition of what constitutes a navigable river has become blurred, and has not been satisfactorily determined by the courts.'[69] Section 261 of the Coal Mines Act 1979 defines navigability in a way that seems to encompass more rivers and streams than has commonly been assumed.[70]

PANZ's proposed solution to the access gaps resulting from erosion and accretion was sweepingly simple, although conditional on some reformist trimming of landowners' property rights. PANZ wanted the government to amend four acts to make all marginal strips, esplanade reserves and public roads movable along water margins:

> The concept of movable freehold boundaries should be extended to all situations involving water margins. Whilst this could be portrayed as confiscatory of private property rights, this would be no more than recognition of immutable natural processes over which mankind has little or no control. Private freehold, as well as lands of the Crown,

> are being extinguished now by river movement and coastal erosion, with no 'compensation'. Where control measures are effective, or in situations where shorelines and banks are naturally stable, there isn't a problem, although making riverside reserves *capable* of moving in all situations would cover all future eventualities. Significant changes to existing statutory law, and extension of statute to override common law presumptions would be required.[71]

What did the reference group think of all this?

The 2003 Acland Report: Erosion and Accretion

The 2003 Acland report recognised that river movement and coastal movement had caused some Queen's Chain reserves to become ineffective, ie total junk. A section on the historical development of marginal-strip law mentioned how, from 1892 onwards, the then new marginal strips came to be unhelpfully fixed in position.[72] The companion report *The Law on Public Access Along Water Margins* dealt with this history in more detail.

Another section in the 2003 Acland report considered the factors inhibiting public access to water margins. This section included a brief description of the effects of erosion and accretion. As a vivid example, the writers discussed a winding part of the Oreti River in Southland. Nineteenth-century surveyors had mapped the meanders. Cadastral records based on these old surveys showed public roads on both riverbanks. But a modern aerial photograph, reproduced in the report, showed that river movement had left some parts of these roads submerged, thereby chopping up the roads into strips of riverbed and stranded enclaves of public dry land.[73] Even if informal access to this part of the Oreti River was available, as one person later claimed[74], such access lacked a legal basis and would not necessarily last.

The reference group's assessment of the access difficulties caused by erosion and accretion agreed closely with PANZ's analysis; but the group's suggested solution differed in almost every respect from PANZ's proposal. The different approaches shared just one feature: both were prospectively politically controversial. The 2003 Acland report floated the idea of deeming walking-access rights to exist along selected water margins:

> Deeming could apply in situations where unformed roads or marginal strips have already provided for access, but which have not moved when a waterway has moved. Deeming access along these waterways would simply rectify the situation and be consistent with the previous intentions. The intent of the past mechanisms was to provide practical and legal access, but this is no longer possible due to natural processes.[75]

As events were to unfold, the idea of deeming riverside and coastal access to exist would incite New Zealand's farmers as would have done a threat of invasion and ruination.

Poronui Station, Phase Two, Exclusive Capture

Poronui Station, where an access problem had arisen in 1969 (see Chapter 5), seemed to be susceptible to recurring bouts of access disease that was never completely cured. In March 1993 a Public Access New Zealand newsletter raised concerns about the exclusive fishing rights being advertised in connection with a tourist venture on Poronui Station. A Mr Simon Dickie had applied to the Taupo district council for consent to operate tourist cabins on the station, near the Taharua River tributary of the Mohaka River. The Taharua River did not have a Queens Chain reserve along either bank, but public road access to points on it was available. PANZ had asked the council to lay off esplanade reserves as a condition of approval, so that the public would have access along the river. The council had declined this request. A North American fishing publication had trumpeted twenty-five miles of private angling:

> Poronui Ranch
> This fishing camp is owned and operated by Simon Dickie and is located on 20,000 acres of private ranch and wilderness lands near Taupo in the North Island. Over 25 miles of private water offers sightfishing for rainbow or browns averaging 4 pounds … These ranch waters are reputed to harbor the largest concentration of trout in the North Island.[76]

Freshwater, fish and wildlife do not attach to land title in New Zealand. Even when, as sometimes happens, an adjoining landowner also owns the riverbed to the centreline (under the *ad medium filum aquae* principle), the water itself and the fish in it are not privately owned. Section 26ZN of the Conservation Act 1987 prohibits the sale of sports fishing rights; section 23 of the Wildlife Act 1953 prohibits the sale of game hunting rights.[77] So no individual or organisation, other than Fish and Game New Zealand, has the right to sell licences to fish and hunt. But some landholders, as in the above example, were using the Trespass Act to restrict access to land or to rivers, thereby controlling the ability of the public to hunt game or to fish. The taking possession of fish and game animals in this way, by limiting physical access to them, became known as exclusive capture. It was an issue mainly for anglers and hunters, but it had ramifications for walkers and kayakers too, as the law was allowing landowners to charge for access across private land to reach public land.

Poronui Station did not drop completely out of the news after 1993. It popped up again, under different owners but again in connection with exclusive capture, to become an anglers' cause célèbre that would not be resolved until the sale of Poronui Station to an overseas buyer in 2007.

The 2003 Acland report devoted a page-sized sidebar to exclusive capture, singling it out as 'an interesting example of the complexity of property rights in the access debate'.[78] Exclusivity could attract tourists, particularly from overseas, and could therefore have financial benefits. But some submitters to the reference group had argued that access to publicly owned natural resources was being denied to restrict the use of those resources solely to commercial enterprises.

This was no easy dilemma. Landholders maintained that the public's entitlement to sports fish and game had never carried with it a right to enter private land. They contended that the right to exclude was basic to the concept of property. It was a landholder's prerogative to decide who entered or crossed their land. Excluding the public, they said, was not a misuse of the law of trespass.

Anglers and hunters were concerned that they could not gain practical access to sports fish and game in areas that involved crossing private property where commercial access arrangements operated. They objected to landholders benefiting commercially from fishery-access schemes that included the denial of public access.

The reference group considered that exclusive capture was an issue that warranted investigation and review.[79] Four years later, the Walking Access Consultation Panel would produce a report containing five pages on exclusive capture but would be unable to find a consensual solution.

Maori Land

Land in New Zealand comprises three categories: crown land, Maori land and general title land (commonly referred to as private land). Te Ture Whenua Maori Act 1993 defines Maori land as Maori customary land and Maori freehold land. Maori land does not include general title land owned by Maori. Most of the lands that the crown has returned to Maori in Treaty settlements are general title land, not Maori freehold land. Maori land is subject to restrictions and protections under Te Ture Whenua Maori Act 1993 that do not apply to general land.

Maori freehold land has had a title issued by the Maori land court and it remains under the jurisdiction of that court. Maori customary land is Maori land whose title has never been investigated by the Maori land court; hardly any Maori customary land remains, apart from a few small islands and rock stacks.[80]

The 2003 Acland report contained a paragraph or two on customary rights, a total of about two pages about Maori land, and a page about access along water margins on Maori land. The report also contained a full-page sidebar listing some concerns that Maori had expressed to the reference group.

Customary Rights

The report described customary rights to land as entitlements usually derived from take tupuna: a right that could in the past be established because an ancestor had asserted himself over land or resources using any one of various tikanga (correct procedures or customs).[81] For example, take whenua are rights gained through inheritance, while tuku whenua are rights gained through the gifting of land or resources. The reference group reported that changes in land tenure over the years had 'removed many customary access, use and management roles that previously existed'.[82] Also there were situations where Maori had benefitted from informal entry arrangements for obtaining mahinga kai (traditional food) but where changes of landowners had jeopardised those arrangements.

These brief references to customary rights would not go unnoticed or unchallenged. In its submission on the report, the Council of Outdoor Recreation Associations of New Zealand would argue that 'issues of

iwi/hapu/whanau private harvesting rights were not part of the Acland Group's Terms of Reference'.[83] According to CORANZ, the group had been captured by its Maori members. The proposed access commissioner, CORANZ said, should not be saddled with issues of customary Maori harvesting rights:

> [Customary Maori rights are] a separate Crown issue, and [have] nothing to do with public recreational access to waterways and the countryside. Whether such rights exist is problematic, as most harvesting rights go with the land title. An enormous amount of time could be spent unproductively on these issues.[84]

Three and a half years later the report of the Walking Access Consultation Panel would contain an informative section on Maori land and access, but this section's comment on customary harvesting rights would be limited to a mention that the proposed code of responsible conduct could 'contain provisions relating to … compliance with local prohibitions on the taking of resources (rahui)'.[85]

Walking Access to Maori Land

The wider question of walking access to Maori land was very much a part of the group's terms of reference, as Jim Sutton had asked the group to think about which private land, if any, might be considered for greater public access. Regarding entry to Maori land, the report said that, in general terms, legal access (such as the laying out of roadways) could not be granted over Maori land except by agreement with the landowners or by order of the Maori land court. In 2003 there were 1.54 million hectares of Maori land, forming 5.7 per cent of the land area of New Zealand.[86] In 1840 these figures had been just under 26.9 million hectares and 100 per cent.[87]

Much of the Maori land in 2003 was rural and classified as of poor capability. Most Maori land was in multiple ownership, characterised by absentee shareholders and managed by trusts and incorporation managers and boards. Sixteen thousand property titles had no legal management structure, making it difficult for the owners to act collectively, and therefore sometimes difficult for them to authorise anyone to control or monitor access.[88] Almost half of the Maori freehold land titles were unsurveyed and up to one-third were likely to be landlocked (ie, the owners themselves had no legal access to their land).[89]

Maori who had met or submitted to the reference group had strongly opposed the possibility of any 'taking' without consultation and compensation. The report said that

> Maori assert that under the Treaty of Waitangi the Crown, as a Treaty partner, has an obligation to actively protect the property interests of Maori land, as well as customary interests. Article Two of the Treaty granted to Maori 'full exclusive and undisturbed possession of their lands and estates forests fisheries and other properties'. The Waitangi Tribunal has expressed its preference for defining the rights under Article Two as 'rangatiratanga', rather than the 'exclusive possession' used in the English text of the Treaty. According to Crengle[90], who

> has published a commentary on implementing the RMA in the context of the Treaty principles, the use of the term 'rangatiratanga' denotes 'an institutional authority to control the exercise of a range of user rights in resources, including conditions of access use and conservation management. Rangatiratanga incorporates the right to make, alter and enforce decisions pertaining to how a resource is to be used and managed, and by whom.'[91]

Towards the end of its report, the reference group suggested some measures that the government could use to extend the Queen's Chain. But the group remained noncommittal on whether such measures should apply to all land or to all land except Maori land. Some submitters on the report were less restrained. Some stated that Maori land should not be considered to be different from any other private land and should not be exempted from any legislated extension of the Queen's Chain:

> Maori land should be treated no differently to other private land. In the case of sports fish, game birds and large game, practically all the species involved are introduced species, and as such are not recognised by the Treaty of Waitangi.[92]

Some other submitters argued the opposite. A few considered that public access would stymie the landowners' opportunities for economic development. The land was a wealth-generating asset for Maori. Public access could disrupt or constrain commercial initiatives. Also, some Maori were concerned that further access might result in the desecration of burial sites or wahi tapu. Some submitters said that mahinga kai was already being pillaged by members of the public. One submitter wrote:

> The deeming and statutory trust approaches are authoritarian use of the powers of the State when other methods are available. I suspect and hope that the authoritarian socialist confiscatory approach is no longer acceptable to New Zealanders. When carried out against Maori land in the 19th century this caused grievances which still persist and show little signs of going away.[93]

The government's land-access proposal of December 2004, however, would be unequivocal: it would say that the planned footways would be established on Maori land as well as on general land. We will return to this issue, and its political repercussions, in Chapter 24.

Code of Conduct

The reference group reported that there was solid support from landowners and recreators for a code of conduct that would inform all parties of their responsibilities. The group agreed that such a code could assist in building the confidence of private landowners. It could be written to apply to both public and private land. A code would provide a baseline for the type of behaviour that could reasonably be expected in the outdoors.

The group had looked at examples of codes in New Zealand and overseas. It said that 'the content and purpose of the Scottish Countryside

Access Code [had] merit'.[94] (The correct name is the Scottish Outdoor Access Code.) But the group did not attempt to list in detail the possible contents of a New Zealand code of outdoors conduct. Not until the 2007 Acland report would we see a list headed 'Possible Content of a New Code'. For the time being, after the publication of the 2003 report, we were left thinking, What did the group mean by 'code of conduct'?

What Did the Group Mean by 'Code of Conduct'?

Many people interpreted the word 'code' to mean a brief list of rules, like the ten-point New Zealand Environmental Care Code that had only forty words. An outdoor access code on these lines would list the most basic facts of considerate and acceptable conduct. The visitors would need to know about the admittance and control of dogs, the carrying of guns, lambing-time restrictions, fires, keeping to the track, minimising disturbance to livestock, gates (leave them as you find them), and car-parking (not inconveniencing the land-occupier). The landholders would need reminding of the maximum penalty for obstructing a public road.

Yet I doubted whether such a short code could put more than the shallowest dent into New Zealand's access problems. It would have been impossible, for instance, to word any brief references to rights and privileges in a way that was acceptable to everyone. I myself would have objected to the inclusion, unqualified, of the sentence: 'Access across private land is a privilege, not a right.' An easement is a right of way.

A synoptic code alone, unescorted by any handbook of access facts and advice, would not cope with the intricacies of our multi-status walkways system or the uncertainties of our crumbling social conventions. At one extreme, the code would need to emphasise that access along gazetted walkways across private land is a legal right, but one that might be subject to restrictions and which carries responsibilities. At the other extreme, the code would need to explain that arranged one-off access across private land is a privilege, legally, not a right. And what would it say about all the semiformal walkways and accessways whose exact statuses were known only to landholders and local-authority or Department of Conservation officers?

It was one thing to state that all New Zealanders were eternally grateful to the hundreds of landowners who, for example, had entered into walkway agreements, all of which were voluntary; it was quite another thing to state, without legal exceptions and philosophical reservations, that linear access across farmland was a privilege, not a right.

A further complication was that many New Zealanders did not understand that public roads were public land, often bisecting private land; some people thought that an unformed public road that crossed private land was merely a right of way across that land. The public were capable of understanding this distinction, but we'd never given them the information. One submission to the ministerial reference group had referred to a 'universal ignorance' and the need to educate not only the public but also the public servants.[95]

The many complexities of access in New Zealand seemed to me to necessitate an authoritative booklet, backing up any concise code that were to be developed. This booklet would explain rights of public access in some detail, while remaining in plain English, digestible by the average

walker or angler. On aspects such as public roads and the eight basic reservations that form the Queen's Chain, this booklet would replace access folklore with access facts. Officials and access leaders needed to treat our public as a sophisticated population, able to take in rights and responsibilities, liberties and constraints, powers and obligations. Educating the public would become a permanent function of the proposed access agency.

Scottish Outdoor Access Code

The 2003 Acland report mentioned the Scottish Outdoor Access Code as a possible model. The Scottish code was then in draft form; the Scottish parliament approved the final version on 1 July 2004. The Scots' right of responsible access came into force on 9 February 2005.

The first thing to stress about the Scottish Outdoor Access Code is its name: it is not merely a code of conduct, but a code of access. It is two-sided. Although it contains much about visitors' responsibilities, it is far wider than a list of desirable visitor behaviours. Furthermore, if for you the word 'code' conjures up something short and simple, then the Scottish access code is misnamed, as it consists of a substantial set of principles, greatly detailing rights and responsibilities.[96] These rights and responsibilities are akin in some ways to the Scandinavian models. Scots enjoy considerable linear and area access to private uncultivated land. That entry to private land is based on a balance of rights and responsibilities, a balance laid down by statute. Hillwalkers on the large private estates in the Highlands do not have to decipher an access code that waffles on about social conventions and asking for permission. The Scottish code does not talk about privileges; it talks about rights. Without more access across private land, New Zealand will not achieve a similar balance. There cannot be a balance of rights and responsibilities, in the context of private land, if walkers do not even have linear legal access across that land.

Landowners Breaking the Rules

There was a danger that the code of conduct mooted by the reference group could evolve solely into a device concerned with the behaviour of walkers. I wrote down this concern in my submission on the 2003 Acland report:

> Question:
> Do you consider that a code(s) of conduct for access could be useful?
>
> Answer:
> I see an outdoor access code as a cornerstone of the access strategy – and I may be the first person to ridicule the code if it is not accompanied by concrete plans to solve the access problems catalogued in the Report.
>
> These are the questions that I hope I never have to ask: is there any point in educating people on how to behave on public roads if they cannot work out where the public roads are? Is there any integrity in promoting individual responsibility when there are gaps in governmental responsibility (eg no clear duty to confirm and waymark road alignments)? Why should I even *read* a government code, if State and local-authority uninterest denies me help in exercising my right

> of access to public roads? Is there any sense in advocating courtesy and understanding when the legal and moral rights have diverged and when the balance between these two forms of rights has tipped too far towards the landowner? Is there any purpose in promoting a respect for the law of trespass, when many recreators consider that that law needs softening? Regarding the Otago Peninsula, for example, I can see a situation developing where some Dunedin recreators could find an imbalanced access code a somewhat difficult thing to abide by and take seriously. Yesterday (18 September 2003) my weekly AOK mountain-biking newsletter arrived; it mentioned a recent access difficulty on the Peninsula, featuring a confrontation with a hammer-wielding land-guard. [97]

I was struggling to fathom the New Zealand approach to access to the countryside. We had an unwritten rule, called a social convention, that allowed walking access to private uncultivated countryside, provided that walkers asked for permission: an antiquated rule that many landowners now rejected. Also we had a written rule, called a law, requiring a gate across a public road to carry a sign, PUBLIC ROAD: a rule that landowners universally ignored. So we had a big problem caused by landowners breaking the rules. How did we intend to fix it? – by inventing a third sort of rule, called a code, aimed primarily at recreators.

An access plan that envisaged much negotiation could not sensibly go ahead without a code of access. But this code could struggle to gain widespread acceptance if it were part of an access plan that had no teeth.

There was an unjustified degree of pessimism about the behaviour of the modern Kiwi townee. I had some difficulty accepting that urban New Zealanders 'often [didn't] know how to act responsibly on farms'. (Ministerial statement, 11 August 2003.[98]) This accusation may have been true of a minority. But the majority should have been regarded as an educated population and not viewed – as some quarters seemed to view them – as a potential pestilence. Even if there was some truth in the suggestion that urban New Zealanders had become removed from their rural roots, the situation would surely only worsen if they were not welcomed back to those roots.

There were of course justified grounds for concern about the reckless use of firearms and the inadequate control of dogs. Similarly, there were grounds for concern about land-holders ignoring old access conventions and behaving aggressively and threateningly.

Ideas about what form the proposed New Zealand code of conduct would take were destined to oscillate around for four years. A crucial question was whether the code ought to be statutory or voluntary. A cabinet paper released in December 2004 would include a government intention to 'establish a statutory Code of Responsible Conduct to ensure that persons exercising the walking right [along the proposed footways] respect and protect the interests of landholders'.[99] But the 2007 Acland report would recommend the development of a voluntary code, written in general terms that would apply to all walking access, whether on public or private land.[100]

Acclamation and Disapproval

The 2003 Acland report earned praise from outdoor recreators and disfavour from landowners. One happy reader wrote: 'Well done! In my opinion this is an icon of commonsense and clarity unlike some other papers I have read.'[101] Another wrote: 'The report of the Land Access Reference Group cannot fail to become a document of great historical significance to New Zealand.'[102] Federated Farmers, in contrast, disputed the report's logic: 'Federated Farmers is strongly critical of the report. The Federation believes that many of the conclusions drawn from the submissions are not balanced or valid.'[103]

The 2003 Acland report provided a thoughtful and open-minded base for a public debate. But the government did not manage to keep that debate balanced, informed and level-headed. Instead a fifteen-month government silence left everyone guessing and put a few loudmouthed farmers in control of the arguments. In mid-September 2004, a year into that silence, John Acland remarked that he was 'sick and tired of combating misinformation'.[104] That misinformation had plenty of time to fester and irritate in every farmhouse in New Zealand. Altogether, after the formation of the ministerial reference group, nearly two years were to pass before the government released any firm plans.

Chapter 10

Government Silence

Shortly after the publication of the 2003 Acland report, and before the two months of public meetings around the country, the *Press* talked to John Acland, who made it clear that the reference group's work was nearly finished: 'We will have it all tied up by the end of November [2003], and then it's up to the Government to decide what they want to do.'[1]

The reference group did finish its work as predicted, but by then the foreshore-and-seabed issue had arisen unexpectedly to devour the government's time and energy. In June 2003 the court of appeal had released a decision that provided the opportunity for Maori to gain freehold title to parts of the New Zealand foreshore and seabed. This ruling had detonated a complicated national barney over the ownership of and public access to the coastal foreshore. The seashore became the chief political issue of the 2002–5 parliamentary term. Public access to and along beaches, and the recreational use of beaches, formed a subsidiary but influential part of the foreshore-and-seabed debate, whose central topic was Maori customary property rights in the foreshore. Kay Booth has dealt in detail with the access aspects of the tempestuous and sometimes bitter foreshore controversy.[2] Commenting on the twin access-related events of 2003 – the court of appeal decision and the setting up of the Land Access Ministerial Reference Group – she called them 'arguably the most significant access developments in New Zealand's history'.[3]

After these two happenings, the subject of walking access to the New Zealand outdoors would never be quite the same again. Until then, despite a long-established custom of public use of beaches free of charge, the public had no legal right under common law or statute to use the foreshore for recreation, except for navigation and fishing in tidal waters.[4] The foreshore-access debate of 2003–4 led to the passing in November 2004 of the Foreshore and Seabed Act 2004, after months of political shenanigans of potentially hefty long-term significance.[5] The act redefined legal rights of public access to the foreshore, signalling a shift towards codified rights as opposed to de facto rights. During the same deeply polarising debate, the potential loss of the right to go to the beach raised the importance of public access rights within society;

the beach was a highly important and frequently used recreation setting for many New Zealanders.[6] The act defined access rights at considerable length, setting a precedent for New Zealand law. It updated the law 'to better reflect societal expectations and values, as the public believe[d] it ha[d] the legal right to access the foreshore'.[7]

The government achieved this result at considerable political cost to itself. In his biography of Helen Clark, Denis Welch wrote: 'The handling, or mishandling, of the foreshore and seabed issue seriously damaged Labour's relationship with Maori, and to this day [2009] that must stand as one of Clark's worst failures as Prime Minister.'[8]

Although the act protected public access rights, the strength of the new, de jure rights remained untested, and some access advocates claimed that the ministerial power to restrict or prohibit public access meant that the public's rights were not guaranteed.[9] The final word was likely to come from the courts, when the new law came to be tested and interpreted.[10] (The Foreshore and Seabed Act 2004 was doomed to be repealed before its access provisions could be tested, but these provisions would be replaced by new law guaranteeing public access to beaches.)

Improved de jure public access across dry land, however, would happen far more slowly. Few concrete plans on walking access to land were to emerge until the government circulated an update brochure in August 2004 and then released a cabinet paper and related press releases in December 2004. In the intervening fifteen months, between the 2003 Acland report and the cabinet paper, a few thousand laissez-faire minded farmers – representative of many but not of all farmers – steered the national debate, always towards scaremongering and away from the concept of harmonious multiple use. Always towards the stereotypical urban idiot and away from the responsible recreational walker. Towards the status quo, away from change and improvement. The absence of any definite government proposals had left a void, which opponents of access filled to the brim with quick-setting gossip and guesswork.

New Zealand's Most Influential Lobby Group

Federated Farmers, a well-funded and professionally staffed landholders' group, achieved exceptional success in selling its narrow dogmatism. It distilled its negative messages into shorthand themes at the level of tabloid journalism: farmland is a place for production, not recreation; agriculture is the backbone of our economy; property rights form a cornerstone of society; what is good for farmers is good for the nation; walking tracks across farms are a nuisance; walkers are a threat; the Queen's Chain is bad; there are few real access problems; a third of New Zealand is national park; there's nothing wrong with asking for permission; it's always been done this way; it's common courtesy; access is a privilege; we are farmers, we know best. The farmers recited these lines over and over again until they themselves probably believed that the points were statements of fact rather than merely the arguments and claims of one side of the debate. As Laurens Van der Post once said, human beings are perhaps never more frightening than when they are convinced beyond doubt that they are right.

The complexities of the access issues baffled many of our journalists, with some notable exceptions. The argument in the media only occasionally rose above the prejudice of the rustic mob and the angry rhetoric of 'land grab', 'land confiscation', 'outright theft', 'a land-access free-for-all', 'appropriation of property rights', 'Mugabe-like', 'traipsing willy-nilly', 'unfettered access', 'roaming at large', 'strolling freely', 'having free rein', 'open slather', 'uninvited people tramping around', 'trampling through farmers' properties', 'building pedestrian highways over our land', 'a grave danger to the agricultural economy', 'a threat to biosecurity', 'a rural fire risk', 'a certain escalation of rural crime', 'an insult to the rural community' and 'this anti-farmer government'. (A year later, Charlie Pedersen, the Federated Farmers president, was fully justified in boasting that 'the federation was easily New Zealand's most high-profile and influential lobby group'.[11])

Back on planet Earth, it was worth remembering what the farmers were convulsing about. The 2003 Acland report had not proposed a right to roam; it had suggested the deeming of linear pedestrian access 'along all waterways of a specific size or width, the margins of lakes and the coast in order to complete the Queen's Chain'.

The wider public did not properly engage in the access debate; nor did the considerable intricacies of that debate lend themselves to public perusal. The issues seldom reached the TV news, their complications not suiting the fast-paced entertainment model of news reporting favoured by *ONE News* and *3 News*. Only a tiny proportion of the people became informed on the finer points of the access imbroglio. It is likely that many members of the public absorbed the farmers' slogans and did not understand that the government's intentions stopped far short of England and Wales's right to roam – itself a restricted freedom with conditions, limitations and responsibilities. There were times, however, when I thought, Wake up, people. A fact that many farmers and some journalists had got wrong – the belief that the government was planning to introduce the entitlement to rove around on farmland – had become accepted background information. It has been said that if the public is silent, power will win over truth.[12] For several years, after the 2003 Acland report, the wider public remained ignorant, disorganised and apathetic. The truth didn't stand a chance. It buckled under the weight of the farmers' lobbying. Stoked by farmers and fanned by rash reporting, misinformation and misconceptions burnt their way through the whole debate.

Recreational Bodies' Voices Subdued and Ineffectual

Some hunters and fishers participated energetically in the Ministry of Agriculture's public consultations. Some wrote reasoned and tactful letters to newspapers, describing access problems and suggesting solutions. But the involvement of many other outdoor recreators was subdued. A few outdoor people expressed contentment with the status quo. Many folk, while recognising that access problems did exist, were too busy enjoying themselves outdoors to concern themselves with the access issues. Either that, or they were comatose. One Rotorua hunter later regretted the apathy of other hunters. He wrote:

> It's not uncommon to hear of landholders restricting public access to previously accessible rivers, beaches, and mountains, or where access is allowed only in return for payment. Occasionally the new regime is established by an overseas purchaser, more often though it is a New Zealand landowner. To say this is anathema to many Kiwi hunters, trampers and anglers is an understatement and weren't we happy to have this issue sorted out once and for all? Even so, most of us had forgotten about it – thriving on leaving it to 'them'.[13]

Compared to the farmers' onslaught of exaggeration and suspiciousness and doom-vending, the national recreational bodies' public statements of support for improved access were mainly low key and infrequent. Public Access New Zealand, previously an assertive and prominent lobbyer for access, was almost silent for much of 2004. (Although, like the government, it was deeply and visibly embroiled in the foreshore-and-seabed issue.) Fish and Game New Zealand, a government organisation that supports improved access to public resources, phrased its arguments factually and responsibly. Now and again it released a press statement. The newspapers occasionally reported the views of its officials and elected council-members. But Fish and Game's detailed information about the access issues, such as the updates in *Reel Life*, mainly reached just freshwater anglers and gamebird-hunters rather than the general public.

Recreational associations that operated on ephemeral budgets and that were run by committees of volunteers – such as Federated Mountain Clubs of New Zealand and the New Zealand Deerstalkers' Association – were under-equipped to counter the anti-access campaign conducted by Federated Farmers, a body that in 2004 churned out 235 press releases. The muteness of outdoor enthusiasts was palpable: for more than a year they stood on the sidelines, watching the farmers steering and distorting the debate.

Federated Farmers and Jim Sutton Fall Out

In the second half of 2004, relations between Jim Sutton and the representatives of Federated Farmers deteriorated, after being relatively untroubled for a Labour minister of agriculture. An incendiary influence on this relationship was the Braun-Elwert affair, which blazed in September and smouldered through into November.

In January 2003 Federated Farmers had allegedly (it denied doing so) leaked a draft Jim Sutton press release to David Carter, the National Party spokesman on agriculture. The draft statement had contained an error, in accidentally omitting Gottlieb Braun-Elwert from its list of appointees to the Land Access Ministerial Reference Group. Braun-Elwert was a mountain guide and acquaintance of the prime minister Helen Clark. In September 2004 Carter seized on this past mistake to stir up embarrassment for the government concerning Braun-Elwert. As a result of these goings-on, Sutton questioned whether Federated Farmers really was – as it always claimed to be – an apolitical organisation.

Also in September and October 2004, over the same period as the Braun-Elwert episode, a slanging match erupted between Sutton and

farmers over rural crime. The basic question was: should we shut the countryside doors to all visitors, just to try to exclude thieves, burglars and marijuana-growers? Should the recreational opportunities of all New Zealanders be restricted because of the irresponsibility, ignorance, stupidity, or criminality of a small minority? Jim Sutton and most walkers, hunters and anglers thought no. Federated Farmers and some rural dwellers seemed to think yes. By late 2004 this disagreement had become vociferously polarised.

For fifteen months Federated Farmers had held few strong cards – few logical, kings, queens and aces of arguments – in the access debate. Yet it had more than held its own in that debate by dint of propaganda: the organised dissemination of information. Much of it misinformation. The federation was winning the battle of the big lie: but it was losing credibility and respect, in the eyes of informed recreators if not of the general public. Federated Farmers did not appear on our ballot papers but it seemed in some respects like a political party, out on the right between the National Party and ACT New Zealand. Its elected representatives, not its staff, were its spokespeople and public face; they were firmly in control at head office (this hadn't always been the case).[14] Until its members elected senior lieutenants who could use words accurately and debate issues objectively, it was, as Jim Sutton was later to say, a joke.

In September 2004 the federation posted a webpage headed 'Public Access across Private Land'. The federation's crusade against the government's proposed New Zealand Land Access Strategy[15] 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.[16]

The campaign webpage included links to supporting papers. One of these papers was titled 'Mythbusters'. Part Three scrutinises the so-called myths.

PART THREE

Land-guards, 2003–2004

Introduction to Part Three

I shall remember the intense controversy of 2003–4 by one headline from among hundreds: 'Farmers Upset by Sex in the Paddocks'.[1] 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. One could understand why he was reluctant to allow 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. But this situation presented a quandary: were we to limit the recreational opportunities of all New Zealanders because of the thoughtlessness or lawlessness of a small minority?

We had to strive for a workable balance. At the heart of the wrangle over entry to private land lay the balance between a rural landholder's property rights and the public's recreational expectations. Unless you spent 2003–4 in a coma or overseas, you will already know that Federated Farmers of New Zealand (FFNZ) had a categorical and rigid view of where that balance should lie.

In September 2004, Federated Farmers posted a webpage headed 'Public Access across Private Land'.[2] Available from this webpage was a three-page document titled 'Mythbusters'.[3] 'Mythbusters' claimed to be a paper that rebutted 'many of the myths that arose during the consultation' on land access conducted in 2003 by the Land Access Ministerial Reference Group.

What myths? I wondered. Fictions and falsehoods hinder informed debate. Perhaps Federated Farmers was acting responsibly in exposing them.

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

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

The debates were already in print. The last two years had 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 2003 Acland report. My file of press stories and media releases held just a representative collection, a small selection, yet it was an inch thick, with headlines ranging from 'Sort Public Access Now, Expert Says' to 'Farmers Slam the Gate over Access Plan'.

Part Three scrutinises 'Mythbusters'. Each chapter of Part Three reproduces one of the pro-access statements, alleged to be fallacies, and 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 lay behind the soundbites.

The order in which Part Three deals with issues may not be entirely logical because 'Mythbusters' has dictated that order.

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

Chapter 11

Disputed Need for Change

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 implied that there were few access issues of concern. On the contrary, the federation was saying, we should all be celebrating the new high-country conservation parks and reserves. The federation's argument seemed to be 'if it ain't broke, don't fix it'. But much anecdotal evidence had accumulated to suggest that New Zealand's old, traditional admission machine was suffering quite widespread rot. So recreators were saying 'if it's broke, fix it'.

The submission to the ministerial reference group from Wellington Recreational Marine Fishers Association (WRMFA) listed forty-nine areas in the Wellington region where anglers had already met access difficulties or which could have access restrictions in the future.[1] Some of these examples involved an absence 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 was little doubt that the rot in the access mechanism was real. The web file of the WRMFA submission was called 'lostaccess.htm'.

Kayaking provided another example, firmly within the walking-access remit 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 valued highly could be accessed only over private land. Kayakers frequently walked across the private land,

carrying their boats and gear. The ability to do this relied on obtaining the permission of the landholder. Kayakers generally enjoyed 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'.[2] The NZRCA wrote: 'The recommendations and outcomes that arise out of [the reference group's study] are potentially very important to the kayaking community.'[3]

Not all the losses of access involved water margins. The Federated Mountain Clubs of New Zealand submission to the reference group said that 'problems concerning public access have always been with us, but now increase in number and intensity'.[4] This submission detailed eighteen examples of access snags. The particulars were diverse and sometime complex. Twelve of these examples involved the need for linear access across private land to reach public land. Another three involved the bringing into use of a public road to reach other public land; Papuni Road (mentioned in Chapter 7) was a classic case. The causes for the lack of linear access included the obstructing of public roads; the closing of (or charging for the use of) walkways; the closing of tracks because the landowners were selling hunting rights; some important connecting routes being by permission only; and accessways having never existed in the first place.

Three of the eighteen examples – the central Kaimanawa, Mount Tarawera and Mount Hikurangi – involved the loss of area access to land previously open, or partly open, to the public. We will come back to the Kaimanawa shortly. Mount Tarawera is discussed in Chapter 38. Under the heading 'Mt Hikurangi and Judicial Review', the PANZ website contained a bunch of documents dating from 1990 to 2000. (They were still available in 2010.[5])

Regarding research-based evidence of the loss of access, as distinct from anecdotal claims, there was a dearth of New Zealand research to support or contradict the Federated Farmers statement that '[there is] no evidence to suggest opportunities for [the] public to access significant areas are diminishing'. But a 2001 paper that looked into access to public conservation lands had concluded that

> in the last decade, there has been a progressive erosion of free public access and an increasing application of user pays, while access obstruction is evident among private landowners on Crown pastoral leases and commercial forests and public lands of the Conservation Estate.[6]

The authors suggested that these changes symptomised a much broader ideologically driven social and economic revolution that had occurred in New Zealand over 1985–2000. Many key natural resources, such as forests and fisheries, had fallen into private, including overseas, ownership. An economic rather than a social agenda had dominated most government thinking. 'In essence, as the overall economic wealth of New Zealanders [had] decreased almost without respite, so also had the wealth of access rights that were gifted to the nation at its inception.'[7]

Regarding academic analysis of all the constituents of the access problem, including analysis of the causes, this would arrive in 2006 as a part of Kay Booth's doctoral thesis on rights of public access for outdoor recreation. In a section titled 'The Access Problem Confirmed', Booth would agree with PANZ and the ministerial reference group that, contrary to the rhetorical protestations of Federated Farmers, there was indeed an access problem and that it comprised socioeconomic, legal, administrative and practical dimensions.[8]

Kaimanawa Mountains: Turnstiles Now Installed

The access situation in some parts of the Kaimanawa Mountains illustrated the changing nature of recreational access to private land in New Zealand. The big river valleys and rocky summits of the Kaimanawa lie to the east of the Desert Road. Once, provided that you avoided the Waiouru military reserve, you were as free to tramp the Kaimanawa as to tramp the Tararua or Ruahine. By 2003 this had dramatically changed.

> The once free access has become a casualty of a commercial – and at times bitter – battle for the wilderness dollar. These mountains in the shadow of Ruapehu are today being promoted across the world as a unique and bountiful hunting and fishing ground. Very little of the high country of the central Kaimanawas can be wandered without permission and at no cost any more.
>
> What few trampers knew [in the past] … was that the heart of these mountains, unlike their sister ranges to the south, was Maori land. The fact was rarely advertised. The Forest Service, and its successor, the Department of Conservation, maintained the few huts, kept the bush tracks open and preserved the route-finding cairns and poles above the bushline. No longer. DOC has retreated from the central Kaimanawas to the outer areas of the ranges they manage as forest park. Some of the key bush tracks have already disappeared. The place is now a strictly regulated commercial domain. Trampers must buy permits to walk some of the classic routes, several once popular tracks require 'case-by-case' negotiation before venturing into; others are closed altogether to casual trampers.
>
> Throughout the ranges a number of private huts have sprung up. They are for the exclusive use of those who rent them out and [who] are flown in by air charter operators. What has led to this radical reduction in public access, the curtailment of a right most trampers had wrongly assumed was part of their Kiwi heritage? The story makes bewildering reading.[9]

The intricate story occupied several pages of *New Zealand Wilderness*. The full account described the gradual commodification, over twenty years, of a large chunk of mountainous terrain.

Much of the central Kaimanawa had never been crown land. It belonged to Ngati Tuwharetoa. The tribe's East Taupo Lands Trust administered this vast estate. In the early 1980s, Ngati Tuwharetoa leased the land to Air Charter Taupo, which successfully developed a business flying hunters, anglers, rafters and trampers into remote parts of the tribal territory.

For a while Air Charter Taupo allowed free tramping along the bush and open-top routes provided that people obtained its permission. But in 2000, two commercial interests competed for the tribal lease, which drove up the cost of the lease. This led to the leaseholder, still Air Charter Taupo, needing to boost its own revenue. This need led, in turn, to a decision to encourage the greater use of exclusive access. This meant that when fee-paying hunters were hunting in a particular block, nobody else was permitted to enter that reserved area.

In 2001 Air Charter Taupo introduced permits for tramping. It sold permits at $30 a person for three of the most popular routes in the Kaimanawa. Many trampers refused to buy permits. In 2003, Ian Mackersey wrote that 'the restrictions not surprisingly have led to a steady decline in tramping in the most challenging part of the Kaimanawas central massif in which, on the southwest boundary of Tuwharetoa territory, [the North Island's fifth] highest peak, Makorako rears its majestic summit'.[10]

Commenting on Mackersey's article, Hugh Barr, the secretary of the Council of Outdoor Recreation Associations of New Zealand, said that the mixture of public and private ownership of the central Kaimanawa was confusing and was having a negative impact. He wrote that

> because of New Zealand's draconian trespass laws that sanctify private occupancy, beyond anything in any other western country, trampers are sadly turning away from the extra hassle of tramping in the Kaimanawa's [*sic*]. Private owners are driven by the need to pay rates on wildlands, and so [they] need to gain income from them.[11]

One fact missing from the *Wilderness* coverage of the Kaimanawa issue was the actual size of Ngati Tuwharetoa's 'big rates bill'. Hugh Barr did not discuss this. But he did use the Kaimanawa access issue as evidence, as he saw it, that public ownership is central to public access in New Zealand, an appealing but over-simple contention that we discussed in Chapter 7.

The 2003 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 and included 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)'.[12] 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 [Health and Safety in Employment Act] obligations as a reason.[13]

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 was 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.[14]

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, appeared to me to have no confidence in the evidence on which Acland based his opinion. According to the farmers – I judged from 'Mythbusters', FFNZ media releases, the FFNZ submission to the ministerial reference group, and newspaper stories – the existing access situation was hunky-dory. Most of the access troubles described to the reference group were mythical … nonexistent … mere figments of recreators' imaginations. The group had greatly overstated the problems. The whole access debate was a storm in a teacup, stirred up by a few hunters and fishers. There was nothing amiss with that courteous New Zealand custom – arranged admission – and, furthermore, a survey had shown that 92 per cent of farmers granted entry to the public if asked. So there was no need to legislate rights of access across private land; rather, farmers would 'help the non-farming community understand why legislating rights of access is unnecessary and will only make things worse'.[15]

The Acland report had suggested that walking access be deemed to exist along water margins to complete the Queen's Chain. Federated Farmers disliked this proposal because it would intrude into farmers' property rights. In politics, one way to prevent change is to deny the need for it; one way to argue against the deeming of access was to deny the existence of access problems. The federation was shutting itself off from the unpleasant realities. Something similar happens in clinical denial, a defence mechanism in which the existence of unpleasant realities is kept out of conscious awareness to protect oneself from emotional distress. The federation appeared constitutionally unable to recognise the practical shortcomings of single-occasion access by permission.

Rickety Social Conventions and Changing Access Aspirations

Why, in the early 1970s, 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, in 1992, were some well-informed outdoor recreators so concerned about access to the outdoors that they set up Public Access New Zealand (PANZ)? Why in 1997 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 in 2002 did a group of hunters register a new political party, Outdoor Recreation New Zealand (ORNZ), to campaign, among other things, for access?

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

Regarding access across private land, two factors contributed to the evolution of national access lobby groups. Firstly, people were noticing change and thinking, Fings ain't wot they used t'be. The social conventions behind arranged admittance had been weakening. Federated Farmers repudiated this, yet many submitted accounts of access problems indicated that it was so. This debilitation 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.[16]

Secondly, as the 1980s and 90s passed, the inefficient ritual of one-off arranged access, for all its well-mannered decency, failed increasingly to provide the certainty, flexibility and long-term security that recreators and tourists were coming to need and expect. In 2003 many recreators did still highly value entry-by-permission, a treasured and respectful New Zealand practice. It suited all their needs, they benefited from it frequently, and they could not see its disadvantages. A smaller but growing number of others – I'll call them busy people – didn't want a database of 45,000 landholders' phone numbers; they wanted accurate maps showing permanent accessways. They considered single-occasion authorised admission to be inferior access, unable to be marked on maps for the benefit of all, here today and gone tomorrow. Undependable. In some respects obsolescent, a residue of the 19th and 20th centuries. Access expectations were changing.

Many responders to the 2003 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.'[17]

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, 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.'[18]

New Zealanders should not have to ask permission to follow foot-tracks across and to view their own countryside. This unequal rural-urban relationship can work cordially but it can also lead to resentment and division. Federated Farmers's much-quoted Ninety-two Per Cent figure, from the context of asking for permission, did not recognise track-users' changing wants. The farmers' continual references to Ninety-two Per Cent missed the point of high-quality access.

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

What About Tenure Review?

Tenure reviews were creating new recreational opportunities in the high country. Nobody was disputing this. It was a fact. (Leaving aside the never-ending economic and political quarrelling about the fairness of the process, and the scientific quarrelling about the ecological rights and wrongs, and the arguments about the changing landscapes, and the complaints about inadequate access over freeholded lands.) Further progress in the tenure reviews would open up for all New Zealanders a large area of high country the entry to which had been closed or restricted or dependent on gaining permission. But this fact, presented during a disagreement over the real extent of recreators' access difficulties, was the smelliest of red herrings. The new conservation parks in the South Island would not cure the access headaches of the Wellington anglers. Tenure review would not create more walkways in Auckland's urban fringe. Opening up the schist mountains of Central Otago would not enhance the Otago Peninsula's bitty and disjointed network of foot-tracks.

Mick Strack had made the same point in a well-timed paper on property rights, presented to land-surveyors in May 2004:

> While the area of land set aside in the conservation estate is increasing, much of it is the remote mountain tops, and is not likely to be visited by more than a few hardy mountaineers and adventurers. It provides little benefit for the average New Zealander wanting the experience of access to rural land.[19]

The 'Mythbusters' Federated Farmers comment mentioned 'significant areas' as if everyone agreed on the ingredients of significance. In fact, one underlying misunderstanding between the two sides of the access debate involved people's widely different perceptions of significance.

The words 'significant' and 'significance' cause trouble all over the place. Ann Brower has discussed the meaning of 'significance' in the context of cabinet minutes about tenure review: 'Though enshrined in

New Zealand's Resource Management Act 1991 (RMA), "significance" is vulnerable to redefinition by competing interests according to their goals, be they publicly spirited or privately motivated.'[20] Consequently, she says, policy statements that contain the word 'significant' can be ambiguous, and

> ambiguity is a powerful tool that serves certain interests. In giving discretion to unelected bureaucrats, it empowers them. Correspondingly, it silences the public, rendering it unable to question the bureaucrats' judgments. An ambiguous policy makes everything legal and nothing challengeable. Ambiguity in policy often, though not always, helps the short-term goals of the few defeat the long-term benefit of the many.[21]

I will suggest later that much of the farmed landscape is a significant part of New Zealanders' outdoor heritage. If you agree with me, you might wonder why our walking access to most of it is unambiguously and undeniably insignificant.

Two New Zealands

By mid-2004 (well before the publication of 'Mythbusters') the 2003 Acland report and its associated submissions, together with the summaries and analyses of those submissions, had indicated – at least to me – that in regard to walking access to land, there were two New Zealands. Our long history of national parks and other protected natural areas, together with the continuing tenure reviews and the government's vague plans to strengthen the Queen's Chain and to create accessways, seemed to be leading to a near-ideal in which legal problems in accessing the wilderness, the backcountry and the water margins could become rare. But the prognosis for our urban-fringe farmland, our pastoral beauty spots, and our private countryside in general was less optimistic and more variable.

Where no public road existed, obtaining the landowner's consent for a walkway across picturesque farmland could 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. These peninsula hillocks would make expansive, 360-degree vantage-points. Walkers may once have enjoyed traditional access to the elevations along the ridge. The publisher A H Reed walked along this crest one Sunday morning in 1915, during a casual fifty-mile walk on the peninsula.[22] Yet in 2004 there was public walking admittance to only one minor bump, the Soldiers Memorial. A 1999 study of farmers' attitudes had indicated a lessening of willingness to allow recreational entry, with fewer than 50 per cent of respondents prepared to welcome walkers.[23] In practice, walking access to most of the potential viewpoints was a rare event, despite the peninsula's proximity to a town of 114,000 people. Negotiating a short public right of way to the Soldiers Memorial,

across eighty metres of gentle paddock, had taken the city council five years of haggling.[24]

Little Prospect of Agreement

Federated Farmers was campaigning passionately to maintain landholders' property rights. It had every right to do so. It was responding to the demands and apprehensions of the majority its members. Recreators and legislators needed to listen to the farmers' concerns and rigorously examine each of them.

Many walkers, hunters and anglers, however, may have been justifiably disappointed that the federation had thrown together a paper that denied the existence of widespread access difficulties and that did not 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 were not high. Federated Farmers had not shifted its position on the existence of access snags since its submission to the 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.'[25]

Six months later, still in open denial, the federation submitted on the 2003 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.[26] 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.

Chapter 12

Legislation and Goodwill

Pro-access statement:
'Access to land for recreation has also defined us as a nation.' (Jim Sutton, press release, 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 practically and symbolically important for New Zealanders. Few people would argue with the general truth of this assertion. So I didn't see, here, what the myth was that Federated Farmers was seeking 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 was over how to ensure that this happened. Federated Farmers was justifiably apprehensive about the prospect of access legislation that interfered with property rights without compensating the landowner.[1] Such intervention, the federation was suggesting, might erode the goodwill of some landholders and therefore be counterproductive.

The loaded phrase 'interfering with property rights' carried different degrees of gravity to different people. For some people the phrase smacked of drastic intrusion into the entitlements of landholders. In its submission on the 2003 Acland report, Federated Farmers wrote of 'a wholesale taking of property rights'.[2] But the main changes under consideration by the government were merely the imposition of walking access along waterways (where no Queen's Chain existed) and the creation, by negotiation, 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:

> 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.[3]

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 to give small farmers a chance to participate in the country's agriculture. These reforms were driven though an often hostile parliament largely by the zealous commitment and political stamina of John McKenzie – 'Honest Jock' – the charismatic 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 the very thing that Federated Farmers in 2004 was so touchy about: legislative intrusion into property rights. If we measure the success of McKenzie's land reforms by the acreage of land opened up for closer settlement, they were highly successful (helped by world economic factors[4]). The reforms led to the repurchase and redistribution of 1.3 million acres of pastoral estates.[5] 'Some 7,000 farmers and their families moved onto these properties, revitalis[ing] the countryside and accelerat[ing] New Zealand's move away from a "plantation" type of agriculture to family farming.'[6] 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 state purchase of 2.7 million acres of Maori land in just six years, but that's another, less happy story.[7])

Writing about McKenzie's land reforms and the resulting restructuring of New Zealand farming, the historian Tom Brooking remarked that the changes 'ensured that New Zealand became a land of family farmers rather than great estates'. He added that 'ironically … the very success of small farming also guaranteed that these former allies [of the Liberals] would soon become very conservative as they concentrated on entrenching their personal gains.'[8]

The politicising of the farmers intensified during the general strike of 1913 when the government recruited young farmers as special constables ('Massey's Cossacks') and temporary wharf labourers. 'When the general strike ended after eleven days,' wrote Barry Gustafson, 'relations between town and country, unionist and farmer, had been poisoned for a generation.'[9]

In 2003–4, a century after our landless would-be farmers became landed small farmers and swung to the right en masse, we were again discussing issues connected with landownership. The reference group had proposed the deeming of walking access to exist along specified water margins. Most New Zealanders wanted recreational access to land to remain a part of their way of life. Legislating was one of the options that a supportive government had to weigh up.

The government, though, faced a dilemma. Federated Farmers of New Zealand was the country's leading rural-sector organisation, 'representing 18,500 member farmers and rural families throughout New Zealand'.[10] FFNZ argued that admission to any piece of private land, even just linear access, should be at the landholder's discretion; yet this approach would solve only some of the access difficulties and would not meet changing access aspirations. Most access promoters, on the other hand, saw a need for some legislation, for example to end exclusive capture (discussed in Chapter 9); but this approach would rile some landholders, thereby weakening goodwill.

The deeper you dug into this dilemma, the more tortuous it became. The August 2003 ministerial press release from which the 'Mythbusters' quote came made 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.'[11]

The federation was correct in pointing out that access legislation could undermine the civic spirit of the landholders. But recreators could logically argue that the greatest continuing threat to rural-urban friendship was the landholders' deep-seated ultraconservative views on property rights. Could the goodwill seedlings ever thrive when planted in beds of swaggering or phobic attitudes to landownership?

Selective Goodwill

On this complexity, I would like to dispel one myth myself. This is the myth, or at least the partial myth, of goodwill. The 2003 Acland report emphasised the need for authoritative information on access.[12] For example, accessways should be accurately shown on maps. Also, those unformed public roads that were potentially of use to walkers should be waymarked. It would be helpful and neighbourly if gates across public roads were labelled as 'Public Road'. There was even a law requiring the authorised gate-erectors to label them so (section 344(2) of the Local Government Act 1974).[13] This requirement seemed fair, as the benevolence of the state allowed the landholder to erect a gate to serve practical farming needs, when the road was not fenced laterally. Yet in practice in 2004 you were as likely to stumble across a gold nugget as a gate marked 'Public Road'. Where was the celebrated landholder public-spiritedness? Was their goodwill selective?

Bearing in mind that there are an estimated 56,000 kilometres of unformed public road, there must be some thousands of gates. For thirty years, most authorised gate-erectors had ignored their responsibility to fix signage to their gates. The authorised gate-erector was usually the adjoining landholder. The landholders, in effect, had been saying collectively, 'Tough shit, you lot. We're not going to label our gates.' Or they had been ignorant of their obligation to do so. This situation had soured rural-urban relations.

What's more, PANZ had frequently stressed that landholders often obstructed public roads, by locked gates, private-property signs, fencing across the roads, and deliberate diversions over private property. In the opinion of PANZ, this amounted to a national epidemic of obstruction. PANZ considered that 'the obstruction of public roads [was] the largest

access problem in New Zealand'.[14] If PANZ was correct and was not imagining this shambles, where was the socially valuable landholder friendliness that Federated Farmers was anxious to preserve?

The kindly feelings were perhaps surviving in many corners of rural New Zealand, but they were absent on the Otago Peninsula. When in 1990 the Otago Peninsula Walkers endeavoured to establish walking tracks along some unformed public roads, they met angry landholder resistance. Federated Farmers, representing many of the land-guards, supported proposals to stop (permanently close) the public roads.[15] Also, as cited in Chapter 6, the federation's members on the peninsula were disinclined to gift a lease or easement over their land without adequate compensation. To these farmers, the word 'goodwill' seemed to mean that, by the state's purchasing of the necessary public rights of way, the public ought to start paying for walking access that had traditionally been free. In 2004, 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.

Blocked Public Roads: Federated Farmers Prevaricates

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

The federation's April 2003 submission to the reference group, a thirty-two-page document, did not mention public roads (except in two of the landowner anecdotes in its 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 [or city council]. Any concern regarding access or use of these roads needs to be taken up with the District Council or Local Government NZ.[16]

The implication of the above studious advice was that landholders and walkers should pass *all* road-blockage issues to the district council or city council. Whatever you do, farmer, never say, 'Oh yeah, sorry, mate. My fence. Should've put a gate or stile in there. I'll sort something out.' Reading between the lines of this noncommittal guidance, one expected confrontation, not collaboration. One saw avoidance of responsibility, not acceptance of it. One imagined suspicion, not trust. Opposition, not encouragement. Bad will, not goodwill.

Landholders did not need to contact the local authority for help in understanding the following pithy sentence: 'The public has the absolute right at common law to pass and repass along a road without hindrance.'[17] The Local Government Act 1974 made it an offence for any person to obstruct a road, unless they were authorised to do so by the council. Nor could the council itself block roads except in 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'.[18]

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.'[19] Yet 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.[20]

This proposition implied that farmtracks, whether they happened to be public roads or private property, probably had 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 was inward-looking and unimaginative. To many farmers, unable to see the farm as anything more than a factory floor, the suggestion will have seemed sensible. (We shall return to this point in Chapter 16.)

There may be opportunities to legally transfer the ownership of some public roads to the adjoining landowners. But the district councils and city councils responsible for public roads should only agree to do this in exchange for alternative public accessways of equivalent status to public roads.

In about June 2004, Federated Farmers released a draft access code for walking across private land. This code recognised the public's right to use public roads. If you thought creatively enough about the code's phrasing, you could 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 …'[21]

If Federated Farmers genuinely wanted to preserve civic thoughtfulness and decency, it would need to wholeheartedly support the opening-up of New Zealand's unformed public roads. If landholder humanitarianism really did exist, the landholders could show some initiative by cooperating with recreational groups who volunteered to waymark public roads. So obvious. And yet so radical. A minority of landholders already did this but they were too few, in 2004, to warrant talking about widespread farmer goodwill.

Landholders' Generosity

The prevalence of landholder generosity throughout New Zealand was not as complete as Federated Farmers had claimed. The attitudes of neighbouring farmers varied greatly, especially regarding the approval of new accessways or walkways. We'll risk a little stereotyping.

Thank goodness for the John Aclands of the farming world. Farmer Type A was level-headed, tolerant, cooperative and socially responsible.

He or she acknowledged that we all lived together in New Zealand and shared, to a degree, its land and its future. Type A accepted the need for change and was not antagonistic towards walkers. In 2003–4 there may have been many farmers of this sort, but their voices were subdued.

Two main ingredients informed the psyche of Farmer Type B, the ultraconservative stalwart of Federated Farmers who was a hard-working and productive cog in the machine that drove our agricultural exports. The first ingredient was an incandescent denial of any need for change, as expressed by a spokeswoman for Rural Women New Zealand (which until 1999 was the Women's Division of Federated Farmers): '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.'[22] The second ingredient was a ferocious streak of rightist property dogma, including the doctrine of absolute privacy, which upheld the right of a landholder to rule sovereignly over expanses of keep-out countryside.

The upshot was an unstable mix of traditional cooperative assistance and distrusting overlordship.

Goodwill and Access Trusts

Goodwill, however, would continue to feature crucially in creating walking tracks across private land. Several access-related trusts were already cooperating successfully with landholders. Te Araroa Trust and its regional sub-trusts had been steadily extending Te Araroa (the Long Pathway). Some sections of Te Araroa followed pre-existing trails. Many other sections used legal routes, typically following coastline, riparian strips and unformed public roads. Quite a few other stretches did not offer existing tracks or legal ways, but by talking patiently to dozens of landowners, many of them private, by February 2006 Te Araroa Trust had created about 295 kilometres of new permanent trail.

Returning to the 'Mythbusters' Federated Farmers comment, the second sentence in italics proposed a national voluntary-access trust. This September 2004 suggestion deserved consideration. A track trust supported by Federated Farmers would be well-placed to negotiate with landholders. But the trouble with this idea, coming from Federated Farmers, was that it met derisive suspicion from some recreators, after two years of their reading headlines such as 'Farmers Dig In for Access Battle'.

For much of 2003, Federated Farmers had denied that New Zealand had a problem regarding the scarcity of certain and lasting walking access across private land. I will show later that its submission on the 2003 Acland report suggested that property rights should stay unchanged and that people's access expectations should decrease, compared with the old days when arranged admittance was almost always available. Since September 2004 the federation had campaigned to convince the general public that legislating to provide public access along waterways was wrong. The federation's deepest beliefs seemed to regard walking tracks across farmland not as part of the New Zealander's birthright but as trivial distractions and manifest burdens. The federation had argued that walkers would threaten not only biosecurity and but national security itself. All this hostility towards walking tracks and the pedestrians who

would use them did not rule out the formation of an access trust backed by Federated Farmers, but neither did it give the idea a flying start.

Limitations of Wholly Negotiatory Approaches

In 1975–90 the twelve district walkway committees had achieved some success, but also had met some failure, in negotiating access, often using a one-to-one initial approach to landowners and always relying on the landowners' public-spiritedness. More recently, by working locally a number of track trusts had gradually won the confidence and support of individual landowners, which had led to negotiated access. But it seemed to me in 2004 that track trusts, working wholly by negotiating, would be unlikely to solve the type of insuperable access problem in which the landowner declined a request for a vital link in a track network or an accessway to a fishing spot. Sooner or later, legislating to resolve the most intractable or pressing access issues and to meet changing access expectancies would probably be inevitable. In some situations, such as exclusive capture, there would be no goodwill for legislators to harm, because the commercial imperative would have already swept altruism aside.

A common argument from farmers in 2003–4 was that legislating to create foot-tracks across private land would damage the links between farmers and the public. Yet that harm had already been occurring for a least twenty-five years, due partly to a growing tendency to exclude the public from private land; we saw in Chapter 5 that in 1979 the staff of the New Zealand Walkway Commission had expressed concern about a widening gap between farmers and town-dwellers.

In Chapter 21, I will describe Jim Sutton's ill-fated plan to introduce radical legislation to create footways along selected water margins. Chapters 22 and 23 will relate the farmers' demolition of that plan, a fully justified or mean-spirited act, depending on your viewpoint. All that would be left, after Sutton's departure from front-bench politics in 2005, would be confidence-and-supply agreements to implement 'non-statutory proposals to negotiate improved public access along rivers, lakes and foreshore'.[23] Two years later the chairman of the New Zealand Fish and Game Council, in a speech to Federated Farmers, would question the likely success of negotiatory approaches: 'Why would a landowner, who enjoys "exclusive access" to a public resource, for example a trout fishery, by luck of their location, bother to go into negotiation with an Access Agency [that] … has no real powers to determine an outcome?'[24]

Chapter 13

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.' (Jim Sutton, press release, 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 meant 'very many'. If you accepted that his use of this phrase was accurate, there was nothing mythical or misleading in his pro-access comment. He was emphasising the reality: the truth of the matter, the end result of a highly complicated mix of circumstances. People had been drawing attention to this issue for many years. In 1985 a national policy statement on outdoor recreation had said that 'access over private land to public recreation resources beyond is essential, and is a contentious issue in specific locations'.[1]

Here is a more-recent example: 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'.[2] As regards access nationally, PANZ had said that difficulty in obtaining authoritative information about the location of access was the 'largest single factor in deterring public recreation'.[3] This problem has been called the 'don't know – won't go' phenomenon.[4] Federated Farmers was wrong to insinuate, by using the title 'Mythbusters', that Sutton was spreading a fiction. But I was

pleased to see Federated Farmers acknowledging the information void and constructively suggesting two projects to tackle it.

The proposal to conduct a 'stocktake of existing and unformed accessways' came quite close to endorsing the PANZ suggestion for a public-access topographic map series.[5] The proposal to improve the 'identification of accessways' endorsed the 2003 Acland report's suggestions on signage and waymarking.[6] These encouraging Federated Farmers ideas matched 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'.[7]

Even if Federated Farmers and outdoor recreators agreed on little else, the apparent accord on the need for redesigned and improved maps was significant. It signalled acceptance by some of the farmers' leaders, at least in principle, 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'.[8]

The development of maps, whether paper or electronic, showing existing foot-tracks open to the public and showing unformed public roads and Queens Chain reserves would not involve or precipitate any interference into property rights. There was some prospect, therefore, of this idea gaining cross-party support. But designing and producing such maps would be a long-term undertaking.

The Mapping of Public Roads: a Transitional Vacuum

In 2003, up-to-date paper maps showing all public roads were not available. Digital cadastral maps, which would show all public roads, were on the horizon but would only become available, initially, for a considerable price from commercial suppliers. (The 2007 Acland report would conclude that 'there is a legitimate need for a single, publicly accessible and officially recognised database', which would show public roads as well as other forms of legal access, such as gazetted walkways and marginal strips open to the public).[9]

We were in a transitional vacuum, between having easily available paper cadastral maps and having one complete and authoritative national online map. To fully understand the importance of the digital maps to come, walkers needed to understand the importance of the paper maps that we had lost.

In 1877 the first comprehensive cadastral mapping, usually at a scale of 80 chains to one inch, had begun on a district-by-district basis. This work continued until 1960, when the Department of Lands and Survey published the first sheets of the NZMS 177 cadastral series, at a scale of 1:63,360. These maps, which showed all public roads, were readily available to the public. They were in turn replaced by the NZMS 261 1:50,000 cadastral series, completed in 1980.[10]

In 1976, the centenary of the Department of Lands and Survey, the department's mapping section employed eighty registered land-surveyors, a hundred survey technicians, about 560 draughtsmen and women and about forty others.[11]

In 1987, as a part of wide-ranging government restructuring based on neoliberal economic principles, the Department of Lands and Survey was disestablished and the Department of Survey and Land Information (DOSLI) came into being.[12] That same year, DOSLI installed computer equipment that would enable it to create a digital cadastral database (a database containing information about property boundaries). The days of paper cadastral maps were numbered. DOSLI completed this national database in 1996 and handed it over to a new department, Land Information New Zealand. The government required LINZ to undertake national topographic mapping at 1:50,000 and broader scales, but only for defence and emergency services and national constitutional purposes. The maintenance and publication of paper 1:50,000 cadastral maps was discontinued.[13] Land Information New Zealand, a government department with seemingly minimal social objectives, had no mandate to meet the mapping needs of the recreational public. In the late 1990s, after a century of cadastral mapping, it became increasingly difficult for outdoor recreators to obtain up-to-date maps showing public roads.

Some submitters on the 2003 Acland report said that the move by LINZ to Land*online*, which was designed to meet commercial business needs and which ran on user-pays principles, had created gaps in general public access to public records.[14] One submitter wrote that 'access rights such as surveyed and paper roads are being lost through inaction and loss of information that used to be available on cadastral maps'.[15]

Maps: Potentially the Main Source of Information on Tracks

Paper or digital mapping is not the only way of stocktaking public foot-tracks; you could also list them descriptively in a text-only database. Yet a map is overwhelmingly the most useful way in which to present the information to landowners and the public. The 1:50,000 topographic maps, whether on paper or electronic, should be the primary source of information on tracks. Ideally this information would include the track statuses, as the track symbols do on British topographic maps; in practice, current developments in New Zealand are taking a composite approach, providing access information by superimposing cadastral mapping onto topographic mapping.

In 2004, when Federated Farmers published 'Mythbusters', our 1:50,000 topographic maps did not provide access information, vital knowledge for walkers. It seemed to me that one result of this basic deficiency of the Topographic Map 260 series (also known as the NZMS 260 series) was that topographic maps were not a prominent part of our everyday culture. My impression was that these maps did not play as important a part in the lives of New Zealanders as, say, Ordnance Survey topographic maps played in Britons' lives.

In March 2004, Dunedin city council reported on some recent research into Dunedin's tracks.[16] One hundred and eight track-users had been 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 did not mention topographic maps. Why was nobody

using the Dunedin topographic map? Why did Joe PublicNZ not think in terms of topographic maps? There were probably many answers to these questions. But one answer was that the maps did not show access rights.

Another and different answer, put to me by a correspondent, was that 'a lot of people (the majority of casual walkers and mountain-bikers) can't read, understand or correctly interpret topographic maps and they actually prefer other sources of information'. You could call this the retard theory. It was correct and it was nonsense. The average British fourteen-year-old can pick up basic map-reading quickly: I know, I taught them the skills weekly for over twenty years. And I would not presume to allege any national difference in IQ between Britons and Kiwis. The difference, which was considerable, was in the quality and style of the topographic maps available.

(Karel Kriz of Vienna University would explore these matters in 2009, asking 'Are We Living in a Cartographic[ally] Illiterate Society? He would conclude that 'cartography has the potential to promote spatial communication in our society efficiently – if utilised correctly'.[17])

Electronic Developments

This was all history, some people argued. The coming of electronic global positioning systems meant, they said, that paper maps would sink into irrelevance. They predicted that a rising use of digital mapping in conjunction with Global Positioning System (GPS) receivers would lessen the need for traditional navigation using paper maps. Whether this would happen was still, in 2004, unclear. Yet what was indisputable was that the efficiency and usefulness of the new methods of finding one's way would still depend partly on the accuracy, up-to-dateness and completeness of the underlying topographic database.

LINZ provided an online topographic map, NZTopo*Online*, freely available on the internet and covering the whole country. In 2005 I examined the depiction of tracks on the portions of NZTopo*Online* covering the Dunedin area. For this area, regarding showing tracks correctly and completely, the online map duplicated many of the deficiencies of the LINZ 1:50,000 Topographic Map 260 series.[18]

Several commercial digital maps that went partway towards what was required were becoming available. These products, on CD-ROMs or DVD-ROMs, were based on digital data provided by LINZ from the NZTopo database and sometimes also from Land*online*'s spatial view (sometimes called the spatial cadastral database). They included TUMONZ, New Zealand Mapped *GPS*, Terramap Digital and MapToaster Topo/NZ.

A pair of TUMONZ CDs containing topographic data and property boundaries allowed you to view topographic maps overlaid with public roads, but at a price. The pair of CDs cost $185.00 (in 2005). They contained a phenomenal amount of information, which for some intensive users made them excellent value for money. But for the person who in the past, until 1996, might have consulted a paper cadastral map at a district office of the Department of Survey and Land Information, knowing the whereabouts of public roads had become an elitist luxury.

It was not clear to what extent, if at all, the intermediary firms field-checked or augmented the track data that they obtained from the NZTopo database. Furthermore, although the ability to overlay public roads upon a topographic base was a significant development for those who could afford the software and hardware, the resulting cadastral-topographic mix still lacked some important information. The mix did not show some access rights that only appeared on titles and legal survey plans, such as esplanade strips and access strips.

Marginal Strips Not Shown on Cadastral Plans

Another deficiency of the cadastral-topographic blend was that it did not show the geographical position of marginal strips established since 1990, because LINZ's spatial cadastral database marked these ambulatory strips with a notation rather than with drawn lines. In its submission to the Ministerial Reference Group, Public Access New Zealand had discussed at length this notation-only practice:

> A combination of legislative changes to accommodate the setting up of SOEs[19], computerisation of the record, and the introduction of movable marginal strips in 1990, lead to the current situation whereby there is no certainty as to either the existence of many newly created marginal strips, or of their location if such exist. If DOC doesn't know the location of many of these conservation areas, how is the public expected to know?
>
> To accommodate the rapid establishment of SOEs, instead of the historic practice of defining the position of marginal strips prior to disposition of Crown land, a mechanism was devised of including marginal strips *within* the parcel boundaries of newly issued certificates of title. This was with a statutory 'deeming' or exclusion of marginal strips along qualifying water margins. A memorial or notation on the title was added 'subject to Part IVA Conservation Act 1987' (the marginal strip provisions). The trouble is, this notation does not tell if strips actually exist – unless some express action has been taken to define them.
>
> … Chief Surveyors are required to cause plans 'to show the marginal strips'. Often they do not because Chief Surveyors have discretion to show these 'in the manner they consider most appropriate'. Usually a simple notation, in the absence of any depiction of boundaries on plans, is all that is recorded, despite this failing to meet the statutory test of 'showing' the strips … While the existing 'notation only' practice *may* discharge Chief Surveyors' legal obligations, this fails the public purpose behind these reservations. If no one knows where the strips are, they serve no purpose. This is a compelling instance where public purpose needs to direct bureaucratic practice, not the reverse.
>
> It is essential that whatever means is devised to show marginal strips on plans there is some kind of spatial depiction of them – the reach of water margin reserved (i.e., start point and end point) and the width from the bank or high water mark. There must also be

> a notation recording the legal status of the land. Notation alone completely fails to satisfy the public need.[20]

In a more perfect world the Department of Conservation, which was responsible for managing marginal strips, would itself have raised this notation issue at a high level, for the department's own benefit and for the benefit of outdoor recreators. But it had not done so, as far as I know. Since LINZ's formation in 1996, LINZ had done little to help members of the public to locate marginal strips. To what extent DOC helped people to locate them is open to question. The Conservation Law Reform Act 1990 had assigned a fresh purpose to marginal strips; they were to be administered first and foremost for conservation purposes, and secondly to enable public access to adjacent waterbodies and public recreational use of the strips and waterbodies.[21] The 2003 Acland report said that 'the major focus by DOC on the marginal strips it manages is based on the direction provided by the Conservation Act, i.e. on conservation and biodiversity outcomes, rather than access per se.'[22] A further complication was that some marginal strips existed explicitly for ecological reasons that could be at odds with public access.

Inexplicably, the 2003 Acland report did not specifically mention or respond to PANZ's concerns about the need for plans showing the geographical position of marginal strips established since 1990. The companion report, Brian Hayes's *The Law on Public Access along Water Margins*, amounted to 118 pages containing much about marginal strips but it did not discuss the notation-only issue. I understand, however, that in 2005 the minister for land information, Pete Hodgson, became aware of the matter and asked LINZ to examine how to solve the problem. In April 2006 the consultation document of the Walking Access Consultation Panel would indicate that LINZ was still considering this matter.[23] We will return to this issue when we discuss the digital maps available in 2006–7 (in Chapter 27).

*

The calls for a public-access topographic map series met a mixed reaction. One land professional emailed me saying that

> in no way is our land title record system's fundamental structure & purpose designed to be transferred onto small scale topographic maps for the use of Joe Public. The task of going through every individual land title and legal survey plan in NZ (literally millions), sifting out the rights that you want depicted on topomaps and then transferring them onto small scale topomaps is simply impossible … You simply have to get your head around the fact that topographic mapping & the recording of land ownership/access rights are simply totally unrelated in NZ and always have been and thats the way it is! In this country small scale topomaps can only ever show physical features (formed roads and tracks, contours, vegetation, streams etc) & not property rights.

Impossible or not, the Ministry of Agriculture and Forestry, in partnership with LINZ, began a pilot mapping project in 2005 to investigate

the overlaying of spatial cadastral information upon a topographic base. (See Chapter 27.)

The Same Old Red Herring

Return to the Federated Farmers comment and take another look at it. The third sentence in italics offered readers a second reality, an additional angle. It reminded people that a third or more of the land in New Zealand was publicly owned. Access advocates knew this already because Federated Farmers press releases had been telling them about it for two years. They also knew, however, that the two realities, Jim Sutton's and Federated Farmers's, did not contradict each other. The second did not rebut the first. Sutton's statement was and is true, although I would add to it 'and pastoral countryside'. Recreators need more accessways across private land to reach public land. Walkers want more walkways across private land to enable people to appreciate and enjoy private rural New Zealand. Walkers would like – and will increasingly expect – linear access to the spacious hillsides and ridges 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 near 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 [gradually rising], 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.[24]

In Chapter 6 we looked at the chequered history of walkways from 1975 to 2003. I mentioned that in 1973 the estimated population of New Zealand had reached three million. What I didn't mention was that on 24 April 2003 the Population Clock on the Standards New Zealand website reached four million. The nearby-nature needs of the increasing number of urban-dwelling children and adolescents, however, was only part of the population issue. It was estimated that by 2051, 1.33 million people (one in four New Zealanders) would be aged 65 years and over, compared with 490,000 people (12 per cent of the population) in 2004.[25] The demographic arguments for providing more nearby walkways were strong.

In contrast to advocacy of walking opportunities near where people live, advocacy of increased opportunities further afield faced provisos and reservations in academic journals as well as impulsive opposition from rural residents who wanted to keep the countryside private. Scholarly evidence had accumulated to suggest that there was no longer any growth in outdoor recreation in New Zealand (or in England). The academics had also identified a shift in the nature of outdoor recreation:

> Outdoor recreation has to compete in a leisure budget that is increasingly divided into smaller 'bytes' of time: a competition that is not being won since outdoor recreation has never been a 'quick fix' … As these new leisure opportunities increase, it is possible that the consumption of traditional outdoor recreation pursuits, particularly walking in the countryside, may witness a steady decline … Tighter leisure-time budgets mean that a half-day walk in the countryside has now become a two-hour cycle on a mountain bike. Shorter times make outdoor recreation more local to home and require a greater intensity of experience.[26]

As a frequent two-hour cyclist, as well as a day walker, I understood what this writer was saying. But a word of caution is necessary. These were muddy waters. The findings of studies that measure participation reflect to some extent the current provision of recreational opportunities; even the most faultless researcher cannot monitor the use of a foot-track that does not yet exist. Furthermore, even if research does quantify the demand for, say, a proposed walkway, the findings would not necessarily accurately forecast the actual level of use of the walkway. An attractive new walkway close to a town can create a demand greater than was expected. If we do not provide varied walking opportunities near where people live, we can hardly expect either active or passive walking close to home to become more popular. The Scottish access legislation of 2003 covers placid countryside on the outskirts of Edinburgh and Glasgow, not just the faraway bogs of Sutherland; before this land reform, 'Scotland [was] poorly provided with secure access to lowland and urban fringe areas'.[27]

Regarding the generous percentage of New Zealand's total land that was in public ownership, it was about time that Federated Farmers came up with a fresher red herring. It is true, however, that demand and supply can be tricky things to quantify. Furthermore, the 2003 Acland report dwelt more on the provision of access than on the demand for it.

One of the most striking examples of the difficulty of forecasting the future demands upon a track comes from cycling. In February 1984, a few months after the official opening of the Queen Charlotte Walkway, the Marlborough Sounds Maritime Park Board published a study of recreation in the whole of the Marlborough Sounds. This report combined information obtained in several ways from visitors and locals. It found that 'the development of coastal walkways is highly favoured by both local residents and visitors'; this finding correctly hinted at a future growth in the use of some walking tracks by walkers. The report also found that 'bicycling proved to be of little popularity amongst questionnaire and interview respondents'.[28] At that time, mountain-bikes were just trickling into New Zealand. By 1990, mountain-bike sales were booming.[29] By the late 1990s, many off-road cyclists considered the renamed Queen Charlotte Track to be among the best rides in New Zealand.

We will touch upon demand and supply again in Chapter 16.

Chapter 14

Public Access and Farm Management

Pro-access statement:
'There are more and more examples popping up of landholders restricting public access to previously accessible rivers, beaches and mountain land.' (Jim Sutton, press release, 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 Chapter 11, that Federated Farmers considered that 'a few highly reported incidents' had been blown up out of proportion to their importance, and that the real scale of the access problems was small.

I will give one example of what Sutton was talking about. The following quote comes from one of the responses to the 2003 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.[1]

The early settlers and their 19th-century descendants had guarded their right to pass and repass on public roads just as ardently as many of us do today. Controversy over gates and fences blocking public roads is nothing

new. The matter has often aroused strong feelings. On 6 February 1885 the *Evening Post* replied to a correspondent:

> If anyone has improperly blocked a public road by erecting a gate, the Road Board, or County Council, as the case may be, will no doubt remedy the evil on being appealed to. As a general answer to the question, of course no individual has a right to put a gate across a public thoroughfare.[2]

In actuality, in the South Island high country for example, 19th-century runholders frequently fenced across public roads to prevent their stock from straying onto neighbouring blocks.[3] Travellers protested about the straying of sheep and cattle onto the public roads and about the erection of fences and gates across the roads.[4] In the 1880s, road-users in north Canterbury petitioned the Malvern Road Board, complaining about the gates that sheep-owners had put on several roads. The gates had become 'a serious obstruction to traffic and a source of great inconveniences to the travelling public'.[5]

One hundred and twenty years later, Jim Sutton was attempting to resolve the same problem, along with other, newer ones. The Federated Farmers comment in 'Mythbusters' did not disprove Sutton's statement. It did though add a different angle, widening the discussion. Taken together, Sutton's pro-access statement and the Federated Farmers remarks formed a variation on a familiar theme. They restated the dilemma we met in Chapter 12.

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: the 2003 Acland report's proposed deeming of pedestrian access to exist along specified water margins would, if implemented, impinge upon property rights – slightly or greatly, depending on your perspective – and could hence weaken farmers' civic spirit.

In this new example, the same concern was deepened: walkers and trampers were in some instances losing previously available recreational entry. But this time, Federated Farmers expanded its argument against access legislation that would interfere with property rights. Instead of merely forecasting a loss of farmer goodwill, it listed three practical reasons why that goodwill could wear thin. Removing from farmers their 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.

Farmers' Concerns Glossed over by Reference Group?

Earlier I suggested that recreators and the government needed to heed the farmers' concerns and meticulously examine each of them. Only by doing so could access advocates and government officials separate the valid arguments from the smokescreen of groundless objections. One of the main thrusts of the Federated Farmers submission on the 2003

Acland report had been 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.[6]

The group comprised eleven members, eight of whom possessed some sort of farming background. Even if one or two of these eleven members had not read the farmers' anecdotes, it was likely that most of the group had studied them receptively and with understanding.

Walkers, hunters and anglers might have had sound reasons to question some of the farmers' apprehensions, but they also needed to bear in mind that hasty and half-baked access measures that led to riverside snafu would set back the cause of access.

The Safety of Walkers on Farms

On the protection 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 trigger-happy military-camouflaged hunter is sneaking around like a gecko. 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 require walkers to wear fluorescent jackets and safety goggles.

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 accessible to the public. In New Zealand in 2003–4, the government was not planning to create go-anywhere entry to private land. (Such access would continue to exist on some farms, on specific occasions, by permission.) The government's considerations, in the context of private land, were limited to linear access: walkways, accessways and routes along riversides, lake shores and the coast. So in some respects the safety aspects ought to have been relatively simple, no more complicated than on those New Zealand farms that had lived with walkways for the past twenty-five years. But some farmers contended that the characteristics of their farms would make the provision of safe foot-tracks difficult or impossible. One responder to the 2003 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.[7]

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

(For the matter of a landowner's liabilities under the Health and Safety in Employment Act, see Chapter 15.)

The Security of Livestock

On the possibility of livestock being harmed, farmers, walkers and responsible hunters shared the same enduring enemy, rural pariah number one: the thoughtless or incapable dog-owner. The owner of a dog that attacked 'any person, stock, poultry, domestic animal, or protected wildlife' committed an offence liable to a fine of $1,500. (Dog Control Act 1996, section 57.) But this law was no consolation to the farmer whose sheep were killed by an unseen dog. Nor did all dog-owners respect the no-dog rules that applied 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.[8]

The exact rules about dogs and walkways did not lend themselves to a simple national code of access. Dogs were or were not allowed on a gazetted walkway, depending on the terms of the easement and the view of the controlling authority. The New Zealand Walkways Policy stated (in 2004): 'Where conditions permit, other activities such as riding horses, carrying firearms (to hunting areas) and taking dogs and riding bicycles may be allowed."[9]

Accessways across private land to reach public hunting areas did pose questions of what to do about dogs and guns. The New Zealand Fish and Game Council 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.[10]

Lambing-time

Lambing-time and the question of walking access formed another common concern of farmers. Gazetted walkways could be closed over lambing-time, conditional on the terms of the easement and the provisions of the New Zealand Walkways Act 1990 (since replaced by the Walking Access Act 2008). Having walked quietly past fields of ewes heavy in lamb each spring for over twenty years, often while leading ten teenagers but keeping our distance from the sheep, I doubted the genuineness of the need for this restriction. Just one or two other daring New Zealanders, out of four million of us, shared this scepticism. One submitter on the 2003 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 [stock management occurs] successfully in areas of open access'.[11]

The possibility of walkers without dogs disturbing lambs was negligible, but if a farmer wanted to close a gazetted walkway during lambing, that was his or her legal prerogative, provided that the walkway was not based on a public road or other publicly owned strip. Fish and Game New Zealand supported 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.'[12]

The closing of public roads for lambing, however, was an entirely different kettle of fish, legally, than the closing of walkways based on easements. Public roads provided sturdier access rights than any other form of linear access. The principle of free, unhindered passage along public roads *at all times* had been well established through the courts. Yet the dominant tale of recreational use of public roads in New Zealand had been one of local and central government agencies being often unwilling to help the public to exercise their rights on unformed public roads. So, for example, Dunedin city council – in some ways a promoter of walking access – had undermined the age-old principle of the king's highway by promising to consider 'supporting the annual temporary closure for eight weeks for lambing on unformed legal roads which have been developed as tracks where it can be proven that the area is essential to the farming operation'.[13] The council claimed that the Local Government Act 1974 provided for such closures.

A public road is a twenty-metre-wide strip of public land. A temporary closure of such a road for lambing cannot be anything but biased towards the claimed needs of the adjoining landholder and against the rights and needs of the public. In 2003–4 our farmers inspired an extraordinary ballyhoo (which would intensify in 2005) about their right to exclude the public from their land. Meanwhile, Dunedin city council was offering to help some of them to exclude *us* from *our* land. There was only one answer to the closure of public roads for lambing: only a fool pays obeisance to unwarranted and possibly illegal restrictions.

What happens overseas at lambing-time? Hill farms cover large areas of the UK. According to the National Sheep Association, the UK in 2008 had a total sheep flock of some 43 million sheep at the peak of the summer[14]. (New Zealand had about 34.1 million sheep at 30 June 2008.[15])

Public footpaths, based on the law of highways, crisscross much of this sheep country. A public footpath may be temporarily closed, subject to prescribed processes, if the landowner needs to undertake dangerous works near the path or if closure is necessary to control the spread of animal or plant disease or for defence purposes.[16] The closure can only be carried out by local authorities or central government. But the law does not consider lambing-time to be legal grounds for a temporary closure, and public footpaths cannot be closed for lambing.[17]

It is true that ewes prefer to give birth alone in a quiet sheltered place with no disturbance. This allows the ewe and her lamb to bond. It is important to avoid unsettling the ewe before, during and after the birth. Yet British sheep farmers achieve these requirements without walkers being banished from public footpaths. Their farm management, if necessary, takes into account the routes that footpaths take through their farmyards and fields. Also, because the visitors are invariably on public footpaths or designated access land, the farmers are not interrupted by people stopping to ask for permission.

As regards dogs on public footpaths in England, walkers can take 'dogs under close control'.[18] A landowner can ask their local authority to make an order requiring dogs to be kept on leads on a specific public footpath. If an order is made, the landowner can put up notices saying DOGS MUST BE KEPT ON A LEAD AT ALL TIMES ON THIS PATH. If the authority is unwilling to make an order, the landowner is entitled to put up a sign requesting a particular action, such as LAMBING TIME – PLEASE KEEP YOUR DOG ON A LEAD IN THIS FIELD.[19]

In New Zealand – or at least in Dunedin – the dubious reasoning behind the possible closures of public roads went blithely unchallenged. Dunedin's walkers did not harm or disturb lambs or pregnant ewes; uncontrolled dogs might have done, along with bad weather (typically a late snowfall), inadequate feeding during pregnancy and poor ewes' body condition. A dog does not understand the legal significance of a fence-line. Dogs are a natural enemy of many herd animals, cattle as well as sheep. A dog loose among sheep forms an explosive mixture. Dogs have evolved from wolves and they exhibit social and predatory behaviour similar to that of wolves.

> Predation is a normal instinct in dogs. It is in their nature to chase and hunt prey … Predatory behaviour involves stalking, chasing, catching, biting, killing and eating. Domestic dogs may go through the whole sequence or may stop at any stage … In some cases, the predatory instinct is so strong that it cannot be suppressed, regardless of the training technique.[20]

In reality the practice of closing walking tracks at lambing-time was a clumsily indirect way of excluding uncontrolled dogs. There were few other logical explanations for it. Our farmers' concerns about the sensitivities of pregnant ewes and lambs to walkers were at best mistaken and at worst … well, make up your own mind; farmers should have been well aware that lambs would take little notice of walkers – without dogs – passing quietly by. Despite this the need for lambing-time closures was

accepted as gospel by the farmers themselves, by many New Zealand-born walkers, and seemingly by all our recreational organisations, governmental and nongovernmental.

Another possible reason for lambing-time closures was that some farmers, during this busy time of the year, may have wanted to avoid being disturbed by walkers asking permission for access. I don't know whether any farmers did take this approach. On farms that regularly received many requests for access permission, it would have been an entirely reasonable attitude. But even without any evidence that at lambing time some farmers were too hard-pressed to deal with the public, its being probable underlined what some walkers already knew: traditional, grace-and-favour access had great disadvantages compared with such mechanisms as public roads and easements that carried no seasonal restrictions.

Typical of our dubious lambing-time track closures was the then two-month shutdown of the Aramoana-Heyward Point Walkway, near Dunedin. Dogs were already prohibited from this gazetted walkway all the year round.[21] This fact called into question the need for the walkway's lambing closure, which seemed to imply, bizarrely, that walkers without dogs – and who would be keeping to the track – would disturb or even endanger ewes and lambs.

Although the majority of walkers accepted lambing closures and assumed that they were necessary (this was my impression), for the more sceptical walkers the closures did sometimes cause frustration and annoyance, as much for their needlessness as for their preventing of eagerly anticipated walks. Sometimes a visitor's first knowledge of a closure took the form of a shock at the farm boundary; this tended to happen when the suspension of access was poorly advertised or when the visitors were tourists with no local knowledge. To some visitors from Europe, our lambing-time closures were incomprehensible.

This frustration sometimes led to noncompliance, which harmed rural-urban relations. In August 2000 the Department of Conservation issued a press release asking the public to refrain from using the Mangawhai Cliffs Walkway (in Northland) for three months, from 1 July to 30 September. There had been several incidents where people had ignored this rule. DOC's visitor services officer for the Whangarei area office, Lynnell Greer, said:

> We must respect the local landowner's right to have the walkway closed while his sheep are lambing as it is private property. It would be a shame if access to this walkway was threatened by people's inability to respect this condition.[22]

An upgraded Mangawhai beach and clifftop walk was opened in September 2008 and forms a section of Te Araroa.[23]

New Zealand led the world in sheep farming, including the theory and practice of lamb survival, but its widespread lambing-time track closures smacked more of outdated and unquestioned convention than of true necessity. Most of our access advocates, however, needed first to modernise their own thinking on this, before tackling the farmers. No other aspect of our access debate, except mapping, was so in need of

some foreign freethinking scrutiny. Our peculiar lambing-time access convention cried out for some research and objective analysis and a much sharper focus on where the problem really lay: in uncontrolled dogs and their owners.

There were other animal-welfare issues involving the closure of foot-tracks, apart from the nonsense of lambing-time closures. There was the possible need to close foot-tracks during outbreaks of disease. Nothing about access was ever simple. You did not have to be a veterinarian to imagine the potential nightmare of confining an outbreak of foot-and-mouth disease to one place. Yet what were we to do about this possibility? Cease building new foot-tracks? Permanently close existing walkways? Stop all unformed public roads? We had 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 were created in the future.

Farm Gates

Finally, gates. Perhaps the issue of farm gates provided the archetypal example of the need to reach a sensible balance between the business of farming and the recreational use of farmland. Was there any reason why most New Zealanders could not learn, at an early age, to leave farm gates as they found them? Moreover, what would be the long-term consequences if this vital rural convention did not penetrate the suburbs, where 85 per cent of New Zealanders lived?[24] And another question: how many disruptions involving gates and farm animals were occurring on those New Zealand walkways that crossed private land? And another: could more walking tracks use the combination of a stile beside a locked gate, which would eliminate the chance of the gate being left open?

During the furious access row of 2003–4, few people seemed to be asking these questions. No research, as far as I knew, had estimated the number of gate calamities and the number of person-visits to private countryside. In 2000, however, 40 per cent of respondents to a questionnaire survey of South Island high-country pastoral leaseholders had identified gates left open as being a prominent problem with recreators on their land.[25]

The Federated Farmers submission to the reference group had included a list of landowner anecdotes, and fourteen of these comments had 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.[26]

Without research specifically into the frequency of gate incidents, it was impossible to put the anecdotal evidence into perspective against the total number of visits to farmland. Yet hardly a week passed without our

being bombarded with gate-related doom. For example, from an editorial in 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.[27]

The use of the word 'traipses' typified the joyless embroidery that was obscuring and polarising the access debate. In the context of the sentence, the word carried a mistrusting, derogatory undertone. Unwelcoming. Patronising. The writer did not acknowledge, or did not understand, that waymarked foot-tracks could be relatively unintrusive and trouble-free. The public were guilty before being proven innocent. We were ignoramuses who couldn't be trusted to leave gates as found.

Little Familiarity with Gates

Perhaps we were. Perhaps New Zealanders were hopeless with gates, although the convention of leaving gates as you found them had existed in New Zealand for many years. In 1982 in its description of Mt Auckland Walkway, the *AA Book of New Zealand Walkways* emphasised that 'where it is necessary to use gates [in the section across Glorit Farm], it is essential that they are left as they were found'.[28]

Landowners in the UK often adjust this requirement by using a small label saying PLEASE CLOSE THE GATE. A Kiwi version of this sign, in big writing, was photographed in the Marlborough area in the 1980s: SHUT THE FLAMIN' GATE, MATE.[29]

Even so, in 2004 perhaps many urban kids were not becoming familiar with farm-gate routine because, even after thirty years of trying to establish walkways, we had relatively few walkways across private land, especially near some of our city suburbs and near rural townships. In 1996 Public Access New Zealand had said:

> 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.[30]

John Wilson, the president of Federated Mountain Clubs of New Zealand, touched on the same subject in a careful and restrained letter to *Rural News*: 'Since the abolition of the Walkways [*sic*] Commission and District Walkways [*sic*] Committees in 1990, Walkways have languished … More opportunities for the public to walk over farmland would help to reconnect urban people with the land.'[31]

I should add a rider to these statements by PANZ and John Wilson. Although DOC inventoried all the foot-tracks for which it was responsi-

ble, there were in 2004 no national statistics of the wider picture, informing us comprehensively about the length and location of all foot-tracks open to the public. Vague impressions and half-informed guesses were all that track advocates had to go on.

Risk to Property

The third concern mentioned in the Federated Farmers comment was the risk to property. 'Mythbusters' reiterated this anxiety later, and I will consider it at this next occurrence, in Chapter 17.

Fire Risk

Later in this chapter we will see that some outdoor recreators thought that landowners were using the perceived risks associated with fire as an excuse to deny access. This allegation might have been true of a few landowners. Equally true was that some landowners, who may normally have readily granted access, expressed legitimate worries about allowing entry at times of high fire risk. But over the first eight months of 2003, until the publication of the 2003 Acland report, most of the publicly expressed worries about fire risk had been general rather than specific, vaguely phrased rather than clearly explained.

In 2003 Federated Farmers had surveyed its members to ascertain their views on issues relating to access to land. Its submission to the reference group reproduced fifty-eight extracts from the responses to this survey. Seven of these referred to the danger of fire, mostly without elaborating, such as 'fire risks getting greater'. The most detailed remark about fire was:

> Access to Land: Comments/Experiences from Survey Respondents. 037. … Have had Stock slaughtered , fires lit and gates left open by people … During this fire season we have come across places were [*sic*] people have used an open fire for a BBQ. If it was spotted or got out of control and the fire service was called, who would have to foot the bill?[32]

Forest and Rural Fires Act 1977

The reference group took the opportunity to examine systematically the landowners' concerns over fire danger. In discussing the question of who paid the costs of a fire, the group scrutinised the Forest and Rural Fires Act 1977, which established responsibility for the control of fires and laid down liabilities and penalties for outbreaks. Regarding the control of access, the act allowed a fire authority to stop some or all people from entering a forest where fire hazard conditions existed. This power to close a forest to the public overrode other access arrangements.

Where the Forest and Rural Fires Act seemed to fall down, according to the 2003 Acland report, was in its resulting in a situation in which the landowners sometimes bore the costs or a part of the costs of fires caused by visitors. The report suggested that the cost of an average rural fire (for helicopters, crew, food, etc) might have amounted to $200,000.[33]

The act did provide for the recovery of any loss of property damaged or destroyed by fire and for the recovery of the costs of firefighting. But identifying and tracking down a person responsible for a fire was

often difficult or impossible. Even when the culprit was known (and was not the landowner), the landowner had to take civil action to recover the costs of a fire started on his or her property. Landowners insured themselves, at considerable expense, against the possible costs of a fire on their land. Some landowners perceived and resented an unfairness: a cigarette dropped by a recreational visitor could start a fire, but these users of private land did not pay towards the cost of the fire insurance.

The 2003 Acland report concluded:

> The Group believes that legislation that imposes these types of liability overlooks the health and other social benefits that come from encouraging recreation. If a recreational user lit a fire and cannot be located, the Group does not believe the landowner should be held responsible for consequent costs. The Group recognises, however, that this is not a simple issue, as it could be easy for an irresponsible landowner to deny liability by claiming that the fire resulted from a recreational user.[34]

Submissions from Forestry Organisations

Further remarks about fire risk came after the 2003 Acland report, particularly in forestry companies' submissions on that report. Many forestry companies were acutely concerned about the risk of a fire caused by a member of the recreating public.

The submission of the New Zealand Forest Owners Association argued at length against any legislative imposition of public rights of access without full compensation. Surprisingly, though, this submission did not mention fire risk. On the contrary, the NZFOA said that 'public recreation in a commercial forest mid-rotation poses little or no concern to the owner'.[35]

In a submission that enthusiastically supported the general thrust of the 2003 Acland report, and which even endorsed the idea of deeming access to exist along waterways, the New Zealand Institute of Forestry (NZIF) wrote that 'the NZIF congratulates the Reference Group on producing an easily readable report, making the effort to communicate widely with the public and for earnestly listening to what people are saying about the proposals in the report'.[36] The Institute said that with forests covering over 26 per cent of New Zealand, public access was an important issue in forestry management. Of concern to the NZIF was that 'landowners should retain the right to exclude the public at times of high commercial or environmental adverse risk, e.g. lambing or fire danger'.[37]

Recreators Not the Cause of Most Rural Fires

Two and a half years later, in April 2006, the consultation document of the Walking Access Consultation Panel would put a noticeably different slant on the issue of fires, farmers, and recreational users of land. The document would imply that farmers seldom have genuine cause to decline requests for access on the grounds of fire risk:

> Little, if any, evidence exists that recreational users of land pose a significant fire risk. Land clearances by farmers are a significant cause of fire. In the 2001/02 year, land clearances were responsible

> for 64 percent of the total area burnt, and 54 percent in 2002/03. Figures representing the proportion of fires specifically attributed to recreational use are not specifically recorded. The National Rural Fire Authority has advised that, although activities associated with recreation, such as hunting or lighting campfires, do pose a risk, recreational users and the public are not the cause of most rural fires.
>
> Any risk that such visitors pose could be alleviated by provisions in a code of responsible conduct on avoiding fire risk.[38]

This consultation document would also point out that the Department of Internal Affairs was conducting a review of fire legislation, with a view to eliminating some ambiguities, inconsistencies and inequities between rural and urban fire-management regimes. The results of this review could be relevant to the issues surrounding fire risk, liability and recreational access to rural areas.

Walking Tracks and Biosecurity

The Ministry of Agriculture and Forestry has defined biosecurity as 'the exclusion, eradication or effective management of the risks posed by pests and diseases or unwanted organisms to the economy, environment and human health'.[39] This definition covers a huge area, including such tasks as border security, the extermination of pests like the painted apple moth, and the containment and eradication of diseases such as foot and mouth. Without a specific context, therefore, the accusation that someone or something poses 'a threat to biosecurity' can be woolly and unexaminable rhetoric. Yet press reports in 2003–4 frequently carried farmers' generalised claims that walking tracks would threaten biosecurity.

Vague Claims, Alarming Language

In April 2003 Federated Farmers had titled one news release 'Walkers Threaten Biosecurity'. It stated that

> not only would free and ready public access to private property create a huge threat for landowners in terms of animal health and welfare … [but also] it has major implications for New Zealand's biosecurity.[40]

The vague claim of this news release was that people walking across farmland could and would spread diseases and to a catastrophic degree. The release mentioned just one disease, beef measles. The implicit suggestion was that the obvious measure to minimise the possibility of people spreading diseases was to have no public walking tracks across farms.

In view of the alarming language of this news release, one might have expected the federation's submission to the reference group to have contained an itemised explanation of the alleged 'major implications for New Zealand's biosecurity'. In fact, its submission's perfunctory remarks about biosecurity had consisted of only three sentences, naming just two diseases and one weed:

> Biosecurity.
> Unwanted pests, weeds and diseases on neighboring [*sic*] properties can be spread by visitors crossing between properties, eg footrot, ragwort. There is also the threat of contamination from external sources, as shown by the example of an outbreak of an Asian cattle disease, not present in New Zealand (Beef measles) on a North Island farm. The source of contamination was traced to friends/relatives of overseas farm workers, visiting and defecating on the property.[41]

More Work Needed on Biosecurity

The 2003 Acland report had 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.[42]

The Acland report also said that 'the submissions suggest that biosecurity risks may be overstated'. I do not know how closely the reference group looked at the biosecurity issues. One member, Sally Millar, was an environmental consultant. The report's section on biosecurity was brief. It implied 'more work needed on this'.

Fish and Game New Zealand, not usually a body that would play down environmental risks, brushed aside the Federated Farmers biosecurity alarm, saying that there was 'no evidence to support this claim'.[43] A simplification, perhaps. Fish and Game might have more productively drawn attention to the lack of any authoritative examination of the farmers' claims. (This was before Cathy Kilroy, a scientist from the National Institute of Water and Atmospheric Research, discovered the invasive alga didymo in two Southland rivers.)

A year after the publication of the 2003 Acland report, the public was still reading newspaper stories containing unverified assertions linking walkers with biosecurity violations. The main unwanted organism on New Zealand farms seemed to be the type wearing walking boots and carrying a daypack. But dogs and sausages were also unwelcome, as explained by a Catlins farmer, Max Harrison: 'A town dog could steal a raw sausage at a barbecue, come to the farm and next thing I've got sheep measles in my stock.'[44] Country dogs, one presumed, never stole raw sausages at barbecues.

To sum up on biosecurity. Throughout 2003–4 Federated Farmers asserted that allowing greater public access to farmland, without the farmers' consent, would create biosecurity risks. The federation was to rebroadcast this ill-defined and unsubstantiated claim in May 2005, during the Waiheke Island foot-and-mouth disease hoax. As far as I know, no systematic analysis of the biosecurity implications of increased walking access across New Zealand's farms was to become available until July 2005 (see Chapter 24).

Rational and Irrational Reasons for Refusing Entry

Farmers and recreators needed 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 in late 2004 the jury was still out on this matter would be an understatement; the trial had hardly started, even after two years of consultations, submissions and meetings.

Track-users and legislators needed 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.

Farmers in 2003–4 had presented both rational and puerile reasons for refusing entry, even for apparently straightforward linear access, such as along riversides or on farmtracks. The presence of an accessway could genuinely impede a landholder's freedom to use land. There again, it might definitely not. Responders to the 2003 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.[45]

Comparisons with Europe

One submitter on the 2003 Acland report said this 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.[46]

In actuality, only five pages of the 2003 Acland report's 121 pages were allocated to access arrangements in other countries.

Our farmers wanted people to believe that New Zealand farms were decidedly different from European farms. I walked across farms in Britain regularly for thirty years and in Germany, France, Austria, Switzerland and Italy occasionally. 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. It never occurred to me 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 in 2003–4, it seemed that there was a high likelihood of my doing all these things.

We track-users needed to understand these differences. In Scotland, people recognised that 'well-planned paths … help landowners and farmers to integrate recreational use with land management operations without compromising their businesses'.[47] In New Zealand, the farmers told us, 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.'[48]

People will continue to make these sorts of comparisons, because the attitudinal differences are striking. To reject international comparisons outright, denying them even a place in the debate, even if such a rejection were born out of characteristically-Kiwi defensive pride, would be xenophobic and repressive.

Walkers a Danger to National Security

Furthermore, according to Federated Farmers, as well as imperilling farms, walkers would clearly endanger national security:

> 10. National Security
> In the current world environment, with increased potential for bio-terrorism, 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.[49]

Behind this warning lay the United States Bioterrorism Act 2002. Federated Farmers was saying that we clearly could not 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 had a government department, the New Zealand Security Intelligence Service, designed to neither confirm nor deny the terroristic threat that walking tracks posed to our agriculture.

Big Playgrounds and an Access Code

We have two loose ends to tie up, left dangling from the Federated Farmers comment on the first page of this chapter: the perception that farms are big playgrounds and the need for a code of conduct.

It may have been true that some urban New Zealanders ignorantly viewed farms as big playgrounds in which they could go anywhere and do anything. The farmers said that this visitor cluelessness was commonplace; in reality a small minority of visitors may have contributed large quantities of ignorance or stupidity. Either way, a problem existed.

To tackle this trouble, a progressive farmers' organisation might have supported an increase in linear access across farms, accompanied by a well-publicised access code. Federated Farmers, picking and choosing, promoted the latter but not the former. The federation's submission on the 2003 Acland report supported the idea of an access code.[50] This allows me the pleasure of writing about something on which, as early as November 2003, there was almost universal agreement. Agreement in principle, that was. A large number of responders to the 2003 Acland report considered that an enforceable access code should be a cornerstone of an access strategy.[51] This access code would need to be two-sided, and that two-sidedness would need to include explicit acknowledgment of the recreational, social, cultural and economic value of linear access across

uncultivated farmland. The consensus, as we shall see, would gradually shift from a preference for a legally enforceable code to a preference for a nonregulatory, voluntary code that would recommend best practice, clarify existing laws and promote responsible behaviour through education.

Chapter 15

The Queen's Chain and Landowners' Property Rights

Pro-access statement:
'This is about access not ownership. It affects people's recreation, not their businesses.' (Jim Sutton, press release, 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 came from a government news release containing questions and answers.[1] 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?' Sutton's 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 was Sutton saying? First, he was saying that clarifying and extending the Queen's Chain posed complex legal and political issues. He was also suggesting, I think, that this need to clarify and extend the Queen's Chain had languished in dusty corners of the parliamentary offices while governments had concentrated on matters apparently more momentous than access to the outdoors. Also he was 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.[2] (Some are first and foremost 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'.[3] What we've ended up with is perfectly devised for the recreation and amusement of lawyers. Brian Hayes, an authority on land law, has gathered information on the historical development of publicly owned water margins and has assembled it into a table, 'The Queen's Chain at a Glance'.[4] Kay Booth has described the access aspects of the various reserves and strips that form the Queen's Chain.[5]

Until the late 1980s, the recreational reasons to extend the network that formed the Queen's Chain were not topical enough to force the matter onto the political agenda. In 1989–90 the Labour government even proposed marginal-strip reforms that would have corroded the Queen's Chain; this woke up the public, whose disapproval contributed towards the dropping of the worst aspects of these changes.[6] 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.[7] 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 discarded again.[8]

Over the 1990s, some of our politicians gradually realised that strengthening and lengthening the Queen's Chain would be a wise provision for future recreation and could, if handled carefully, win votes. These legislators were now, in 2004, keen on the idea of the Queen's Chain, and the more eloquent among them were eager to embrace its ethos. The Chain was cool. The public was fond of it. The public also wanted to know where it existed. Anglers and kayakers hoped to be able to reach it and walk along it. Literature commonly estimated that 70 per cent of water margins were in public ownership, which would have been a respectable proportion – were it not for the fact that private property landlocked many parts of this 70 per cent. Without a helicopter to fly you there, you could not get to the public land. Also, as discussed in Chapter 9, substantial parts of the 70 per cent were unavailable for public access because of coastal erosion or river movement. Furthermore, also mentioned in Chapter 9, the existing statutory mechanisms for providing new access along water margins – creating esplanade reserves or esplanade strips during subdivision into lots of four hectares or less – were arguably inadequate; extending the Queen's Chain this way would be slow, intermittent and piecemeal. Many parcels of land would not be subdivided or alienated for hundreds of years.

The Federated Farmers Stance on the Queen's Chain

Now that we know that Sutton was talking about the Queen's Chain, we are better prepared to examine his pro-access statement: 'This is about access not ownership. It affects people's recreation, not their businesses.'

Hmm. This was the first 'Mythbusters' Sutton argument that Federated Farmers could justifiably rebut. But only partly and at the risk of exaggeration. The issues surrounding the gap-filling of the Queen's Chain

certainly involved recreational access, as Sutton had emphasised. But they also involved property rights – ie, ownership – contrary to what he had said. A more cautious Sutton would have said: 'This is about access, it has only minimal impact on ownership.'

Public expectations, according to the Federated Farmers comment, were no more significant than landowners' rights to secure title. This comment implied that, among other things, enforced gap-filling of the Queen's Chain would adversely affect the property rights of the landowners involved. The motivation behind the gap-filling would be access, as Sutton had stated, but the downside – albeit perhaps merely the creation of a foot-track along a riverside, which would in most cases not affect the farm business – would detrimentally affect ownership. The force of that impact, according to the farmers, would be considerable.

Recreators expected this response. Track-users had heard the argument a hundred times. It was perfectly valid, except for one thing: exaggeration, or at least misapprehension. Deeming walking access to exist along water margins, as proposed by the 2003 Acland report, would not affect agricultural production. The effect on ownership would therefore be slight or negligible.

Now, as we read through this paper, long after its publication, it is becoming obvious that the federation erred in titling it 'Mythbusters'. The paper did not uncover any ministerial fabrications or falsehoods; it did supply the other, conservative perspectives.

What was that Federated Farmers standpoint 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.[9]

Here is a later statement, slightly more amenable, from the federation's submission on the 2003 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.[10]

What Federated Farmers meant by this, in practical terms, I did not know. (We would find out in 2005.) If we could take the reported remark of Grant Bradfield, the president of the Otago branch of Federated Farmers, as being truly representative, many farmers were as ready to espouse the Queen's Chain as they were 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.'[11]

Politics of the Queen's Chain

The politics of the Queen's Chain had split people into three factions: the conservatives, such as Federated Farmers, who thought the crown already

owned 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. Yet there was one aspect on which all three factions agreed. Any access matter that caused an unholy alliance between Federated Farmers and Public Access New Zealand demanded attention. When Federated Farmers supported and quoted a PANZ viewpoint, every member of parliament should have taken notice. In its May 2003 submission to the Ministerial Reference Group, the federation wrote:

> 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 recognised the fundamental challenge: it was a question of balance. But one person's balance was another's intrusion. Achieving a 'balance' that gained universal support would be difficult. Or impossible. The minister for rural affairs had had the courage to shoulder this rural brain-ache.

Health and Safety in Employment Act 1992

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

Some farmers were fretting about their HSE Act liabilities for injuries to recreational users of their land. Was this a legitimate concern or was it the land-guards' ace, kept in reserve as a ruse to deny entry when all other reasons had failed? Or was it something in between, a result of landholder uncertainty caused by misinformation?

OSH and Government Clarifications

Farmers' anxieties about their HSE Act liabilities had acquired a longevity akin to that of the Loch Ness Monster. Their worries had kept on resurfacing despite arguments that they should not have existed. Even before the 1998 amendment to the HSE Act, the Occupational Safety and Health Service (OSH) had tried to explain that farmers would not be held liable for non-work-related injuries to recreational users. But this OSH assurance had not convinced the farming lobby.

The Health and Safety in Employment Amendment Act 1998 had clarified the responsibilities of farmers who hosted recreational visitors. The amendment had made it clear that farmers did not have a duty to persons using their land for noncommercial recreational or leisure purposes unless they had given express consent to those persons to be on their land. OSH had emphasised this in a *Farming Bulletin* article titled

'If Visitors to My Farm Are Injured, Am I Liable?[12] Yet still the farmers' apparent confusion had persisted.

Landholders' fears of liabilities were a problem in some parts of the South Island high country. A paper in 2000 had said that

> traditionally, land-holders would permit open access, but increasing visitor nuisance and fears of liabilities under recent Occupational Safety and Health legislation have led some run-holders to close their properties to the public. This is particularly the case around the larger tourist resorts, such as Queenstown and Wanaka, and is based on a belief that landowners are responsible, under the legislation, for any accidents that might take place on their property, and [are] therefore liable to legal action. In practice, this is an unlikely interpretation of the law, and is being formally clarified, but it remains a belief, and, sometimes, an excuse for denying access.[13]

In 2001, Public Access New Zealand had written:

> 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.[14]

In August 2003 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.[15]

In a perfect world, this apparently clear exposition would have left no grey areas. In the real world – one containing lawyers – we had not heard the last about farmers' liabilities towards visitors. The legal minds from the different sides of the access debate took contrasting views.

Farmers Remain Anxious about the HSE Act

The 1998 amendment seemed not to have satisfied Federated Farmers, whose submission on the 2003 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.[16]

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'.[17]

In response to this claim, the national operations manager of the Occupational Safety and Health Service, 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 followed public walking routes across private land did so without needing or obtaining the explicit permission of the landowner or land-occupier. Therefore the landowner or land-occupier was not liable under the HSE Act for injuries to these people.[18] Yet according to the Federated Farmers submission to the Ministerial Reference Group, farm-owners, their employees and their contractors still had a duty to ensure that no action or inaction on their part, while at work, caused serious harm to any person.[19] As clear as a lawyer's porridge? Which of these two interpretations was true? Were they both true, if you looked more deeply into the contexts?

The muddiest situation regarding the remaining HSE Act liability issues seemed to be traditional access, for which the landowner granted specific consent. Some lawyers had advised their landowning clients that the wisest thing to do was to say no. NZ LAW was an association of legal practices that in 2006 represented 167 partners and 184 solicitors. In March 2005 its newsletter to its clients carried a two-page article about the government's walking-access plans. The cautious counsel showed little sympathy for 19th-century traditions:

> On a completely low note, in order to retain defences to prosecution, it would not be wise for any rural landowner to grant consent to a public walker if asked – unless of course the farmer was absolutely sure there were no risks, which may not be possible next to a waterway.[20]

Farmers' concerns about the HSE Act were to die down, perhaps temporarily, from mid-2005 onwards. If at some time in the future they should reappear, 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. The 2003 Acland report, while emphasising that landholders' HSE Act liabilities were more limited than was commonly believed, also acknowledged the case for a law change:

> There is a pressing need to address concerns about landowner liabilities … in return for offering better access arrangements. There appears to be a good case for removing landowner liabilities under occupational health and safety legislation if a landowner is willing

> to facilitate unhindered access for mahinga kai, and recreation and leisure purposes.[21]

Back to 'Mythbusters' now, the second and third sentences in italic reintroduce issues I have talked about in previous chapters.

Chapter 16

The Pastoral Landscape and Landowners' Property Rights

Pro-access statement:
'There should be no impact on ownership.' (Jim Sutton, press release, 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 two-thirds of the way through 'Mythbusters', and it has become apparent that the minister for rural affairs was not an architect and builder of access myths. In the above statement on ownership, however, he may have been optimistically oversimplifying. This was the second 'Mythbusters' Sutton statement that, in a limited sense, may have been slightly rebuttable. But bear in mind the context: he was not discussing new motorways across farmland; he was not envisaging granting the public the liberty to range around (he had said 'the report … finds little support for any "right to roam" policy'[1]); he was talking about foot-tracks along riversides, lake shores and the coast.

Advantages of Well-defined Foot-tracks

The positive, neutral, or negative effect of a foot-track on farm management is in the eye of the beholder, the individual foot-track user or farm-manager. Some farmers recognised that waymarked foot-tracks could eliminate access irritations rather than generate them. A well-defined track, open to the public, could 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.'[2]

A few rural-constituency members of parliament were beginning to half acknowledge this advantage of dedicated, clear tracks. One or two of them, Jim Sutton's colleagues in government, 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.'[3]

Perhaps Parker was using the word 'fewer' to appease a hostile audience. The word 'more' would have made better sense. Outdoor recreators needed more accessways to attain public land. People needed to be certain that these routes existed and were open to the public. The way I saw it, waymarked linear access was governable and unengulfing and could defuse the mutual suspicion and resentment that, in some places, seemed to have replaced the traditional goodwill. But many farmers had yet to accept the argument that well-defined accessways could funnel walkers efficiently through farms in a constrained way. In January 2003, Ivan Hurst of the South Canterbury branch of Federated Farmers had commented on the setting-up of the land-access working party. He had 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.'[4]

Constant Disparagement

Willy-nilly? You cannot tramp *willy-nilly* along a waymarked track or along a narrow strip beside a river. According to rumours that had been circulating, the government was considering whether deliberate straying from the accessway or riverside should become an immediate trespass, hence reinforcing the constraint inherent in linear access.

Walking, whether in the form of linear access or area access, is a perfectly respectable recreation. Using scornful language such as 'tramping willy-nilly' to describe recreational walking is ignorant in two senses. Firstly, it does not fit the physical circumstances of walking along a foot-track. Secondly, even if applied to, say, the area access of Scandinavia, it fails to recognise that Scandinavians' access rights carry well-understood conventions and responsibilities.

Furthermore, in 2003–4 the pejorative language frequently used by some New Zealand farmers to describe walking insulted walkers. The sneering disparagement of the activity of walking damaged rural-urban relations. In future, walkers will need to confront the underlying presumption that only farmers respect and appreciate the working countryside.

Standpoints Against Public Foot-tracks across Private Land

Some landholders flatly repudiated the pro-track arguments. Or they rejected these arguments when applied to their circumstances. They valued their privacy. They objected to the idea of walkers crossing their land. If foot-tracks were forced upon them, they expected complications in farm management, a debatable assumption that we discussed in Chapter 14. They also said that foot-tracks would make them more open to crime, a prediction that we will look at in Chapter 17. They viewed the potential impact on ownership as considerable. As stated in the Federated Farmers comment above, legislated entry, even restricted to walking tracks, would diminish the landholders' property rights. The seriousness of that adjustment could be great in their eyes, though slight in the eyes of many observers.

Tortured Comparisons

The anti-access viewpoints reached fulsome expression in the rancorous proclamations of Gerry Eckhoff, an ACT member of parliament and a colourful character who – this was my impression – saw a bogeyman under every daypack. Eckhoff reigned over a farmdom near Roxburgh and was said to be 'an engaging man, full of passion for the heartland, and the earthy wisdom to go with it'.[5] In August 2004 an update brochure from Jim Sutton indicated that the government might legislate to safeguard 'unrestricted access to and along our waterways'.[6] 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.'[7]

The Mugabe comparison cropped up frequently in Eckhoff's reported histrionics. His imagination detected a similarity between imposing foot-tracks along rivers and ruling a country despotically. The comparison had no more factual basis than a likening of ACT New Zealand to Zanu-PF.

During his campaigning against the government's development of an access policy, Eckhoff had frequently used the phrase 'unfettered access' ambiguously. To many listeners to his speeches or readers of his press releases, the term implied that the government was planning greater access liberties on private land than merely waymarked accessways and routes along water margins. As the above quotation shows, he continued to talk about 'unfettered access' even after the Sutton update brochure. Yet

the 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 misrepresented the government's intentions, disinformed gullible farmers, fooled some ill-informed journalists and impeded the accuracy and veracity of the access debate. Jim Sutton, unfortunately, never managed to detoxify that debate.

William Blackstone

Hang on! We're supposed to be discussing the federation's views on property rights, not Gerry Eckhoff's tortured comparisons. All right. Federated Farmers had clear and devout opinions on the general principles of property entitlements. It laid them out 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.[8]

The overall thrust of the FFNZ property-rights model implied that property rights were absolute and sacrosanct. A landholder had the right to refuse entry, said 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 resembled the later New Zealand Business Roundtable submission on the 2003 Acland report, which began 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).[9]

The writers of the Business Roundtable submission intended this quotation to eruditely buttress the sanctity of private property rights. The quotation, in their eyes, emphasised the importance of the right to exclude other people from one's property.[10] On me, it had the opposite effect; it underlined the necessity for a balance between the rights of the citizenry and the rights of the citizen. Western thinking about landownership had progressed since the 18th century, during which there was 'a colonial and nation-building vision of property', which 'served the interests of governments of young colonies and nations, such as the US and later New Zealand, by providing incentive to colonise and conquer'.[11]

In *Song of Solomon* the American novelist Toni Morrison crystallised what farm-ownership meant for a propertied African-American – a rare combination – in 19th-century Pennsylvania: 'Grab this land! Take it,

hold it, my brothers, make it, my brothers, shake it, squeeze it, turn it, twist it, beat it, kick it, whip it, stomp it, dig it, plough it, seed it, reap it, rent it, buy it, sell it, own it, build it, multiply it, and pass it on – Can you hear me? Pass it on!'[12]

Examining the New Zealand version of the nation-building dream, Christine Dann wrote: 'For the British settlers, colonisation was based on rights to ownership of the land and also on the taken-for-granted right to do what one liked with that land. Hence the introduction of exotic species on an individual, local, and national scale.'[13] Dann was writing about environmental impact.

Along with the right to plough the fields and the right to import and propagate new species came the right to deny people access to the land. The second of these three rights had gradually evaporated during the 20th century.[14] The last had persisted through the 19th and 20th centuries, untouched by parliament and seldom questioned. Carried forward into the 21st century and applied to rural land, a New Zealand landowner's absolute right to exclude walkers seemed to me to be a hangover from more primitive times, preserved by veneration, fortification and isolation.

A pivotal event from those earlier times, involving property rights, may partly explain why the present-day ideas of some of us are still frontier-like. On 6 February 1840, about forty-five[15] Maori chiefs signed the Treaty of Waitangi. In the English version of the deal, the Queen guaranteed to the chiefs and tribes and their families 'the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession'. The Maori version reinforced this promise, assuring the chiefs that they would retain 'te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa'.[16] We will use the historian Michael King's interpretation of these Maori words: 'the unqualified exercise of their chieftainship over their lands, villages and all their treasures'.[17]

The full story is a tale of ambiguity and contradictions.[18] For the sake of brevity, let's just say that some clauses accorded Maori the same clear and undiluted rights of ownership as those that the mid-19th-century settlers were anxious to enjoy themselves. In practice, the treaty led to increased European immigration, which in turn resulted in widespread alienation of Maori land, sometimes in ways that broke both the letter and the spirit of the Treaty and which aroused enduring anger.

To what extent and in what ways had this colonial history coloured the property-rights opinions held by New Zealanders in 2003–4? That's a question you ought to keep in mind while we discuss bundles of property rights. It might have been a facet that Jim Sutton did not think about enough.

Clusters of Rights

For anyone who balked at Blackstone's condoning of despotic dominion and at his KEEP OUT model of property rights, there was a different, widely held model available. Page 30 of the 2003 Acland report had suggested that the European view of property rights balanced a cluster of state rights against a cluster of private rights. Owning property did not grant you

absolute rights over it, whether that property was a house and garden in Auckland or a farm in Otago. You were bound by national and local laws.

At the risk of getting bogged down in detail, a crucial twist given a full-page sidebar in the 2003 Acland report, I should reiterate, as cited in Chapter 9, 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. (Although the sale of access rights to land to hunt is not.) In the distant and intermediate past, hunters and anglers enjoyed free admittance to private countryside by tradition, provided that they asked for permission. But in the decade before the Ministerial Reference Group began its examination of the issues, some landowners had used the Trespass Act to restrict access, hence obtaining exclusive capture of these public resources.[19] These landocrats, in effect, had created royal hunting forests and private fishing waters. Fish and Game New Zealand argued that this represented a taking of the public's right of access to fish and wildlife.[20]

The Business Roundtable submission magisterially examined and faulted the 2003 Acland report's assertions on bundles of property rights. The business people argued – and I presume that Federated Farmers agreed with them – that property rights should not be 'changed involuntarily in response to lobbying by those who seek access to private property for recreational purposes'.[21]

Societal Change, Property Rights and Access Rights

Regarding societal change and property rights, the federation's submission on the 2003 Acland report went 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 2003 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 was perfectly correct. Bang on. The government could choose to ignore the creeping disablement of the traditional access conventions, rather than pass any legislation that some landholders might view as an impingement on their property rights. The government, in effect, would be saying to outdoor 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 in late 2004, when 'Mythbusters' appeared, was clear. It remains so today. You can either agree with the 2003 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.

I will leave the final word on bundles of rights to Ann Brower:

> Property in land is not the land itself, but a collection of descriptors of what one can and cannot do with the land …
>
> The bundle metaphor came to frame modern property law in the twentieth century. It has been the dominant paradigm in real property jurisprudence in the US, the UK, New Zealand and Australia since the 1930s. The bundle certainly has its critics … [but] courts around the world have decided that property as a bundle of rights is a legal fact, not a theory. In law school, it is Property 101.[22]

The Farmed Landscape: a Part of Our Outdoor Heritage

We should consider walking access across uncultivated rural land 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 working countryside is, in many places, restricted to the views obtainable from car windows – unless you can afford a farmstay.

Te Araroa (the Long Pathway)

The main national exception to this non-access to farmland is Te Araroa (the Long Pathway), some sections of which cross privately owned pastures. The finished track was due to be officially opened in December 2011. Entry to Te Araroa is free, except for one section of the Queen Charlotte Track where in July 2010 the landowners enforced a $12 charge. Te Araroa may eventually generate farmstay and backpacker business throughout its length.

In an issue of *Forest & Bird* in 2001, Geoff Chapple, the chief executive of Te Araroa Trust, had eloquently described the swelling demand for recreational walking and the associated need to penetrate the pastoral hectares:

> When I talked recently to the North Shore branch of U3A [University of the Third Age] about Te Araroa – the Long Path – one of its members, a Federated Mountain Clubs man, approached me afterwards.
>
> 'I notice you consistently used the word "hike" which is European,' he said, 'rather than the traditional New Zealand "tramp".'
>
> I'm 'guilty as charged'. The word 'tramp' has a low vowel. The articulating tongue sinks, not unlike a boot into mud, whereas with 'hike' it describes an upbeat loop onto the palate.

> For a 3000-kilometre route – the distance of the planned trail from Cape Reinga to Bluff – the difference between 'tramp' and 'hike' may be significant, particularly as regards support.
>
> According to the Hillary Commission 12 percent of men tramp, and 9 percent of women do. Yet 80 percent of women 'walk for recreation' and 60 percent of men do. The recreational walkers are those we believe will use Te Araroa trails. In the course of our longer objective of a trail the length of the country, Te Araroa Trust is doing small sections that traverse farmland and coastline more often than the back country.
>
> The new trails may also help to keep tourists off the crowded 'Seven Great Walks' which, when you add them up, total a meagre 270 kilometres distance. They'll enable visitors to see more of the New Zealand way of life and to meet New Zealanders, with marae-, home- and farm-stays …
>
> New Zealanders seem to want this penetration of the countryside.[23]

Access to the Farmed Landscape: a Privilege or a Right?

Perhaps not many farmers had penetrated this issue of *Forest & Bird*. On 23 January 2003, Federated Farmers had released its first statement responding to the setting-up of the Land Access Ministerial Reference Group. John Aspinall, a national board member, had restated a refrain from the depths of New Zealand's land law and rural traditions: access to private land is a privilege, not a right.[24] In the past, that simple principle had made sense and worked well. Repeated ad nauseam by farmers in 2003–4, and parroted by most recreation advocates, it told only half the story. Furthermore, as I saw it, the landholders' confident assumptions inherent in that principle formed 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. But permanent public foot-tracks across that countryside can be provided only by making them legally secure; that is to say, 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.[25] Adherence to the principle emphasised by Aspinall would not secure the long-term future of these forty-eight tracks.

The farmers did not employ their privilege reasoning consistently. They never tired of telling the public that linear access across farmland – in the absence of any rights of way – was legally a concession that landholders could withdraw. But no farmers, as far as I know, stated the obvious parallel: that the farmers' use of unformed public roads for grazing was a privilege that the state could withdraw.

So far in this book I have used the terms 'rural land' and 'countryside' without defining them. It might help if we put these words into a New Zealand context. Internationally the literature of rural studies has discussed the meaning of 'rurality' in some depth.[26] The adjective 'rural' can mean different things to different people in different countries. Looking at the meaning of 'rural area' in the New Zealand context, Kay Booth wrote that

> rural lands are located between public conservation lands and population centres. They offer intervening opportunities for outdoor recreation and rural tourism, often close to where people live, with accessibility guaranteed through the rural road network … Rural areas, then, provide a different setting for outdoor recreation, potentially attractive to recreationists interested in less-wild places than [those] available within the protected natural areas network, with the critical factor being proximity to urban areas.[27]

A partial definition of the phrase 'rural area' is available in section 2 of the Local Government Act 1974, which limits the meaning of rural area to be 'an area zoned rural in a proposed or an operative district plan'. (The act does not define the adjective 'rural'; perhaps 'rural' is defined in other legislation.)

Recreational activities that take place in rural areas seldom use land reserved solely for recreation. Recreational issues in rural lands are often concerned with the 'promotion, provision and containment of recreation alongside the claims of other, prime, uses' such as farming and forestry.[28]

Rural land is a place of production, a recreational resource and a tourism resource. Federated Farmers acknowledged two of these uses 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.[29]

So far, so good. The domesticated and groomed landscape – the sheep-cropped turf beside stony streams, the patchwork of greens among hills smudged with remnant bush, and the exotic plantations – is a part of New Zealanders' heritage and a part of their outdoor ethos. There is no harm in landowners sharing the countryside with tourists by running guided walks and farmstays and charging for these services. But Federated Farmers did not state the essential proviso, which is that all New Zealanders should have free and efficient admittance to an adequate proportion of this scenery, especially near where they live. Rather, the federation implied that New Zealanders ought to be content to access solely the third of New Zealand that in 2003 was 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.[30]

The gist of these last two quotes was clear: it was fine and proper for the paying tourist to admire the modified landscape, but the New Zealand public should exercise its scenic aesthetics on public lands only. And if necessary should drive a hundred kilometres to get there.

A privilege is a special advantage, or immunity, granted under certain conditions and not enjoyed by all. Viewing linear access as a privilege, to be allowed only in limited circumstances and not to be offered to everyone, is a wacky way of encouraging the public to explore our gorgeous countryside on foot.

A right is something that is morally just or legally granted as allowable to a person. So there are moral rights and legal rights. As I see it, walkers have a moral right to enter and enjoy the rural landscape, keeping to the tracks. The gradual growth of free and enduring foot-tracks across this countryside will slowly advance walkers' legal rights to match their moral ones.

'Not if we can help it, mate!' say the farmers. 'It's our land. We have a natural right to exclude people.' This impasse illustrates the inconvenience of moral rights. We imagine them, and the natural rights presumed by one person can differ conclusively from those presumed by another. The philosopher and jurist, Jeremy Bentham, tolerated no nonsense about amorphous intuitive rights: 'Right … is the child of law: from real laws come real rights; but from imaginary laws, from laws of nature, fancied and invented by poets, rhetoricians, and dealers in moral and intellectual poisons, come imaginary rights, a bastard brood of monsters.'[31]

Our landholders' legal rights, in 2004, opposed and eclipsed walkers' moral rights. But there was comfort, perhaps, in something else that Bentham said: 'The greatest happiness of the greatest number is the foundation of morals and legislation.'[32]

Access Advocates Have Overlooked the Pastoral Landscape

Thinking that neglects the pastoral landscape may predominate in New Zealanders' ideas on and attitudes towards access. 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 has strenuously emphasised the access advantages of public ownership. This pronounced PANZ slant has gone largely uncontested and may have inadvertently contributed to the pastoral landscape having less prominence in the minds of access promoters than it deserves. PANZ's well-meaning and excusable 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. At present, property rights in New Zealand put landholders on the legal high ground. Our feeble rights to enjoy the working countryside reflect outdated law and they contradict our national outdoor spirit.

So I found myself disagreeing – sharply at first glance – with the long-established and well-respected Federated Mountain Clubs of New Zealand, 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.'[33] A sweeping simplification. Perhaps written by someone whose likings have been constricted by an overenthralment in boundless beech forest. There's no accounting for taste. 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 had always vigorously championed the cause of walkways where a demand existed, and across private land where necessary or desirable.

Sceptics reading this could justifiably ask: 'Exactly where in New Zealand did people want to walk across farmland for its own sake?' There are two answers to this question. Firstly, sprinkled through this book are examples of places where walkers wanted to do precisely that, such as in parts of Belmont Regional Park, on the Port Hills and on the Otago Peninsula – not to mention on an increasing number of private walking tracks. Secondly, the question is a fair one, as there has been relatively little research into the *demand* for access as opposed to into the *supply* of it. This fact was mentioned in Chapter 13, in relation to needing nearby walkways. Kay Booth has pointed out that the 2003 Acland report was preoccupied with access-provision issues and that it paid little attention to demand, although in one section it did acknowledge the need for robust information on the demand for access.[34]

Nobody was suggesting that we should spend money developing extravagant walkways where no demand existed or was expected. On the other hand, much of the land-access uproar of 2003–4 centred on real demands for reliable walking routes across private land. Routes across farmland do not always need to be grandly engineered and generously surfaced paths, conforming to Standards New Zealand prescriptions. Across fenced or open pastures, a combination of marker posts and stiles or waymarked gates may suffice and may entail little maintenance. Already, the regional councils of Fish and Game New Zealand have signposted hundreds of river access points, the accent often being on adequate waymarking rather than on creating de luxe tracks suitable for tourists with handbags.

Landscape Tastes

Landscape tastes vary. Different people relish different flavours. One's palate can change with age. And there are multiple cultural values in landscapes (which Janet Stephenson has examined in depth[35]). Researchers have emphasised the need to involve communities in defining what is important and distinctive about their own landscapes.[36]

In the book *Beyond the Scene: Landscape and Identity in Aotearoa New Zealand*, twelve writers examine landscapes that are important to them. Each discusses a very different landscape, which results in twelve contrasting perspectives. Ailsa Smith, for example, presents the results of her analysis of seventy-eight Taranaki waiata tangi (songs of lament), undertaken to investigate 'Maori feelings of connectedness with … the places they inhabited in the tribal landscape'. Gordon Stephenson writes about the rocky pastures and covenanted bush of his forty-acre block in Waotu, south Waikato.

For some walkers, pastoral scenery is not inferior to dramatic lofty wilderness; the two landscapes are different and they complement each other. For these people, farmtracks across rural land are potentially just as important as DOC tracks across mountains. But in 2004, access rights were not meeting the needs of these walkers. To help to improve those access rights, track advocates needed to attach more importance to the aesthetic, cultural and spiritual values of our local sheep runs.

Some other New Zealanders – I got the impression – seemed to view the farmed countryside not as a recreational alternative to the grandeur of wilder country but as a boring place of no aesthetic attraction or even as a casualty of history and progress, to be tolerated with regret. If we work on the premise that my impression was correct, some clues about where such attitudes sprang from might be hiding in the excellent book *Environmental Histories of New Zealand*. Its nineteen authors present the main strands of 160 years of debate over the economic imperatives of farming, forestry and mining and over their environmental effects. The book necessarily says much about the history of preserving New Zealand's indigenous forests for watershed protection, scenic benefit and conservation and about the destruction or degradation of its wetlands and tussock-lands. Paul Star and Lynne Lochhead write that in the late 19th century and early 20th,

> increasingly native flora, fauna, and scenery were not merely appreciated, but also fulfilled a psychological need. Native birds, scenic wonders, and mountains first appeared on New Zealand postage stamps in 1898 … Indigenous nature became linked to both individual and national identity.[37]

In another chapter, 'The Meanings of Mountains', the historical geographer Eric Pawson covers the ways in which New Zealand's alpine peaks and its main volcanoes assumed social significance. He ends this chapter: 'For most of us … [the mountains] have long been landscapes of renown, taken-for-granted national "possessions" that do service as New Zealand's face to the world: rendering distinct, and distinguished, a homeland otherwise too often marked by little but its ordinariness.'[38]

Ordinariness? The scenes of *Country Calendar*? The Port Hills and the farmland of Banks Peninsula? The pastures and plantations of the Marlborough Sounds? The delicate lagoons of the Otago Peninsula? The historic Northland landscape around Pouerua? The scenery of large sections of Te Araroa? Are these landscapes indistinct and undistinguished and too ordinary to admire and enjoy?

Views on environmental issues and on landscapes have changed with time. Perhaps 160 years of argument about preservation might have contributed towards the present-day landscape aesthetics of some New Zealanders: DOC-managed bush, tussock-lands and wetlands are relatively natural and are ecologically beneficial, therefore landscape with these features looks nice and makes us happy; farmland is unnatural and is environmentally questionable and therefore is of no interest except that of concern.

We are back to the beginning: landscape tastes do vary. There is a danger that we might talk past each other when we use the word 'landscape'. Many New Zealanders do still need to recognise the public's right to enjoy the farmed landscape. Farmtracks can take walkers and cyclists through wonderful scenery and to special places. At present that idea is perhaps for some New Zealanders not cool; real men do not walk on farmtracks and, in any case, dairy farms are an environmental scourge. It is time for us to take a more open pride in the highly modified parts

of our country, and we can do so without neglecting the conserving of our wilder areas.

A more recent influence than environmental histories, an argument prevalent in 2003–4 that might have discouraged some people from appreciating the working countryside, was the factory-floor metaphor.

The Farm as a Factory Floor

On the subject of the farm as a business, Federated Farmers's search for metaphor took it down some ambitious – some would say 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.[39]

If you think that society should look upon the principles that govern walking access to the countryside as being identical to the principles that govern walking access to the local meatworks, you will appreciate the beauty in this comparison.

If, however, the comparison makes you want to scream, you will probably already be aware that inventive, effective metaphors successfully draw likenesses between two unlike entities. The farmers' factory-floor metaphor does not. Turfy ridges are a central part of New Zealanders' outdoor heritage; factory floors are not. On the right day, with the right light, the artificial and manicured landscape can be sublime, the equal of any pristine nature. Farmers knew this. It was a large part of why they were farmers. Many of them were happy and proud to share their countryside – their workplace – with the public. The means to enable this sharing was the issue.

Regional Plans and Your Local Sheep Runs

The word 'landscape' means an extensive area of land regarded as being visually distinct. So you can have an urban landscape, dominated by buildings (and sometimes called a townscape). The structures and other features give the built-up area its unique character and identity. The values that people place on any one urban landscape are subjective and will differ.

So too the rural landscape. Deciding what makes attractive countryside can be an elusive and controversial matter. As with the urban landscape, people perceive and experience any one rural landscape differently. Many perceptions and values, however, are shared. Research can sometimes identify such shared feelings. Often we as a community recognise an appealing landscape, intuitively rather than by research, and then formally acknowledge that landscape, such as through reserve status or in a regional-plan landscape assessment.

Official Landscape Categories

You do not need to be a university researcher to know that the classifying of landscapes involves both objective and subjective input. But it helps if you are. Lars Brabyn has written authoritatively that 'the classification of landscapes is complicated by the fact that it involves both human perception and physical reality, while many of the science classifications

tend to be based on just the physical. This makes landscape classification particularly difficult because human perception generates a wide range of meanings.'[40]

One method for classifying visual landscape character is the New Zealand Landscape Classification (NZLC). It provides a generalised description of landscape character that is intended for use alongside manual landscape assessments that capture greater complexity. Planners could use this classification system, combined with visibility analysis, to describe landscape experience on walking tracks.[41]

A potentially controversial or misinterpretable aspect of the New Zealand Landscape Classification is its giving of a naturalness score of between 1 (Natural) and 5 (Unnatural). Brabyn says that 'natural landscapes are valued in NZ and this is substantiated by psychophysical research on landscape value … Therefore, a naturalness score can be used to substantiate landscape value.'[42] This may make some sense, provided that you do not equate landscape value with aesthetic quality. The New Zealand Landscape Classification does not provide information on aesthetic quality.[43] The classification, for example, would probably give the featureless tussocklands of Te Papanui Conservation Park a naturalness score of 1 (Natural) and the farmed hills of the Otago Peninsula a score of 4 (Semi-natural). But if asked to measure the beauty of each of these two landscapes – the combination of the qualities that delight the senses and please the mind – some walkers and mountain-bikers would reverse these scores.

Landscape appraisal, in the context of professional planning and consultants' reports, has its own science and jargon. The planners and resource-managers separate our beautiful scenery into regionally significant areas, regionally outstanding areas, coastal preservation areas, landscape conservation areas, etc. A study of Canterbury's landscape, for example, identified most of the Mackenzie Basin as being regionally outstanding. The study talked about areas of the Mackenzie Basin being outstanding because of

> their 'natural science' values (geomorphological and biological values, particularly glacial and fluvial features, lakes and wetlands, and vegetation types); 'legibility' (expressiveness and ease of understanding); 'aesthetic values' (including visual character and quality, such as naturalness, and coherence); 'recognised' values (general agreement between professionals and the public on its value); and takata whenua values.[44]

Are you still with me? For the purpose of this book, that is all we need to know about landscape-talk. The important thing to realise is that official landscape categories exist. The next important point is that not all the landscapes recognised as being attractive or worthy of preservation are faraway DOC-managed wildernesses; some are close to towns and cities and are privately owned farmlands.

Landscape Ratings of the Otago Peninsula

I have suggested that walking access to the farmed landscape close to where we live is important. I have used the Otago Peninsula as an

example, it being adjoined to a town of 114,000 people. I have said that, in 2004, the peninsula lacked a continuous public foot-track along the oceanic coast. It also lacked public walking access to nearly all its high-points. Much of the peninsula was private farmland. How did the Otago Peninsula measure up on the formal landscape ratings?

The hills, coastline and harbourside of the Otago Peninsula have been the subject of a thesis written for a doctorate in landscape architecture.[45] But we will simplify our task by restricting our reading to another, less demanding source: Dunedin city council's District Plan. This plan classed all the area between the grassy ridge of the peninsula and the oceanic coast as an outstanding landscape area. It is worth reproducing the whole of the landscape-character description:

> (a) Peninsula Coast Outstanding Landscape Area
> (ii) Landscape Character
> This area consists of an extensive and coherent but complex set of rural and coastal landscapes which are of high or very high visual value and generally of high sensitivity to change. The coastline is a complex mix of broad sandy beaches, high coastal cliffs and extensive tidal inlets. The landscape is attractive at both the extensive and the more intimate scales, a feature which sets it apart from much of the City's rural landscape where the large scale effect is highly coherent and of high scenic value while the detail is often weak or unattractive.
>
> The entire area is sparsely settled, and pastoral agricultural land use and the strongly defined landform set the overall patterns of this landscape. Pasture is the dominant vegetative cover with patches of bush in the gullies and on steeper slopes.
>
> There is an awareness of extreme climatic conditions created by dramatic cliffs and windswept vegetation. This and the limited visual impact of buildings give the area a sense of isolation and wildness. There are, in many parts of this landscape, the remains of old abandoned farm buildings and shelter plantings, usually of Macrocarpa. These, together with the stone walls, add historic interest.
>
> The landscape is not large scale. The hills are generally no higher than 400 m above sea level. To date the overlay of human elements of roads, plantings and buildings has been mostly small scale as well and this has allowed the natural environment to maintain its dominance. This dominance of the natural elements containing the human elements is important in maintaining the character and a sense of maturity and harmony which the landscape currently possesses.
>
> There are few places where views towards this landscape are possible and there are very distant ones from the Brighton coast. The primary viewing perspective to be considered is that of the road traveller or pedestrians on public walking tracks or beaches within the area. The roads are generally narrow and winding, and because of this the traveller moves through the landscape relatively slowly and is exposed to a wide and varied range of views at both large and

> small scales. The present form of the roads is fundamental to the manner in which the landscape is viewed and appreciated.
>
> The views within this area are highly stimulating because of their diversity and complexity and because of the consistent and prolonged exposure to a series of high-quality scenic experiences.[46]

Furthermore, much of the area on the opposite side of the main ridge of the peninsula, sloping northwestwards down to the harbour, forms another belt of pasturelands, of a contrasting character to the ocean-facing slopes. This belt of farmland is mainly open, yet dotted with patches of regenerating indigenous bush; from it visitors obtain panoramic views of the whole harbour. It is itself classed as a landscape conservation area.

The juxtaposition of the two contrasting landscapes makes the whole even more appealing than the parts. The evidence of human occupation of the land is visible everywhere; the dry-stone walls and post-and-rail fences and wind-bent macrocarpa look as if they were installed specially for artists. Dunedinites and tourists, in 2004, needed a more interconnected and logical network of foot-tracks if they were to make the most of this 'series of high-quality scenic experiences'. Because of the aristocratic property rights of the New Zealand landholder, gaining the necessary access across the private farmland appeared to pose insoluble problems.

Property Rights Are Subject to Moral and Social Sanction

In 1969, in his poem 'A Man in Assynt', the Scottish poet Norman McCaig asked:

> Who owns this landscape? –
> The millionaire who bought it or
> the poacher staggering downhill in the early morning
> with a deer on his back?
>
> Who possesses this landscape? –
> The man who bought it or
> I who am possessed by it?[47]

The Land Reform (Scotland) Act 2003 answered McCaig's questions decisively and without condoning poaching. By then, around the world, perspectives on land rights had undergone considerable modification in the post-industrial globalising world. 'Property rights [were] being increasingly subjected not only to legal, but also to moral and social sanction.'[48] In some parts of the world, there was more to a discussion of land rights than freehold interest, exclusionary rights, and the productive value of the land. This wind of change had not yet blown into the southern hemisphere to reach the New Zealand public, although the idea of its coming did ruffle many a farmer's Swanndri in 2003–4.

Kay Booth has pictured the access rights of outdoor recreators in several western countries as being spread along a continuum.[49] The United States sits at one end of the continuum, in that private property rights there are muscular and that trespass rights vest with the occupier. The

Scandinavian countries, where public access rights take precedence over private property rights, sit at the other end. The United Kingdom stands in the middle (although Scotland deserves to be ranked with Sweden and Norway). The place of New Zealand, Booth suggests, lies between the US and the UK.

Policy changes cause some countries to creep, and occasionally to leap, along the continuum, and not all in the same direction. While in the early 2000s the UK and particularly Scotland was vaulting towards the Scandinavian approaches, many other countries were shifting gradually the other way, with recreational access to private and community land being increasingly contested and charging for access becoming more common. New Zealand was one of the latter countries.[50] In New Zealand, where private land was involved the freedom of the hills had been weakened by the seismic political and economic upheavals of the 1980s and early 90s.

Regarding recreational access to private land in New Zealand, in 2006 Booth wrote:

> The landholder/recreationist transaction is the primary interaction that facilitates public access to privately-occupied land. New Zealand's public policy framework and private property rights regime establishes landholders as the dominant power-broker in this relationship. Strong private property rights have resulted in no RPA [rights of public access] across privately-occupied land and the *Trespass Act 1980* gives private landholders the power to exclude the public from their land. Thus the regulatory regime has established the parameters of this power balance.[51]

'Imbalance' would have been a more informative word. This property-rights climate, on the political right, has New Zealand's walkers pleading for permission to enjoy something of which a share is already morally theirs. An adjustment of these property rights is overdue. We should 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, conditional on debate and political support. 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 nowadays would be considered revolutionary interference into property rights, which was surpassed by the next stage in New Zealand's land history, which Tom Brooking called 'bursting up the greatest estate of all' (the Maori landholdings).[52]

The legislation that the government was hinting at (and was to propose in December 2004) would hardly secure Sutton anything more than a footnote in the history of land law. The Sutton changes, if carried out, would be minor tinkerings compared with McKenzie's land reforms of the 1890s. They would be minor adjustments, also, compared with some of the legislation that had been passed in Britain, Scandinavia and Germany. He would not be creating open country on private uncultivated rural land; there would be no public entitlement to drift around farmland. He would merely be proposing to quasi-extend the Queen's Chain by imposing walking access along significant water margins. Sutton, if successful, would just be tidying McKenzie's loose ends.

Chapter 17

Access, Privacy and Rural Crime

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

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

- *Enforcement [of their right to exclude people 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).'[1] 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 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 was having none of it. The Federated Farmers comment implied that an accessway or a riverside footway – even, say, fifty metres away from the farmstead – could jeopardise the occupiers' privacy. The disagreement was semantic. What constituted a loss of privacy?

Sutton was arguing, I think, that a walker passing by fifty metres away from a family home would not disturb the family's peace and quiet. He was also implying that accessways were necessary for the public good.

On the other hand, Federated Farmers held that a landholder's right to say no was absolute and immutable. The federation rejected the concept of curtilage. The enforced presence of the public anywhere on a farm could invade the farmer's family's seclusion and its freedom from interference. The intrusion on the farmer's property rights would be inflammatory and intolerable. The disturbance would destroy the family's happiness.

Also the federation seemed to be suggesting that having more foot-tracks across farms would increase the occurrence of attacks on farmers, housebreaking, and theft of farm equipment.

Although I shared, with reservations, the farmers' consternation about rural lawbreaking, I had less sympathy for their fretting about privacy, given Sutton's reassurance on curtilage. The government had already killed any ideas about establishing the right to roam (although it was unable to prevent the opponents of improved access from conveniently ignoring its categorical statements on this matter). Routes across farmland would be confined to water margins or to negotiated waymarked tracks. The proposed access code would, one presumed, include stipulations related to respecting and safeguarding the privacy of country-dwellers. This combination of measures seemed to me sufficient to protect farmers' freedom from disturbance. Many British farmers lived comfortably with the toing and froing of the public through their farmyards; foot-tracks across New Zealand farms, as envisaged by Sutton, would not go anywhere near the farmhouses.

But the rules for sharing the working countryside in New Zealand were still raw and unreliable, based more on convention than on legislation. When asked for permission, landowners were expected to allow recreational access, which superficially was an admirable state of affairs. At the same time, the property-rights notions of some of our farmers seemed to be based on a creed of infinite curtilage.

Rural Crime: Three Basic Questions

The rest of the 'Mythbusters' Federated Farmers comment widened the discussion beyond what Sutton was talking about. Nowhere in his press release of 23 January 2003 did Sutton discuss rural crime.[2] But Federated Farmers was distinctly worried about theft, burglary and assault and it wanted to raise these concerns, so let's look at them.

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 running past. 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. Yelled 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. All quiet. *Deliverance*! Welcome to the Northland countryside, bro.

This brief skirmish might sound faintly amusing, but in reality it was a scary confrontation. I learnt afterwards 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 strode around the sports grounds. I saw them going purposely round and 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 working countryside – across the keep-out farmland and through the keep-out pine plantations – as well as through bush reserves. I mean on foot-tracks recognised as being open to the public. A lack of such tracks encourages confrontation; providing such tracks discourages confrontation.

The year 2004 saw several vicious assaults in rural areas. 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 reoffenders. Some landholders linked countryside lawbreaking to walking access, forecasting more crime if the government went ahead with its plans to improve pedestrian access along public and private water margins 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, the most fundamental question we should ask is: was 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. My Kaikohe incident – the great escape – provides a useful example. It illustrates some of the main questions being asked in 2004 in the complicated debate over lawbreaking, landholder-recreator confrontations, walking tracks, and recreational needs. The incident contained two lawless ingredients. Firstly, a theft. Secondly, a potentially violent encounter. These two ingredients pose two further questions: would the creation of more walking tracks across private land lead to an increase in crime, such as theft and vandalism? And would it also lead to more-frequent face-offs between landholders and visitors?

Was New Zealand Suffering a Rural Crime Wave in 2003–4?

The theft of the batteries, in the Kaikohe story, was one example of what Federated Farmers described as 'a high incidence of theft and other crimes

on farms [and on other rural land]'.[3] 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 was the theft of livestock: '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.'[4] I do not know whether this claim was verified.

Rural wrongdoing was obviously disquieting, but national roguery statistics, for what they were worth, did not appear to warrant the term 'rural crime wave'. We shall look at these numbers later.

Would More Walking Tracks Mean More Crime?

Nobody knew in 2003–4 whether building more walking tracks and accessways across private land would lead to more misdeeds, such as theft and vandalism. Perhaps it is a fact of human life that more people equals more felonies. Conversely the hermit in his cave enjoys a crime-free utopia, unless visited by marauding trampers.

The ACT member of parliament Gerry Eckhoff seemed to view all walkers as potential plunderers or ravishers. In April 2003 he had warned his audience at a Marlborough Federated Farmers provincial meeting:

> 'I say the biggest aspect [of greater public access across farmland] is the security of farms, especially of the womenfolk,' he said. That was because people crossing farms could leave the trail, look in sheds and watch private residences. 'There are all sorts of opportunities for these predators to attack.'[5]

Some user submitters on the 2003 Acland report argued that 'more genuine users accessing a property will dissuade others from undertaking criminal action'.[6] A Fish and Game New Zealand newsletter contended similarly: 'More "honest eyes" of decent, law-abiding outdoor recreationalists [*sic*] are likely to reduce crime in the countryside.'[7]

Federated Farmers didn't seem to want any eyes out there, honest or otherwise. It was one thing to conduct a survey that collected reasonably sound statistics on rural illegalities; but it was quite another to imply that creating more foot-tracks across farms would lead to more farm break-ins and assaults. Yet this is what Federated Farmers had been indicating since its press release of 9 April 2003, which had 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.[8]

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.[9]

The 2003 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.'[10] 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.[11]

Federated Farmers was correct in saying that theft and thuggery in some parts of the heartlands were causing considerable unease. Rural crime affects its victims (as too of course does city crime), it can sour rural-urban relations (although often the offenders themselves are rural people), and it damages recreation and tourism. But neither Federated Farmers nor anyone else could answer with total confidence the question posed in my last heading.

Perhaps more-productive questions are those we asked in Chapter 10: should we shut the countryside doors to all visitors, just to try to exclude thieves, burglars and marijuana-growers? Should the recreational opportunities of all New Zealanders be restricted because of the irresponsibility, ignorance, stupidity, or criminality of a small minority? In 2003–4 most walkers, hunters and anglers thought no. Federated Farmers and some rural dwellers seemed to think yes. By late 2004 this disagreement had become fractiously polarised.

Would More Walking Tracks Mean More-frequent Confrontations?

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 have been complex, yet one part of the answer was 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.

Come to think of it, I do recall one slightly similar incident, in the Peak District National Park in northern England. I was walking with 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 shut the footpath. England's system of recording public footpaths on definitive maps 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. The offices of the then Peak Park Planning Board in Bakewell held copies of the definitive maps for the whole of the national park. Someone pulled one out of a long map drawer for me. It confirmed that the route in question was still a public footpath. Our enterprising builder had been telling porkies. I came away from the offices armed with a footpath number to quote in the event of a repeat of the incident.

In New Zealand in 2004, confrontations on private rural land were 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.[12]

All landholders will have sympathised with Max Harrison's predicament. Many were championing the landholder's right to say no. Many walkers and trampers, young and old, still displayed an unquestioning allegiance to and reliance on the established practice of asking for permission. But those campaigning to preserve the status quo were battling to prolong a system that often did not work any more, that treated all walkers as potential bearers of malicious intentions, and that aggravated many access troubles rather than calming them. If a public walking accessway had crossed Harrison's farm, combined with a well-publicised national access code, reasonable people wanting to reach the coast would have done so without disturbing Harrison or interfering with his farm equipment. What about those cut fences and the theft? Determined yahoos and crims would have satisfied their idiotic or lawless urges whether there was an accessway or not – as they did in towns. A Fish and Game newsletter pointed this out, in an exasperated response to the Federated Farmers's scaremongering, 'the countryside is no more immune to crime than the city'.[13] Every New Zealander, whether country-dweller or city-dweller, was at risk of theft and vandalism. The challenge to law-enforcers and the community in general, in rural areas and in towns, was to minimise crime without curtailing freedom of movement.

September and October 2004: Crime Is Bad, Therefore Access Is Bad

Makahu was a remote sheep station occupying a basin in the wilds of the Kaweka foothills, fifty-eight kilometres northwest of Napier. In 1953, at the age of twenty-one, Jack Nicholas had bought the land outright. He used money he had saved doing man's work since he was fifteen:

shearing sheep and filling hoppers with sacks of maize and grain. Since then he had laboured for fifty years to fashion the 2,500 acres of tea-tree scrub, tussock grass and fern into a family farm carrying 2,000 ewes, 1,000 hoggets, and 500 head of cattle. He had planted 75,000 trees, for milling and for beauty. With his wife Agnes he had created 'an efficient, self-sufficient slice of heaven'.[14] At about 7am on 27 August 2004, he left the house, possibly to feed some pet sheep nearby. 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.[15]

The next 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 during question time in parliament, Gerry Eckhoff raised the matter of rural crime:

> 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.[16]

About two weeks after the killing of Jack Nicholas, the *Herald* printed an article titled 'Farmer's Widow Pleads with PM'.[17] 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, imploring her to scrap the 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.

National Crime Statistics and Rural Crime Rates, 2003–4

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'.[18] The phrase 'open access', which people usually associate with the status 'open country', misrepresented the government's plans. On the other hand, this farmer may have been loosely referring to accessways and routes along water margins. When used in New Zealand, the term 'open access' is often

ambiguous and confusing. People should adopt and stick to the terms 'linear access' and 'area access'.

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 2004 *Rural News* published a follow-up article, 'Rural Crime Rate No Worse'.[19] New Zealand Police had provided *Rural News* with statistics comparing 'urban stations' with 'non-urban stations'. A copy of these statistics, supplied to me by New Zealand Police, confirmed the accuracy of the *Rural News* story.[20] 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 were less likely to be targeted by criminals than their urban counterparts but if they were targeted, the offender was 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 were quite rapid, police arriving at the sources of most Priority 1 calls in non-urban areas within half an hour.

In contrast to this cautious and unusually even-handed *Rural News* coverage of the rural-crime controversy, other newspapers kept emotions turbulent 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, inflicting severe head injuries.

Bandit Country

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.[21]

The following day, the verbal warfare and mutual distrust intensified when Jim Sutton, visiting Dunedin, accused his antagonists of campaigning against the government. 'They have put themselves on a campaign footing for the next general election,' he said. 'It precludes close cooperation.'[22]

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 claimed threat of increased crime from greater public access to private land. The federation was implying that the murder substantiated the claim. 'That's absolute rubbish and they should be ashamed of themselves for exploiting a tragedy like that for political purposes,' Sutton had said.[23]

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. In response to the *Otago Daily Times* articles, 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.'[24] In the weeks that were to follow, opinions on rural crime were to become ever more polarised. A new migrant in New Zealand might easily have gained the impression that rural New Zealand was some sort of bandit country. People's freedom of movement would have to take second place to the need for security. Our countryside would need to become one vast gated community, in which country-dwellers would be safe from kleptomaniac walkers.

Federated Farmers had 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 stemmed from conservative theories on property rights. Despite having a constitution designed to avoid political partisanship, the federation was an undisguisedly and unashamedly political organisation. Not for the first time, a farmers' body in New Zealand had become an undeclared political party. Something similar had happened as long ago as 1909, when 'the Farmers' Union ignored its motto of "Principles Not Party" and became little more than an unofficial extra-parliamentary wing of the [right-wing] Reform Party'.[25] Sixty years later, in 1969, Austin Mitchell described the meetings of Federated Farmers branches and National Party branches in rural areas

as often appearing to be 'the same people sitting in different rooms at different times'.[26]

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.[27]

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

What did track-users 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 and more comfortably, 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 had never heard a better argument for freedom of movement across rural land. I further thought, It is a serious concern when a whole segment of society, including its leaders, loses its sense of proportion. Why, with so much going for us, are we more angst-ridden than ever before? Lighten up, guys!

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 ministerial reference group had received 230 written submissions and had listened to presentations by various groups.[28]

After the publication of the Acland report, from September to November 2003, more than fifty meetings had been held nationwide, roughly half of them being public meetings and half being stakeholder meetings.[29] (In this context, the word 'stakeholder', a political catchword, meant a representative of a body with a special interest in the issues reported on.) The written record of these meetings was 111 pages long. Like the other Ministry of Agriculture and Forestry land-access publications, it was available from the MAF website. It showed that Federated Farmers representatives had 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'.[30]

MAF had received 1,050 submissions on the 2003 Acland report.[31] Its analysis of these submissions listed landholder concerns and user concerns.[32] In quoting from the submissions, the analysis often paired landholder comments with user comments.

The government's discussions with the public on land access had been comprehensive and unhurried. The proposed New Zealand land access strategy would stem from lengthy analysis. Like any other interested organisation, Rural Women New Zealand would be able to submit its views at the select-committee stage of the walking-access bill and also at several further consultation stages, such as that for the access code.

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.

There is an argument that newspaper readers like to have their beliefs confirmed by what they read, and that newspaper editors pander to that desire.[33] The skewed coverage of the access debate in provincial newspapers such as the *Southland Times* appeared to verify this hypothesis. In 1844, Robert Fitzroy, the second governor of New Zealand, had noticed the same tendency. He wrote that 'very incorrect accounts of proceedings in [the] legislative council appeared in newspapers … being the results of notes in common writing (not short hand) taken by the editors or composers of the Auckland newspapers, who trusted much to memory, and frequently colored their statements so as to suit the taste of their readers.'[34]

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'. Goodness me. How could they write such stuff! One expected falsehoods from politicians, but surely not from journalists? The 2003 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.'[35] In June 2004, MAF's analysis of written submissions on the Acland report had shown that 'support for the right to roam by users is small'.[36] Finally, Jim Sutton's update brochure of August 2004 had

stated that 'the right to roam anywhere at all over open country, which is the tradition of some countries, is not appropriate in New Zealand.'[37]

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 2003 Acland report, which had claimed that rural crime was rising and that 'families should not be forced to be exposed to strangers and the full range of perverse human behaviour'.[38]

These farmers' mushy arguments demanded the question: when being asked for permission for access, how does a farmer examine strangers to identify and weed out those who might behave perversely? Maybe a little koru tattoo would pass muster, whereas a full facial moko would incriminate the wearer. I had reservations about a farmer's appraising a person by what he or she looked like. Entry by arrangement, for all its nostalgic tradition and professed merits, can be an arbitrary and discriminatory approach.

My submission on the 2003 Acland report endorsed the universal desire to retain as much arranged access as possible; but I also argued for certain and durable forms of access, ones that would guarantee equality of opportunity.[39] Individual landholders should not always be the ultimate authority over who can and who cannot view the farmed landscape.

Many farmers did 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.[40]

Into November now, and the ugly rhetoric, misinformation, misconceptions, anxiety disorders and political poppycock 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 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 would patrol the farms, guarding the farmers from the covetous walkers?

A year earlier, a reflective comment in the Fish and Game New Zealand submission on the 2003 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.'[41]

On 3 November an ill-informed editorial in the *Nelson Mail* backed up Federated Farmers's long stint in mulish 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.[42]

One wondered whether the writer of this editorial had read the Preface of the 2003 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.'

Blown out of All Proportion

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 2003 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.[43]

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 camps. 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.'[44]

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 hammered the existing wedge deeper. Sutton was later to comment:

> Particularly appalling in this debate [on rural crime] were those who used the example of farmers killed by presumed poachers to argue against walking alongside rivers. This tragic example would be better used in arguments about gun control, not walking access for unarmed people.[45]

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:

> 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.[46]

FMG was set up in 1905, by farmers, for farmers. So 2005 would be FMG's centenary. We can adapt a remark attributed to Ralph Nader: for a century the insurance industry had 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 in 2004 was a 19th-century relic in a 21st-century world. It was no longer working reliably enough everywhere, which was inevitable in a country

in which some country-dwellers seemed to be suspended in a pit of delusional insecurity, and in which some farmers talked about using firearms to protect themselves. Yet the figures provided by New Zealand Police, for what they were worth, tentatively suggested that demonic influences were on the wane, our rural crime rate being at a twenty-year low.

Left to its own devices, the current system would 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 could legislate to slightly open up our privately owned countryside, moving away from me-me-me and a little towards the norms of northern Europe.

A Scottish View on Walking Access and Rural Crime

In New Zealand the bizarrely combined issue of walking access and rural crime was to stay actively alive until about mid-2005, after which it was to die down. It will no doubt flare up again occasionally, but this book will not dwell on it again. Before we leave it, we can briefly widen our perspective because concurrently with New Zealand's 2004 rumpus about walkers and rural crime, Scotland was discussing similar issues, although not so noisily.

The Land Reform (Scotland) Act 2003 received royal assent in February 2003. The act required that a new Scottish Outdoor Access Code be prepared. Scottish Natural Heritage was charged with developing the code for the Scottish parliament to consider. In March 2003 Scottish Natural Heritage released a draft code for wide public consultation. The question of vandalism and crime received attention on the first page of the first section of this seventy-two-page document:

> 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 antisocial behaviour.[47]

The Land Reform (Scotland) Act 2003 and the Scottish Outdoor Access Code came into effect on 9 February 2005. On that day, an Aberdeen law firm published a paper on the act's implications for owners and occupiers. This is what Professor Jeremy Robinson said about the Scots' new access rights and rural crime:

> Concern has been expressed by land managers about people who come onto land for nefarious purposes. It is thought such people

> may try and shelter behind the new access rights. At present they can be told to leave. The fear is that when challenged in future they may respond that they are exercising their access rights so that this will be more difficult to deal with. In other words, the new regime could aggravate an existing problem. This is clearly something land managers should keep a close eye on. It is not an access problem as such; it is a rural crime problem and one solution would be to raise the profile of the need to tackle rural crime. This may sound like a triumph for hope over experience. However, experience with wildlife crime suggests that continuing pressure can produce results and Scottish Natural Heritage has had initial discussions with the police about this. All the existing criminal offences directed at rural crime, and there are a considerable number of these, continue to be available. In addition, it may be possible, if these fears are realised, to use some of the support mechanisms described above, for example, exemption orders, to try and resolve a problem.[48]

Crime is omnipresent. It exists in Glasgow and Auckland, in Queenstown and Aviemore, in the small farming communities of Dumfriesshire and in the townships of the Waikato. The challenge for a free people is to restrain it without sacrificing fundamental liberties.

Chapter 18

Traditional Access and New Landowners

Pro-access statement:
'Sometimes the new regime is established by an overseas purchaser, although often it is a new New Zealand owner.' (Jim Sutton, press release, 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 farmland. His statement was true. Later in 2003, many submissions verified what he had said. In a news release after the publication of the 2003 Acland report, 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.[1]

I have said it before: nothing about access is simple. The 2003 Acland report included sections on changes in land use and changes in land-ownership. These listed a number of factors that had contributed to a loss of admittance to previously accessible private land. The notoriety of two particular demons – foreign owner and lifestyle owner – was perhaps supported by some factual evidence, but the genus *Land-guard* could also contain your good old Kiwi cow-cocky and sheep-cocky.

It was impossible to measure or even estimate the proportion of access problems that were connected with foreign ownership. Some vague figures on the extent of foreign ownership, however, were available for New Zealand's high country. In 2002, Forest and Bird estimated that overseas

interests controlled 220,000 hectares of New Zealand's high-country stations, mostly crown pastoral leasehold land.[2] But other estimates varied. In 2004 the Overseas Investment Commission calculated that foreigners owned 123,000 hectares of the high country.[3] The way that 'foreigner' was defined created confusion. Anyone with permanent residency could buy land in New Zealand without the approval of the Overseas Investment Commission. Despite this uncertainty, there was little doubt that some foreign owners were locking up their lands. In 2002 Mike Floate of Federated Mountain Clubs wrote:

> We once used to be able to wander virtually anywhere we liked. Now access is often denied, more by foreign owners who don't have that tradition. They see they have trespass rights and use them. And they run businesses [such as guided hunting and luxury lodges], so they want to keep exclusive rights for their clients.[4]

The sins of New Zealand-citizen landowners, the journalist Bruce Ansley pointed out, had been almost forgotten. The new owners of Erewhon Station had put up a sign: 'Forgive those that trespass? Not me. I shoot the bastards.'[5]

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

Persuasiveness of an Access Code

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 consent has been occasionally 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 2003 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.[6]

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

The proposed access code would help to preserve access by permission as one part of our national approach to access. Many New Zealanders would remain content to ask for permission to enter the countryside, irrespective of whether they viewed the practice as a common courtesy or as paying homage to one's lord.

The Need for Certainty

Regarding the implicit assumption that one-off arranged admittance would satisfy the changing expectations of walkers and tourists in the 21st century, I have already argued that grace-and-favour access has basic drawbacks. Many recreators in 2003–4 saw the need for something better than a black-and-white TV.[7]

At about the same time as 'Mythbusters' appeared on the Federated Farmers website, two foreign land-buyers, the Canadian singer Shania Twain (Eileen Lange) and her husband Robert John (Mutt) Lange, offered the public something more reliable than access by consent. In connection with their purchase of the leases for Motatapu and Mount Soho stations between Wanaka and Arrowtown, they agreed to the building of a new twenty-seven-kilometre walking track across the property. The route would make a three-day tramp across a fantastic stretch of mountains. The buyers offered to pay for the construction of the track including stiles and bridges and signage. They would also build a new trampers' hut, upgrade a musterers' hut, and provide campgrounds. As well, they would give $10,000 a year towards maintenance.[8] Unlike arranged access, the track would be open 365 days a year and could be marked on maps as a foot-track open to the public.[9] It would meet all the criteria of the government's proposed objective of high-quality access, being certain, open to all, free, and enduring.

The previous owners, Don and Sally McKay, hard-working high-country farmers, had not wanted people walking over the station, although they had occasionally granted access for a fee.[10]

The Overseas Investment Commission (OIC) had to approve the sale of the two stations to foreigners. The national-interest benefits needed to be 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. This solution had been suggested by

Geoff Chapple; the track would form a spectacular section of Te Araroa (the Long Pathway).[11]

There was something wrong. Something strange. Across great swaths of private New Zealand, the only way to establish public walking tracks guaranteed for all time was by selling the land to foreigners. We will return to this point when we discuss the Overseas Investment Bill, in Chapter 28.

Chapter 19

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.' (Jim Sutton, press release, 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 intense a word? Did many 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 representatives of various organisations, and so it had plenty of opportunity to test Sutton's hypothesis. On charging for admission, the 2003 Acland report was uncharacteristically one-sided and blunt: 'The public believes that access to New Zealand's outdoors should be free.'[1] 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.'[2] (My italics.)

The reference group noted that the Department of Conservation charged concession fees for commercial businesses that operated tramping and walking activities on public land. The group recognised that DOC's charging for access to public resources could set a precedent that could encourage private landowners to charge for walking access to private land.

Regarding hunting and fishing, the analysis of written submissions on the 2003 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'.[3]

Not everyone had been impressed by this example of a consultative and democratic process. Before we examine Federated Farmers's specific com-

ments on charging for access, we should remember that the federation had strongly criticised the 2003 Acland report in general. The federation had not thought that 230 submissions was a large number. The federation had also said that 'most of the submissions [came] from representatives of the same or similar interest groups'.[4] (Who else would they come from?)

*

The 'Mythbusters' comment on Sutton's fundamentally important statement was 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 interpreted the total comment, you could have missed 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 created for farmers was a foremost issue for Federated Farmers.[5] The federation argued that the cost of providing and maintaining public accessways and signage must fall on the public users.[6] The federation 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.[7]

In 2009 the New Zealand Walking Access Commission established a contestable fund 'to provide some financial support to territorial authorities and interest groups to help them to obtain, develop, improve, maintain, administer, and signpost walking access over any land'.[8] In March 2010 the commission invited interested individuals and groups to apply for money. Up to $225,000 was available for distribution in 2010. The maximum available to any one project would be $50,000.[9]

The cost of maintaining foot-tracks will continue to be shared by many organisations and groups: the Department of Conservation, local and regional authorities, Fish and Game New Zealand, track trusts, recreational organisations and interested landowners. It is likely that the Walking Access Commission will work with local councils, landholders and recreation organisations to supply, install and maintain signage.[10]

We will look at construction and maintenance costs again in Chapter 38.

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

In a section on changes in land use, the 2003 Acland report acknowledged the flourishing 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.[11]

In its submission on the 2003 Acland report, Federated Farmers stated its views on these turnstiles. The difference between the thinking of farmers and outdoor recreators is sometimes profound. New Zealand farmers did 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 [*sic*].
>
> 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.[12]

We ought not to let the first sentence go unchallenged. It was the sort of confident and apparently authoritative factual statement that can slip past one's fault-detector: 'Visitors to the farm impose significant costs on landowners'. I know of no study that has estimated the annual costs to New Zealand farmers of having walking tracks across their farms. (This does not necessarily mean that nobody has carried out such a study.) In many cases, especially those situations involving no additional track maintenance, the annual costs could be negligible. Consultants in Britain have studied the costs to landowners affected by walking access, but the context was area access, not linear access. Appendix 5 gives brief details of two such investigations.

Three Thousand Rural Tourism Operators

Recreation had been the driving force behind the pro-access lobbies that had forced land access onto the political agenda. Yet outdoor tourism too had much to gain – and had not much to lose, although some might have disagreed – from the access improvements that would 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 in 2003, in two-thirds of New Zealand, did not exist. This one development alone, merely the provision of information, could help to diversify and mature New Zealand's outdoor tourism.

In April 2004 I wrote to Mark Burton, the minister of tourism, discussing the importance to tourism of the possible repercussions of the 2003 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, open to all, and permanent. The minister managed to reply both encouragingly and circumspectly. He zeroed in on a growth area that held considerable economic importance and which also presented a tough dilemma to the debaters of the desirability of 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.[13]

One of the landowner anecdotes in Federated Farmers's submission to the 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.[14]

We cannot repeat this too often: free foot-tracks to enter and enjoy the farmed landscape should be an important part of every New Zealander's birthright. There is nothing wrong with being receptive to economic goals, but treating the private rural scenery as raw material for generating personal income is more morally complicated than charging for entry to a swimming pool or cinema or golf course.

My garden, a tiny patch, is of no importance to Dunedin walkers; the farmland of the Otago Peninsula is innately important to them, and most of them do not expect to pay to walk across their own local countryside. We shall return to the subject of private walking tracks later in this chapter.

Royal Hunting Estates 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 wildlife, fish and water being public property; ie they do not attach to land title. In Chapters 9 and 16 we saw that some landowners had used the Trespass Act to restrict access, hence obtaining exclusive capture of sports fishing and game hunting. The September 2004 issue of *Reel Life*, the angling newsletter from Fish and Game New Zealand, described an example, which we could call Poronui Station, Phase Three:

> 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.[15]

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

> 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.[16]

Federated Farmers argued that legislating to extend the Queen's Chain would amount to a taking or reduction of private property rights for which landowners should be financially compensated. Fish and Game, in head-on reply, asserted that by using the Trespass Act some farmers and other landowners had confiscated the public's rights to wilderness fishing and to access and enjoy natural waterways. These farmers and other landowners, Fish and Game said, should be paying compensation to the public.

An eventual solution to the Poronui Station access problem would happen by chance in 2007, not because of any overall legislated removal of exclusive capture, but because of the sale of the property to an overseas buyer and the accompanying involvement of the Overseas Investment Office.

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.[17]

The private Banks Peninsula Track runs for thirty-five 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'.[18] In the short term, turnstile-at-the-gate approaches widen the access opportunities for those walkers and trampers 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. For a farm on marginal land, the revenue from a private walking track might help to keep the farm viable. For some farming families, particularly those in remote places, involvement in running a private walking track may provide welcome social contact. But there

is an argument that such approaches are hopelessly provisional and are unsuitable for protecting valued natural or cultural features in perpetuity.

Farmstays

Plenty of enterprising farmers are confident of their ability to not only safeguard such features but also to transform them into market commodities. On 8 November 2004 the *New Zealand Herald* ran a story 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, would 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 home-stay 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.'[19]

Farmstays form an important part of the rural sector of New Zealand's economy. The involvement of farmers in tourism ventures had increased steadily in the 1990s. By 1999, farmstay, home-stay and bed-and-breakfast accommodation accounted for almost half of all rural tourism enterprises in New Zealand.[20] In many areas, rural tourism had become part of the rural fabric. In some cases, it had probably allowed farmers to stay on rural properties which were otherwise not economically viable.[21]

The holidays on farms typically include comfortable and relaxing accommodation, wholesome food, observing or joining in some of the farmwork, and enjoying the forested, grazed and cultivated landscape. Yet there is another way, apart from farmstays, of providing the last-mentioned part of this experience – you can provide it free, to all New Zealanders, by having public foot-tracks across farmland. Hugh Rose, a farmer with liberal views on public access, pointed out to me that their taking fee-paying guests to supplement their farm income did not automatically mean that they would deny access to nonpaying walkers.[22]

Private Walking Tracks

Elsewhere in New Zealand, though, by 2005 there were about fourteen private walking tracks that were open to paying customers but which were not open to nonpayers.[23] This sort of access entrepreneurialism 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 possession. A turnstile at the gate effectively reinforces a landowner's right to exclude and delays efforts to weaken it.[24]

New Zealand has been slow in developing networks of public foot-tracks over farmland. Outside the national parks and conservation parks and reserves, our web of usable public tracks is only emergent, with much growth still to take place. The public foot-track networks in many pastoral

areas are rudimentary or nonexistent. Many commercial forests have no functional foot-tracks dedicated to enduring public use. 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 the public good 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 home-staying. In other situations, the two demands may be incompatible. Some decisions may 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 release of 23 January 2003: 'Sometimes access is allowed in return for payment … All this is anathema to a lot of New Zealanders.'

If Sutton was right, people's views on the turnstiles ought by 2005 to have been hopelessly polarised; in actuality, though, there had hardly been a single public whimper of unease. I must admit, this apparent complacency – or maybe it was approval – surprised and slightly irritated me. As I saw it, access advocates awaited a change in public perception. Walkers needed to understand that turnstiles on the foot-tracks would not open our farmed countryside to most of the public.

Had he been still with us, the Irish dramatist and socialist George Bernard Shaw would have understood this issue. While visiting New Zealand in 1934 at the age of seventy-seven, he spoke of tourists as beasts to be avoided:

> New Zealand is a sort of place you should keep for the recreation of your own workers and people and not so much for tourists … You don't want to make New Zealand another Riviera, do you? Remember that all tourists are not exemplary characters like myself. You should reserve your attractions for those who have earned the right to enjoy them, so that you may never become dependent on migratory wasters.[25]

What proportion of New Zealanders agreed with Shaw's utterance is uncertain. Margaret McClure has written that

> New Zealanders were often reluctant to share their country with tourists. There have been ongoing debates over who should use New Zealand's outdoor areas: ordinary New Zealanders who earned their access to nature the hard way, or wealthy outsiders who yearned for civilised pleasures.[26]

In fact, between March 1934 and March 1935, only 8,378 tourists visited New Zealand from overseas.[27] Throughout much of the 20th century, 'New Zealand's situation "at the wrong end of the world" inhibited large numbers of tourists from venturing so far'.[28] Tourism remained the Cinderella of industries.

Then, on 4 April 1963, BOAC's regular pure-jet service between Auckland and the United Kingdom began. The flying time was thirty-seven hours.[29] Jet travel began to change everything, including the use and importance of New Zealand's walking tracks. In the year ending January 1987 there were 743,976 overseas visitors, who brought an estimated $1,045 million into the country.[30] In the calendar year 2003, 2,074,000 tourists arrived.[31]

In the year ending March 2005, international travellers spent $8.1 billion on tourist activities, while domestic travellers spent $9.4 billion. Tourism contributed 18.7 per cent ($8.1 billion) to New Zealand's total export earnings. An estimated 105,000 full-time equivalent employees were directly engaged in producing goods and services purchased by tourists.[32] Most New Zealanders were obviously no longer disinclined to share their spectacular natural landscapes with visitors. Instead, a new issue had arisen: paying visitors were now reserving the pastoral landscapes exclusively for themselves, aided by the overwhelming political influence of two multi-billion-dollar industries: tourism and agriculture.

We haven't yet finished with walking tracks as revenue streams. We will grapple with them again in Chapter 38, to further consider whether these business ventures fit in comfortably with the 2003 Acland report's finding that 'the public believes that access to New Zealand's outdoors should be free'.

Chapter 20

Other Issues of 2003–2004

There are a few assorted matters that we have not yet covered. They are the questions of whether the ministerial 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 claimed figure of 92 per cent was based on rigorous independent research. Also I need to add a note about the Green Party's walking-access policy statement of November 2004. Finally I will speculate on the total provision of walking tracks in New Zealand compared with that in some other countries.

The Make-up of the Land Access Ministerial Reference Group

When in January 2003 the reference 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 had offered him the job of chairing the group, had reportedly told his youngest daughter he was afraid he would be burnt at the stake.[1]

Looking back nearly two years later, one forgot that there had been 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, was a former National Party member of parliament. Regarding this make-up, the initial reactions from the recreational lobby had varied from unworried, through noncommittal, to pessimistic. John Wilson, the president of Federated Mountain Clubs of New Zealand, had 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.[2]

Fish and Game New Zealand had 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.[3]

A gang that contained more farmers than lawyers had not impressed Public Access New Zealand. This was clear from a PANZ press release:

> The Reference Group has a predominance of farming interests, and minimal recreational presence. The latter is most disappointing given its purpose. [Mr Mason said:] '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.'[4]

And again, three weeks later:

> 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'.[5]

Rural News reported that Bruce Mason, the PANZ researcher, had said that the government may have set the group's objectives too wide. Sutton, according to Mason, should have confined the research to the access issues surrounding public land instead of including access to private land. Mason said that 'irritating landowners will be the only achievement'.[6] Mason, through his years of prodigious labours for the cause of access, knew much about angering landowners, and his prophesy was soon to prove correct in one sense and incorrect in another. The findings and recommendations of the Land Access Ministerial Reference Group would certainly give rise to some irritated landowners. But that would not be the group's only achievement. Far from it. Looking back, one can see a clear progression from the 2003 Acland report to the National Strategy for Walking Access, completed in 2010.

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].[7]

Whatever the balance of the group, it produced a progressive report that received praise from outdoor recreators and odium from farmers.

The PANZ suggestion that the group was 'poorly equipped' for its role seemed to me unfair, although perhaps the inclusion of a PANZ representative might have further extended the group's collective knowledge. Any suggestion that the group was biased against landowners seemed to me unjustified. Acland's tribute appeared fitting: '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.'[8]

Jim Sutton, in setting up the reference group, had expressed a wish to bring community wisdom to bear on the topic. The group had done that.

David Carter Queries the Reference Group's Impartiality

The predominance of agricultural interests on the group had been so manifest that the anti-access factions had not quibbled over the fairness of the group's make-up. Yet 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 2003 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.[9]

On 8 September 2004 a story in *Rural News* piled on the innuendo. Carter 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 was related to Sutton. Roy had been a National Party member of parliament from 1993 to 2002.)

Carter was 'most concerned' about the inclusion of Braun-Elwert. He alleged 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 [while] 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.'[10]

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.[11]

A sheep and beef farmer of many years' experience, with a degree in agricultural science from Lincoln University, David Carter was also a former Christchurch businessman, hotelier and property developer.[12] We shall meet him again and, depending on one's opinion, we will become wincingly or blissfully familiar with his pronouncements on walking access to the New Zealand countryside.

Carter's insinuative criticism of Braun-Elwert received a comprehensive reply. In a detailed 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.'[13]

This Braun-Elwert letter provoked *Rural News* into digging up some more unsubstantiated dirt. On 16 November it published a piece that cast unattributed aspersions on Braun-Elwert, with xenophobic undertones: 'Your old mate [no writer's name was 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'.[14]

Such was access politics in 2004. And malicious, if infantile, journalism.

Gottlieb Braun-Elwert remained active in advocating improved access. In 2007 he became a spokesman for StopTenureReview. He had initially welcomed the opportunities that tenure review would open for climbers and trampers, but had soon realised that 'a laudable objective was turning sour'.[15] He died of natural causes in August 2008 while on a tramping trip with a small group that included the prime minister Helen Clark, the minister for rural affairs Damien O'Connor and the minister for land information David Parker. *Forest & Bird* wrote that

> he believed high country areas were so beautiful that everyone should be able to cross them, and he campaigned for better access during his six years on the Canterbury/Aoraki Conservation Board. The natural quietness of the mountains was important to him, and he disliked the growing numbers of aircraft filling the skies around the Southern Alps. Even though he could have enriched his guiding business by flying clients to remote huts, he stuck to the longer – and quieter – on-foot route.[16]

Population Statistics and the Urban Bias

In its section on the changes in demand for access, the 2003 Acland report pointed out that 85 per cent of New Zealanders lived 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.

After the publication of the 2003 Acland report, some rural landholders 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.

Farmers Accuse Government of Urban Bias

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.[17]

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.[18]

After the land-access public consultations, the foreshore-and-seabed issue arose and contributed towards a nine-month hiatus on land access.

On 7 May 2004 I joined the audience at a debate about the seabed and foreshore. Four members of parliament each spoke for seven minutes. At the end, finding it difficult to restrain myself, I asked Wayne Mapp, the deputy leader of the National Party:

> The National Party is vigorously supporting the principle of public access to the foreshore. 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 replied adeptly with three minutes of effortless waffle about national parks and the Queen's Chain. He said nothing about walking admittance to the farmed countryside. If indeed there really was a permanent rural-urban imbalance in New Zealand politics, in favour of urbanites, it didn't show in Mapp's response to my question. The National Party, if we were to judge from this reply, didn't seem concerned about the recreational rights of the urban majority. National would remain the farmers' party, though not a party of farmers.

Population Imbalance Was Only One of Many Factors

In August 2004 Jim Sutton's update brochure awoke the farmers. Gerry Eckhoff fantasised on 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.'[19]

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 [*sic*].'[20] The language was characteristic Eckhoff hyperbole. The gentleman did not seem to know any other way of talking. 'Appropriating property rights' conjures up an image of a tyrannical regime that confiscates land; in reality the Labour government was merely trying to establish linear access for walkers to and along water margins. Yet Eckhoff was showing an alert understanding of the numbers, an understanding that many of his fellow-farmers and firebrands had not yet grasped.

It did not often happen that a senior academic substantiated a Gerry Eckhoff proclamation. This was to be one of those rare occasions. A couple of weeks after Eckhoff's numerical utterance, 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.[21]

The operative word in Hargreaves's comment was 'ultimately'. Gaining high-quality access across rural land would be a long-term crawl that would face many obstacles, one of which would be the occasional National government.

David Carter, the National Party's spokesman on agriculture, had already signalled National's opposition to Jim Sutton's intention to enhance pedestrian access to and along water margins. On 16 August 2004, after Sutton had sent his update brochure to submitters, Carter had announced that the next National Government would repeal any legislation that significantly impinged on private property rights.[22]

What could recreators learn from the two years of debate? Could track-users take a back seat and sleep soundly, relying on the population imbalance? They faced two snags. First, that not enough of them would involve themselves in the public debate. Second, that not enough of them would base their vote on this issue.

Debate More Finely Balanced than the Demographics

Since January 2003 the land-access debate that had rattled on spasmodically in the media had not reflected Eckhoff's figures of 45,000 rural landowners against 350,000 recreators (statistics of unexplained origin).

Our newspapers had published the occasional balanced and informed editorial or feature, yet these had been collectors' items, rarities that had shone out from the mass of superficial and often one-sided reporting. The farmers and other landowners were a minority, but this volatile small faction had spoken in a disproportionately loud voice. This voice had fed the public with whole silos of farmer-gossip, half-truths, misinformation, distortion, scaremongering and Eckhoff brouhaha. The farmers' side of the war of words over the alleged link between access and rural crime had resounded with panicky overstatement.

Blocs on both sides of the access debate seemed to agree on the need for an access code that would help to educate the public on the facts of access. Yet the political build-up to the creation of that access code had contained much false information. My impression was that this sustained fusillade of misinformation had come mostly from the farmers' side.

It was true, as Bob Hargreaves had said, that Federated Farmers could present sound arguments against changes in walking access and yet could still be overruled by the wishes of the urban majority. But it was equally true, and was looking quite likely, that the farmers' proficient propaganda could turn an ignorant public against the government's plans. Thanks to the farmers' untruths, few of the public realised that the commotion was merely about walking tracks along water margins.

From its national office in Wellington, which provided a centre for policy development, advocacy, lobbying and legal services, Federated Farmers ran a professionally staffed lobbying machine, which in 2003 banged out 268 media releases. There was some merit in the existence of this formidable lobby. All New Zealanders benefited, in some ways, from farming having a brawny voice. The agriculture-and-forestry sector remained one of the largest sectors in the New Zealand economy. Together with its support and processing components, it regularly contributed more than $21 billion per year, or about 20 per cent of New Zealand's Gross Domestic Product.[23] The danger, though, was that the farmers' mouthpiece could skew the public debate on a matter that was much wider than the economic indispensability of sheep.

In 2003, access advocates witnessed the pique and self-importance of that mouthpiece. When Jim Sutton set up the Land Access Ministerial Reference Group, Federated Farmers complained that it had not been consulted beforehand. While every other New Zealand organisation and every other New Zealander waited for the formal consultation process, the leaders of Federated Farmers implied that they should have received special treatment.

There was a long history of giving precedence to the voice of the farmers. For a century and a half, the agricultural sector had been of crucial importance to the New Zealand economy:

> Apart from a few brief years during the goldrushes of the 1860s, farmers [had] contributed the greatest part of New Zealand's export earnings … From the very start, New Zealand farmers considered themselves worthy of special treatment … [One reason] why farmers believed that they deserved special treatment was because they were

> producers of wealth on whom everyone else, apart from goldminers, depended for economic survival.[24]

This favouritism towards organised agricultural interests, which had become embedded in the state policy-making machinery, had very effectively minimised the growth of de jure public access to the working countryside.

Opposing the ideas and desires of the urban masses was a familiar and instinctive role for Federated Farmers. The federation owed its existence to farmers' recognition, in the mid-20th century, of the need 'to present a stronger and more united front to counter the increasingly powerful and vocal urban interests', such as the soil-conservation movement.[25] To answer this need, 'in 1946, the Sheepowners' Federation (known as the "squatters") and the Farmers' Union (the "cockies") sank past differences to form the Federated Farmers of New Zealand'.[26] This unification may have contributed to a sharpened rural-urban divide, characterised by a bluntly expressed them-and-us rancour.

After the second world war the rural population, which had been shrinking since the turn of the century, shrank more rapidly, while the suburbs grew relentlessly.[27] Apparently, 'political power, held for so long in the strong hands of farmers, slipped away faster than an East Cape hillside'.[28] On the other hand, in the 1950s and 60s, 'in comparison with the urban dweller, the farmers remained a self-conscious social group, united by a distinctive form of production and by an entrepreneurial ethic of personal profit and independence'.[29]

By late 2004 the walking-access debate seemed more finely balanced than the population figures might have suggested. The farmers were not politically emasculated. In the short term, their noisy two-year campaign against the government's access plans looked likely to thwart any possibility of the farmers being crushed by the plebiscite. New Zealand administrations had long since ceased to be governments of farmers, by farmers, for farmers – as the Liberal governments had been in the early 20th century[30] – yet our agricultural industry still had a political punch way beyond the industry's size measured in number of people. In contrast to the public's crucial influence on the concurrent foreshore-access debate, people on the street were not playing a key role in the land-access arguments.[31]

In the longer term, though, Federated Farmers would probably have to change tack, to move away from its overprotective controlism. The case for high-quality walking access to the farmed countryside was irresistible. For if the wellbeing of every New Zealander depended to some extent on the prosperity of the country's farms, the opposite was also true. The future of those farms could not be divorced from the quality of urban life. Farmers would benefit not just from efficient farm management but also from the existence of energetic and sophisticated urban populations. One important influence on national mental and physical health is the recreational opportunities open to our townspeople.

Ninety-two Per Cent

In April 2003 the Federated Farmers submission to the 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. All others generally do so provided certain conditions are met and rules (formal or informal) followed.[32]

In the twenty months that followed, leading up to the cabinet paper of December 2004, federation spokespeople and farmers in general frequently claimed that 92 per cent of farmers admitted walkers if asked. The number 92 became a farmers' rallying cry. It refused to go away. In one sense the number deserved this stubborn importance because many recreators continued to depend on access by consent. In another, more significant sense, the number was irrelevant because grace-and-favour access was inferior access that did not meet several of the criteria of high-quality access. That the number 92 had become a litany ingrained in the debate, implying that arranged entry would meet most access requirements and desires, indicated how entrenched that debate had become. The farmers would not tire of haranguing the public with the words 'ninety-two per cent!' until they themselves faced the facts and recognised the need for more-certain access.

Deficiencies of Traditional Access

What were the facts? In what ways did arranged entry not meet the criteria of high-quality access? I mentioned several ways in Chapter 11. John Acland 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?'[33]

And what do you do, in places such as the Otago Peninsula, about the 54 per cent who are not?[34]

An article in the *Marlborough Express* unintentionally highlighted – for me, if not for most readers – another way in which arranged access could 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.[35]

In many situations it is problematic and time-consuming to ask for permission. The effort involved can be disproportionate to whatever excursion the requester is hoping to undertake. 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. Furthermore, as Kay Booth pointed out,

> in most cases, recreationists need to seek permission prior to leaving home, which further complicates their ability to find the correct person. In addition, the widening urban/rural interface, with a concomitant loss of rural etiquette and understanding of rural practices, means that many recreationists will not know how to approach a farmer in a rural setting.[36]

The essence of the predicament is this: the landholder expects permission to be sought, but the recreationist does not have the necessary information or confidence to seek it. Booth calls this dilemma the access permission conundrum.[37]

Another aspect of the access permission conundrum is that visitors often need last-minute approval. Many track-users want spur-of-the moment flexibility: the freedom to act on impulse, responding to a favourable weather forecast or to a sudden urge. On the subject of asking for permission, in the context of the Port Hills of Christchurch, Reuben Peterson wrote that

> even though land owners can be contacted, access is still at their discretion. There is also no guarantee that land owners will consent to the advertisement of their phone numbers. The main difficulty with contacting land owners to arrange access is that seventy-one percent of people decide to use the Port Hills on the day.[38] It would be very difficult for people to contact land owners straight away and get permission to use their land. This situation could also be undesirable for the land owner as the more popular properties are likely to receive a considerable number of phone calls.[39]

To improve the efficiency of the permission-seeking, tramping clubs and other recreational interest groups have partly institutionalised the process. Guidebooks sometimes include landowners' contact details. Often, though, vital knowledge of landholders' names and telephone numbers is widespread within a club but is unavailable to the public. Some groups have gained routine access for their members to desired sites on privately owned land.

Kay Booth pointed out that this group-friendly aspect of arranged access is inequitable because it results in access winners and losers. 'The losers are the less confident, who, as a result, continue to patronise public lands for their recreation and are "hidden" within this debate.'[40] Being a trained academic, trusting in research results in preference to her intuition, she wrote carefully that 'the extent to which the need to seek access permission deters outdoor recreation is unknown'.[41] A less cautious observer might have contended that New Zealand's decrepit custom of arranging access could have been specifically designed to minimise recreational access to the farmed countryside.

Some support for the view that access by permission benefited club-members and event participants over unattached individuals lay in a 2000 paper by Grant Hunter. He suggested that 'diversity in land ownership can enhance the overall opportunities for resource-based recreation and tourism at the regional level'.[42] His research led him to conclude that

> at least for relatively aware, organised public groups, land tenure *per se* does not appear to strongly facilitate, or inhibit, recreational choices. Individuals and other small, informal 'non-paying' groups, who lack the knowledge of opportunities and/or acceptance by landowners, may be less well served by private land ownership.[43]

If the large majority of outdoor recreators had belonged to organised clubs, perhaps this unfairness might not have mattered much. But research in the early 1990s had identified trends in outdoor recreation that included a decreased structured participation via traditional outdoor-recreation clubs and an increased number of people doing their own thing in a small group.[44] New Zealanders were no longer great joiners to clubs and associations. This trend may have continued.

Chapter 35 will mention three multi-sport or mountain-biking events held annually in the South Island high country. According to one observer, in 2009 some pastoral lessees were granting access for commercial events on one day a year but were denying access to everyone else during the rest of the year. Furthermore, the event-organisers were making a virtue of the exclusivity, marketing their events as rare opportunities to walk or cycle some magnificent tracks across normally closed farmland.

The worst feature of single-occasion arranged linear access – it bears repeating – is that the route 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. It is fourth-class access, an old fuddy-duddy idea, riddled with undependability. In this connection, by late 2004 Ninety-two Per Cent had become a symbol of obduracy and unresponsiveness.

Furthermore, over perhaps several decades, de facto access had sometimes become a mere pawn on the chessboard of rural politics. In riposte to issues unconnected with access, some farmers had chosen to deny traditional access rights. Kay Booth quotes an example from an interview with Neil Deans, the manager of the Nelson-Marlborough regional office of Fish and Game New Zealand:

> We've [Fish and Game New Zealand] had an issue blow up in Motueka to do with a water conservation order, where we have had considerable fall out with well-water users, because they may be restricted. A number of them have said 'oh, bugger you, we're withdrawing the access across our place' … so grace and favour arrangements do have that sort of limitation.[45]

In this example the loss of de facto access was a reaction to increased regulation, rather than to the access issue itself. This sort of deliberately

obstructive and unhelpful approach of landowners, which they may apply to disparate rural issues, has been called country-mindedness.

Methodology Not Open to Public Scrutiny

According to the survey cited by Federated Farmers, ninety-two out of every hundred farmers were favourably disposed towards granting entry when asked. How important was the accuracy of the figure of 92 per cent?

We saw in Chapter 11 that there were two ways of looking at grace-and-favour access. On the one hand, as the 1980s and 90s had passed, access expectations had changed. Many walkers and other track-users now wanted certainty and spontaneity. Asking permission for access did not provide these qualities. For these busy people, the accuracy of the 92 per cent statistic had little pertinence to the overall debate. The reliability of that figure was, for them, a peripheral issue.

On the other hand, some trampers, anglers and hunters still regularly relied on one-off access by consent. For them, the correctness of the 92 per cent figure was important. They should have been asking three questions about the 92 per cent. Firstly, how often did these sympathetic farmers say no, and on what criteria?

Secondly, were there trouble spots where the proportion of farmers who said yes was significantly less than 92 per cent? The answer appeared 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 did so at the time of the study.[46]

Thirdly, did the 92 per cent figure truly reflect the average situation across the whole country? The figure may have been the case for the South Island high country – and another survey had indicated that it was[47] – but it was hard to believe of most peri-urban locations. Far be it from me to allege that the FFNZ results were based on anything less than immaculate science, yet I thought I would check. In November 2004 I contacted Federated Farmers, requesting a copy of the research documentation. The federation answered courteously, explaining that only the results of its research were publicly available.

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

In May 2008, five years after publishing the 92 per cent result derived from research unavailable for public perusal, the federation would still be regurgitating this finding, such as in the federation's submission on the Walking Access Bill, which would state that 'the Federation's own

surveys among our members indicated that a high percentage (over 90%) of landholders provide access across their properties [when asked for permission]'.[48]

The Wrong Investigation

On 24 November 2004 the Green Party announced its 'public access position'.[49] Jeanette Fitzsimons, the party's co-leader, agreed with the need to locate and open unformed public roads. She also supported the ideas of an access code and an access commissioner. She also envisaged the access commissioner negotiating, and holding on behalf of the public, written access agreements with landowners. If I interpreted her press release correctly, she meant voluntary agreements. Recreators will have eagerly welcomed the general thrust of these stances.

Walkers will have approved of the Green Party's call for the utilisation of 'paper' roads. There was already a widespread recognition that it could be difficult to reconnoitre a walk along an unformed public road without the help of a lawyer and a land-surveyor.

So far, so good. But Roman politicians had a word, *procrastinare*, which meant 'to postpone until tomorrow', and the Green Party wanted to postpone some delicate aspects of the proposed New Zealand land access strategy. Fitzsimons was 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. The access commissioner would be spending two years investigating the availability of black-and-white TVs.

As I saw it, the access commissioner, if such a person were to be designated, ought to concentrate not on the known inadequacies of one-off arranged access but on the clear superiority of high-quality access. He or she could spend two years determining what proportion of landowners would voluntarily consent to the establishment of permanent public foot-tracks. Such an investigation would replace conjecture with facts and would be immensely relevant.

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

In my access writings of 2003–4 I had acknowledged the established place of arranged admittance as one part of access in New Zealand. I had also emphasised its deficiencies. For the sake of our children and their children, we needed a longer-term approach than solely access at the pleasure of the landholder.

Provision of Public Foot-tracks: International Comparisons

Benjamin Disraeli, a British Tory statesman and the prime minister in 1874–80, said there are three kinds of lies: lies, damned lies and statistics. Statistics may vaguely reflect what's underneath but you can slip up on them.

Here is an example. Dunedin city council's Track Policy and Strategy (1998) quoted an American national standard of 50 miles of tracks for each 100,000 people (taken from the Colorado Springs Multi-use Trails Master Plan of 1988). The Dunedin area, apparently, was well in advance of this standard with 313 miles of tracks for 118,000 people. The Track Policy and Strategy suggested that 'perhaps Dunedin does not need more tracks, but that better on- and off-site information is needed'.[50] Welcome to the slippery world of access statistics.

How far away from Dunedin were its 313 miles of tracks? What proportion of the 313 miles crossed the improved pastoral countryside, as distinct from native bush, regenerating bush and elevated tussock grasslands? What tracks were available ten minutes' walk away from where people lived? What about the so-called network of foot-tracks on the Otago Peninsula, which in 2004 was abjectly deficient? What about the lack of continuous coastal foot-tracks in the Dunedin area? Were walkers happy with the permitted track over McGregors Hill, closed for two months each summer and susceptible to permanent closure? How did the American standard compare with the track provisions of western Europe?

Access statistics are hugely complicated. A one-line rule of thumb from the park and recreation department of Colorado Springs may have no more relevance to the consideration of Dunedin's track coverage than, say, the fact that in 2003 London and the southeast of England had 33,759 kilometres of public rights of way (mainly public footpaths and bridleways), a network density of 1.2 kilometres per square kilometre.[51] When scholars attempt rigorous analysis of recreational access to the countryside, the results may be esoteric papers adorned with definitions, causal variables, conceptual considerations, tables of mean quadrant values, weighted indices of access availability, and fourth-order polynomial regression curves.

Countryside Access in North America and Western Europe

Most of these academic papers are stones that I will leave unturned. Yet I would like to have recourse to just one. As Dunedin city council's consultants saw fit to quote an American example, it seems to me pertinent to look at the difference between countryside access in America and that in Europe. In 2000 *The Great Lakes Geographer* published a study of the provision of public recreational access in representative districts within western Europe and Anglo-America. The author, Hugh Millward, wrote that

> most of the literature on recreational access concerns a single country or region, and there has been very little cross-cultural or international comparison of the demand for, supply of, or use of access routes and zones in the countryside … In particular, until recently,

> there have been no empirical studies which allow a comparison of the supply or availability of countryside access.[52]

The national settings that Millward used in western Europe were Britain, France, West Germany and Benelux. In Anglo-America he chose five settings in the United States and three in Canada. Within each national or regional setting, he selected three or four representative agriculturally-settled districts and, where possible, one non-settled national park. By examining topographic maps and by field-verification and gathering published information, Millward identified and counted up various forms of access, ranging from a precisely defined 'arduous access' to an equally meticulously defined 'passive access'. His paper included detailed statistical analysis of this data. We will content ourselves with two extracts from his summary:

> This comparative survey of countryside recreational access has revealed many attributes and relationships common to both Anglo-America and West Europe, but also some considerable differences which have important behavioural and policy implications.
>
> In general, wilderness parks in both continental settings are similar, providing little passive (car-borne) or casual (trail-oriented) access, but relatively high levels of more rigorous access types. Settled areas differ markedly, however, being much more generously provided with passive and casual access in West Europe, and conversely having much more land closed to the public in Anglo-America.
>
> … It is clear that West Europeans are better provided with the more frequently demanded types of recreational access (passive and casual) and find the countryside more easily available to them.

New Zealand is not North America, yet its property-rights thinking might be closer to that of North America than to that of western Europe. I read Millward's final comments with a curious mix of déjà vu and foreboding:

> In Anglo-America, lack of cross-country access in settled areas has been partially overcome, by a substantial minority of the population, through the purchase of estate homes in the exurbs, through acquisition of private recreational retreats (cottages, cabins), or through membership in private fishing and game clubs and syndicates. In this way, the private land ethic, which is partially responsible for lower access levels, is reinforced. As both recreational demand and land prices rise, however, the social inequity of these market responses to scarce access can increasingly be called into question, and the goal of wider public access should be pursued.

Millward was suggesting that North America could learn from western Europe. Similarly, planners in New Zealand might view the astonishing track network near Mainz, West Germany, as every bit as worthy of emulating as the standards quoted in the *Multi-use Trails Master Plan* of Colorado Springs.

Statistical Gaps (2004)

Having said how complex are international comparisons of access to the countryside, I will now step hesitantly into the beginning of a crude comparison. We will define a 'physically evident foot-track' to mean a foot-track that is visible on the surface of the ground or is adequately waymarked. What was known in 2004 about the total length of physically evident public foot-tracks in New Zealand?

We knew how many kilometres of foot-track the Department of Conservation managed and maintained. Under a plan released in October 2004, DOC was to build about 625 kilometres of new track and was to phase out 435 kilometres of existing track. DOC's managed track network was expected to grow to a total of 12,900 kilometres.[53]

We could have also determined fairly accurately the length of public foot-tracks in some local authorities, excluding the length managed by DOC. For example, by extracting selected data from the Dunedin city council track database a researcher could have obtained the length of public foot-tracks – not managed by DOC – in the area administered by the city council.

But New Zealand had no national inventory of physically evident public foot-tracks, providing complete local and national statistics such as lengths and legal statuses. Still, in 2011, there is no such register. If researchers were to create this inventory, based on the Walking Access Commission's mapping system, they would need to exclude hundreds of kilometres of unformed public roads and Queen's Chain reserves that at present lack tracks or waymarked routes. A piece of unformed uselessly sited public road is not a physically evident foot-track. Although we know that there are about 56,900 kilometres of unformed public road, the proportion of these that will ever become useful foot-tracks is unknown. So, end of story. That is as far as a primitive comparison can go. It is tricky for a researcher to compare either our existing track provision or our potential track provision with the provisions of other countries.

The argument that I advance in this book – that we suffer from a dearth of walking tracks across private farmland – is therefore more subjective, based on my impressions, than objective, based on either a makeshift comparison of mileage or on empirical research underpinned by a theoretical framework. But I stick by my unproven premise, I'm a great believer in intuition (if it's my own). Furthermore, an absence of an extensive public rights of way network across farmland is not peculiar to New Zealand. In 1998 a researcher wrote that

> in Australia, there is no parallel system to the rights of way network which gives people access to much of the countryside in England and Wales. Conflict in the use of private rural lands for public recreation is common, but has yet to attract much attention from planners and policy makers.[54]

In New Zealand in 2004, outdoor recreators still needed to persuade their policy-makers that much of the nation's track network remained lopsided, under-representing the pastoral landscape despite thirty years of walkway development.

Dearth of Public Walking Tracks across Private Farmland

The trouble with intuition is that one person's common sense is another's nonsense. This is particularly so in connection with judging the need for public foot-tracks across private land. In the absence of any empirical proof, walkers have to rely on their personal experiences and impressions and on the evils of guessing. I've given you my impressions. For an example of another walker's gut feelings on this topic, we will leap ahead six months to June 2005, when the newspapers once again became full of the access debate. Alan Creak wrote to the *New Zealand Herald*:

> Alan Creak: So Much for Open Country.
> I grew up in England, where we lived in Scholes, a village in mainly agricultural country on the edge of Leeds. Despite the closeness of the city, my environment was of farms, lanes, footpaths, streams, fields, animals and crops. As I grew older I became fond of country walks. As I grew older still, the walks grew too, and half-day and day walks became a valued part of my life.
>
> Most of these walks were on footpaths across farmland. I naturally grew up knowing the rules. They were the obvious ones, such as not destroying things, not interfering with the farm activities or property, and so on. They added up to behaving responsibly. Most other people understood that too. There were a few idiots – but there always are.
>
> We came to New Zealand in 1973. It was an exciting prospect. I was aware that it was a beautiful country with a strong bias towards the outdoor life; obviously the footpaths would be even better than those in England. Then we arrived. The country was beautiful beyond my imaginings and the outdoors was highly regarded – but there were essentially no footpaths. Instead, there were notices of a sort that I'd rarely seen before; they didn't quite say 'anyone who steps off the road will be shot', but the message was there.
>
> It was a nasty shock. There were a few parks, but most of the countryside was out of bounds. And it still is. We drive through kilometres of glorious countryside with world-beating views to get to somewhere we're permitted to walk – in a forest, where we can't see anything but trees. I like trees, but I like views as well.
>
> For example, in the past few months we have seen in newspapers photographs of the countryside behind Waiwera. It is beautiful but it is inaccessible. The photographs were there because it will shortly be destroyed to build a motorway.
>
> Some of the Auckland Regional parks give us views, but the Waitakere park, with the biggest collection of walks, is mostly forest. North Shore City does its best, but most of its walks are in bush reserves, or public parks that aren't very country.
>
> There is talk of opening access to waterways. The farmers are not pleased. I'm not particularly concerned about getting to waterways but I am about the world-beating views that I glimpse from the road, but would like to see better from the top of a hill.
>
> Farmers claim the proposal will open their properties to unrestricted access, letting in criminals. Surely anyone with criminal intent is unlikely to worry about the legality of access. The only

people being kept out are law-abiding people like me. Indeed we read regularly of theft, vandalism, and murder on remote farms. We also read that there were no witnesses. Perhaps if farmers were less diligent in keeping people away, there might be more witnesses.

Farmers claim that most of them are happy to let people on to their land if they ask nicely, which misses the point entirely. Unless I know a path is there and available, I'm not likely to plan to go there. Anyway, if I do see a pretty hill I'd like to climb when I'm driving through the countryside far away from home, how do I find who I have to ask? By the time I've found the right place, it's time to go home.

Is it really true that the proportion of vandals in New Zealand is so much higher than it is in England? It certainly wasn't true in 1973, when the New Zealand countryside was, if anything, even more closed than it is now. If it's true now, then we have problems that are a lot bigger than footpaths.

The network of footpaths in England is a treasure, which grew over centuries, and is built into enough English law to be fairly protected. It is true that not everyone who uses the paths observes the rules as carefully as I, and most other people, do, and there is some misbehaviour. A lot of farmers might be happy to get rid of the paths but they can't, so they manage. Both sides have to compromise, so they do.

We've been back to England. It is wonderful, in that comparatively highly industrialised and overpopulated country, to be able to get into the countryside far more easily than in New Zealand. And almost all of the access is to farmland.

There's a story that comes in several slightly different versions, but they all end with the punchline 'I went to New Zealand, but it was closed'. It still is.[55]

The response of many *Herald* readers to Alan Creak's letter probably took the form 'but he's not saying what's good about New Zealand'. That wasn't his purpose. He was pointing out a striking deficiency. He was talking about a want of access to a then 11.7 million hectares of grazing, arable, fodder and fallow land.[56] Forty-three per cent of our land area.

Chapter 21

FFNZ's Campaign

In January 2003, the PANZ researcher Bruce Mason had called Jim Sutton's access plans 'pie in the sky'. Mason had emphasised that there was 'a very strong private property right ethos surrounding private land in New Zealand'. He was correct: New Zealand landholders cherished their property rights and in particular the absolute legal right to exclude others. Furthermore, although our outdoor recreators believed undyingly in their right to enter and enjoy publicly owned land, there was a longstanding and uncritical public and institutional acceptance that linear access across private farmland was a privilege rather than a moral right. Federated Farmers had argued uncompromisingly in support of landholders' property rights; few walkers had reasoned, in reply, that access to the pastoral landscape was a social right. 'Mythbusters' was just one small component of the federation's campaign to defeat the government, a campaign that would continue into 2005.

Undeclared Assault, Followed by Open Opposition

For twenty months from January 2003 onwards, the federation's offensive against the government's walking-access proposals had been implicit rather than explicit, although still damaging and obvious. An undeclared campaign can be as self-evident and as negative as a proclaimed one.

In August 2004 Jim Sutton's update brochure had signalled the government's intention to create 'walking access along waterways'.[1] This announcement seemed to have stung the federation into unconcealed methodical hostility. From September 2004, the federation's assault on Jim Sutton's still-vague plans had become an openly announced fight, publicised on its webpage 'Public Access across Private Land'.

In a little flourish of provocative banner-waving, one of the links on this webpage read: 'Private Property Signs. A guide on how to make signs warning visitors that they are entering private property.'

The farmers could have imported second-hand signs from Britain, where recent access legislation had in many places – mountain, moor, heath, down and common land – rendered such signs redundant. Erecting

forests of KEEP OUT signs could be a sure way to put access back on the agenda of some future New Zealand government.

My 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 2003 Acland report;
- expressed no confidence in the evidence presented to the reference group;
- denied the existence of 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';[2]
- had not recognised, or had rejected, the public's changing expectations and aspirations;
- did not support the idea of a national access strategy, nor the establishment of an access agency;
- viewed walking tracks across farms as commonly incompatible with farm management;
- opposed any interference into property rights, however minor that refinement would be;
- opposed any extension of the Queen's Chain that would impinge upon property rights;
- argued that single-occasion entry-by-permission should remain the main form of access across private rural land;
- argued that the third of New Zealand that was public land was sufficient to provide for most of the recreational needs of New Zealanders;
- did not seem to view the farmed landscape as a part of every New Zealander's outdoor heritage; and
- often seemed blind to the recreational, social, cultural, and economic value of coherent networks of public walking tracks across rural land.

From the 2003 Acland report's large fleet of constructive ideas, three ships survived the federation's storm of condemnation. The federation:

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

John Aspinall was the FFNZ national board member responsible for lands, tenure review and access. On 1 November 2004, in a letter to the *Otago Daily Times*, he expressed pride and confidence in the remnants of the fleet, which the federation had seemingly taken ownership of:

> I am surprised and disappointed by comments made by Rural Affairs Minister Jim Sutton. 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.[3]

Who was running the examination of walking access? The board of Federated Farmers? Or the Ministry for Rural Affairs? Who would decide New Zealand's land-access policies? Mr Aspinall or Mr Sutton?

No Genuine Discussion

For some people, careful debate is a tad boring compared with rhetoric and hyperbole. Back in 1996, Jim Sutton had 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.[4]

If we apply Sutton's observation to 2003–4, the situation seems to have been more complex than a simple paradox between beneficial one-to-one relationships and strained organisation-to-organisation relationships.

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

Certainly the relations between many individual farmers and many individual recreators remained cordial and productive. Yet it was also probably true to say that the vocal majority of farmers – as well as their national organisation – vehemently opposed the government's walking-access plans. They did so as a herd, with few open dissenters.

One submission on the 2003 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.[5]

Unquestionably there were individual farmers who might have been happy to have informal access arrangements formalised to become more permanent. But there was no widespread sign of farmers' open-mindedness to radical change. Quite the reverse. On access, 'Federated Farmers' had become a byword for – depending on your viewpoint – resolute or obstinate conservatism.

On 15 November 2004 an editorial in the *Press* acknowledged that lobby groups had whipped the debate into a frenzy. The long government silence had exacerbated this turmoil:

> The Government must take a large part of the blame for the current tense state of affairs. It has been a year since a ministerial committee recommended an independent access agency be formed to develop a national access plan, including mechanisms to 'embrace the ethos' of the Queen's Chain. So far, the only solid information released has been that any law will not include a right to roam but people should be allowed to walk along the coast, lakes and rivers with reasonable access across private land to waterways … No-one expected a quick solution to a complex problem but such slow progress and vague statements only serve to aggravate the situation.[6]

Maybe this stricture of the government was partly deserved. Yet I am not convinced that the release of the government's detailed plans a year earlier, had they been ready, would have forestalled the rural hullabaloo.

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 were considering mass disobedience if the government pushed ahead with its proposed land access strategy. For about the fiftieth time since May 2003, I read that 92 per cent of farmers allow entry when asked. The farmers had yet to welcome the principles of high-quality access. And Jim Sutton had yet to feel the full force of the farmers' political power.

FFNZ: the Voice of the Farmer

In November 2005, Charlie Pedersen, the new Federated Farmers president, reportedly boasted that 'the federation was easily New Zealand's most high-profile and influential lobby group'. This brag was probably true. 'The federation's claim to be "the voice of the farmer" [had] been endorsed by the State since the Second World War'.[7] In 1972 Federated Farmers had received statutory recognition as the interest group representing the farm sector on broad issues affecting all farmers.[8]

Most of this book is treating 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 number of individuals. When I say that Federated Farmers displayed a siege mentality, I mean those many farmers whose paroxysms the press releases and newspapers frequently carried. Often a newspaper story identified a farmer as an FFNZ office-holder. Some of these federation members showed more paranoia than goodwill. Some exhibited more walker-phobia than walker-friendliness.

The federation's policies were member-driven. The federation's staff and elected representatives canvassed its members for their views. This democracy clearly worked efficiently in 2003–4, because the submissions and press releases out of the FFNZ headquarters in Wellington were as reactionary and as negative as the news columns from the heartlands.

We should, however, have half expected this conflict. The mission of Federated Farmers of New Zealand (Inc) was: 'To add value to the business of farming for our members.' Federated Farmers was designed to promote the economic interests of farmers – or what it *saw* as their economic interests. The federation did not see networks of public foot-tracks as offering any direct economic benefits to individual landowners. Within the federation's parochial focus, this was all that mattered.

In the almost complete absence of farmers' voices rejecting the Federated Farmers stances on walking access, I have found it impossible, in writing Part Two and Part Three, to avoid constructing a negative farmer stereotype. I have reported only what I have observed, and I came across few farmers' statements supporting increased access to the farmed countryside. The public good, which had been a foremost consideration in the minds of those farmers who had backed the walkways of the 1970s, did not get a look-in in 2003–4. Even if public track networks could sometimes stimulate economic growth in some rural communities, it seemed that most farmers still opposed them.

Had the farmers' financial muscle swayed public opinion? Did the collective affluence of the landowners assist them in their focusing of attention on the cons and away from the pros? Perhaps. Money might have played a part in the debate, together with intense commitment, iron unity, effective organisation at a local and a national level, professional policy analysts and lobbyists, and a capable publicity machine.

Vigorous Language and Ruthless Misinforming

Federated Farmers of New Zealand is a major lobby group. In the period 2004–6 it reportedly spent about $7 million a year on policy development, all of this money coming from a voluntary membership of about 18,500.[9] Its national office reportedly had a staff of about sixty.[10] Twenty-five of these staff members concentrated on policy issues, probably New Zealand's largest policy team outside of government.[11] The federation employed a public affairs manager and communications adviser to handle the bulk of its internal and external communications.[12] It emailed each of its press releases, about one each working day, to about 250 newspapers, television channels, radio networks, websites and other media.[13] Regarding the style of these dispatches, Graeme Peters, the federation's public affairs manager, wrote that

> the Federation does not hold back when it has something pointed to say. One of the benefits of working for an advocacy group is it does not require its press releases to be 'all sugar and spice'. Quite the contrary, they are often highly critical and use very forceful language.

There's nothing wrong with forceful language – so long as it doesn't stray into half-truths and distortion. When it does, as happened in the walking-access debate of 2003–4, the potent mixture of vigorous language

and ruthless misinformation manipulates the media and contaminates the open debate that underpins our democracy. When, in addition, many journalists do not grasp the issues and therefore cannot provide informed commentary, as also occurred during the walking-access wrangling, the public debate is further impaired.

FFNZ Resources, Compared with Those of Recreational NGOs

The federation's internal communications with its 18,500 members and with the rural community were as efficient as its businesslike hoodwinking of the general public. It distributed a weekly electronic newsletter, the *Friday Flash*. The federation's fortnightly newspaper *Straight Furrow* went to 84,000 rural boxes. Its quarterly members' magazine *Federation Update* comprised sixteen full-colour pages with no advertising. Its website, which was updated daily with new material such as press releases, discussion documents and policy papers, had a public area and a members-only area.

In 2004 many rural people still had slow (dial-up) internet access rather than fast (broadband) access. To cater for these users, the federation's website was a specially designed low-graphics one. The federation had turned a disadvantage into a strength: for sheer efficiency, its no-frills website was hard to better. (This website was to be further improved with a redesign in late 2005. Ironically Public Access New Zealand's website was to became temporarily unavailable from October 2005 onwards, possibly – I'm guessing – as an indirect result of a lack of money to continue to employ Bruce Mason.)

Despite the federation's highly professional internal and external communications – utopian compared with the resources of recreational NGOs – Graeme Peters claimed that

> by the standards of many, but by no means all, private and public sector organisations, Federated Farmers' communications run on a very tight budget … Communication on a shoestring budget means that the tools used routinely by many communicators are not affordable. Tools out of reach include the use of outside public relations and advertising consultants, expensive pre-print design firms, and a dedicated website manager/designer.[14]

Communications on a shoestring? Were our beleaguered farmers impoverished? They seemed not to be short of a bob or two for financing their campaigns. On about 6 December 2004, the ACT member of parliament Gerry Eckhoff threatened to instigate a class action to resist the expected legislation. Meetings of farm lords around the country had given him confidence that such action would gain their financial support:

> Landowners were already offering to fund legal action opposing the legislation which, [Mr Eckhoff] estimated, could cost $500,000 and end up before the Supreme Court. 'I have no doubt we could raise that sort of money in a very limited space of time,' he said.[15]

As it was to turn out, the farmers were to intensify their long-running anti-access campaign, and so help to cause a government rethink, by tying orange ribbons to their gates.

PART FOUR

Impasse and Reconsultation, 2005–2008

Chapter 22

The Footways Cabinet Paper

Our look at December 2004 starts with a marginal note. On 7 December Lincoln University council elected Tom Lambie, the president of Federated Farmers since 2002, to be the university's chancellor: the figurehead of the university, a role similar to that of a chairman of a board of directors. Lambie retained his Federated Farmers position. A news bulletin reported his saying that 'the two roles do not conflict and it will not hurt to have a foot in both camps'.[1]

On 22 December 2004 some particulars of the government's access plans emerged at last when the government released its fourteen-page cabinet paper 'Walking Access in the New Zealand Outdoors'.[2] One main part of these plans was the intention to provide a five-metre-wide footway alongside rivers and lakes of significant access value in rural areas where there was no Queen's Chain reserve. The government also intended to provide these footways along some parts of the coast. The footways would fill in some gaps in the Queen's Chain, but only in places of high access-value and only for walkers. A user would have to stay on the waymarked strip, except when access was blocked by vegetation or other features, in which case a diversion of up to twenty metres from the dry margin would be allowed. No footway would be closer than fifty metres to a house. Walkers would have to comply with a statutory access code. People would not be able to take guns, dogs, bicycles, motorbikes or vehicles onto these footways.

The footways would not affect the existing Queen's Chain, said to be about 70 per cent complete (although some of this was useless, having been lost to coastal erosion or waterway movement).[3]

The cabinet paper provided quite a few details of how the footways would work in practice; it also left several crucial questions apparently unanswered. If a deer fence ran all the way down to a river, would there be a gate through the fence? If an existing farmhouse was closer than fifty metres to a river, would the footway come to a dead end? After a footway had been established, could the landowner build a house over it, thus creating a one-hundred-metre gap in the route? What about vegetated riverbanks in production forests?

In the months that followed the release of the cabinet paper, these practical uncertainties may have contributed to the eventual dumping of the proposed bill. But the rural furore triggered by the cabinet paper centred, for most people, not on practicalities but on property rights. Firstly the farmers objected to the proposed compulsion; they did not think that the government should impose the walking-access rights. Secondly the farmers took exception to the likelihood that the government would not compensate affected landowners. We will return to compulsion and compensation in Chapter 23.

Public Reactions to the Cabinet Paper

The public reactions to the walking-access plans were predictably mixed, ranging from admiration to condemnation. Some initial responses acknowledged elements of compromise in the government's proposals. Neal Wallace, agribusiness editor for the *Otago Daily Times*, thought that the government 'appeared to have successfully traversed a middle path'.[4] Bryce Johnson, the director of Fish and Game New Zealand, called the response practical, but 'he hoped access would be extended so hunters could have the right to walk over private land with a gun and dog to designated public hunting areas'.[5]

The footway proposals did not impress Bruce Mason, the co-spokesperson for Public Access New Zealand. He expected practical difficulties. He foresaw that landowners would exploit the legislation's weaknesses:

> Bruce Mason said the Government had created a minefield by trying to please all parties … The government had avoided imposing land-use controls on private land, such as restricting building, for fear of provoking compensation claims. The result of this was the possible construction of new houses, farm buildings or subdivisions alongside waterways to invoke the public-access exclusion areas of 50m [around] homes or 20m [around] farm buildings, effectively excluding the public. Instead, Mr Mason said the Government should focus on improving the legal provisions of the 70 per cent of shorelines and riverbanks which were publicly owned.[6]

Several newspapers reported surprisingly muted responses from some farmers. Neville Hagenson, the president of the Taranaki branch of Federated Farmers, had given the access plans 'a conditional thumbs up … Mr Hagenson said the amount of land involved was nowhere near what had been suggested [a twenty-metre-wide strip] … He said he felt "a lot more comfortable" with the new proposals and the lengthy period of consultation.'[7]

Perhaps Neville Hagenson had not read the Federated Farmers media release of the previous day. In this communiqué, John Aspinall, an FFNZ national board member and said by a critic to be a subconscious invoker of the Lockean view of landownership as distinct from the bundles-of-rights view[8], reiterated the dictatorial and simplistic messages that some of us had been wincing at for two years. Farms, he said, 'are run as businesses and [are] not scenic spots for teenagers wanting a midnight swim'.[9] So much for the public's outdoor ethos. Aspinall's argument, worded to

apply to New Zealand farms in general, amounted to the placing of a night curfew on the Queen's Chain. The farmers had often rued the decay of rural-urban connections, yet, as listed in Chapter 21, they had also opposed most of the reference group's access proposals, initiatives which if implemented would have helped to rebuild the links.

It was clear from this media release that the Federated Farmers official anti-access campaign would continue unabated:

> Nearly all farmers give access to walkers and others if first asked, but they vehemently object to the government using legislation to remove the right to say no … Federated Farmers makes no excuses for forcefully opposing the government using the heavy hand of legislation to build pedestrian highways over their land. That opposition will continue until the government listens with both ears, Mr Aspinall said.[10]

The private John Aspinall was a less hawkish individual than the John Aspinall who penned or approved this press release. Behind the rhetoric was a Jekyll and Hyde of the access debate. He farmed Mount Aspiring Station near Wanaka. He and his family had extended their hospitality to several generations of trampers and climbers; the family name was synonymous with the best aspects of traditional access.[11] He favoured diversification by runholders; thirty-three separate activities were carried out on his property:

> Each year the Aspinall family welcomed 70,000–80,000 people to their station. Two school camps and 25 commercial tourist operators used the land. Although the visitors generally helped to watch for stock in trouble, a small but increasing number of people were causing problems: 'the key was mutual respect between farmers, conservation and recreation groups, something that can take time to develop but which can be quickly destroyed,' he thought.[12]

Starting in 2005, Aspinall would serve on the Walking Access Consultation Panel, then the Walking Access Advisory Board and then the board of the New Zealand Walking Access Commission. In 2009–10 he would chair the project steering committee for the walking access mapping system, one of the commission's most important enterprises and an acknowledged success.

Controversy over Footways Overshadows other Proposals

The footways proposal was just one part of the government's walking-access plans. Concerned only with linear access, it was I thought a moderate proposal, particularly if compared with the right-to-roam customs of some countries in northern Europe. But it was an aspect that many New Zealand landowners considered radical. The footways, in their view, would amount to compulsory, uncompensated unregistered easements.

The brouhaha over the footways, regarding compulsion and compensation, sidelined the other, less controversial aspects of the proposed access strategy. The cabinet paper proposed establishing an access agency to provide leadership: a crucial element of the access strategy. The paper

also prioritised the provision of improved information on existing access, and especially 'clear and accurate mapping'. Other objectives included devising a code of responsible conduct, the negotiating of accessways across private land to attain public land or the new footways, and establishing a contestable access fund. The access policy would emphasise the importance of foot-tracks being certain and enduring.

A Once-in-a-Lifetime Opportunity

In August 2004 Jim Sutton's update brochure had made it clear that the government was not considering giving the public the freedom to rove over private open country. Federated Farmers had perhaps achieved its number-one objective. In New Zealand politics, 'right to roam' would be a taboo term for a long time to come. This was no bad thing for MAF and the pro-access lobbies as it simplified the task ahead, allowing them to concentrate on the development of linear access across private land, either to reach public land or as an end in itself.

On 16 August 2004 a press release from Rural Women New Zealand had 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.'[13]

We could perhaps have excused Rural Women its perception that the Queen's Chain issue involved, on the recreation side, only a few hunters and anglers. This narrow interpretation of the issue had 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 enfeebling 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'.[14]

The access controversy of 2003–4 had been far more than a squabble pitting farmers against hunters and anglers. What was under scrutiny was the long-term future of New Zealand's foot-track network. What was at stake was the recognition of the right of every New Zealander to appreciate the ordinary rural scene, not only the untouched wilderness. What was being discussed was the rediscovery and harnessing for recreation, where appropriate, of some hundreds of kilometres of unformed public road. Under consideration was a sea change in the provision of information on access. Of concern was the future of rural-urban relations, then at a low ebb and unlikely to improve under a Fortress FFNZ model of admission. A problematic challenge, containing conflicting needs, was the further diversifying of New Zealand's outdoor tourism. Developing new public walking tracks was a part of that diversification, yet, paradoxically, our only-half-finished networks of public walkways faced a race against market forces and the growing number of private walking tracks.

But the main thing at risk, in the view of Federated Farmers, was the property rights of the rural landholders. The perceived threat to those rights was the uncompensated imposition of public foot-tracks

along selected water margins. The 2003 Acland report had 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?'[15]

Hugh Barr, a Wellington tramper and the secretary of the Council of Outdoor Recreation Associations of New Zealand, had been involved with the land-access issues for many years. He had close contact with the Walkway Commission over its fifteen-year life. Perhaps his response to the 2003 Acland report epitomised 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.[16]

The government seemed determined that recreators should not miss out. On 22 December 2004 it had released some details of its proposed New Zealand land access strategy. Recreators and farmers now had some nitty-gritty to approve of or moan about. After this release, we ought not to have heard any more misinformed alarm about a licence to wander. But the farmers' right-to-roam scaremongering would continue.

The government's proposals reflected the pledges of Labour's *Conservation Policy 2002*, part of Labour's election manifesto, which had 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 stopped short of an immediate extension of the reserves that made up the Queen's Chain. The proposed quasi-extension, using strips five metres wide, would allow only pedestrian access; no vehicles, no dogs, no guns.

Also in late December, after suffering two years of traducement from farmers, Jim Sutton relinquished the rural-affairs portfolio, handing it to Damien O'Connor. Sutton, though, retained a role in this area, becoming the associate minister for rural affairs and hanging on to his official walking boots, remaining (for a while) the government's main man on walking access.

It remained to be seen whether Federated Farmers would continue or even intensify its campaign to preserve a one-dimensional colonial model of walking access. I suggested earlier that the great unrecognised blunder of New Zealand history is that the early settlers did not bring with them their public footpaths, those narrow tracks that crossed the British fields from farm to farm and village to village and which were known to Shakespeare:

> *King Lear*, Act IV, Scene 1.
> GLOUCESTER:
> Know'st thou the way to Douer?

EDGAR:
Both style [*sic*] and gate; Horseway, and foot-path.

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

In Part Three I acknowledged that some of the practical concerns of farmers were justified; they were based on cogent and informed reasoning. After the release of the December 2004 cabinet paper, I expected that Federated Farmers would redouble its efforts to communicate these anxieties to recreators and the general public. But it was likely that the federation would face both general and specific credibility barriers. The polarisation of the issues had lifted these obstacles to a considerable height.

For some access advocates, the federation's general believability and its goodwill were tarnished. The federation's overall attitude towards access changes had been narrow-minded and aggressively dismissive, except on access information and access trusts. The federation's tactics in opposing the government's plans had capitalised on misinformation and distortion, to the point of being deliberately deceitful. The recreational public had been left wondering, To what extent are the farmers' worries based on realistic practical considerations? And to what extent is their opposition based on a desire to exclude the public from the farmed countryside for no logical reason, apart from an unwillingness to share? So it did not surprise me, when I was discussing a federation press release with the leader of a national recreational body, that he contemptuously dismissed it. He added, 'Nobody believes anything the Feds say.'

Regarding the many specific practical concerns that Federated Farmers had raised – such as on theft of equipment, spreading of beef measles, and damage to rows of vines – the farmers would need to convince a sceptical recreational side, and possibly also a sceptical government. The federation's practical anxieties had varied from the reasonable to the fanciful. Preposterous claims about the danger that walking tracks posed to national security had damaged the federation's credibility, in the eyes of informed access advocates if not of the general public. Dubious contentions connecting walking tracks with biosecurity had so far raised only questions about the federation's infectious exaggeration; to be treated seriously, these claims needed peer-reviewed scientific substance. Hysterical prophesies linking walking tracks with criminality had created a rift between the federation and the minister for rural affairs; he may not have viewed Federated Farmers as an intelligent organisation with which to deal. Federated Farmers had itself to blame for this.

The farmers' neurotic embellishments had confused the issues and had distracted people from studying the undisputed practical stumbling blocks. For both sides of the access debate, this was unfortunate. Some of the farmers' worries were genuine and well founded, such as on gates, dogs, litter, and people accidentally straying off the tracks. It would have been counterproductive for recreators to win the moral and political

arguments if the practical details had led to riverside mayhem. The surest way to have obtained that riverside chaos would have been to implement the changes too quickly.

As we entered 2005, to judge by the details released in December 2004, the government was building plenty of cautious delay into the proposed land access strategy. The next six months, before the walking-access bill became ready in mid-2005, would allow the government to further scrutinise the farmers' practical concerns. Some hard-nosed common sense applied to the farmers' objections could deliver workable solutions.

If the government went ahead with its plans, regarding the mapping and establishing of footways along water margins, pilot projects could take the teething problems out of national implementations. After the access agency had decided the location of a riverside or coastal footway, the landholder would have a year to seek exclusions before the footway came into effect.

The Big Picture, in January 2005

Amid the welter of complexities underlying the access issues, it was easy to lose sight of the big picture. For me the big picture started with an 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'.[17] In August 2003 Jim Sutton had 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 parliament.[18] In December 2004 the government had released some details of the proposed land access strategy. It had also announced that an access agency would be set up.

The second part of the big picture was the 'overwhelming support for greater provision of information that is concise, free, regularly updated and easy to locate'.[19] To me this meant one thing above all else: a public-access map series. Others emphasised other priorities, such as signposting and contact information. The December cabinet paper had pointed 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 recognised the need to collect this information and make it available in a much more publicly accessible form.

The third part of the big picture was 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.'[20] The proposed strategy included an intention to develop a code of responsible conduct, which the access agency would formulate after extensive consultation.

Overemphasis on Water Margins

The fourth component of the big picture was a large incongruous hole, the filling of which would remain entirely dependent on negotiation with landowners, as it had been since the New Zealand Walkways Act 1975. During the public meeting in Hamilton on 20 October 2003, an alert person from a Raglan ramblers' group had asked about this bizarre white space: 'You emphasised riverside access, but there are also ridges – please comment.'[21]

Too right. That comment had not yet emerged forcefully enough. In hilly country, expansive views of the middle distance and the horizon are obtained not by walking along a riverside but by following a ridge or by reaching a high-point. But across extensive tracts of private New Zealand, our Queen's Chain fixation and our national obsessing over the inviolability of private property rights were leading us towards the development of track networks almost wholly based on water margins. In many areas the valley-bottoms away from rivers, the hillsides, the grassy spurs and the windy ridges would remain off limits, except where public roads happened to exist. Undistinguished coast and nondescript riversides would be accessible, while many exquisite corners of *Country Calendar* would remain locked up. The primary stockpile of potential walking access – the existing farmtracks – would stay wastefully private, unless they happened to follow public roads or parts of the Queen's Chain.

I will qualify that last paragraph slightly. The proposed land access strategy would include a contestable fund 'to help create and enhance access opportunities across private land to the footway [ie to the water margin] and to other land with recreational or iconic values.' Perhaps this money, combined with the leadership of the access agency, would breathe some new life into the New Zealand Walkways Act. Many submitters on the 2003 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.'

Fragile Goodwill and Fractured Rural-urban Relations

After that, the big picture became murky. Many people wanted the big picture to be painted on a background of goodwill. Many submitters on the 2003 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'.[22] Note the words 'where practical'. Much of what had been written about goodwill was long on platitudes and short on realism. Capitulating to the ultraconservative views of Federated Farmers would salvage some landholder cooperation but would be unlikely to resurrect the recreator goodwill where access problems persisted. Conversely, legislating to strengthen or extend or quasi-extend the Queen's Chain would gratify some walkers and anglers but at the expense of some landholders' goodwill. Nobody wanted a solution that saw walkers running the gauntlet of angry farmers; yet in the final analysis, in the most intractable situations, such a solution could be preferable to none at all.

In January 2005 we seemed to be facing another six months of acrimonious debate. Federated Farmers was staring at long demographic odds, but it still talked mainly of fighting. The cordial relations that New Zealand landowners banged on about were those looking down from above, from Forbidden New Zealand. The most amiable connections between country-dwellers and city-dwellers spring from positions of equality and certainty, not from inequality and condescension. A country cannot achieve rural-urban friendship and understanding if its people do not belong in their own countryside. Again and again in the federation's submissions and media releases, the federation had talked about visitor ignorance, blatant abuse and disrespect. Did all this sound like cordiality? Without either radical or incremental action to open up the farmed countryside, this situation could worsen. I wondered whether there was any place in Europe where the country-dwellers so distrusted the visitors. Maybe Sardinia.

The Pakeha settlers of the 19th century had seen themselves as being engaged in a war against nature, a long battle to turn as much of New Zealand as possible into an agricultural landscape.[23] By the middle of the 20th century, generations of the combatants had converted 50 per cent of New Zealand's surface area to grasslands, to meet the grazing requirements of sheep and cattle.[24] By the 1970s the farmers' focus had shifted to aspects such as soil conservation and aerial topdressing to increase productivity, but the rhetoric and mindset had remained militaristic, exemplified by the title of the important historical account *Hold that Land* (1971).[25] The aggressive, no-holds-barred approach was still detectable at the end of the century, as in the advertisement HALT THE ENEMY OCCUPATION: ARM YOURSELF WITH TORDON BRUSHKILLER AND WE'LL ORDER A FREE AIR STRIKE. In 2002, according to the joint authors of 'The Grasslands Revolution Reconsidered', 'the pugnacious, masculinist attitudes of landholders against nature' still persisted among some farmers.[26] In 2003–4, these farmers had redirected their bellicosity to serve their fight against the creation of linear walking access to private land.

Status Quo Now. Status Quo Tomorrow. Status Quo Forever.

Fish and Game New Zealand was optimistic that the government's land access strategy, if implemented, would 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.'[27] In the short term, I could not share Fish and Game's hopefulness. The 2003 Acland report had stated that the status quo was not an option; for sixteen months since then, Federated Farmers had been saying 'it has always been done this way'. This response from the padlocked minds of our rural landowners seemed drearily unadventurous. In the long term, yes, the farmers might tire of outspoken intransigence and could get used to regarding visitors with something other than suspicion.

Improving the walking access to rural land required thinking long-termly. It also needed a matching long-term commitment. The Labour Party's defining of high-quality access – being access that was certain, free, practical and enduring – and its adopting this as a goal would provide guiding principles for its future access policies. Governments would

come and go, but the concepts behind high-quality access were sound enough to withstand occasional assaults from the right. Unknown to anyone in December 2004, though, the proposed New Zealand Land Access Strategy faced another six years of development (including name changes) before its completion. And the finished master plan, which would be published in September 2010, would not envisage any imposed public rights of way for walkers.

Chapter 23

Prelude to the General Election

Two thousand and five was an election year. Walking access to the outdoors would never be anything more than a minor election issue where these things matter, in the cities. Even so, access to land was to remain a fiercely political topic in rural areas. From 1 January 2005 onwards, the lobby groups' and politicians' statements on the government's access plans would remain confrontational or supportive, as they had been for two years, but would now be designed more consciously to catch votes.

Herald-DigiPoll Survey Results, 5 January 2005

Much newspaper comment in the year before the release of the government's walking-access plans had been shallow and ill-informed. Some had been grossly irresponsible. There had been the occasional careful and knowledgeable exception. After the details of the government's proposals became known, the quality of the reporting stayed variable. Late December 2004 saw a cluster of fairly accurate and balanced newspaper stories reporting on the details of the cabinet paper and on the public's response. Then on 5 January 2005 the *New Zealand Herald* re-muddied the waters by publishing the results of an opinion poll based on a provocative question unrelated to any suggestion in the Acland report or to the likely government proposals.

The *Herald* article announced the findings of a Herald-DigiPoll survey of one thousand adults. The poll – conducted in November, before the government announced its access plans – had found that 'nine out of 10 New Zealanders oppose giving people an automatic right to stroll across farmers' land'. This vague finding, unlinked to any specific government proposal, seemed to me dubious and probably meaningless. What exactly does 'stroll across' mean?, I wanted to know. So I obtained the wording of the poll's question. The question turned out to have been loaded and ambiguous. It was: 'Should people walking in the countryside have an automatic right to go across farmers' land?'[1] Considering that the 2003 Acland report and several subsequent government statements had emphatically rejected the right to roam, this wording was at best

careless. At worst it was irresponsibly vague and maybe even deliberately manipulative.

Although, as shown in Chapter 21, outdoor recreators had reason to worry about the capacity of Federated Farmers to disinform the public, perhaps they had more reason for concern over the factual poverty of some New Zealand journalists. Similar concerns have been raised about inaccuracy and shallowness in the press coverage of the 2003–4 foreshore-access debate; during this highly charged controversy, which was rife with public misperceptions on current access rights to the foreshore, the 'media showed little aptitude for investigative reporting, at times incorrectly reporting official documents and providing a superficial level of reporting'.[2]

The Walker-phobia Continues, January to May 2005

By the end of 2004, many farmers – some of them only half-informed on the facts of the access debate – were displeased with the associate minister for rural affairs. The feeling was mutual. The prospect of any early calming of emotions was zero. Along came 2005, with a general election due by September at the latest. In February and March, *Rural News* inspired its readers with story-titles such as 'Bay Farmers Join Call for Sutton to Resign', 'Rural Lobby Rallies against Sutton', and 'More Calls for Sutton's Head'.

On 10 March 2005 a Federated Farmers media release referred to 'government plans to allow the public, including overseas tourists, a right to roam over private land'.[3] Yet the cabinet paper of December 2004 had clearly proposed only linear access; in a news release accompanying this cabinet paper, Jim Sutton had stressed that 'the right to roam had found little support in consultation and is not supported by Government'.[4] The Federated Farmer media release, therefore, was yet another instalment of wilful misinformation. A big fib, like saying 'Iraq has nuclear weapons'. But that's politics. Sutton was never to refute effectively that destructive lie.

That's not to say that he didn't try. On 22 March 2005, beehive.govt.nz posted a webpage that reiterated the government's access proposals.[5] The webpage said that the government hoped to introduce a bill into the House by the middle of the year to enact these plans. But in terms of carrying a message to the public, Sutton and his ministry advisers were not in the same league as the farmers. Public perception and policy reality remained distinctly different. Mark Twain, the 19th-century American novelist, had long ago encapsulated the problem that now confronted Sutton: he once said, 'A lie can travel halfway around the world while the truth is putting on its shoes.'

Misery and Hardship

Once a week the *Taranaki Daily News* contained a column called 'Farmer's Farm View'. The newspaper encouraged its readers 'to air their views [on rural issues] and generate some healthy debate'. In this column on 5 May 2005, Bryan Hocken, the senior vice-president of Taranaki Federated Farmers, reported that

> in an historic first, five Federated Farmers provinces have passed motions of no confidence in Jim Sutton as Minister of Agriculture. Four of them went further and demanded the man resign.
>
> Why? The minister is simply not doing his job. As the Minister of Agriculture he should be standing up for the property rights of the country's farmers. Instead, he appears hell-bent on letting dope-growers sneak up river banks to tend their booby-trap-ridden cannabis crops.
>
> … The last time he turned his back on farmers was when he supported the stupid Fart Tax and now he's backing the Government's land access free-for-all. We smashed him for six on the Fart Tax but it looks like he's up for another hit around.[6]

The excruciating access-phobia continued … 'Sutton [was] selling a land access policy that [would] only bring misery and hardship to rural New Zealand, farmers and landowners'.

Healthy debate does not spring from dramatisation and disinformation. What access free-for-all was Bryan Hocken ranting about? What misery? What hardship?

Propaganda impedes the establishment of an atmosphere conducive to constructive cooperation. If we were to judge from this bellicosity from the milk-solids heartland, Jim Sutton's relationship with the share-milkers and milk lords had collapsed completely. It was unsalvageable. Another report talked of an all-out slagging match between Sutton and Federated Farmers.[7] At some point, in May or June, the minister said that communication was impossible. He accused the federation of being captured by right-wing parties.

Tom Lambie and the Chartered Accountants

Also in May, the *Chartered Accountants Journal* carried an article by Tom Lambie, the president of Federated Farmers. Self-seekingly titled 'What Farmers Want from the Next Government', it listed 'the top 10 areas that any new government must understand are crucial to agriculture and the wider economy'. Lambie warned the 21,641 subscribers to the journal that walking tracks would jeopardise the business of farming and by implication the national economy:

> Controlled Access Only
>
> The current Government wants to pass a law giving anybody, no matter their character or intent, the right to walk on private farmland along rivers, lakes and the seashore. Giving this right through legislation will increase the already high risk of opportunistic crime and endanger the business of farming. No other business would be expected to provide public access to the factory floor without strict controls. No other business would be forced to expose themselves or their production unit to opportunistic crimes.[8]

It was ironic that Tom Lambie was a Scot. In the UK, the Labour Party manifesto for the 1997 general election had contained a commitment to 'greater freedom for people to explore our open countryside'. During the Scottish version of the access debate that followed, 'land management

interests pushed hard (but unsuccessfully) for access through enclosed land in Scotland to be in linear form'.[9] The Land Reform (Scotland) Act 2003 and its associated Scottish Outdoor Access Code had come into effect on 9 February 2005. Scottish outdoor enthusiasts now enjoyed liberally defined open country – almost all land and water – and a statutory right of responsible access. Yet in New Zealand, the equivalent land was merely a collection of 'production units', and Lambie was campaigning vigorously and self-righteously against linear access, a far more constrained, controllable and less intrusive form of access than area access. Scottish farmland was opening up radically at precisely the time that New Zealand farmers were frantically resisting the creation of footways along water margins.

The Foot-and-mouth Disease Hoax

On Tuesday 10 May 2005 Barry O'Neil, the director of biosecurity for the Ministry of Agriculture and Forestry, announced that MAF and New Zealand Police were responding to a claimed deliberate release of the foot-and-mouth virus on Waiheke Island. O'Neil said the claim, contained in a letter to the prime minister's office that morning, was probably a hoax but that MAF was taking it seriously.

In 2004, agricultural and food exports had provided more than half of New Zealand's total export earnings.[10] An outbreak of foot-and-mouth disease could severely damage the New Zealand economy.

Operation Waiheke

O'Neil said that MAF had activated its disease management response systems. As a part of this precaution, MAF had issued a controlled-area notice that restricted the movement of livestock and risk material on and from the island. Risk materials included live animals, hay, equipment used with animals, untreated products from animals, milk, cheese, meat and wool. There were no restrictions on people travelling to or from Waiheke Island, but farmers and ministry officials would be asking the public to cooperate with measures such as disinfectant footbaths.

There was no risk to public safety or public health. Foot-and-mouth disease only affects cloven-hoofed animals such as sheep, cattle, pigs, goats, llamas and deer. It is highly contagious. It can be spread from one animal to another in saliva, mucus, milk and faeces. The virus can be carried on wool, hair, grass, straw, footwear, clothing, livestock equipment and vehicle tyres. The wind can spread it rapidly and over long distances. For example, circumstantial evidence suggested that the outbreak on the Isle of Wight in 1981 resulted from airborne spread of the virus from Brittany in northern France.[11]

The incubation period for the foot-and-mouth virus could be up to fourteen days, so MAF's surveillance would last at least that long. A week into Operation Waiheke, the MAF inspectors had found no evidence of the disease. The police were convinced that the claimed release of the virus was a hoax.

Farmers' Unproven Claims

In a press release titled 'Threat Boosts Access Concerns', Federated Farmers argued that the hoax validated the federation's claims linking walking access with biosecurity breaches:

> The Waiheke Island foot-and-mouth scare highlights the huge importance of minimising the potential for pests and diseases to enter farm land, said Keith Kelly, the President of Auckland Federated Farmers … 'One of the ways to minimise the biosecurity risk to agriculture is farmers retaining the right to manage who enters their land,' Mr Kelly said. 'Foot and mouth is the most serious biosecurity threat to New Zealand. However, there are many others which are also serious. The risk of these diseases and pests being spread is heightened by uncontrolled access to farming businesses.'[12]

Kelly's queer argument leapt a titanic gap between the signs he had observed and the deduction he made. Evidence observed: some bonehead had claimed to have released the foot-and-mouth virus on Waiheke Island. Deduction made: public walking tracks across farms would result in the spreading of diseases and pests.

By 'uncontrolled access', Kelly probably meant any sort of pedestrian entry – linear access or area access – that did not require the landowner's permission. Farmers had frequently claimed that allowing entry without the need for consent would create biosecurity risks. A MAF paper later said that 'this [claim] implies that farmers can assess the biosecurity risk posed by a person requesting access, which appears unlikely'.[13]

Operation Waiheke ended on Monday 23 May, two weeks after the receipt of the hoax letter. MAF was facing a bill of about $1.5 million to $2 million.[14] This figure excluded the cost of lost staff time, the costs of other organisations involved, and the costs of compensating any farmers who had been affected by the investigations. At its height, the undertaking had involved more than a hundred public servants: sixty at MAF and the New Zealand Food Safety Authority in Wellington, twenty at the Exotic Disease Response Centre, thirty-one on the Field Operations Response Team in Auckland and on Waiheke Island, plus staff from the Ministry of Foreign Affairs and Trade and from the New Zealand Police.

For more than two years, representatives of Federated Farmers had been claiming vaguely, and without reliable proof, that allowing greater public access to farmland would increase the likelihood of biosecurity transgressions. Throughout this time, as far as I am aware no methodical examination of the farmers' claims had been available. Scientific comment had been absent. Even during and immediately after Operation Waiheke, there seemed to be no official response to Keith Kelly's assertion that unscrutinised walkers would spread diseases and pests. Not until July 2005, after the government's rethink on the proposed footways, would an authoritative paper be written, exploring the farmers' nebulous folk wisdom.

Budget Day

19 May 2005 was budget day. Vote Agriculture and Forestry included $1.9 million a year for four years – a total of $7.6 million – to pay for the development of the walking-access policy. Some of this money would fund the purchase of computer software to map public access rights.[15] The 2003 Acland report had highlighted the need for accurate information on the location of public roads and Queen's Chain reserves.[16] The public would also need information on the location of the intended footways. Marrying cadastral to topographic information would present hurdles in terms of scaling and accuracy. The Ministry of Agriculture and Forestry, with the help of Land Information New Zealand, would need to conduct pilot projects to probe these difficulties. Given success with these trials, readily available information on public roads and on public access to and along water margins was perhaps just around the corner.

Compensation and the Proposed Footways

You may have noticed that Part Three, which chewed over most of the access issues of 2003–4, did not include a discussion of compensation. This omission happened because I wrote most of Part Three before the release of the December 2004 cabinet paper; the government had said little about compensation. Even after the disclosure of the cabinet paper, Jim Sutton and his ministry officials had remained reticent to discuss compensation in depth, in public. The landowners who would be affected by the proposed footways had shown no such reticence. So by May 2005 we had a sketchy idea of the government's thoughts on compensation and we had a clear impression of the landowners' opinions. This section lists and examines those conflicting thoughts and opinions.

What the 2003 Acland Report Had Said about Compensation

The Acland report had only briefly mentioned the question of making amends to landowners for an imposed diminution of their property rights. It had succinctly acknowledged the existence of two different perspectives, which you could call anti-compensation and pro-compensation.[17] It had also suggested that the enforced creation of pedestrian access would constitute a constraint rather than an expropriation:

> Most actions in relation to access will not involve the absolute taking or any expropriation of property rights, but are more likely to involve a restriction on the exercise of property rights, falling short of the taking of those rights (Guerin, 2002).[18]

Inquisitive sheep farmers who investigated the source 'Guerin, 2002' will have further learnt that 'compensation is normally required only for physical takings, such as the acquisition of land, and is not available for takings through regulation, such as restricting the right to use land in a particular way'.[19]

That was as far as the 2003 Acland report dared to venture into a politically polarising subject beset with legal complexities and economists' theories. When the report suggested completing the Queen's Chain by the deeming of walking access along waterways, lake shores and coasts, it did not discuss compensation.[20]

What the Cabinet Paper Said about Compensation

Fifteen months after the 2003 Acland report, came the December 2004 cabinet paper. But the government's having more than a year to deliberate on compensation had not made the matter more politically presentable. A press release from Jim Sutton, coincident with the release of the cabinet paper, skated rapidly over the frozen expanse of Lake Compensation, hoping that the ice would not give way:

> Will compensation be paid for the public having access?
> This is unlikely. However, under the work programme [for the walking-access bill], there is to be an investigation of whether compensation should be payable.[21]

The cabinet paper itself was only slightly more informative:

> Compensation
> 35. … the footway is not intended to interfere with the essential elements of a landholder's title to the land. The landholder retains the rights to the occupation and use of the land. It is proposed that officials examine this issue further.[22]

A different section of the cabinet paper perhaps revealed what these ministry officials would be looking into, regarding compensation:

> Human Rights and New Zealand Bill of Rights
> 65. The Ministry of Justice's initial view is that the proposals appear to be consistent with the New Zealand Bill of Rights Act 1990. Further consideration will be required as the policy is developed into legislation.

The fond frailty of human hopes! The cabinet paper was premature. The policy was never to be developed into legislation. In an embarrassing backdown, the government was to jettison its plan to impose footways. This government rethink, which we will cover later, would enable the government to avoid any parliamentary examination of the legal gymnastics surrounding compensation for the enforced establishing of footways. Deep-seated views on compensation, however, did circulate. In response to Jim Sutton's indication that recompense was unlikely, the press releases from the landowners' organisations claimed that compensation would be a basic necessity. The reported views of farmers echoed the same sentiment. In the pubs of Taranaki and Southland, Sutton's brief explanations for not compensating affected landowners received only acrid derision.

The Burden of a Walking Track

The issue of whether the state ought to recompense the owners of land affected by enforced pedestrian access is complicated. The mystical rules of compensation involve legalistic and esoteric consideration of constitutional matters and human rights. While the 2003 Acland report and the subsequent cabinet paper had dodged this subject, many farmers and one or two lawyers had been far more forthcoming.

After the release of the 2003 Acland report, Chapman Trip, a firm of barristers and solicitors, published in its newsletter *Counsel* an article titled 'Public Access and Private Property Rights'. The writer was in no doubt that circumstances could sometimes justify state intrusion:

> While Government legislative intervention to define and protect public access rights may seem a drastic measure eroding private property rights, it is neither a radically new concept nor necessarily an unconstitutional or objectionable one.
>
> Against a backdrop of individual property rights, it is important to remember that individual landowners have never enjoyed a totality of rights in respect of their property. Central government has always retained and progressively taken for itself a significant number of rights which hold precedence over private property rights, and over which the landowner has little or no control.
>
> … In such circumstances, private rights have been protected by the exercise of due process and the provision of suitable compensation.[23]

So, compulsion may be OK, provided that the state compensates affected landowners if they suffer an absolute taking of their property rights.

There are precedents for not paying compensation and there are precedents for paying it. Many New Zealand landowners in 2003–5 considered that the state should make amends to a landowner affected by the burden of a walking track. Their rationale for this belief went something like this: common law and statute law recognise the importance of compensation for individuals called upon to make sacrifices of their property in the public interest. If an owner of land suffers loss, and can prove that they have suffered loss, as a result of the building of a walking track across their land, they should be entitled to reparation.

Moreover, the farmers argued, any hampering of farming activity that is long-term and frequent would lower the value of the land. It was a matter of natural justice, they said, that the landowner should be compensated if the land value falls. In March 2005, NZ LAW, an association of law firms, commented on the likely effects of the proposed footways. In a newsletter article addressed to its landowning clients, NZ LAW confidently forecast – without any expert economic analysis – that these foot-tracks along water margins would cause a loss of land values:

> It is also uncertain at this stage, what other impacts the public walking areas [five-metre-wide strips] will have on buildings and subdivision, and property values generally. The prospect of having to share private land with the public has to have a negative effect on value, but the government does not plan to compensate for that.[24]

The question of whether the footways would affect the land values was complex, with enough variables to occupy an economist for months. As far as I know, no economist looked at it. Even had one done, the results would have been full of ifs and buts and subjective guesswork. Not to worry, the rural landowners would have said, even if a walking track does not affect the value of the land, everyone has a right to respect for one's

home and privacy; reducing that right would constitute a deprivation of possession; only in exceptional circumstances can such forfeiture take place justifiably without recompense. That's life, right?

Government's Views on Compensation and the Planned Footways, May 2005

On 10 May 2005, *Rural News* reported that in a recent letter to the Marlborough branch of Federated Farmers Jim Sutton had written that compensation 'has not been dismissed'. Three weeks later Damien O'Connor, the minister for rural affairs, risked martyrdom by taking part in a celebrity debate on the proposed legislation at the Marlborough branch's annual meeting. The farmers 'made it clear to Mr O'Connor they were strongly opposed to the proposed 5m walkways along waterways on private properties without compensation'.[25]

Land … compensation … a delicate matter everywhere in the world, a doubly touchy subject in Aotearoa New Zealand. What did Helen Clark's government think of these grounds for recompensing landowners affected by the proposed footways? We can glean the cabinet's consensual views (though not the views of individual cabinet members) from Jim Sutton's press releases and other sources.

The government contended that the footways would not affect the landowners' titles to the land. Farmers would still be able to fully use their land. The footways would not lower agricultural production. Landholders would have a right to make temporary exclusions (such as for lambing or tree-felling) for a maximum of ninety days in any one year. The value of the land would not fall. The owners of the land would suffer no genuine financial loss. *Ipso facto*, no compensation would be necessary. Jim Sutton did not offer any economic analysis to support his contention of no significant costs, not that academic estimates would have influenced farmers who listened to only one side of the arguments.

What about other, less quantifiable losses, such as the loss of privacy? A Jim Sutton news release emphasised that the walking-access right would carry restrictions and responsibilities, backed by a statutory code of responsible conduct. A fifty-metre exclusion zone around houses would safeguard the privacy of country-dwellers. People would not be allowed to take dogs or guns onto the footways. Bicycles and vehicles would be prohibited from the footways.[26] There would be no loss of privacy. *Ipso facto*, no compensation would be necessary.

Traditional Access Had Been Free

That was all the government said openly, up to the end of May 2005, about its reluctance to compensate landowners affected by the planned footways. The government did not publicly expound upon the deeper aspects of compensation. There were things that the associate minister for rural affairs did not say in public. But perhaps he should have said more, and said it assertively. There is more to compensation for public access, in the New Zealand context, than the legal need to quantify financial loss. There is a moral aspect. A question of fairness. In the past, the public enjoyed widespread recreational access to private rural land: landowners almost always granted access when asked. Furthermore, the natural water, freshwater sportsfish and wildlife do not attach to the land title in New Zealand. The public has the right to navigate (eg to

row or kayak) on lakes and rivers, but needs to be able to get to and from the water.[27] Also about 70 per cent of the Queen's Chain already exists (although some parts of this are unusable thanks to coastal erosion or river movement), and access along water margins is an institution shared and appreciated by all New Zealanders. So the moral and social pressure on a landowner to allow the public to walk across private land to reach a river is considerable. But, by 2005, there were two problems with the tradition of access by permission.

Firstly, it was dying. Federated Farmers had adamantly disputed this, yet the ministerial reference group considered that there was a 'decreased goodwill towards giving "general access" (i.e., to people not known to the landowner)'.[28] John Acland himself, in the Preface of the group's report, was unequivocal and worth quoting a second time in this book: '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 its implications'.

Secondly and more importantly, many New Zealanders wanted walking access that was certain and lasting. Single-occasion arranged access was neither of these things; it was here on one day, gone the next. Permitted tracks provided more certainty than arranged access, but they could be impermanent. If we New Zealanders did not develop more-reliable and more-permanent access, we would be letting down our children and their children and all their descendants.

Formalising the walking access would replace the decaying and vulnerable traditional entitlements with more-certain and durable rights. In most circumstances, except when the landholder provided a service or suffered a financial loss, there would be absolutely no moral reason why New Zealanders should pay, either at turnstiles or through their taxes, to walk across their own countryside, keeping of course to the foot-tracks. Indeed, Fish and Game New Zealand had argued that improving the public's access to rivers would merely restore existing fishing (and swimming and picnicking) rights that some land-occupiers had eroded by misusing the Trespass Act.[29] According to Fish and Game, a landowner who denied the public access to public resources – the rivers and the fish in them – and who exploited these resources for his or her own commercial gain, ought to compensate the public for the loss.[30]

To sum up on compensation. In May 2005 Jim Sutton was saying that compensating the landowners affected by the imposed footways had not been dismissed. Government officials were still considering this matter. Compensation wasn't ruled out. Nor was it ruled in. Sutton was to stay noncommittal until 29 June. We will return to this footways-compensation issue in Chapter 24 and briefly in Chapter 26.

Chapter 24

A Bad Month for Footways

June 2005 became a make-or-break month for the footways element of the government's land-access ambitions. Federated Farmers raised the tempo of its long-running anti-access offensive. Damaging differences of opinion developed between some of the representative bodies of outdoor recreators. Views on compensation continued to evolve, occasionally venturing from backstage to centre-stage. The Maori aspects began to be discussed, having previously gained little publicity. These four threads ran together through the month, but we will look at each one separately, which will require some chronological hopping to and fro.

Finally the government put its walking-access bill on hold, its future dependent on finding more support for the proposals.

The Action Orange Campaign

On 10 June 2005 a Federated Farmers press release announced the Action Orange Campaign, a week-long protest against the government's proposed access reforms.[1] The federation was asking all farmers and other landowners to close their land to the public from 16 to 23 June. Participating farmers would tie orange ribbons to their locked gates. The federation had posted details of the campaign to all its 18,500 members. During the Action Orange week, the federation's land-access petition would traverse the country, adding to its 25,000 signatures. The federation would present the petition to parliament on 23 June.

The press release included a typically alarmist and unbalanced complaint, perhaps designed more to sustain the farmers' contagious hysteria than to be taken seriously by rational people:

> 'The government wants to give members of the public, no matter their character or intent, the right to walk on private land along waterways. Farmers are absolutely opposed to this confiscation of their property rights, and alarmed at the increased risk posed to their security and livelihoods,' he [Tom Lambie] said.

What Lambie didn't say was that the Queen's Chain already existed on many of our waterways, and had done for a hundred years or more, without damaging farmers' livelihoods and without becoming a highway for criminals or a conduit for the proceeds of crime. Jim Sutton had already pointed this out: 'I'm yet to hear a report of any burglars running along the Queen's Chain with a farmer's TV set in their arms, making their escape.'[2]

Queens Chain reserves were used by thousands of anglers every season, as well as by countless others. If the existing Queen's Chain reserves were not a crime problem, why would extending the Queen's Chain for only pedestrians become one?

This was not to deny that thieves occasionally targeted rural properties. Nor was it to ignore the callous shooting of the farmer Jack Nicholas on 27 August 2004. But burglars and rustlers and murderers and rapists do not check the cadastral maps to ensure that there is legal access. The lack of a Queen's Chain reserve or public right of way does not, against Lambie's apparent belief, deter criminals.

Formed roads and motor vehicles, not riverside foot-tracks and walking boots, are the criminals' accessways and implements of choice. New Zealand has an extensive network of public roads, formed and unformed, many of them used for stock movements. All sorts of people use these roads: locals and tourists, walkers and mountain-bikers, fishers and hunters. Nearly all road-users are honest, a few are not. Nobody, not even Tom Lambie, was suggesting that officialdom should control the access to all public roads because of the existence of a few villains. So why would anybody want to control the walking entry to water margins, which criminals didn't use?

Only a *few* lawbreakers? Yes. We learnt in Chapter 17 that for the year to 30 June 2004, New Zealand recorded its lowest rate of offending in two decades. Rural dwellers were less likely to be targeted by criminals than their urban counterparts, but if they were, the offender was more likely to be caught.[3] Despite this low crime rate, many farmers had approached the access issues with Wild West thinking or too much chilli powder. Time and again we had heard about the necessity for 'the right to challenge strangers'. Some farmers seemed unable to comment on access matters without losing possession of their faculties.

The leaders of Federated Farmers were educated, astute business people. They were probably *au fait* with the corporate governance of Fonterra Co-operative Group Ltd as well as with computerised herd-management, genetic selection and advanced soil analysis. An abiding enigma of the access debate, therefore, was the inability or unwillingness of otherwise intelligent and articulate farmers' leaders to contribute anything inspiring or far-sighted or perceptive. It was as if a voice of moderation or pacification from a leader would be a weakness, one that would not go down well with the rank and file. Full-on combat was safer. Why complicate things when pugnacious land-guarding claptrap was available? Landowners had to do what landowners had to do. The peer-group pressure in the Federated Farmers subculture was not to look at the bright side and welcome the public but to reject the sharing concept.

Within hours of the announcement of the Action Orange Campaign, the government and Fish and Game New Zealand responded. Jim Sutton was losing patience with the farmers' domineering property-rights absolutism:

> This policy is about access to the publicly-owned resources of water and the animals that live in it. Why don't the Feds just come out and say they believe that only the people who own the land should be allowed to walk on it – that they want the Queen's Chain abolished?[4]

Bryce Johnson, the director of Fish and Game New Zealand, described the planned farm closures as 'arrogant, selfish and anti-Kiwi'. His press release pointed out that

> the Queen's Chain, access along waterway margins, is a heritage all New Zealanders share and should be able to enjoy. It is part of the country's founding principles. All the Government is trying to do is find a way to complete the Queen's Chain along the remaining 30% of water bodies that don't have one in a manner which is fair to both the community and landowners, and here is a selfish section of the community trying to deny our unique heritage.[5]

The trouble was, it wasn't just the Action Orange bullies who disliked the method that the government had invented to fill in some of the gaps in the Queen's Chain. Some outdoor recreators openly disparaged the proposed quasi-extension of the Chain. They didn't want what they expected would be a grotesque deformed substitute for the Queen's Chain; they wanted the real thing.

Access Supporters in Disarray

Someone once said that ideas are like pizza dough, made to be tossed around. Not all outdoor recreators shared Fish and Game's enthusiasm for the proposed footways. Bruce Mason of Public Access New Zealand, for example, had damned the footways from the start (see Chapter 22). On 13 June 2005, three days before the start of the Action Orange week, he publicly tossed this piece of dough right out of his kitchen window. In a press release titled 'Access Leader Bars Government Entry to Property', he announced that

> all Government MPs, their election campaigners, as well as government officials, are barred from my property until further notice. A NO GOVERNMENT ACCESS sign is now hung on my front gate along with an orange ribbon. Unlike the Federated Farmers' protest my sign will remain indefinitely until 'footways' are dropped from [the] Government's agenda.[6]

This idiosyncratic protest from Mason was a mischievous contribution, confusing to all but a few devoted watchers of the access debate. The government was trying to improve walking access to the countryside, and here was PANZ's main spokesperson, condemning a key part of

the government's access plans only months before a general election. Astonishingly, PANZ and Federated Farmers were now an item, at one on this issue, although hardly united in the bonds of matrimony. Promoting the cause of recreational access to land attracts driven individualists. In this respect, Mason seemed to share some of the traits of another, earlier renowned access campaigner, Christchurch's irascible and audacious Harry Ell, a 'somewhat crazed genius'.[7]

Bruce Mason Opposes the Proposed Footways

Yet the distrusting Mason was raising valid concerns about the practicalities of the footways and about what he saw as their legal pregnabilities. He was wary about the proposed curtilage rules: 'I can see all manner of tin sheds going up to prevent the public from proceeding.'[8] The footways, in Mason's view, would be ineffectual; they would not provide the certain and permanent public access that Queen's Chain reserves can guarantee. (Leaving aside the rider that some marginal strips, some esplanade reserves and some esplanade strips are created for conservation purposes that may be incompatible with public access.)

Furthermore, Mason's caustic disapproval of the footways conformed to PANZ's views on the Queen's Chain, which favoured extending the Chain by a non-radical bit-by-bit process, accelerated by applying existing mechanisms more efficiently and uniformly.[9] PANZ's overall philosophy rigidly promoted access by public ownership; the intended footways would not be publicly owned strips of land and therefore would not fit into PANZ's world-view.

Finally, Mason's censure of the proposed *imposition* of the footways was also consistent with his concern that 'compulsion would alienate the powerful rural sector. It will be ineffective and cause unnecessary aggro and [will] poison relationships between landowners and the recreational community.'[10] From the moment the 2003 Acland report had been released, PANZ had disagreed scathingly with the report's suggestion that the government could deem access to exist over private land along water margins.[11] PANZ saw no need to disturb the land-barons en masse, with a radical new law; the state could spread the disturbance over time, gaining Queen's Chain incrementally.

Aristocratic Concept of Private Land

Mason deserved the Order of New Zealand, or at least a New Zealand Bravery Award, for his years of indomitable promotion of public access to public lands and waters. That is not to say, however, that PANZ's reasoning had been beyond reproach. Public ownership had many merits, but the PANZ fixation on public ownership might have helped to perpetuate rather than break down New Zealanders' far-right attitudes towards private land.

Some parts of Mason's orange-ribbon media release of 13 June read like a landowner's anti-Labour Party diatribe. The proposed footways, he warned people, would constitute 'a gross infringement of private property rights'. It spoke volumes about New Zealand's ultraconservative property rights that our most prominent champion of access was projecting such an aristocratic concept of private land.

If New Zealanders are to improve their walking access to private countryside, and so enjoy the farmed landscape, they will need to trans-

form, little by little, the access orthodoxy. They will have to challenge the supposition that linear access across farmland is a privilege. They will have to reject the conventional wisdom of the day that foot-tracks across private land are necessary only to access public land. They will have to question the landowners' fierce possessiveness. They will have to chip away at the farmers' over-anxious territoriality. They will have to scorn the prevailing notion that occupiers of uncultivated farmland in New Zealand have some sort of timeless royal prerogative, independent of the wishes of parliament, to exclude their fellow countrymen and women.

They will also need to question the PANZ view that public ownership is a prerequisite for high-quality access. A dual system has been developing for thirty-five years. Walking-track easements are here to stay, as an inferior but nevertheless acceptable alternative to public ownership. The imposition of footways along water margins, unregistered easements as it were, would have considerably dented our property-rights absolutism. New Zealand's petrified land law needed this precedent. Bruce Mason could have helped this change happen. Instead his outspoken opposition to the footways subverted the government's efforts to gain access over private land.

Mason's views on the virtues of the Queen's Chain were directly opposite to the views of many farmers. Yet his personal orange-ribbon protest comforted those landowners who would have been delighted to see the Queen's Chain left to rust. It said 'Vote National' – this at a time when the two main political parties were polling neck and neck. It seemed designed to boost the circulation of the *Taranaki Daily News*.

Mason's Protest a Private Initiative

What did the PANZ board of trustees think about all this? Had Mason acted with the board's approval? Did his antics accurately reflect the views of the '120 organisations and 500 individuals' who supported PANZ?[12]

According to one of the trustees, whom I contacted two years later, Mason's well-publicised orange-ribbon stunt had been a private initiative. Yet his press release of 13 June 2005 had been issued not by him as a private person but by and on behalf of Public Access New Zealand. The episode raised a question about the structure of PANZ and about how it conducted its business. Mason's combination of legal expertise and high-country know-how was irreplaceable. He was Mr Access. Deservedly. It was unlikely that any single person would ever again achieve the same prominence on the issue of access. Therein possibly lay a problem for PANZ. How much that came out of PANZ came from a consensus, arrived at after discussion between trustees? And how much came straight from Mason's pen, with little or no collective moderating and rewording?

PANZ was managed by a board of seven trustees.[13] At least one and possibly a majority of Mason's fellow trustees had shared his opposition to the government's footways plan. Had he sought their approval for his actions in advance, they might have granted it.

On 21 and 22 June, a week after Mason's announcement of his own orange-ribbon protest, the *Otago Daily Times* carried two lengthy and informative access articles written by him. These were the sort of careful and knowledgeable pieces that our newspapers had mostly lacked since the 2003 Acland report. In tone and balance they differed markedly from

his PANZ press release of 13 June, in that they acknowledged the merits of some of the government's proposals. But the damage, nationally, had been done. And even these two articles, though lacking the petulance and crankiness of his orange-ribbon exploit, remained critical of the government and Jim Sutton.

Back in 1996 Sutton, then the Labour Party's spokesman for lands, had written a well-intended but clumsy article about access to the countryside. He had suggested that the Queen's Chain was 'a cultural edifice constructed on legal foundations of sand'.[14] He also wrote that 'the Queen's Chain – much relied upon and ostentatiously defended – is nowhere to be found in our law'. By themselves, with no deeper explanation, these statements were ambiguous and potentially misleading. True, the term 'Queen's Chain' did not occur in law. Yet the various reservations that collectively formed our incomplete Queen's Chain were absolutely defined in law. Water-margin reserves providing statutory access included public roads, marginal strips, esplanade reserves, esplanade strips, access strips and several kinds of public reserves. Of these, public roads (laid off in the period before 1892) and marginal strips (reserved under the land acts and conservation acts after 1892) made up the backbone of the Queen's Chain, with esplanade reserves forming the next most common type and continuing to expand.[15]

Bruce Mason was not inclined to tolerate an inexactitude on this matter. In his 22 June *Otago Daily Times* article, he wrote:

> The ad hoc nature of existing access provision is a central but misguided criticism advanced by associate rural affairs minister Jim Sutton. It is an amazing achievement that 70% of water margins were reserved in public ownership over a period of 165 years of ad hocracy. This is something deserving celebration, not deprecation.[16]

This was a typically abrasive and combative Mason contribution, but 'deprecation' was an unfair choice of words. Sutton had not expressed disapproval of the idea of the Queen's Chain. He had strongly supported the concept. He had probably been the main instigator of the part of the Labour Party's 2002 election manifesto that had stated that 'Labour will develop a public access strategy, including the extension of the Queen's Chain … to ensure New Zealanders have ready and free access to our waterways, coastline and natural areas.' But Sutton's radical plans to extend the Chain using footways – or to quasi-extend it – did not match Mason's more corrective and incremental proposals.

Mason's figure of 70 per cent needs qualifying. Erosion and accretion had affected much of the water-margin reserve so that either the original reservation had become separated from the water margin or had become submerged under a river or the sea. In 2006 possibly as much as half of New Zealand's water margins were private land.[17] Wherever privately owned land backed directly onto a river or lake, the landowner could refuse to allow the public to walk along the riverbank or lake shore. Wherever privately owned land was contiguous with the foreshore, the landowner could decline people permission to walk across the private land to reach the beach.

CORANZ Joins PANZ in Opposing the Proposed Footways

Recreational groups were not speaking with a common voice. Another group to break ranks was the Council of Outdoor Recreation Associations of New Zealand (CORANZ). In its submission on the 2003 Acland report, CORANZ had rejected the idea of deeming access to exist along water margins, except possibly as a means of re-introducing the Queen's Chain where it was previously immovable.[18] CORANZ favoured extending the Queen's Chain by using existing mechanisms on the sale of crown land or at subdivision. CORANZ, like PANZ, advocated public access through public ownership. On 13 June 2005 the *New Zealand Herald* reported the CORANZ views about the suggested footways:

> The Council of Outdoor Recreation Associations is the latest [body] to oppose Government plans to give walkers access rights alongside major rivers. The Government's planned legislation did not truly extend the Queen's Chain as the Labour Party promised in its 1999 election policy and was primarily aimed only at 150,000 walking freshwater anglers, CORANZ spokesman Hugh Barr said. He claimed [that the] interests of more than one million outdoor recreationists – including hunters, mountain-bikers, dog-owners and drivers – represented by the Council were being ignored. 'So the Government's proposals have little support … outside Fish and Game circles,' he said.
>
> … 'The Government must think again about why its worthy access intentions have met so much opposition. It needs to return to broader-based and proven alternatives, not footways,' Dr Barr said.[19]

Hugh Barr's point about the meaning of the word 'extend' was important, though not necessarily a clinching argument against the footways. For three general elections (1996, 1999 and 2002), the Labour Party had spoken of 'extending' or 'completing' the Queen's Chain. To most people, the word 'extend' implied a genuine extension using public reserves such as marginal strips and esplanade reserves. Depending on the type of reserve used and its purpose, a true extension could sometimes allow people to take bicycles, guns, dogs and vehicles.

A third recreational body to come out publicly against the proposed footways was the New Zealand Federation of Freshwater Anglers (NZFFA), which represented fifty-five angling clubs.[20] Its president, David O'Neill, said that the federation was constantly told about difficulties with access. So it did want improved access to waterways. But it favoured trying to negotiate access rather than forcing it upon landowners. NZFFA would support legislated access as a last resort, to be available should reasoned discussion fail.

The Political Opposition Exploits the Recreators' Disunity

News of division sells more newspapers than news of cooperative bliss. Journalists quickly noticed the disunity in the ranks of the access supporters. The public was soon reading headings such as 'Unlikely Bedmates Over Access Issues'. This *Otago Daily Times* article informed its readers that 'an unlikely combination of farming and outdoor interest groups is mobilising in opposition to the Government's public access policies'.[21] On

the same day, Jim Sutton faced questions in parliament about the government's public-access plans. Gerry Eckhoff, a prominent standard-bearer for the no-change cause, raised a matter that he had no doubt observed with some joy or even ecstasy: the disintegration of access advocates' support for the footways idea:

> Gerrard Eckhoff: What is the Minister's response to the condemnation of his proposed legislation by recreational groups such as Public Access New Zealand, the Deerstalkers' Association, [and] the Federation of Freshwater Anglers … ?
>
> Hon JIM SUTTON: My understanding of the coalition [*sic*] of outdoor recreation associations [CORANZ] is that its actual position is that it wants the walking policy to go ahead, even though it does not go as far as [CORANZ] would like.[22]

Sutton's answer was partly correct and partly evasive. CORANZ did broadly support several main aspects of the government's access strategy, including embracing the ethos of the Queen's Chain; but it opposed the proposed footways. I dare say Eckhoff's schadenfreude filled the House. The opponents of improved access probably saw his crusade against the government as a great job, well done.

Two days later, opposition members of parliament were out in force at the New Zealand National Agricultural Fieldays at Mystery Creek near Hamilton. Federated Farmers launched its Action Orange week, and the National Party launched its agricultural policy. According to National, sometimes called the property-rights party, 'the number one issue facing rural New Zealand [was] Labour's proposal to allow public access over private land'.[23]

National's agricultural policy re-employed the familiar warning that walkers 'pose a risk to stock, life and property'. Despite the absurdities and the insult of this sweeping claim, the government's counter-arguments – logical and compelling – had not ended the farmers' opportune alarmism. If, in the minds of the public, you equate outdoor enthusiasts with common criminals, you have a useful pretext for denying, controlling or limiting access. Don Brash, the leader of the National Party, said that if the government changed the land-access laws before the general election, a National government would reverse the changes.[24]

Had this happened, such a wholesale closing of newly established rights of way, all mapped and some signposted, could have proved to be more politically risky than Brash thought. Even so, his threat was one that Jim Sutton could not ignore. When you are in government, there's no point in making changes that are not going to stick. A basic aim of the government's access plans was to obtain access routes that would last.

Fish and Game Supports the Footways Plan

So many people, so many opinions. Did Sutton have any buddies left? Which recreational organisations did support the planned footways?

Fish and Game New Zealand – often shortened to 'Fish and Game' – remained the government's chief footways-backer. The promotion of improved access to water margins and public lands was an important matter for Fish and Game, reflecting the statutory duty of the New

Zealand Fish and Game Council 'to represent nationally the interests of anglers and hunters' (section 26B(1) of the Conservation Act 1987).

Before we move on, we need to pause here to explain this organisation's several names and to say a little more about its structure and work. The name 'Fish and Game New Zealand' is the operating name of the New Zealand Fish and Game Council and the twelve regional fish-and-game councils. The Conservation Law Reform Act 1990 established these thirteen councils, which collectively are the statutory managers of the sports fish and game bird resources of New Zealand. (The Conservation Act 1987 was amended accordingly.) Fish and Game obtains all its income from the sale of fishing and hunting licences; it receives no taxpayer money. A Fish and Game webpage dated 2007 said that F&GNZ was selling annually approximately 100,000 freshwater fishing licences and 40,000 game bird hunting licences. It employed seventy professional staff around the country. About 500 volunteer rangers assisted with matters such as checking people's licences and people's adherence to fishing and hunting regulations.[25]

There was a section on this 2007 webpage headed 'What does Fish & Game NZ do?' One of the answers given was: 'We negotiate access to hunting and fishing areas on public and private land, and this often has important spin-offs for the wider public who also gain access to these areas.'[26] Kay Booth had already made this point, but with an extra slant, saying that 'despite having statutory functions, Fish and Game New Zealand operates more like a non-governmental organisation and has made a significant access contribution'.[27]

By 2005, Fish and Game's director, Bryce Johnson, had been involved in access matters for at least twenty-five years. He had been appointed the national director of the acclimatisation societies in early 1980 and had become widely known in government circles 'both politically and administratively, as a wily and effective lobbyist, who had rapidly got to know people in all walks of public life'.[28] In May 1990, when the government abolished the acclimatisation societies, the staff of the societies transferred to Fish and Game, and so Johnson became the director of the new body. Although access issues were only one part of the range of issues in which his job involved him, they had been important throughout the history of the acclimatisation societies, many were still unresolved, and he attached importance to dealing with them.

Johnson had initially thought in 2003 that the Queen's Chain should be properly extended, either by gaining public land such as esplanade reserve or marginal strip or by deeming the water margins to be public.[29] But he had subsequently come to the view, by 2005, that incremental extension of the Queen's Chain using existing mechanisms, even if those mechanisms were to be enhanced, would take many decades. In his view, the PANZ and CORANZ willingness to tolerate little-by-little extension and their insistence that the extensions be by genuine crown ownership was unrealistic.[30] The footways, which would relatively quickly quasi-extend the Queen's Chain, would form an expedient and workable compromise. In a message to me, Johnson wrote that

> PANZ and CORANZ are doing significant damage to the public access cause … Regarding [the footways' practical snags], these are what we will get identified in detail and sorted out before the Select Committee – if the Access Bill ever gets introduced. If it doesn't then PANZ and CORANZ will deserve some serious wrath from the outdoor recreation fraternity!![31]

On 23 June 2005, the last day of the Action Orange week, Johnson circulated a memorandum to reporters. It said that the majority of farms in New Zealand did not have water bodies of interest to the public for recreation. It also pointed out that, if we looked at the minority of farms that did have rivers, streams and lakes of potential recreational value, Queen's Chain reserves already existed on about 70 per cent of their water margins (but in some places were ineffective, having been lost to coastal erosion or river movement). If we then inspected even closer, to pick out waterways and lakes prospectively attractive for passive recreation but lacking Queen's Chain reserves, we ended up with only a small proportion of New Zealand's farms.

Moreover, the memorandum continued, bear in mind also the planned statutory code of responsible conduct, the tightly defined footways, the intended prohibition on guns, dogs, bicycles and vehicles, and the fifty-metre curtilage provisions to protect country-dwellers' privacy. The intended footways would not affect or would only minimally affect most landholders. The Federated Farmers campaign was 'a gross over-reaction to an inconsequential proposal for the vast majority of farmers'.[32]

To judge by what emerged publicly, the split in the pro-access bodies seemed nothing worse than a difference of opinion between on the one hand PANZ and CORANZ, and on the other F&GNZ. Privately, at least one relationship may have undulated. From Mason's viewpoint, Fish and Game was misguided in supporting the footways. From Johnson's viewpoint, the PANZ press release of 13 June had amounted to self-inflicted sabotage.

Federated Mountain Clubs Backs the Proposed Footways

Before and during the Action Orange week, one might have expected pro-government press releases from more recreational bodies than just Fish and Game, but my searching detected only one from another recreational organisation, Federated Mountain Clubs.

Several representatives of Federated Mountain Clubs of New Zealand were staunchly backing the government's access plans. In April, *Wilderness* had reported that John Wilson, the FMC president, thought the government's footways proposal to be 'a reasonable compromise'. The government plans were 'a great opportunity to really make a difference'.[33] A few days before the start of the Action Orange Campaign, the *Press* asked Wilson for his views on the locked gates and orange ribbons. He condemned the farmers' stance, repudiating their claims that the proposed footways would cause more farm crime. He said: 'We only need to look at New Zealand walkways. All of these terrible things are not happening. Federated Farmers are really making this into a big bogeyman.'[34]

Wilson's successor as president, Brian Stephenson, expressed similar sentiments, calling the farmers' campaign short-sighted. He said that

> there is tremendous goodwill between farmers and trampers, going back several generations. Instead of harnessing this goodwill and moving forward, Federated Farmers seems content to fire cheap shots. Words like 'confiscation' are emotive, unhelpful and inaccurate. Federated Farmers would provide better leadership to its members if it were to take a long-term view and support efforts to find a good solution. It does not seem to have a focus beyond the next election … If the Acland proposals do not go forward, 10 years from now New Zealanders will look back with sadness at a lost opportunity.[35]

Brian Stephenson's gentle poke at the leaders of Federated Farmers was overdue and understated. Perhaps the greatest impediment to the improvement of access across private land in New Zealand was the imperishable narrow-mindedness and want of vision of the senior figures in Federated Farmers. Too many of them were stuck in the 19th century.

Federated Mountain Clubs's commitment to improved walking access to the outdoors had never been in doubt. The organisation's history of advocating for recreation and conservation stretched back many decades. In 2005 FMC was still working tirelessly behind the scenes, through the official channels, looking after the interests of trampers and mountaineers in a wide range of matters, such as tenure review, tourism's impact on conservation lands, hut fees, draft Department of Conservation management plans, hydro-scheme proposals, and the protection of rivers from pollution and degradation. It is possible, though, that in 2005 FMC might have been preoccupied with its long-standing concern for backcountry tracks and huts, and with projects such as the Living Rivers campaign and the Six Pack of Parks campaign, and that this involvement meant that its public voice on the walking-access issues was somewhat muted.

Forest and Bird Quiet on Walking Access

Definitely muted on the walking-access issues, during Action Orange week and during the two-year build-up to it, was the powerful voice of the Royal Forest and Bird Protection Society of New Zealand. Our largest nongovernmental conservation organisation, eighty-two years old in 2005 and with 40,000 members, had remained a formidable contributor to the nation's identity, at a time when many voluntary bodies had suffered falling membership. The society's mission was 'to preserve and protect the native plants and animals and natural features of New Zealand'.[36] Forest and Bird's professional staff, skilled in sciences and resource management, advocated and lobbied on a wide range of conservational and environmental issues at all levels of government.

In its *Handbook of Environmental Law*, revised in 2004, Forest and Bird had included an authoritative and up-to-date overview of public access rights.[37] But this useful information may not have percolated far beyond the members of Forest and Bird itself.

Among Forest and Bird's concerns in 2005 were establishing protected areas in the high country, restoring the dawn chorus of native birds, protecting the environment from invasive pests and weeds, and creating marine reserves. The February 2005 edition of the society's quarterly magazine, *Forest & Bird*, reflected these concerns and priorities, contain-

ing such articles as 'Birdsong at Boundary Stream', ' "Rat Sausages" Prove Tempting to Stoats', and 'Disposing of Sewage at the Seaside'. But the society's full in-tray of pressing conservational issues had left it little time to devote to the walking-access issues. Between January 2003 and June 2005 the society's newsletters, ten in total, had not mentioned the government's work on walking access to the outdoors. (The matter was to gain a short mention in the August 2005 newsletter, just before the general election.)

SPARC Stays Out of It

There was one other organisation that one might have expected to have joined the fray in support of walkers but which did not. Sport and Recreation New Zealand (SPARC) had not visibly participated in the two and a half years of debate on walking access. On 15 April 2003, Deb Hurdle of SPARC had made an oral submission to the Land Access Ministerial Reference Group, but SPARC had not broadcast its views to the public. SPARC had not submitted on the 2003 Acland report, either orally or in writing.[38]

SPARC had been established in 2002. It was a crown entity responsible for promoting, encouraging and supporting physical recreation and sport. Its predecessor, the Hillary Commission for Sport, Fitness and Leisure, had been criticised for an increasing focus on sport at the expense of recreation. SPARC in 2003–5 was continuing this bias.[39]

It seemed as if it would take some sort of Pearl Harbor to bring SPARC into the walking-access controversy. Kay Booth wrote: '[SPARC] has shown no national leadership with respect to public access and has virtually abdicated its role as the institutional "home" for outdoor recreation within government.'[40]

Lack of Access Coalitions

Discussing the absence of coalitions of interest among the access advocates of 2003–5, Kay Booth wrote that 'access coalitions have not been formed in the New Zealand access debate, although some convergence of argument has occurred. This reflects the disparate nature of the outdoor recreation NGO sector'.[41] She could also have added that, as well as some convergence, some serious divergence of argument had transpired.

The lack of unity and want of cohesion among New Zealand's outdoor recreation and conservation NGOs was not a new situation. Sectoral division had existed for half a century and had blunted the influence of these NGOs through much of the 1980s and 90s.[42]

Sometimes the dispute had an environmental element rather than or as well as an access element. In 1948, for example, the Royal Forest and Bird Protection Society (founded in 1923) and the New Zealand Deerstalkers' Association (formed in 1937) had disagreed over the Department of Internal Affairs's policy of trying to destroy all deer.[43] This quarrel bubbled on through the 1950s and 60s. In 1958 at a conference on noxious animals, Federated Mountain Clubs joined Forest and Bird in calling for the extermination of all deer.[44] In the early 1960s some, possibly most, branches of the NZDA were affiliated to FMC.[45] But at the FMC annual meeting in 1964, the president, H E Riddiford, said:

> To the deerstalkers, I hope you continue to contribute fully to the work of the Federation … [But] it is clear that the views of many other clubs in the Federation are very sharply opposed to the views of the deerstalkers on these matters. If they are pursued through the Federation I believe a split must inevitably result.[46]

Branches of the NZDA began to disaffiliate from FMC. By 1981, 'very few of the deerstalking branches remain[ed] part of Federated Mountain Clubs'.[47] In 1983 a controversial book, *The Deer Wars*, reignited the argument. The author and publisher, Graeme Caughley, cited research that indicated that rainfall, not vegetation, was the main determinant of the rate of erosion.[48] In 2003, debate continued as to the significance and permanence of the impacts of red deer and chamois and on the desirable levels of control.[49]

The Public Lands Coalition of the late 1980s, mentioned in Chapter 7, had been a successful but short-lived exception to the general recreational sectionalism. In 2000 Bruce Mason had remarked upon the sectoral division:

> Our biggest problem is the division within the NGOs. I think it's an artificial and unnecessary one. That's the biggest obstacle. If we could overcome that, I think political results would follow.[50]

Since then the outdoor-recreation NGOs, while in agreement on many matters, had patently not overcome their disunity on some access and conservation issues. PANZ itself, New Zealand's only dedicated access advocacy group, had 'struggled to attract major recreation and conservation groups as members, and then retain them, or even work alongside them'.[51]

The Government Fine-tunes Its Views on Compensation

Back in December 2004, Jim Sutton had been saying that it was doubtful that the public purse would compensate the landowners affected by the imposed footways, but that officials were still considering this matter. No detailed government presentation on this issue was to emerge between then and 29 June 2005, when the government announced its rethink about footways. But the compensation issue did simmer gently, spitting the occasional tell-tale splash into the public arena. In a speech in March, John Aspinall, the Federated Farmers's access emissary, added a *soupçon* of misrepresentation and a couple of new ingredients, and he gently stirred the mixture:

> The government has proposed a fund to negotiate access across private land, which is one of the things Federated Farmers asked for. But it is meanwhile proposing to confiscate land off the same private title if it happens to be next to a waterway. It is totally inconsistent to pay compensation for negotiated access across land, but not if that land is along a waterway.
>
> If we consider the history of land tenure in New Zealand the land was bought by the Crown from Maori (or sometimes confiscated)

> then sold to settlers with appropriate title. Where the land was confiscated, this is now being addressed through the Waitangi Tribunal and compensation negotiated. Under the current proposals the Crown is now wishing to confiscate property it had previously sold.
>
> There is debate between government agencies on whether compensation should be payable. However, the government appear to have rejected this option.[52]

Imposed Unregistered Easements

Aspinall's use of the verb 'confiscate' was inaccurate. The government was not proposing to confiscate land. But the phrase 'confiscate land' will always arouse an audience of farmers who might otherwise doze off. I doubt whether any of the government's advisers considered the proposed walking rights to be a potential seizure of land. Aspinall was probably correct, however, in saying that ministry officials were debating the matter of compensation. The debate might have centred on whether the state ought to recompense landowners affected by what would have amounted to imposed unregistered easements. Some officials might have pointed out that the proposed footways would cause most farmers no financial loss.

Federated Farmers, on the other hand, was arguing that allowing the general public to walk along private river-margins, without the state recompensing the landowners, would be an absolute taking of property rights (rather than a restriction on the exercise of those rights), irrespective of whether the landowner suffered any financial loss.

In early June 2005 Tom Lambie, the president of Federated Farmers, expressed this view more rurally:

> Legislating to allow the public free access to private land, without compensation to the landowner, can only be described as theft. It's the kind of theft we expect the government to protect us from. Landowners with significant waterways (streams, rivers, lakes, wetlands and coastal foreshore) all stand to lose property rights if the general public is given foot access along waterway margins.'[53]

For a century and a half traditional recreational access to private land had been free of charge and had been almost invariably granted, and the government had not compensated the landowners. Yet formalising that custom, to suit the 21st century, was in Lambie's judgment theft.

The word 'theft' is – like 'roam' and 'unfettered' – just another blood-warming buzzword in the political parlance of land access in New Zealand. At the risk of becoming the devil's advocate, I should mention here that during the foreshore-and-seabed wrangling, the Labour-led government itself had argued that Maori customary rights 'are property rights and to remove them without compensation is theft'.[54]

One further stage on from Tom Lambie's interpretation, the pro-compensation case casts aside reasonableness and tradition to become: 'We'll screw them for everything we can get, irrespective of how negligible is the interference into our property rights.'

Compensation for Demonstrable Loss Not Ruled Out

On 10 June, five hours after Federated Farmers had announced its Action Orange protest, a government press release reiterated that the proposed

footways would cause 'little or no impact on farming operations' and that 'farmers could continue to use their land as they wanted'. The press release also declared that 'compensation for demonstrable loss had not been ruled out, contrary to what Federated Farmers was saying'.[55] In other words, the government thought that most farmers affected by the footways would not be able to demonstrate any financial loss, but that a few might and that this possibility was still under consideration.

The Property Law Section of the New Zealand Law Society offered its opinion:

> 'What the policy proposes is, in effect, an unregistered easement over land and should not be granted without compensation,' Property Law Section Chair Chris Moore said today.
>
> 'The Section supports the aim of providing better public access to the margins of the sea, lakes, rivers and streams, but advocates a more tailored approach than that proposed by the Government. Areas where access is limited or inadequate should be identified and specifically addressed on a case-by-case basis. The Section opposes a blanket approach that would see (subject to certain exceptions) all New Zealand's waterways and waterfront subject to compulsory easements.
>
> 'The New Zealand Bill of Rights (Private Property Rights) Amendment Bill, a Member's Bill currently before Parliament, proposes recognising property rights in the New Zealand Bill of Rights Act. It would also grant a right to compensation in the event of deprivation of property, a principle that the Section welcomes,' Chris Moore said.[56]

Earlier we touched on one of the complexities of compensating a landowner for takings by the state (Chapter 23): 'compensation is normally required only for physical takings, such as the acquisition of land, and is not available for takings through regulation, such as restricting the right to use land in a particular way'. I quoted some views that suggested to me that the enforced creation of pedestrian access would come somewhere between an absolute taking of property rights and a mere restriction on the exercise of those rights. We are now back to this complexity.

Disputable Value Judgments

The private member's bill that Chris Moore was referring to had been put forward by Gordon Copeland, United Future's revenue spokesperson. At one level, United Future's policy on compensating landowners was clear and uncompromising. Copeland had said: 'We do not agree that private land should ever be acquired without the payment of just compensation'.[57] At a more real-life, brass-tacks level, United Future's stance still left deep questions hanging over the compensating of landowners who were affected by imposed public rights of way but who suffered neither deprivation of land nor any other financial loss. First, should the state compensate them at all? If yes, how could the appraisal of how much money to pay them be anything other than profoundly subjective and arbitrary? Setting the level of compensation would depend not so much on the mathematics of land-valuing as on disputable value judgments.

The Labour-led government did not have to delve into the second of these questions because it was saying no to the first. Creating the footways would not require the acquisition of land. The government was considering compensation only for demonstrable loss – and it had not yet said what it meant by 'demonstrable loss'. We can assume, though, that the government was trying to avoid triggering a bonanza for lawyers and land-valuers.

Regarding other possible costs connected with the footways, a government press release on 22 June stated that 'the costs of signage, etc, was to be borne by the proposed Access Commission'.[58]

In parliament on 23 June 2005, after the farmers' grumpy little protest of that day, Jim Sutton answered questions about the government's walking-access policy. There was no new news about compensation:

> Drafting [of the access bill] is under way and, as I have said before, it will be introduced when it is ready. There are some policy issues – such as mechanisms for negotiating compensation, and what to do with the millions of dollars worth of public land in the form of paper roads that are being farmed rent-free by adjoining landowners – that still have to be clarified.[59]

A Radio New Zealand news item the next day hinted at the government's interpretation of 'demonstrable loss': Sutton had said that he wasn't ruling out compensation if land values were reduced.

On 29 June a different message and a few more details emerged. Sutton had suddenly ditched the non-committalism. The *New Zealand Herald* reported that the government had 'agreed in principle to pay compensation for "demonstrable loss of value" for any private land used to open up access to the coast, rivers and lakes'.[60]

That was the last we were to hear, before the general election, of the government's thoughts about compensating landowners affected by the proposed footways. A slight clarification of the meaning of 'demonstrable loss' was to appear in October in the briefing to the incoming ministers of agriculture and for rural affairs (see Chapter 26).

A Latecomer: the Maori Dimension

Between January 2003 and May 2005, Gerry Eckhoff's rhapsodising on property rights and scaremongering about walkers had gained noticeably more publicity than statements by Maori representatives on similar themes. Remember though that throughout 2004 many Maori had focused on the foreshore-and-seabed issue. This focus had culminated in the Hikoi of Hope, a national protest march that had converged on parliament on 5 May 2004, coinciding with the first reading of the Foreshore and Seabed Bill. Press stories estimated the final crowd to be between 10,000 and 20,000, making it one of the largest ever Maori protests. Kay Booth has discussed the strong racial dimension of the foreshore-access debate of 2003–4.[61] On 9 July 2004 the Electoral Commission had registered the Maori Party as a political party, but this new party had said little on walking access until June 2005.

We saw in Chapter 9 that several sections of the 2003 Acland report had discussed customary rights, access arrangements on Maori land, and walking access in relation to the Treaty of Waitangi. The report had acknowledged that some submitters had strongly opposed extending the Queen's Chain to Maori land. The report had stayed circumspect on whether future extensions should or could apply to Maori land:

> An important consideration would be whether any of the following approaches [eg deeming a right of pedestrian access along water margins] would apply to all land or all land apart from Maori land. Considerations would need to be given to Treaty obligations as customary Maori land and some freeholded customary Maori land were never subject to the Queen's Chain reservation.[62]

Behind the scenes in 2004, the cabinet members may have struggled to agree on this issue. In August 2004 the *Dominion Post* had reported that

> Land Information Minister John Tamihere [a prominent member of Labour's Maori caucus] is ruling out any moves to force landowners to hand over public access strips to waterways landlocked by private property … Mr Tamihere said yesterday the issue was still going through the Cabinet process and decisions were still to be made. 'But under no circumstances is there going to be compulsion.'[63]

Two weeks later, while answering a question in parliament, Jim Sutton had attempted some damage control, correcting the *Post*'s account: 'My colleague the Minister for Land Information has told me that he was misquoted on this matter.'[64]

John Tamihere had resigned from the cabinet in November 2004, over his acceptance of a $195,000 golden handshake.

The walking-access cabinet paper of December 2004 had said that the planned footways would be established on Maori land as well as on general land.[65] A government press release had explicitly repeated this intention:

> Does this [footways] policy apply to Maori land?
> Yes. The policy applies to land of all tenures. Maori land would be subject to linked and parallel statutory and judicial processes arising from the Te Ture Whenua Maori Act 1993.[66]

John Tamihere Confuses Linear Access with Area Access

Tamihere's resignation from the cabinet had left him freer to express his dissenting opinions on the footways. In June 2005 he did so. You may recall that on 10 June Federated Farmers announced the Action Orange Campaign. Two days later the government faced opposition on a second front, which we could call Action Tamihere. The *New Zealand Herald* reported that

> MP John Tamihere said Maori land had separate legal status for good reason, and he would regard the law change as tantamount to a right to roam. 'If we have a free-roaming right on the last vestiges

> of where our land holdings are, you're actually starting to talk about cemeteries, wahi tapu [sites of spiritual value],' he said.[67]

From where did Tamihere obtain the impression that the government was planning a 'free-roaming right'? He, like many other New Zealanders, was confusing linear access with area access.

Sutton was proposing footways only five metres wide. Even a full-width Queen's Chain reserve, a twenty-metre-wide strip, could not be said to provide access 'tantamount to a right to roam'. On a 1:50,000 map, a twenty-metre-wide strip would be a tiny tramline only 0.4 millimetres wide (if depicted to scale, which would be difficult). A five-metre-wide strip would be 0.1 millimetres wide on the map. Almost invisible.

Imagine, for example, a privately owned area covering one square kilometre and roughly square in shape. A track that meanders across this area, from boundary to boundary, might be about one and a half kilometres long. If this track were five metres wide, it would provide physical access to less than 1 per cent of the private land.

Tamihere's reasoning would not have survived in a Year 7 maths class, yet he was only mimicking the specious argument of others, and I did not come across a single press commentary demolishing it.

The *Herald* continued:

> [Mr Tamihere said:] 'I've got major issues. If you want to put this through as part of the pre-election deal I think they're going to have some problems.'
>
> He said 'any drongo' could see that it put Labour in a 'no-win position' trying to fight the Maori Party.

The implication behind this deliciously quotable statement was that the members of the cabinet, which was backing Jim Sutton's footway proposals, could not see the political difficulties involved and were therefore dimwits. This allegation, from a Labour member of parliament and an ex-cabinet minister, was grist to the National Party's mill. National immediately released two media statements exploiting the apparent division in Labour's ranks: 'Labour Caucus Split on Maori Issues' (12 June 2005) and 'Is Silence Evidence of a Split on Maori Issues?' (12 June 2005).

Pressure to Exempt Maori Land from Footways Provisions

In 1843 Ernst Dieffenbach had provided a piercingly critical outsider's view of what sometimes happened when 19th-century British law and culture were imposed upon tribal peoples. After travelling through New Zealand he wrote that

> the ruling spirit of English colonization is that of absolute individuality. It is unwilling in its contact with foreign nations to acknowledge any other system than its own, and labours to enforce on all who are under its control its own peculiar principles. This has been most destructive to the native races, as might be expected from the sudden and violent change which was demanded from them; and hence principally it is that no amalgamation has taken place between the aborigines of America, of Australia, or of Van Diemen's Land,

> and the English emigrants, but the original inhabitants have either disappeared or greatly decreased in number and natural vigour.[68]

The prospects for Maori, Dieffenbach thought, were uncertain. Subjected to too violent a change, they would suffer the same decline as the natives of North America, Australia and Van Diemen's Land. But 'if a strong protective administration watches over their interests against the baneful selfishness of colonial schemers,' he wrote, ' … then indeed … it will be possible for them to continue in the midst of a prosperous and thriving colony, until in the course of time they become amalgamated with it.'[69]

Dieffenbach died in 1855, before the main conflicts of the New Zealand Land Wars. He would have viewed them with dismay. But what would he think about the subsequent century and a half, if he could join us today? Perhaps he would take heart from the continuing deep spiritual attachment of many Maori to their tribal lands, a feeling that in 2004 had led, with associated beliefs and aspirations, to the founding of the Maori Party.

On 20 June 2005, Tariana Turia issued a press release on behalf of that political party. Titled 'Action Orange: The Maori Party Supports Federated Farmers over Access Laws', the statement loudened the farmers' hysterical siren:

> At its worst, [the footways proposal] is an attack on the security and safety of our rural communities. No home in the suburb or private business would allow members of the public to wander willy nilly through their property. Why should our rural communities be expected to accept the risk of violence, pollution, damage to their property, personal safety of family members or stock losses as inevitable?[70]

Meanwhile, ten days after John Tamihere's 'drongo' remark, the word 'drongo' was still echoing around the parliamentary debating chamber.[71] Don Brash claimed that 'Labour is under increasing pressure from its Maori caucus to exempt Maori land from these access provisions. That would be an extraordinary double-standard, even for Labour.'[72] The difficulty for Labour was that for some Maori, our colonial history was still an open wound, and their attitude towards property rights was vigorously suspicious and assertive. On 29 June *Rural News*, referring to interdepartmental documents obtained under the Official Information Act, reported that

> the Ministry for Maori Development is arguing that Article II of the Treaty of Waitangi, which guarantees Maori 'full exclusive and undisturbed possession of their land', means Maori land should be exempt from pending legislation.[73]

Also on 29 June, the government announced plans to renew consultation on the access proposals. The *New Zealand Herald* commented:

> The Government's Maori caucus has … opposed any intrusion on the property rights of communally owned Maori land. Mr Sutton said: 'There is controversy over Maori land. The Government has said there should be one law for all and Maori have said, "hold on, there is a completely different history and legal structure surrounding Maori land". Well, both these positions are hardly arguable, really.'[74]

The Maori Party welcomed the government's rethink. Its co-leader, Tariana Turia, added a new twist to the arguments over property rights. She suggested that compensating farmers for demonstrable loss caused by imposed footways would be racial discrimination because Maori had not been compensated for the taking of the foreshore.[75]

Regarding the recreational rights of the citizenry and the Treaty rights of Maori, New Zealanders faced continuing dilemmas of justice and equity. In a handy overview in 2001, Nigel Curry had cautiously probed the outer skin of these dilemmas. But he had been careful to point out that a fuller examination of the issues would require more than a ten-page paper:

> One of the central issues in respect of access to land for outdoor recreation in New Zealand is that of contemporary claims to the bundle of rights that pertain to the land itself. The relationship between the European settler and the indigenous Maori in respect of these claims is complex, disputed and unresolved. It is sufficiently imbued with different value systems and alternative histories for any comprehensive or even subtle account to be beyond the scope of this discussion. Its centrality to the access issue, however, necessitates its acknowledgement.[76]

Similarly, the issues of on the one hand Maori land dispossession and Maori land rights, and on the other hand the need for egalitarianism in the allocation of access rights to land for leisure, are beyond the scope of this book. I will just mention one other aspect of the relationship between Maori and more-recent arrivals to New Zealand. Some people object to any belief or suggestion that non-Maori have a lesser affinity with the land than Maori. Are some ethnic groups closer to the land than others? Do Maori have a unique connection to nature? If you want to explore this issue more deeply, a thought-provoking start would be Danny Keenan's 'Bound to the Land'.[77] A different perspective is available in Philip Temple's short article 'Natural Values – A Personal View', written during the Ngai Tahu settlement process of the mid-1990s.[78]

A Government Rethink on Footways

Action Orange week, 16–23 June, contained two parts: firstly a national lockout of walkers; secondly, regional cavalcade protests culminating in the presenting of a petition to parliament. It is difficult to gauge how many farm gates carried orange ribbons. Some reports indicated a low turnout of farmers at the regional processions. Fewer than twenty vehicles turned up for a demonstration in New Plymouth.[79] The *Taranaki Daily Times* divulged that

> the lack of Taranaki farmers' bums on the seats of buses heading to Parliament this week for a national protest against the Queen's Chain 'land grab' is disgusting the organisers … the lack of action from Taranaki farmers towards the national protest has angered new Taranaki Federated Farmers president Bryan Hocken, of Tarata. 'I'm gutted. Disgusted. It just isn't happening. We haven't even got enough to fill one bus,' he said.[80]

Ill-humoured Demonstration

On 23 June 2005 what *Rural News* called an 'apathetic turnout' of about two hundred farmers demonstrated outside the Beehive. This small gathering was a third the size of an apple-growers' march the day before.

The demonstrators carried two orange coffins symbolising the 'death of property rights'. Harry Schat, the president of the North Canterbury branch of Federated Farmers, presented a 28,000-signature petition opposing the proposed footways.[81] The petition also proposed a compromise in the form of rules of conduct. This so-called visitor protocol, based on the logo 'Ask For Access', would allow public access to farmland provided that the visitor subscribed to the ritual of seeking approval.

Tom Lambie, still the FFNZ president as well as the chancellor of Lincoln University, gave a speech opposing the government's land-access proposals. To judge from the main press reports, no journalists questioned the propriety of having a university chancellor leading a farmers' march against the government.

Jim Sutton tried to speak to the crowd. He met jeers, abusive chants, and a tirade of personal abuse. He ridiculed the size of the crowd and then gave up trying to talk to it. He wished it 'Have a nice day'. A protester, Annie Carmichael, bellowed at him that the issue was not a joke. 'You're a joke', he fired back.[82]

He later said that he had been invited to address the crowd. It had bawled him out. So he had given as good as he had got. The *Press* reported that

> Sutton dismissed the petition and protocol after his efforts to speak … were shouted down by cries of 'Jim's a wanker' … He described the petition as 'not one of the great petitions of all time' and said that though the federation's proposed protocol could be a part of a final plan, it would not change the Government's focus.[83]

Sutton could have phrased this last comment more specifically. The government was not focusing on a primary reliance on single-occasion grace-and-favour access; it was focusing on access that would be certain and that would, the government hoped, endure.

The low turnout of demonstrators during Action Orange week and Sutton's remark about the undersized petition raised an interesting question, which had lain under the surface of the access debate for two years. What did the silent majority of New Zealand farmers think about the government's plans? The uncompromising views so loudly broadcast by representatives of Federated Farmers may not have represented the

attitudes of all farmers. In 2004 Federated Farmers represented 18,500 members.[84] There were 65,000 farms.[85]

The Government Shelves Its Walking-access Bill

Jim Sutton, a determined conservator of the Queen's Chain, was the prime mover behind the land access review and the walking-access plans. But he had underestimated the strength of the landowners' opposition to his plans. He had misread the mood on property rights; or he had not foreseen the flood of disinformation that would warp that mood. For two years he had not managed to outmanoeuvre the federation's torrent of half-truths, and he was ultimately unsuccessful in promoting the government's access plans, modest though they were.

Could he have done anything differently? The heated walking-access debate of 2003–5 would have been cooler if the ministerial reference group's terms of reference regarding private land had specified linear access. They did not, which allowed the opponents of reform to stage a carnival of disinformation and negativism, centred on a mesmerising display of the phrase 'right to roam'. The government's core message should have more strongly emphasised that its plans were for keep-to-the-track access. Sutton's press releases should have repeated – forcefully and incessantly – the phrase 'keeping to the track'. He should have stressed to journalists that the five-metre footways beside selected rivers, with occasional diversions around vegetation or other features, would have amounted to no more than linear access: nothing remotely like the freedom to range around. There is a gigantic difference between linear access and area access; the government did not get this message across to the public.

Selling the footways proposal to the public had called for full-blooded, inspired and educative salesmanship. Instead there had been just a few poorly publicised and futile government responses to the farmers' right-to-roam falsehoods.

Six days after the farmers' little demonstration outside parliament, the government shelved its walking-access bill, which was almost fully drafted and had been two careful years in the making. Sutton announced that he had not achieved a public consensus on the proposed legislation. His press release said that the government would be 'embarking on a further round of consultation among major stakeholders in search of greater consensus'. According to a newspaper report, he had said: 'We have to show some flexibility in how we advance [the walking-access policy]. Let's advance on those fronts where there is general agreement.'[86] It seemed likely that the Queen's Chain would continue to grow only incrementally, as it had done since Queen Victoria's instructions of 1840.

Was this a humiliating surrender? Or a tactical retreat? Probably a bit of both. The government did seem to have consigned the footways to the capital city's mausoleum of dead ideas. Jim Sutton himself appeared to have ended up isolated, a forlorn victim of the farmers' immensely successful thought-control and of his own political incaution. There had never been much outward sign of his cabinet colleagues being eager to share collective responsibility for his walking-access aspirations.

Various factors had led to the government's failure to sell its access plans to the wider public. They included:

- the fifteen-month delay caused by the government's preoccupation with the foreshore-and-seabed issue;
- from December 2004 onwards, a concentration of attention onto the controversial proposed footways, which pushed into the background several less contentious but equally important areas, for which there would have been considerable public support;
- a well-organised, prolonged and fiery Federated Farmers campaign defending the status quo and opposing the government's plans and implying, fallaciously, that the footways would have amounted to a right to roam;
- persistent landowner concerns about their liability under the Health and Safety in Employment Act for any harm that walkers came to, despite the 1998 amendment that said that farmers did not have a duty to persons using their land for noncommercial recreational or leisure purposes unless they had given express consent to those persons to be on their land;
- specious farmers' arguments linking the possibility of greater walking access to farmland with the issue of rural crime;
- a lack of a detailed government response to the farmers' claims linking public walking tracks with biosecurity risks;
- superficial and inaccurate media coverage of the complex issues of walking access, which compounded the farmers' misrepresentation of the government's plans;
- a national ignorance of the clear distinction between linear access and area access, which contributed to a lack of public awareness that the footways, had they been created, would merely have provided keep-to-the-track access;
- acutely different perceptions of the extent to which walking tracks affect the privacy of landholders and the management of farms, and related to these a disagreement over the need to compensate landowners affected by the proposed footways;
- recreational lobbies that were deeply divided on the footways issue, Fish and Game New Zealand supporting the proposals, PANZ and CORANZ opposing them;
- PANZ's long-standing and uncompromising insistence that public access to the outdoors be based on public ownership of the land involved;
- Bruce Mason's personal orange-ribbon protest against the footways proposal, which gained considerable publicity, appeared to support Federated Farmers, confused the public, and came only months before the general election;
- weak and apathetic support for the government's proposals from a complacent and only half-informed majority of outdoor people;
- a worry among some outdoor recreators, especially some trampers, some hunters and some rogainers, that the imposition of the footways would cause a landowner backlash, leading to the loss of arranged access to private land;
- lukewarm support from some of Jim Sutton's cabinet colleagues;

- profoundly conservative attitudes towards private property rights, ingrained nationally and honouring the rights of landowners far above the recreational rights of citizens.

In July 2003 the PANZ submission to the ministerial reference group, titled 'Improving Public Access to the Outdoors', had formed a detailed and knowledgeable blueprint for non-radical, partly incremental change. The document did not carry Bruce Mason's name, but an accompanying PANZ press release named Mason as the 'compiler of the strategy', the production of which had taken 'months of research and consultation'.[87] The forty-two pages extracted and condensed the key points of Mason's encyclopedic knowledge of access issues. It was a Mason *tour de force*. Commenting on this submission and the 2003 Acland report that followed it, Kay Booth wrote that these two documents represented, at the time they were published, 'the most comprehensive assessments of access issues ever written for New Zealand'.[88] Jim Sutton's subsequent apparent disregard or rejection of some of PANZ's basic arguments lost him the important support of PANZ. Bruce Mason, who had for many years provided a lone counter to all anti-access forces, effectively abrasive and bellicose at times, was loath to compromise and support Sutton's approach to extending the Queen's Chain.

Underlying the seemingly limitless complexities of the access debate, there was widespread latent support for the principle of the Queen's Chain. The Queen's Chain was a good thing. Somehow, the government had failed to tap that support.

A revealing postscript to the Action Orange Campaign was to surface two years later. In a speech written to address the annual general meeting of Federated Farmers on 4 May 2007, Pita Sharples, the co-leader of the Maori Party, wrote: 'We think your orange ribbon campaign was a mark of genius.'[89] It was hard to argue with this opinion. You had to admire a body that could disinform four million people and get away with it.

A Second Herald-DigiPoll Survey

Exaggeration, distortion, misinformation, confusion and inaccuracy had characterised the access debate. The incorrect use of words, such as 'confiscate', and the misunderstanding of concepts, such as linear access, had contaminated and debased the democratic process. This record of that process would be lacking if it did not mention the second Herald-DigiPoll survey, even though this survey probably did not affect public opinion. On 29 June 2005 a *New Zealand Herald* article referred to this second survey of the public's attitude towards the government's access plans. As in the first survey the question was vague and ambiguous: 'Do you believe the public should be allowed access to rivers and lakes across private farm land?'[90]

This question may have been referring to either of two utterly different government proposals. One, the proposal to impose footways *along* riversides and lake shores that lacked Queen's Chain reserves. Two, the proposal to arrange accessways *across* private land to reach water margins; these accessways were to be negotiated, not forced, and a fund was to be set up to pay for their easements.

The ambiguity in the question rendered the poll's results meaningless. But this did not stop the *Herald* informing its readers that the 'survey confirms 60 per cent of voters oppose the plan [to increase public access to waterways]'.

This sort of poll result infiltrates the entire media, mutating as it goes. It doesn't just flare briefly and die; it reappears somewhere, months after its arrival. Again. And again. It becomes a form of mental pollution. Impartial journalists quote it, without questioning its origin or authority. Politicians and lobbyists quote it, when it suits them.

Our pollsters would improve the workings of our democracy if they were to design their questions more carefully. Press freedom comes with responsibility. Journalists are information intermediaries and are important parts of modern democracies. They shoulder a huge responsibility. The *Herald* had by far the largest circulation of any New Zealand daily newspaper. Yet within the space of six months it twice gave credence to the results of polls based on carelessly devised questions. A poorly fashioned question damages the integrity of the opinion poll. The poll itself becomes deceiving propaganda.

A Shift of Focus

Even in retreat and partly disheartened by the vicissitudes of politics, a bruised Jim Sutton remained 'as determined as ever to improve the public's right of access to waterways'.[91] The *New Zealand Farmers Weekly* reported that

> Sutton is affronted 'people are seeking to lock up' the rightful access of every Kiwi 'to follow a river bank, or go round lakeshore or the sea front'. And he is 'appalled' at what he sees as an attempt to make this access exclusive.
>
> 'It's just a change in society I think, and not one for the better. I [regret] the greed and selfishness that has become more and more a feature of society … I am as determined as ever that I am going to leave behind me better, more certain, public access to our outdoor heritage … To me it is one of the greatest features of New Zealand society, but it's been whittled away.'
>
> Sutton, whose chances of losing the South Island seat of Aoraki are being talked up by National, said better access to rural waterways had been on his own political agenda for 20 years, and in Labour's manifesto for two elections. 'A promise is a promise. We've missed the boat by 25 years. I'm completely convinced if legislation like this had been introduced 25 years ago, it would have gone through with near unanimous support from the farming community.'[92]

The government wanted permanent walking tracks. But Don Brash and David Carter had promised that if National won the general election, it would revoke any access bill that the government passed before the election. To achieve lasting foot-tracks across rural land, the government would need a broader public consensus in support of its proposed methods.

Dumping of Footways Prompts a Change of Focus

The withdrawal of the footways proposal was a personal rebuff for Jim Sutton and a considerable reverse for the government. In time, though, walkers may come to look upon the Labour-led government's access work of 2003–5 as having been highly productive in some crucial areas. The dumping of the footways enabled a focusing on other aspects of walking access, of comparable importance to extending the Queen's Chain. Even as *Farmers Weekly* talked of Sutton's access dream faltering, the same issue reported his commenting that the mapping of existing access would go ahead and would cost 'a heap'. In winning the battle of the footways, the farmers may have inadvertently provoked the government into a more thorough mapping and waymarking of unformed public roads than would have otherwise happened. Sutton saw four areas on which the government and representatives of all sides of the access debate might agree.[93] They were:

- the setting up of an access agency to provide leadership;
- the mapping of existing access, including public roads;
- the signposting and waymarking of existing access; and
- the drawing up of a code of responsible conduct.

Regarding the likely support for the setting up of an access agency, Sutton's optimism was a little puzzling. In its submission on the 2003 Acland report, Federated Farmers had written that it 'does not support the establishment of a new central organisation or access ombudsman'.[94] The federation thought that 'a central Access Agency would likely duplicate functions of existing agencies, be open to capture by vested interest groups, create overlapping responsibilities, and create potential for "passing the buck" '. By June 2005, the federation's stance on this matter had shifted slightly to become: 'We will … be insisting that the proposed access agency should be a voluntary organisation, like the highly successful QE II Trust."[95] Maybe the federation's use of the verb 'insist' was partly wishful thinking; but perhaps it also reflected a disproportionate farmers' sway in some national affairs.

Tom Lambie stepped down from the presidency of Federated Farmers on 26 July 2005 at the federation's sixtieth annual conference. The *Dominion Post* reported his saying that he had 'enjoyed a good relationship with the Labour government, embodied in his local MP and friend, Jim Sutton … [but it had] been awkward at times."[96] During his opening address to the conference, preaching to the converted, Lambie said: 'The federation speaks with a credibility that cannot be matched by a politician or bureaucrat, no matter how well intentioned."[97] This claim was from the retiring president of a body whose press releases on land access had consistently misinformed the public regarding the government's stated intentions. Even as he spoke, there was still a Federated Farmers webpage perpetrating the deception that the government was planning a right to roam.

At Last, Something Solid on Biosecurity

Also still available on the Federated Farmers website when Lambie made his supercilious valedictory address was a document that included the

now-familiar generalised argument linking greater public walking access to farmland with increased biosecurity risks:

> Farmers [had] opposed the access legislation because … biosecurity is paramount to farming. With ever-increasing numbers of overseas visitors the risk of a live organism arriving in or on a person escalates. Access to private land must be controlled.[98]

This fuzzy and unspecific reasoning dated back at least as far as a Federated Farmers press release of January 2003, which had stated that 'free and ready public access to property would create a huge threat for landowners in terms of … biosecurity'.[99]

MAF Paper on the Biosecurity Implications of Walking Access

In July 2005 the Ministry of Agriculture and Forestry produced a paper titled 'Biosecurity Implications', its first comprehensive analysis of the farmers' biosecurity concerns.

The farmers had based much of their biosecurital distress either on the false assumption that the government would create a right to roam or on the real prospect of imposed footways along water margins. But MAF's analysis arrived *after* the government had scrapped its footways proposal. So in some respects it was two and a half years too late. On the other hand, it still formed an informative examination of the biosecurity risks that farmers had associated with walkers.

The paper first pointed out that the main effect of the surviving walking-access policy might be to identify existing Queen's Chain more clearly, hence enabling people to make greater use of the existing Queen's Chain reserves. Such a development, by itself, would not lead to more people walking across private land.

The paper then discussed whether greater walking access over private land would cause biosecurity problems. The writers considered that

> increased walking access would be unlikely to increase biosecurity risks in most situations [because]:
> - Most diseases/pests cannot be spread merely by a person walking over land (eg bovine TB).
> - Most diseases/pests are spread by natural distribution: birds, wild animals, wind or water. Thus, though they may also be spread by walkers, the additional threat is minimal (eg spread of ragwort in a person's socks).
> - Many diseases/pests are already endemic in New Zealand (eg giardia).
> - Most areas are already used by people to a greater or lesser extent, so any threat posed by people is already present. Where no Queen's Chain exists this will include at least the farmer, farm workers, and recreational users with the farmer's permission. Where a Queen's Chain exists, recreational users may use the land without permission.[100]

However, the paper said, there were some diseases and pests, not endemic in New Zealand, that walkers and anglers could spread, such as beef

measles, phylloxera (a plant louse that is a pest of vines) and didymo (a freshwater diatom that can form large blooms on stream and river bottoms). Therefore, if in the future our lawmakers happened to legislate for walking access, they might want to make biosecurity concerns grounds for a temporary closure, so long as the applicant could prove that a risk existed. Also the proposed code of responsible conduct would play a vital role in minimising biosecurity risks. For example, the code would presumably advise people on the burial of human faeces. This would help to prevent the spread of beef measles.

Farmers' Assertions Examined

The paper's appendix methodically examined the explicit issues that some farmers had raised, including:

- disease risks to farm animals (foot-rot, beef measles, bovine tuberculosis, foot-and-mouth disease, and feeding meat sandwiches to cattle);
- disease risks to people, such as the farmer (giardia and cryptosporidium);
- pest plants and plant diseases (weeds generally, plant diseases, aquatic weeds); and
- risks to bees (spreading disease either from or to a hive).

For each disease or pest, after discussing the facts and considerations involved, the authors assessed the additional risk created by allowing people to walk across farmland. For example, the section about foot-rot read:

> Footrot.
> Footrot is spread by close contact between animals. It is very unlikely that a walker could spread footrot from an infected property to a 'clean' property. It is theoretically possible, but would require the walker to carry a piece of infected hoof into the property, and then for an animal with an injured hoof to stand directly on it.
> Additional risk from walking access – negligible.

Of particular relevance, two months after the Waiheke Island foot-and-mouth disease hoax, were the paper's comments on foot-and-mouth disease. During the hoax, Federated Farmers had asserted that the hoax underlined the federation's belief that more public walking tracks across farms would result in the spreading of diseases and pests. Farmers, the federation had argued, needed to retain at all times the ability to control the entry of walkers. Yet, according to MAF, walkers would be unlikely to spread the foot-and-mouth virus and in any case, to further minimise the very slight risk of this happening, they could be excluded from controlled areas during an outbreak:

> Foot and Mouth.
> People do not transmit foot and mouth on their feet or clothes unless they are working closely with infected animals. Restrictions on movement would be imposed under the Biosecurity Act in the event of an outbreak, if necessary.
> Additional risk from walking access – negligible.

One of the important aspects with foot-and-mouth disease, therefore, is the ability of the authorities efficiently to close both linear access and area access during an outbreak, as happened to networks of public footpaths and normally-open areas during Britain's foot-and-mouth outbreak in 2001. Government officials in New Zealand have extensive powers under the Biosecurity Act 1993 to deal with biosecurity risks including, when justified, restricting entry to specific areas.

The main points again. Generalised statements such as 'walkers pose a risk to biosecurity' mean little. The officials and scientists need to consider each disease or pest separately. Some farmers, either for undefined biosecurity reasons or for explicit biosecurity reasons, have opposed the provision of public walking tracks across farms; none of the pests and diseases discussed in MAF's July 2005 paper justify such a doomsday rejection of linear access across farmland. Temporary closures of public foot-tracks across farms may be wise precautions in some circumstances, such as if a new disease arrives in New Zealand and can be spread by walkers. Controls on movement can be imposed under the Biosecurity Act.

Another National Consultation on Access

On 25 July 2005 Helen Clark announced that the general election would be held on 17 September. Ten days later, and five weeks after declaring the government rethink on footways, Jim Sutton announced the formation of the Walking Access Consultation Panel. But this panel's future – and that of the access agency, improved maps, the polishing of the Queen's Chain, the encouraging of negotiated solutions, and the improvement of current legislation – appeared to hang in the balance, dependent on the result of the election. All these access matters entered three months in limbo.

If the consultation panel survived the election, its eight members would 'engage in consultations to reach general agreement on what measures could be implemented to improve access to the publicly-owned resources of water and fish'.[101] John Acland, the Canterbury farmer who had chaired the Land Access Ministerial Reference Group, would chair the panel. The other members would be:

- John Aspinall (Wanaka), a third-generation high-country farmer and a former Federated Farmers board member and spokesman on access.
- Bryce Johnson (Wellington), the director of Fish and Game New Zealand.
- Claire Mulcock (Christchurch), a resource-management consultant who had served on the Land Access Ministerial Reference Group.
- Maggie Bayfield (Wellington), the executive officer of Rural Women New Zealand.
- Professor Tom Brooking of the history department of the University of Otago, who had a comprehensive knowledge of the history of rural society, land use and environmental change and was an authority on the origins of the Queen's Chain.
- Parekawhia McLean (Wellington), a consultant with expertise on Maori issues. (McLean would resign from the panel in February 2006 because of other work commitments. He would be replaced by Peter

Brown, a consultant with project management skills in community economic development, particularly in rural areas.)
- John Forbes (Opotiki), the mayor of Opotiki district council and the chairman of the rural sector group of the Local Government New Zealand national council.

Bryce Johnson later claimed that he had been 'the only member of the Walking Access Consultation Panel with a CV that identifie[d] an outdoor recreation advocacy background'.[102] All other panel members, according to Johnson, had CVs that identified rural connections other than outdoor recreation. The government would respond to Johnson's point by claiming, with some basis, that the panel 'had a wide variety of relevant backgrounds'.[103]

An aspect of note, it seemed to me, was the panel's apparent lack of an out-and-out, single-minded promoter of walking for its own sake. The panel, after all, would be looking into walking access to the countryside in general as well as to water margins. Or would it? We would have to wait and see. We knew only the general aim of the panel, not its detailed terms of reference. Sutton hoped that the panel would 'make progress on these matters and find an agreed way forward'.[104]

Perhaps he should have added 'with or without me'. At the general election, six weeks after this announcement, Sutton was to lose his largely rural Aoraki electorate seat by 7,000 votes. (He would return to parliament as a list MP, but would retire from national politics in July 2006.)

Few responses to Sutton's announcement reached the newspapers. Bruce McNab, Federated Farmers's spokesman on land access, 'welcomed the formation of a new eight-person consultation panel'. He said: 'We are hoping the new panel will come up with some sort of voluntary mechanism for access. We are cautiously optimistic that a sound and reasonable agreement will be reached between all parties.'[105] The *Otago Daily Times* reported that his federation colleague, president Charlie Pedersen, was angry that the federation did not have a current office-holder on the panel. Pedersen reportedly said: 'It is difficult not to see it as a purposeful snub and it does not augur well for the outcome.'[106] The Federation of Maori Authorities, an incorporated society representing Maori business organisations, applauded the government's new initiative but wrote to Damien O'Connor that 'the current panelists do not have the ability to represent or reflect on the nuances of consulting with Maori Land Owners on this *take*'.[107]

Chapter 25

The 2005 General Election

On 27 January 2004 Don Brash, the leader of the National Party, had addressed the Orewa Rotary Club. His speech, titled 'Nationhood', had focused on what he called 'the dangerous drift towards racial separatism in New Zealand, and the development of the now entrenched Treaty grievance industry'.[1] This topic, he had said, was one of his five main priorities, the others being the relative decline in New Zealand incomes; illiteracy and innumeracy; welfare dependency; and enforcing the law. The speech had gained huge publicity and had generated great controversy. Shortly after it, the opinion polls had registered a leap in support for the National Party. National, it seemed, might be a healthy contender for election in 2005, after two elections as an also-ran.

Brash had spelt out where he and his party stood on the issues of the Treaty of Waitangi and race relations. In doing so, at least a year before the likely election date, he had ensured that the Treaty would be one of the main issues at the election. In also highlighting his other four priorities, he had made it likely that the election would be fought not on minor matters, such as the missing fragments of the Queen's Chain, but on the big issues: the Treaty of Waitangi, tax, education, welfare, and crime.

This was how things were to turn out, a year later. With the benefit of hindsight, we could add student loans, roads and health.

The 2005 general election was never likely to provide fertile ground for single-issue nutters, like me, or for minor parties, like United Future and the New Zealand First Party. True enough, the walking-access issue was the chief grief facing rural New Zealand, and it was likely to harm the re-election prospects of a few rural-constituency Labour members of parliament, but it would probably not feature as a national political topic. And as things turned out, it did not.

The government's walking-access plans became an irrelevant footnote of the general election. The results of the election, though, would be crucial to the survival of those plans. Remember that the government had already allocated $7.6 million for the development of its walking-access strategy; for this work to continue, and for that money to be spent as intended, Labour would need another three years in office.

The Political Parties' Policies on Walking Access to the Outdoors

In 2003 the Acland report had examined walking access to public and private land. In 2005 the political parties' pre-election statements on walking access touched on both of these aspects. As I emphasised in the Introduction, the foremost access insufficiency in New Zealand is the dearth of certain and permanent public foot-tracks across private farmland, but – as I also stressed – the twin issues of access to private and to public land are often inseparable. In looking at the manifesto statements, we will check both aspects. I will occasionally refer to the role of public roads and Queen's Chain reserves. It is important continually to bear in mind the contradiction: these strips of *public* land form an intrinsic part of the issue of linear access across *private* land.

New Zealand Labour Party

The Labour Party's policies on the Queen's Chain and on outdoor recreation in general had been fairly detailed since at least 1996. In an assessment of the party policies before the 1996 general election, Public Access New Zealand had labelled Labour's policies 'the most access friendly'.[2] Labour, according to PANZ, had 'a comprehensive programme which [addressed] most of the pressing issues'. We should bear in mind, though, that in identifying these pressing issues, PANZ's focus was on public access by public ownership.

Three years later, before the 1999 election, PANZ was not quite so chuffed with the Labour Party. Labour, in the view of PANZ, still had a detailed policy that tackled most issues, but 'Labour's score [had] dropped significantly since 1996 due to inconsistent high country policies and from a major shift towards Maori interests at the expense of the wider electorate'. In the years that followed, PANZ's pronouncements on Labour's handling of Treaty issues were to become increasingly critical and strident. Treaty issues aside, though, Labour's 1999 election-campaign literature said much that should have pleased all outdoor recreators:

> As the population becomes more urbanised, people will seek areas in which to enjoy a variety of outdoor recreation … Labour will develop a strategy for the extension of the Queen's Chain to ensure New Zealanders have improved access to our waterways and coastline.[3]

For the 2002 general election, Labour's 'Conservation Policy 2002' had promised that

> 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.

By 2005, after six years in government, the Labour Party had not yet completed a public-access plan and had not yet decided on a way to extend the Queen's Chain – but was still working on both. For the 2005 election, Labour played down the land-access issues, condensing its post-Acland walking-access ambitions into thirty-seven words. It also hedged

its bets; slightly wounded by Jim Sutton's land-access tussle, Labour shied away from mentioning anything so silly as rural walkways, preferring instead to defer to New Zealand's landocrats:

> Labour will conduct further consultation on the proposals to achieve practical and secure access along coasts, significant rivers and lakes and other publicly owned conservation areas, while at the same time respecting the interests of property owners.[4]

In other words, 'steady as she goes, and this time we'll try not to upset the farmers'. That was all that was necessary to say. The MAF website already contained masses of material that reflected Labour's policies on walking access. The government's continuing work on access formed a substantial semi-permanent policy statement. I say *semi*-permanent because it was still evolving. The Walking Access Consultation Panel, formed in August 2005, would contribute to that evolution – if it survived the general election.

Green Party

In November 2004 the Green Party had announced its views on some of the walking-access issues.[5] Jeanette Fitzsimons, the party's co-leader, had called for 'the restoration of access over public "paper" roads – land-surveyed and owned as a road but not formed or marked'. She had also said 'the Greens wanted to see a commissioner with an independent budget appointed to negotiate public access'.

The Green Party repeated these points as part of its 'Agriculture and Rural Affairs Policy' of August 2005:

> 9. Public Access
> The Green Party generally supports the right of the public to access conservation areas and paper roads. We will:
> 1. Support the creation of a public Access Commissioner to:
> a) Build relationships between landowners and land users.
> b) Develop a code of conduct for the public using access ways, in collaboration with the Department of Conservation, local government, land owners (including iwi), and other agencies/ organisations as appropriate - with strong penalties for breaches.
> c) Provide financial support for landowners to erect signs and to fence their properties.
> d) Provide reliable geographic information on the location of public access ways of all types to users and landholders.
> e) Ensure existing paper roads remain open, are adequately marked, and that complaints concerning obstruction of them are resolved.
> f) Provide community mediation, work with councils and assist them to enforce the law and provide appropriate signage.
> g) Research and collect information from the public about land access issues, including difficulties.
> h) Two years after its establishment, report to Parliament about whether there is a need for legislation to resolve issues and improve public access to land.[6]

The general thrust of the Greens' ideas roughly matched the government's still-evolving access strategy. But the Greens focused strongly on public access rights and not at all on private property rights.

United Future Party and the Outdoor Recreation New Zealand Party

Outdoor Recreation New Zealand (ORNZ) was a political party that was first registered in March 2002. It was 'dedicated to preserving the heritage of the outdoor sports people of New Zealand'.[7] Although initially ORNZ aimed to support the interests of all outdoor recreators, its literature contained a heavy emphasis on the concerns of salt-water recreational fishers and recreational hunters of game animals; people soon began to refer to ORNZ as 'the huntin' shootin' fishin' party'.

In April 2004, ORNZ affiliated to United Future. Under this arrangement the two parties remained distinct political parties but contested the 2005 election under the banner 'United Future'. United Future adapted its logo to show that the two parties were working together. United Future's candidates included candidates from ORNZ.

The two parties produced a joint outdoors policy.[8] This fifteen-page statement reflected the disquiet of many recreational marine fishers, recreational freshwater fishers and recreational hunters. The overall thrust of the policy asserted that there was an imbalance in New Zealand between the provisions for conservation and the freedoms of outdoor recreators. Public Access New Zealand had expressed similar sentiments several years earlier, with such articles as 'DOC Failing Public Recreation'.[9] United Future-ORNZ encapsulated this message in the slogan 'Outdoor Recreation – Commonsense Conservation'. United Future-ORNZ believed that

> outdoor recreation is only enjoyable (and indeed possible in many cases) if the environment is in a good state of health, and if people are treated as an integral part of the environment rather than as undesirable interlopers.[10]

Moreover, said United Future-ORNZ looking askance at the Green Party, 'people must not be excluded from participating fully in the environment by laws that have an undue emphasis on preservation and the prevention of change'. (We should temper United Future-ORNZ's criticism by mentioning DOC's Recreation Opportunities Review of 2002–4 and the accompanying extra $349 million over ten years allocated to outdoor recreation facilities – especially tracks and huts – on public conservation land.[11]) All this was and is topical and is fundamentally important and is likely to remain a contentious aspect of our outdoor politics – but it is outside the range of this book.

Two of the ten sections of the United Future-ORNZ outdoor policy did touch upon the subject area of this book. A section titled 'Practical Access to New Zealand's Great Outdoors' recorded that United Future-ORNZ had advocated firmly for 'a government access policy that protects and enhances access to public land without impinging on the property rights of landowners'. The anxiety not to infringe property rights was unsurprising, influenced as it was by a party, United Future, considered

to be right of centre on property rights. The policy's obeisance to the land-guards knew no bounds:

> Our interest lies in maintaining and, where possible, enhancing public access to public land. We are not interested in public access to private land per se – it is simply a means to an end.

Some political pragmatism may have led to this bald utterance. But the policy wore blinkers. It defended the policy-writers' gut feelings against the intrusion of a new idea. If interpreted rigidly, the declaration implied that United Future-ORNZ did not support the negotiation of walkways across rural land as ends in themselves. The statement bluntly denied that Joe Public had any entitlement to appreciate the pastoral landscape for its own sake. Political realism perhaps; but also a capitulation to property-rights supremacy. Did not Kiwis have a right to view, walk across and enjoy their farmed countryside, much of which was uncultivated? Northern Europeans reading the statement would have found it an incongruous stance from a political affiliation that included a body called Outdoor Recreation New Zealand.

Whose side was United Future-ORNZ on? One had to wonder about the politics of this enigmatic party. It seemed to me that United Future-ORNZ, reputed to have been influenced by Christian beliefs and said to focus on common-sense moral values (rightness and fairness and so on), was not generous in spirit or welcoming when it came to the common good and recognising the right of ordinary men and women to share ownership of our 11.7 million hectares[12] of farmland (much of it extensive grazing) – an area considerably bigger than Portugal, or nearly the size of Switzerland and Austria combined[13]. United Future-ORNZ did need to ask itself whether its gallant support for property rights was unrealistically simple.

Perhaps I'm being a little harsh. United Future-ORNZ had unswervingly backed the Labour-led government's land-access endeavours. When the government had back-pedalled on its footways proposal, a United Future member of parliament, Larry Baldock, had urged it to press on with the proposed walking-access bill before the general election. So, despite United Future's ideological purity on property rights, Baldock seemed to be supporting the proposed imposition of the footways. He said:

> United Future is confident the basics in the [yet-to-be-released] Bill are fair and reasonable and any further fine-tuning can occur during the select committee stage.[14]

Was there a contradiction here? There was only one way that Baldock could reconcile an uncompromising defence of property rights with the forced establishing of the footways. He must have agreed with the government that the proposed footways would amount to a mere restriction on the exercise of property rights, with minimal financial consequences for most of the affected landowners; creating the footways would not require the absolute taking of land.

Apart from its naive denial of the recreational importance of the working countryside, the United Future-ORNZ walking-access policy conformed approximately to the government's still-developing access plans:

United Future and Outdoor Recreation NZ will:

- Ensure that the notional Queen's Chain is formally enshrined in statute;
- Ensure that New Zealanders have clearly defined legal rights of access to public land (including the Queen's Chain);
- Establish a statutory land access agency and an Access Ombudsman to analyse, implement, administer and enforce a comprehensive land access strategy;
- Require a land access agency to negotiate specific access corridors across private land with landowners on a case-by-case basis (these corridors could in many instances be based on the 'paper roads' and easements that already exist on many legal property titles but are not always acknowledged by landowners);
- Establish a legally binding Code of Conduct (via a land access agency) that prohibits trespassing beyond a legally established corridor, littering, leaving gates open or other nuisances, and any other conditions that may be deemed necessary;
- Encourage (or require) recreational clubs to adopt the Code of Conduct and deal with any complaints directed at their members;
- Ensure the access regime applies to all private land (including Maori land) for the purposes of ensuring access to public land for all legal pursuits;
- Establish a clear set of guidelines for applying to set up new access corridors;
- Require a land access agency to enforce the terms of access corridors on landowners once they have been legally established;
- Ensure adequate funding is available to cover any costs (such as track maintenance) the establishment or maintenance of an access corridor may entail – under no circumstances should the landowner incur any costs associated with public access corridors on their land;
- Establish a fund to compensate landowners up front for any damage that members of the public cause to their property (the land access agency can pursue offenders to recover the cost of fund payouts separately);
- Establish (via a land access agency in conjunction with Land Information New Zealand) a comprehensive land access database including maps and specific access corridor details;
- Employ rangers to monitor public Code of Conduct compliance and investigate violations;
- Establish a responsive complaints process (via the land access agency) for landowners who experience any problems.[15]

One other section of the United Future-ORNZ outdoor policy was relevant to the issue of access across private farmland and private forests.

Titled 'Recreational Risk Management', this section responded to the concerns in the 2003 Acland report regarding the impact of the Health and Safety in Employment Act (and other acts) on access.[16] United Future-ORNZ believed that 'New Zealanders at play in the outdoors should not be burdened unnecessarily by inappropriate legislation.' The parties would clarify access rules 'to ensure that liability concerns cannot be used as an excuse for landowners to refuse access to their land for outdoor recreation events and activities'.

New Zealand First Party

New Zealand First Party did not produce a detailed statement gathering together its thoughts on walking access to the outdoors. But a few windy declarations relevant to walking access were scattered around in its rural, environmental and conservational policies. New Zealand First jumped on the same landwagon as most of the other political parties to reassure the farmers and other landowners that it would 'ensure that the property rights of all rural landowners are respected with regard to land access issues'.[17] At the same time, it promised anglers and river-lovers that it would 'ensure public access to the Queen's Chain'.[18] A leaflet delivered to my letter-box, carrying a photograph of Winston Peters and titled 'A Man for a Change', repeated this promise to guarantee 'public access to waterways and coast'.

In these New Zealand First policies of June 2005, I could find no comment on whether the Man for a Change would support the government's proposal to establish an access agency.

National Party

The National Party produced a five-point outdoor-recreation policy. National tailored this to meet growing public demands for the Department of Conservation to attach greater importance to outdoor recreation. National pledged to 'reform the Department of Conservation to … shift the emphasis from locking up public land to enabling and encouraging outdoor recreation'.[19]

This narrowly focused outdoor-recreation policy did not touch upon the issue of walking access across private land. It did not explicitly mention the Queen's Chain (nor did any other of National's policy statements). National's beliefs on walking access to the farmed countryside appeared in another policy area, that of agriculture. I have already quoted part of what follows, but it is worth repeating:

> 1. Public access
> The number one issue facing rural New Zealand is Labour's proposal to allow public access over private land … National regards this [the proposed imposition of footways] as a serious erosion of private property rights, which poses a risk to stock, life and property.
> National will:
> - prevent any erosion of private property rights; and
> - preserve property owners' rights to determine access.[20]

This uninterest in improving the linear access across private countryside, proclaimed at the New Zealand National Agricultural Fieldays at Mystery Creek on 16 June 2005, adhered to what National had said

almost a year earlier. In August 2004 David Carter, the National Party's spokesman on agriculture, had announced that 'the next National Government will repeal any legislation that significantly impinges on private property rights.'[21] At the Fieldays, Don Brash retransmitted this promise. A month before the general election, Carter told *Rural News* that the access legislation would be 'dead and buried' if National gained power.[22] A week before the election, Brash warned the farmers 'that the Budget allocation of $2 million for the next three years to advance this law is still there'.[23]

The National Party's dismal negativity on public access to rural land contrasted sharply – some said hypocritically – with its strident willingness to protect public access to the foreshore and seabed. But you could not fault David Carter for any inconsistency on the specific issue of walking access to private land above the mean high water springs mark (the landward boundary of the foreshore). As early as January 2003, he had reportedly 'lashed out at the [Land Access Ministerial Reference] Group, saying it was the first step towards opening up farms to pedestrian traffic'.[24] The insinuation, from the start, was that public walking tracks across farms were a bad thing.

In April 2005 Carter wrote:

> If people ask permission before crossing land they can be warned of any dangers … As an active farmer on Banks Peninsula, I enjoy watching trampers making the most of the hills above Lyttelton Harbour, but it's a two-way street and it only works because I know they are there and they know the rules and obey them.[25]

This was a condescending argument for retaining the Great New Zealand Status Quo: an overriding dependence on, and faith in, single-occasion access by permission. Backward-looking. Carter wanted to keep a 19th-century system for the 21st century. Yet some areas of Banks Peninsula already had public foot-tracks that worked perfectly well without the landowners guarding the entrances and exits. Millions of Europeans enjoyed Europe's footpaths across farmland without being vetoed by the farmers who worked the land.

For a few access advocates, the name 'David Carter' was now synonymous with controlism, or to be less kind, control freakery. But charitable observers may have seen an opposition politician doing a damn good job. His thinking was in tune with rural sentiment and it exploited an ambivalence in the arguments of trampers and hunters, many of whom relied on and supported traditional access.

Our farmers were no longer early settlers; they were often corporations, and sometimes the farms were just a part of their investment portfolios. We walkers were no longer the neighbours from down the valley; we were most likely city-dwellers, perfectly law-abiding but with no time to spare on researching who owned what land. Even had we had the time, many of us, especially the non-club-members, lacked access to such information.

Thanks to Don Brash's and David Carter's boundless clarity on these issues, outdoor recreators – but unfortunately not the whole electorate – knew what to expect: if the Brash-ites won the general election, the

new government would demote the importance of the Walking Access Consultation Panel and would almost certainly re-introduce the public flogging of trespassers.

ACT New Zealand

ACT's policies for the 2002 election had inspired Bruce Mason of PANZ to write:

> Heaven help public lands and its users if ACT ever get their hands on them! Their doctrinaire advocacy of private property rights over-ride[s] the very concept of publicly owned and managed resources.[26]

For the 2005 election, there was no reason to think much had changed. From an outdoor recreator's viewpoint, however, not everything about ACT's 2005 policies deserved disapproval. In October 2004 the ACT member of parliament Stephen Franks had delivered a speech questioning society's worship of the Safety God.[27] Franks strongly supported the freedom of adults to take risks. He also spoke of a Bill to re-establish the common law's respect for volunteers; such a law change would protect volunteers from liability in the absence of recklessness. ACT's sport-and-recreation policies for the 2005 general election repeated these themes. ACT even took a leaf out of the Green Party's book, promising to 'reflect sport and recreation values in funding priorities, such as for bicycle lanes and paths'.[28] That, though, is the end of the fragrant news about ACT New Zealand's 2005 policies.

ACT's policies included one paragraph relevant to the issue of walking tracks across private land:

> Uphold the sanctity of property rights. ACT will oppose any legislation that will deny farmers the right to say who may enter their property. The status quo must remain.[29]

To show what this meant in practice, I will illustrate – using his own words – the incorrigible beliefs and the polarising influence of one individual.

After January 2003, followers of the access debate had come to hear of six names in particular. Three politicians: Jim Sutton, David Carter and Gerry Eckhoff. Two NGO representatives: Bruce Mason and John Aspinall. And Bryce Johnson of Fish and Game New Zealand. Eckhoff, a member of parliament for ACT and a self-appointed farmers' champion, had campaigned unremittingly and outspokenly in favour of a landowner's absolute right to exclude.

On 24 January 2003, the day after the government had announced the setting up of the Land Access Ministerial Reference Group, Eckhoff had responded with a press release titled 'Government Insults Rural New Zealand'.[30] The reference group's examination of the access issues, according to Eckhoff, was 'a barefaced affront'. (Most affronts are.) Jim Sutton was 'little more than Helen Clark's lackey'. A year later the scare-mongering was still issuing from Eckhoff's pen: 'The public will destroy the resources they demand access to … Free riders want your assets, [they] have the numbers, and can impose their will.'[31]

Depending on your viewpoint, here either we had a loyal guardian of property rights, splendidly vociferous, an essential rural voice, or we had New Zealand's own demagogue, a political agitator who appealed with crude oratory to the passions of the commiserative and to the imaginations of the gullible. By using such terms as 'Mugabe-style', he raised the temperature of the national debate. By alleging that the government was planning to entitle the public to rove around on farmland, he misinformed people on a crucial detail.

Eckhoff sometimes gave the impression of having been educated in a military academy. His splenetic outpourings eventually strayed into the realm of personal abuse. On 1 December 2004, during a general debate in parliament, he likened Jim Sutton to a wartime traitor:

> During the war years there was a man called Quisling, from Norway. He was regarded as a collaborator and a traitor. The people of rural New Zealand are calling Jim Sutton a quisling. They are telling me that he has collaborated with the Government and no longer stands up for the people he should be supporting.[32]

The assistant speaker, Clem Simich, twice asked Eckhoff to withdraw and apologise. Eckhoff refused to do so. Sutton later complained that the word 'quisling' was deeply offensive.

Eckhoff also hit out personally at Bryce Johnson, the director of Fish and Game New Zealand. According to Eckhoff, Fish and Game's support for 'the Government's right-to-roam proposal' was merely 'Bryce Johnson's personal crusade to allow people to catch a fish once in a while'.[33] (The government had not proposed a right to roam. Nor had Fish and Game pressed for one.) In May 2005 Eckhoff 'called on farmers to shut their gates on the opening weekend of the duck shooting season to stop vehicle access by Fish and Game rangers'.[34] He alleged that 'the Fish and Game executive has declared war on farmers with its dirty dairying and right-to-roam campaigns'. In an article titled 'Fish & Game vs ACT Fight Gets Personal', *Rural News* reported that 'public access tension is intensifying as groups on either side of the debate get personal in the countdown to the Government's soon to be announced legislation'.[35]

Brendon Burns, the Labour Party candidate for Kaikoura, drew attention to Eckhoff's asinine exaggerations:

> Burns said the [access to waterways] issue has been hijacked for political theatre, with ACT's Gerry Eckhoff being one of the biggest dramatists. [Burns] found offensive Eckhoff's comparisons of the Government proposals with the actions of Zimbabwean president Robert Mugabe. 'Mugabe [is] a tyrant who is having people murdered and houses bulldozed in pursuit of his policies. There's no comparison, it's just totally inappropriate.'[36]

ACT, if it remains in existence, will always have some difficulty in understanding that public linear access across uncultivated farmland is a moral right, not a privilege, and that it should become a legal right. For ACT in 2005, private meant private. Also, ACT had never demonstrated much devotion to the public estate and unformed public roads.

Maori Party

The Maori Party, which had registered as a political party on 9 July 2004, campaigned on five main areas, one of which was the foreshore and seabed. The party implacably opposed the Foreshore and Seabed Act 2004.

The party produced quite lengthy and informative general policy statements, 'Nga Kaupapa [Our Values]'[37] and 'Tikanga [Policies]'.[38] These comprehensive explanations of principles, objectives and policies said nothing specifically on the Queen's Chain or on walking access to private rural land. This lack of manifesto explicitness on walking access was hardly surprising. The Maori Party was still a fledgling, busily organising itself. It had not had time to produce detailed policy statements on minor issues, which walking access had become.

The most concrete Maori Party declarations on walking access were Tariana Turia's press releases of 20 and 30 June 2005 (see Chapter 24). For the most part these utterances seemed to regurgitate old arguments that might have been lifted directly from Federated Farmers press releases.

In contradiction to Tariana Turia's press releases, a questionnaire of political parties run by Vote for the Environment appeared to show that the Maori Party supported – perhaps with reservations – the creation of a land-access agency and also supported pedestrian access to the existing sections of the Queen's Chain.[39]

The Results of the 2005 General Election

The general election held on 17 September 2005 produced a near-tie between the two main parties. Two weeks later the official results gave the Labour Party fifty seats, the National Party forty-eight seats, and other parties a total of twenty-three seats. It was unclear what grouping of parties would govern. On 17 October Helen Clark announced that Labour had achieved the necessary support to form a government. The government would be a minority coalition between the Labour Party and the Jim Anderton's Progressive party, supported on matters of confidence and supply and other specific issues by the New Zealand First Party and United Future.

The 2002 election had given Labour fifty-two seats and National twenty-seven. Labour's third term in government would be far more constrained than its second.

Jim Sutton suffered a heavy defeat in his Aoraki electorate. He returned to parliament as a list MP but did not stand for re-election to the cabinet. John Tamihere did not return to parliament. Neither did Gerry Eckhoff; his departure removed from the access theatre its property-rights lion-heart or its saddest portrayal of intolerance, depending on your point of view.

A number of factors had contributed towards Jim Sutton's losing his Aoraki electorate seat. At least six months before the election, the National Party candidates for Aoraki and Otago had anticipated the chance to win these two Labour-held rural electorates and had started campaigning.[40] I have extensively recorded in this book the farmers' defiant ire and collective miserablism – often misinformed – about the government's walking-access plans. But access wasn't the only matter that

had stirred up rural voters. There was residual ill will from the fart tax (a proposed tax on livestock methane emission). Some communities were fuming about the closure of rural schools. Many rural people opposed the proposed microchipping of dogs. Farmers were complaining about compliance costs, water-management issues and tenure review.

Kay Booth has suggested that access, and particularly de facto access, had become a pawn in the game of rural politics, a farmers' trump card that could be used to combat opponents' harmful moves.[41] The opposition of some farmers to the government's proposed footways may have been partly a retort to other rural issues.

In losing his Aoraki electorate seat, Jim Sutton learnt a distasteful and undeserved lesson. As the minister for agriculture he had overseen the formation of New Zealand's largest company, Fonterra, which had required special legislation. He had earned almost universal praise for his work as a proactive and energetic minister for trade negotiations. This work had included initiating and completing the trade agreement with Thailand and the ground-breaking P4 trade deal with Singapore, Brunei and Chile.[42] During his term in office, New Zealand had become the first developed nation to start talks with China on a Free Trade Agreement (FTA). But as the minister for rural affairs (and latterly the associate minister for rural affairs), his political management of the land-access debate had been poor. His rural background, down-to-earth approach and social conscience had not helped him to polish the Queen's Chain or to dull private property rights.

It is worth spending a moment, here, looking at part of the origins of New Zealanders' preoccupation with property rights. A central argument of New Zealand politics from 1890 to 1920 concerned the relative merits of freehold and leasehold tenures. The was a feeling among farmers 'that not even a 999-year lease provided a tenure as secure as private ownership, which enabled the farmer to enjoy his acres at his ease and to pass them on without question to his heirs.'[43] A trend saw good agricultural land tending to be held as freehold (privately owned), while the poorer land tended to be held as large stations in pastoral leasehold (publicly owned). 'Freehold … was a potent symbol, evocative of a whole political creed; a catchcry irresistible to rural conservatives and individualists.'[44] In the 1920s, 'no one could hope to woo the rural voters without acknowledging their true god whose name was Private Property'.[45]

Eighty years later, in 2005, the mystical basis of property rights, which put them beyond challenge, remained intact. New Zealand was no longer a New World frontier country, yet our attitudes to private land reverberated with memories of land wars and colonial deception, shady deals and unchecked avarice, stump-pulling toils and family histories. Our land law stayed beyond the reach of sophisticated discussion. It let landowners shut out New Zealanders from exquisite corners of their own birthright. It encouraged landowners to adopt uncompromisingly aggressive attitudes. It allowed autocratic ideas to masquerade as a doughty defence of western property rights. It sometimes camouflaged greed and self-interest. It prevented changes that would have strengthened the interdependence of town and country. It allowed farmers to rue the disconnection between town and country, while at the same time releasing a barrage of anti-

urbanite rhetoric. It permitted our farmtracks – our greatest potential means of enjoying the rural landscape – to remain needlessly and wastefully private. It made trespass a criminal offence, once a landowner had warned you to leave, even if you strayed accidentally off an unformed and ill-defined public road. A warning could force you to return the way you had come, instead of continuing along the best approximation to the public road. Astonishingly, according to one legal authority, it was 'doubtful if any person [had] the legal right in New Zealand to go even temporarily upon private land adjoining a highway in order to pass a temporary obstruction'.[46] In theory, our land law upheld our rights to walk along all public roads and along many parts of the incomplete Queen's Chain; in practice, any one of numerous long-standing and exhaustively examined impracticalities could often prevent us from doing so.

The Language of the Access Debate

For two and a half years Sutton had not counteracted the farmers' property-rights vernacular. He had encountered a land rage characterised by such expressions as 'appropriation of property rights', 'outright theft' and 'land grab'. This got me thinking about the inflammatory connotations of the term 'land grab'. So we'll take a solemn lexicographical look at it. *The Oxford English Dictionary* gives us:

> land-grabber
> One who grabs or seizes upon land (landed property or territory), esp. in an unfair or underhand manner; *spec.* in reference to Irish agrarian agitation, a man who takes a farm from which a tenant has been evicted.[47]

We associate the eviction of Irish tenant farmers with injustice, cruelty, hardship and deprivation. The term 'land grab' therefore, when used to describe a genuine expropriation of land, thoroughly deserves its pejorative undertones of wickedness and illegality or near-illegality. The *OED* cites six examples of 'land-grabber' or 'land-grabbing' from British sources between 1872 and 1887. I do not know how frequently the word occurred in Britain during the 20th century. My guess would be that there were probably few domestic happenings, such as law-changes, that warranted its use, though it may have retained some currency in describing events in other countries.

'Land grab' re-appeared occasionally in the United Kingdom in the late 1990s, during the national debate leading up to the Countryside and Rights of Way Act 2000 (the CROW Act). I doubt whether the resurrected 'land grab' had much of an emotional ring to it in the Britain of the 1990s, except in rural areas. The CROW Act, a substantial reform, led to a statutory right of pedestrian access to about 1.6 million hectares of 'access land' in England and Wales. The act included limitations on the new right, to ensure that landowners would not suffer significant losses or costs. The government decided that, as the landowners would face no financial loss, no compensation would be payable. There were different views on whether the CROW Act would breach the Human Rights Act 1998 or the European Convention on Human Rights. The

Blair government argued that the act would not contravene these; some Tory members of parliament said that it would.

A United Kingdom government consultation paper in 1998 had argued that 'the limited interference with landowners' rights has to be set against the important public benefit arising from increased opportunities for recreation'.[48] Moreover, there were moral and historical arguments that the 'new' access rights would merely re-establish ancient entitlements. These reasonings won the day, helped by New Labour's huge parliamentary majority. The adjustment to the landowners' property rights was diametrically different from and infinitely less severe than the sufferings of the Irish tenant farmers in the 19th century. So it hardly deserved the description 'land grab'. Yet, if we make an international comparison, the Tony Blair government's creation of open country (area access) was a far more radical adjustment than the Helen Clark government's proposed footways (linear access), which caused a rural outburst of peculiarly Kiwi hyperbole.

The term 'land grab' still enjoys in New Zealand a rhetorical echo and a political clout – not to mention its new power of distortion – that it long ago lost in Britain. In New Zealand the term's disparaging connotations are nowadays just as politically sensitive as they were in 1893 when someone wrote to the editor of the *Taranaki Herald*:

> Sir,
> I have just heard that certain employers of labour in New Plymouth told their employees that they must vote for Col. Trimble if they wish to retain their situations. Workingmen look and study the above tyranny, and don't vote for land grabbers.
> I am, &c,
> FREEDOM.[49]

As regards the state as land-grabber, I have Dianne Bardsley of the New Zealand Dictionary Centre to thank for informing me of the following New Zealand occurrence: 1905, in Baucke's *Where the White Man Treads*, page 238, 'The Crown itself has become that obnoxious person, the land-grabber!'

In losing the fray over the footways and then his electorate seat, Jim Sutton had become a casualty of a primitive and unflattering land rage. Yet walkers and trampers should not undervalue his contribution to the improvement of walking access to land. Commenting on the work of his Land Access Ministerial Reference Group, Kay Booth wrote:

> The Land Access Review showed a major commitment by the New Zealand Government to recreational access. It invited a national dialogue focused upon land access [for recreation] for the first time in New Zealand's history. Previous access discussions had been place or issue specific (such as legislative threats to the Queen's Chain and the foreshore debate).[50]

Chapter 26

A Search for Consensus

Had all the talking and research wasted taxpayers' money? Perhaps not. Labour's confidence-and-supply agreement with United Future included the intention to advance 'non-statutory proposals to negotiate improved public access along rivers, lakes and foreshore'.[1] (An odd wording, as the Foreshore and Seabed Act 2004 had already provided de jure rights of public access along public foreshore land.[2]) Labour's confidence-and-supply agreement with the New Zealand First Party contained an identical clause.[3]

Although Jim Sutton had not survived as the government face behind the walking-access improvements, his Walking Access Consultation Panel lived on. On 31 October 2005, a *Nelson Mail* editorial reported that the new minister of agriculture, Jim Anderton, would be widening the scope of the consultation panel. (Damien O'Connor had remained the minister for rural affairs, but a cautious and phlegmatic Jim Anderton appeared to have assumed some responsibility for walking access.) There would be no time-frame for the new period of conferring – not that the earlier deliberations, in 2003, had been at all hurried – and 'anyone who wants to be heard will be'. The editorial continued: 'Given that the previous committee [the Land Access Ministerial Reference Group in 2003] had already heard 1050 submissions, there cannot be much left to say … Perhaps the real hope is that consultation fatigue will set in allowing consensus to be reached this time.'

Heading for a Mixture of Consensus and Compromise

Consensus? An agreed way forward? It was true that most of the interested parties would share beliefs on several important issues. Large surviving parts of the government's walking-access plans, temporarily shelved, would involve no interference in property rights. These aspects included improved mapping of existing tracks, readily available information on the location of public roads and Queen's Chain reserves, the encouraging of negotiated access, and the provision of access leadership. The talking on these uncontroversial areas could be expected to progress quickly past the why and onto the how. Some beneficial developments, especially regarding mapping, were faintly visible on the horizon. It was equally

true, though, that the controversy of the previous two years suggested that a strategy arrived at by mutual consent would not meet all the access challenges that the 2003 Acland report had dispassionately described. Although some aspects of such a strategy would stem from consensus, other parts would reflect political compromise.

The complex reality was that landowners and recreational land-users did not even agree on the extent of the access problems, let alone on the solutions. Take, for example, public roads. Public Access New Zealand had called the obstruction of public roads 'the largest access problem in New Zealand'.[4] In the Federated Mountain Clubs of New Zealand 2005 annual report, John Wheeler wrote that in the fifteen or so years he had been involved in access issues with the FMC, problems of access over legal but unformed roads had taken up most of their time and energy.[5] The law needed extending to place a duty on the road-controlling local authority, in the event of any dispute, to assert and defend the public rights of passage. But most of the Federated Farmers statements on public roads had been wishy-washy, evasive and bereft of goodwill. The law also needed strengthening to compel landowners to label gates that they erected across public roads; I had not seen any statement from Federated Farmers or from any other landowners' body acknowledging the crucial importance of such signs.

The prickliest controversy, however, had centred on the creation of permanent linear access across private land: accessways to reach stranded islands of public land; foot-tracks alongside publicly owned rivers that lacked Queen's Chain reserves; vital connections within networks of walking tracks; and walkways across uncultivated land for their own sake – that of enjoying the farmed landscape. Federated Farmers had consistently ridiculed the need for such tracks. Its submission to the ministerial reference group in April 2003 had tersely stated that the federation saw no problem with the extent of public access to public or private land, and so no solutions were required.[6] What's more, the federation viewed walking tracks across farms as incompatible with farm management. It had also implied that walking tracks would increase the level of rural crime.

One day in October 2005, an incident occurred that illustrated the possible criminal consequences of the *lack* of a clear and definite public walking track. Two men who had been fishing the Cust River, near Rangiora, claimed that a farmer had repeatedly shot at them with a rifle. According to a later newspaper report, one of the anglers held a fishing licence and thought they were fishing legally. The other angler said that the farmer 'swore at them repeatedly and said he was sick of them coming on to his land … After threatening to shoot them in their behinds, [the farmer] let them move up river towards their car … but warned them to stay in the river.'[7]

Absurd Analogy

Back in June, at the time of the government's rethink, Jim Sutton had summed up the difficulties of his two-year effort to examine and improve walking access to the outdoors:

> He accused Opposition politicians and groups such as Federated Farmers of spreading a campaign of misinformation and he blamed the lack of support on a 'new hardness, a new selfishness about society at the moment … that doesn't really care much about community interests'. It was fashionable to take an extremist view in favour of private property rights at the expense of the protection of public rights. Yet [most of] the public held a different view on the foreshore and seabed legislation.[8]

Selfishness? Was that a fair description of the anti-access attitude? What other, more perceptive or more sympathetic word describes a refusal to share the rural landscape? Was the government dealing with me-me-me or with a justified resistance to modernity?

The Federated Farmers reactionary stance seemed to me to reveal institutionalised tunnel-vision and a flawless scarcity of imagination. There was a grouchy dogmatism in the farmers' outlook, which saw property rights in black and white terms that obscured any other coloration. The farmers were not recognising that landholders of pastoral expanses have an extra duty on their shoulders, one that has never applied to people living on urban house-plots. Rural land is not merely property to be exploited by its owners for their profit; there are also communal values. Landowners have a responsibility to think about the public interest.

One prevalent argument against creating public rights of passage across farmland was based on what we could call the Law of Rural Sovereignty, combined with a likening of private countryside to private industrial estates. Versions of this argument had appeared in many press reports of landholders' views and in farmers' letters to newspapers. We met an example in Chapter 16 under 'The Farm as a Factory Floor'. The farmers' elastic logic went like this: my farmdom is private land. It is my home and my business. If townspeople get the right to traipse across my land, then I will come into town and trample around their gardens and wander through their factories.

We may not yet have seen the last of these proclamations. They nearly always use loaded verbs like 'traipse' and 'trample'. So track-users firstly need to object to the pejorative words. We are talking about a healthy pastime that deserves a more respectful verb such as 'walk'.

Secondly, this landholders' reasoning says that creating a walking track across a farm is analogous to creating a similar track across an urban house-section or through the yard of a sheet-metal factory. This analogy is farcical, unless you allow a naive property-rights fundamentalism to override common sense. The comparison ignores the fact that the farmed countryside is a paramount part of New Zealanders' outdoor heritage, whereas townspeople's gardens and industrial zones are not. Also, the planners of tracks in rural areas could voluntarily adopt a fifty-metre curtilage convention, to be achieved whenever practical; these circles of private land would keep walkers much further away from houses than happens in towns. In mid-2005, during the national furore over the government's proposed footways, rural interests paid for a TV advert in which a dog and a rural-looking bloke jumped over the back-garden fence of an urban house and headed across the garden towards the opposite

fence, the man saying he was going to the beach. This advertisement misrepresented the government's plans and deceived the public.

Triple Standard

The farmers' tough conservatism, though, was just one dimension of the hearts-and-minds problem that the government was grappling with. Jim Sutton, in the last quotation, indicated a different, nationwide dimension: there was a double standard. In comparing the foreshore-and-seabed issue with the walking-access issue, he was suggesting that the public was willing to support a government's trimming of Maori rights but not of farmers' rights.

In an even more general sense, it seems to me that there is also a triple standard: access to beaches is more important to Kiwis than access to riversides and lake shores, which in turn is more important than access to hillsides, spurs and ridges. If this is true, it ought not to surprise us; human nature might favour lounging upon or strolling along a beach, as opposed to slogging up a hillside.

Triple standard or not, one fact is incontestable: the law now allows us, with rare exceptions, to walk along the most undistinguished beach, but other law excludes us from the peaceful beauty spots that lie hidden among many millions of hectares of pastoral terrain. Rebalancing this cock-eyed national arrangement will take decades of incremental change.

Terms of Reference of the Walking Access Consultation Panel

In October 2005 the briefing for the incoming ministers of agriculture and for rural affairs stated that 'the only Rural Affairs issue that requires some immediate attention from Ministers is the walking access to land issue'. The briefing acknowledged that

> some of the provisions in the walking access to land policy approach [were] controversial, especially:
> - those relating to the establishment of a public right of access on footways along water margins over private land;
> - the application of this right to Maori land; and
> - the scope for compensation in respect of the footway.[9]

The government's renewed consultations would search for a consensus on which to base durable policies. Any changes would be less reformist than earlier contemplated. The consultation panel would meet representatives of interest groups

> to establish more clearly the nature of their concerns and the extent to which agreement might be reached on ways to:
> - clarify existing public access rights along water margins (i.e. the location of the Queen's Chain);
> - establish the location of gaps in the Queen's Chain, their significance and how they might be remedied;
> - signpost access rights to water margin land so that the public will be better informed on where they may walk;

- establish a code of responsible conduct applying to persons walking on private land or on land adjacent to private land;
- protect the security of landholders where this is an issue;
- deal with issues which may arise in respect of walking access from a Maori perspective;
- provide access along rivers and lakes which may have no Queen's Chain at all;
- negotiate access across private land to the Queen's Chain or to public land where there is no other reasonable or convenient means to access this land; and
- explore with interest groups and organisations how suitable unformed legal roads might be better used to provide walking access to the Queen's Chain or to public land.[10]

The government had also asked the panel to comment on the role and nature of the proposed access agency.

National Blind-spot

On some specific matters, such as the functions and form of the access agency, the panel's terms of reference requested deeper enquiries than those pursued by the ministerial reference group of 2003. On these matters, therefore, the panel's marching orders were potentially constructive and productive. Yet overall the panel's brief was narrower than the reference group's. The most striking aspect of the terms of reference was, not unexpectedly, what they omitted. The government was focusing more narrowly than ever, if that was possible, on improving the access to water margins and public lands. Missing was any direct reference to the 'rural and urban walkways' mentioned in the Labour Party's 2002 election manifesto. Abandoned totally, in response to the farmers' anti-access campaign, was the third of the three aims of the reference group of 2003, ie to review 'access onto private rural land to better facilitate public access to and enjoyment of New Zealand's natural environment'. Even before the panel consulted the public, we knew that about 11.7 million hectares[11] of grazing, arable, fodder and fallow land, 43 per cent of our land area, would stay closed, except where there happened to be Queen's Chain reserves or public roads. (The figure of 11.7 million hectares would decrease slightly as tenure reviews progressed and also as crown whole-lease purchases advanced.) The pastoral landscape would continue to appear on every other poster produced by our national and regional tourism bodies, but the need for walking entry to it, to enjoy farmland for its own sake, would remain a national blind-spot. Except, that was, in the minds of the entrepreneurs who were regularly opening new private walking tracks.

*

The briefing papers also threw a little light on what Jim Sutton had meant, back in June, by 'demonstrable loss' (see Chapter 24). Had the footways been forced upon landowners, 'a compensation regime' would have applied where loss was 'clear-cut and provable'.[12] This compensation would have related principally to the loss of exclusive occupation and privacy where these were significant issues for the landholder; all the

landholders would have retained legal ownership and full use of the land (other than exclusive occupancy).[13]

Nonstatutory Solutions Only

Anderton and O'Connor's have-another-try consultation panel was seeking an agreed way forward. The most likely result of the panel's hunt for consensus would be a mix of progress and deadlock. When it came to the slightest softening of New Zealand's absolutist property rights, the panel would be searching for nonexistent common ground.

Furthermore, in considering the access to water margins, unlike the reference group of 2003 the panel would be looking for solely nonstatutory solutions. The Labour Party's confidence-and-supply agreements with the New Zealand First Party and United Future included the intention to progress 'non-statutory proposals to negotiate improved public access along rivers, lakes and foreshore'. Because of his statutory proposals of December 2004, since dropped, Jim Sutton had become trapped in the ugly gladiatorial politics of property rights and had come off second best; O'Connor and Anderton would avoid engagement in the same primitive fight.

A newspaper reported that the panel met in late October. A few days later, a river-access issue arose in the Western Bay of Plenty district council area. If the members of the consultation panel heard about the protest against the proposed Wairoa River walkway, the dispute may have conveniently focused their minds on the difficulties ahead.

Wairoa River Walkway: Vehement Differences of Opinion

The Draft Wairoa River Valley Strategy, a joint plan by Tauranga city council and Western Bay of Plenty district council, had been adopted by both councils in June 2005. The strategy described the Wairoa valley as 'a special environment valued by the community for its natural and spiritual qualities'. Among the pressures that had led to needing a strategy were residential subdivision and development and a rise in the rate of establishment of lifestyle blocks. The joint plan sought to 'improve linkages and to improve access to the Wairoa River whilst recognising that the creation of a full walkway linking reserves along the river from the Harbour to McLaren Falls had some issues'.[14] After adopting the draft strategy, the councils had received submissions on it and had held hearing.

On 3 November 2005, when the Western Bay of Plenty DC met to ratify the strategy, 'irate landowners with placards stormed [the] council meeting, protesting a controversial walkway that could trek right through [or close to] their properties'.[15] Prominent in support of the objectors were Sandra Goudie, a National Party member of parliament, and Barry Roberts, the chairman of the Tauranga/Katikati branch of Federated Farmers. This protest was hardly an example of rural-urban friendliness or of the traditional and valuable social conventions that some landowners had frequently mentioned.

This Wairoa River walkway stoush reflected ramshackle access conventions and heartfelt differences of opinion about walking entry to private land. Ordinary people do not barge into meeting, holding placards, unless they feel strongly about something. The disagreement was confrontational

and polarised. There were two diametrically opposed positions. The local authorities wanted a walkway but did not yet have it; the protesters owned the land or adjoining land and did not want anyone to enter onto it or near it. It was reasonable, therefore, to describe the situation as an access problem – something that Federated Farmers had spent the last three years denying the existence of. (Most recently, on 19 October 2005 the *Timaru Herald* had reported the view of the president of Federated Farmers, Charlie Pedersen: 'What annoyed him about the issue was the lack of existing access problems'.)

The draft strategy referred in some detail to the government's walking-access plans of December 2004, commenting that 'the outcome of this access bill and any subsequent legislation will have implications in terms of access along the Wairoa River margins in the future'.[16]

Traditional Access Irrelevant to the Circumstances

By November 2005, however, it seemed that some details of the Wairoa River plan would stay in limbo, awaiting the access bill that never was and the footways that never were. The full plan, which included the gaining of esplanade reserves and other recreation reserves, was quite complex and long-term. In view of the ardent opposition of maybe some dozens of landowners, I found it hard to see how walking-access policies based solely on consensus and negotiation could solve all the access issues that Tauranga CC and Western Bay of Plenty DC faced. Our much vaunted traditional access mechanism – one-off arranged access – while still having a role to play in many access situations, was utterly irrelevant to the Wairoa River circumstances. The local authorities wanted a permanently available walkway that would guarantee certainty. Entry to the foot-track would be a right, not a privilege. We were in the 21st century, not the 19th. How many Asian immigrants would, firstly, know about New Zealand's antediluvian access conventions, and also be confident enough to knock on a farmer's door to ask permission to walk across the farm?

What was to be done when the elected authorities planned a walkway, for the greater good of all, only to be faced by uncooperative landholders determined to deny entry? Was the New Zealand Walkways Act 1990, which relied entirely on reasoned discussion, an adequate tool for such circumstances? The Resource Management Act relied on subdivision to trigger the creation of esplanade reserves or strips; but subdivision might never occur; so, was waiting for subdivision a satisfactory approach? Should walkers have been concerned that the two councils that were proposing the Wairoa River walkway, along fourteen kilometres of river, expected the project to take twenty years? What evidence was there, from New Zealand or any other developed country, that linked the existence of walking tracks with the level of rural crime? These were the sort of questions that the Land Access Ministerial Reference Group had grappled with in 2003. The reconvened Walking Access Consultation Panel now had to consider them again, while shackled to a heavy ball of political pragmatism.

Intensely Political

Tauranga CC and Western Bay of Plenty DC had not been able to obtain a consensus on such a polarised issue as the planned Wairoa River

walkway. What was needed was a change in landowner perception. This was unlikely to occur en masse or suddenly, although it could happen in individuals and over a long period. In the context of party politics, this sort of issue will forever divide the left and the right. Countryside access is intensely and often stormily political, inseparable from the balance between personal rights and community interests, and further complicated by the dual statuses of the land as a place for production and a place for recreation, roles perceived by some people to conflict.

Let's be frank about some of the difficulties that were facing the Walking Access Consultation Panel in October 2005. In November 2003, in its submission on the 2003 Acland report, Federated Farmers had opposed the establishment of an access agency or of an access ombudsman.[17] This submission had also argued that New Zealand did not need a national access strategy. Towards the end of 2004, newspapers had reported that farmers in several parts of the country were considering mass disobedience if the government imposed footways along privately owned water margins.[18] In May 2005 the *Otago Daily Times* had reported that farmers in Blenheim were 'prepared to go to prison in defence of [their] property rights'.[19] Over the first half of 2005, about 28,000 farmers had signed a petition objecting to the proposed new law that, if passed, would have given the public pedestrian access alongside selected rivers and coasts that lacked Queen's Chain reserves. Labour's election manifesto had then committed Labour 'to conduct further consultation on the proposals to achieve practical and secure access along coasts, significant rivers and lakes … while at the same time respecting the interests of property owners'.[20] Jim Anderton was now hoping, somewhat guardedly, that this talking would find a way to avoid the Punch-and-Judy politics of property rights. He was optimistic that the renewed consultation would find a consensus that would lead to effective nonstatutory ways to negotiate improved public access along water margins. At this stage, Damien O'Connor, the minister for rural affairs, was leaving Jim Anderton to do the talking on walking access. Perhaps neither of them really wanted the job.

Every cloud has a silver lining. Yet it was difficult to visualise a consensual solution to issues such as the conflict over the Wairoa River strategy, a confrontation in which some of the affected landowners had 'vow[ed] to fight riverside walkways plan'.[21]

In April 2006 one issue (the water quality of the tributaries feeding the Wairoa River) remained to be resolved before the two councils endorsed their final strategy.

NZCA Walking Access Principles

Among the many policy documents underlying the work of the Department of Conservation is a New Zealand Conservation Authority document titled 'Walking Access Principles'. It is dated April 2006: reason enough to slot it in here. Aimed mainly at arrangements for practical access to public conservation land, the principles have only limited relevance to the issue of walking access to the working countryside for its own sake. They could, however, affect DOC's approach to access problems like those presented by the privately owned sections of the Queen Charlotte Track.

Walking Access Principles

The NZCA has developed 'bottom line' principles that should apply to arrangements for public walking access.

1. Public walking access to publicly-owned areas and resources should be protected in law and enhanced where there is no current access provision.
2. Enduring access arrangements are needed that are acceptable to both landholders and the public in cases where practical access to public conservation land is over privately-occupied land.
3. Where legal public access routes (such as unformed public roads) connect with public conservation land, waterways or the coast, they should be signposted to facilitate public access.
4. Where there are public access ways across privately-occupied land, reasonable conditions may be placed on public use.
5. There can be no expectation of economic return to private landholders from the existence of public resources on or next to privately-occupied land.
6. Private economic return to landholders from public resources on or next to privately-occupied land, can be derived from the provision of added value, such as interpretation, facilities or refreshments, but these should not be a condition of access.
7. Existing access law should be implemented by public agencies. This includes, but is not limited to, territorial authorities' duty to take action against obstructions on public roads.
8. The public should be provided with information about their access rights.
9. As well as legal recognition, the provision of access needs to be assured in terms of practical, physical accessibility on the ground.
10. Existing marginal strips and esplanade reserves/strips need to be preserved for the benefit of all New Zealanders. Existing provisions within the Conservation Act and Resource Management Act need to be fully utilised, and in some cases strengthened, to extend and secure public access to the coast and waterways, including plugging gaps in the existing network. Waivers to the provision of esplanade reserves/strips and marginal strips should only occur in exceptional circumstances. Wherever possible, public access ways alongside waterways and the coast should be ambulatory (move with the waterway/coastline).[22]

Chapter 27

Mapping the Tracks

The Walking Access Consultation Panel knew that all sides of the access debate had agreed that walkers needed better information on existing access. The panel did not need to argue over the why; it could concentrate on the how. But first let us recap the mapping issues, which were immensely important but which had largely been sidelined, publicly at least, by the farmers' preoccupation first with the right to roam and then with the proposed footways.

The Mapping Issues: a Recap of Three Years of Consultations and Reports

Although such devices as signage, websites, leaflets and guidebooks were always – and remain to this day – recognised parts of the overall information requirements, the focus gradually shifted to maps. The mapping needs, you may recall from Chapter 13, comprised two distinct but related areas: readily available and affordable cadastral plans (either paper or electronic) showing public roads and Queen's Chain reserves; and improved, up-to-date 1:50,000 topographic maps (either paper or electronic) showing all plotable foot-tracks and the boundaries of sizeable public lands.

As I have been at pains to stress, public roads and most Queen's Chain reserves are, literally, public lands. But there is a sense in which these narrow strips provide linear access across the private pastoral landscape, and so the consideration of their mapping is doubly important. In 2003 and 2004, therefore, the Ministry of Agriculture and Forestry officials tended to concentrate on the cadastral needs rather than on the topographic ones. The 2003 Acland report contained twenty-two occurrences of the words 'map(s)' or 'mapping'. Eighteen of these instances referred to cadastral maps or legal record maps. This was hardly surprising. One main objective of the proposed national access strategy was to support the principle of the Queen's Chain, and authoritative information on the location of Queen's Chain segments would come from Land Information New Zealand's cadastral sources.

By late 2004, however, the MAF officials were considering the challenges of combining cadastral and topographic information on one topographic map. The December 2004 cabinet paper envisaged the access agency producing maps of the proposed footways by merging cadastral and topographic sources.[1] Even though the government later dropped the footways plans, the need for improved maps remained urgent. But marrying cadastral to topographic information posed considerable complications of scaling and accuracy. Showing all unformed public roads on 1:50,000 topographic maps could be cartographically challenging because many of these roads lay close to, but still apart from, existing tracks and formed roads.

Concurrently with MAF's continuing examination of walking access, in August 2004 LINZ had invited individual users and representatives of user groups to complete an online questionnaire whose results would help LINZ to plan the delivery of topographic information. The main aim of this Topographic Information User Survey, though, was to enable LINZ to meet the needs of its primary customers in the topographic area, defined by cabinet mandate to be the defence forces, the emergency services, local authorities, and Civil Defence and Emergency Management. There was some doubt whether the survey of users had reached the recreational public as a whole. It was becoming apparent to outdoor recreators that LINZ did not have a stated duty to consider the special needs of track-using recreators and tourists when designing its topographic maps.

Differing Views on the Need for Maps That Show Public Roads

In January 2005 Annabel Young, an ex-member of parliament for the National Party and the author of *The Good Lobbyist's Guide*, took up office as the chief executive of Federated Farmers. She said that of the many issues facing farmers, the land-access legislation and the government's plans to set up an Access Commission were an 'obvious clear concern'. She had reservations about providing the public with maps showing public land:

> An issue for many farmers is that they have paper roads going over their land and to date it hasn't been too much of an issue because no one knows where the paper roads are. But if the Access Commission starts to signpost those roads and hand out maps with the roads drawn on them, that would be an issue for many farmers.[2]

The shameless egocentrism of this statement was magnificent. That nobody knew where the public roads were was *not* an issue. But if people found out where these roads were, that *would* be an issue.

Young also said that publicising the locations of such roads posed a potential public-health risk and a liability to farmers.[3] The less the public knew about unformed public roads, the better. And let's get on with producing more sheep. Federated Farmers had acquired another leader without the faintest feeling for outdoor recreation but with a talent for obfuscation.

Supporters of improved access, however, would benefit from studying and acting upon her *Good Lobbyist's Guide*, an informative and divulging little book. In it she makes the valid point that

> in New Zealand, providing access to information is the most powerful tool for influencing politicians … If you raise the level of understanding of the MP on your issue, you will have begun to skew the debate your way. This is the key to lobbying.[4]

On the issue of mapping unformed public roads, access lobbyists of meagre financial means had been trying since the early 1990s to educate politicians on the legal facts. Faced with the unwavering land-guards of Federated Farmers, they needed to follow Young's advice: they needed to redouble their broadcasting of the basic facts.

Out-of-date and Incomplete LINZ Topographic Maps

In April 2005 I examined the recording of accessways, walking tracks and tramping routes on the topographic maps of the area administered by Dunedin city council. This study of six LINZ Topographic Map 260 maps and also of NZTopo*Online* produced some solid evidence of their out-of-dateness and incompleteness. The study found that at least 49 of the 178 tracks listed in the council's Track Policy and Strategy (1998) were plotable at 1:50,000 but were not shown or were only partly shown on the paper and online 1:50,000 maps of the Dunedin area (in April 2005).[5] Most of these tracks were long-established and all of them were officially promoted. These results added further impetus to the argument that walkers did not merely need improved information on public roads and Queen's Chain reserves; they also needed far more up-to-date mapping of all existing foot-tracks.

For alpine travel, our Topographic Map 260 series maps seemed to me, from a superficial look at them, just as aesthetically pleasing and functional as European maps that I had used. Whether they showed all mountain and high-country foot-tracks accurately I didn't know.

The Department of Lands and Survey had spent more than a century producing topographic maps that, among many other uses, had served well the needs of mountaineers and trampers. Even so, in the first edition of his guide book, we find George Moir writing in 1925 that

> the production of a really accurate map to accompany this book has proved a very expensive item; so much so that it was impossible to have any portion of it coloured. Those interested will find it an improvement to mark the inner margins of the lakes with a blue pencil and the tracks with red ink.[6]

Recollecting the time in the 1920s when he was a forest ranger working in the Rimutaka and Tararua ranges, Ken Francis wrote: 'Maps were inaccurate. Often they showed the headwaters of one river flowing into the watershed of another, which meant that if you followed the map, you could come out of the mountain ranges on the wrong side.'[7]

In 1939 the Department of Lands and Survey published the first one-inch-to-one-mile topographic map (*Napier and Hastings*, sheet N134)

in what would become the NZMS 1 series.[8] In 1975 the department published the last map of this series (*Aspiring*, sheet S106), thus completing the NZMS 1 coverage of New Zealand.[9]

J Jennings, writing about maps and tramping in the New Zealand Cartographic Journal in 1975, was reasonably satisfied with the NZMS 1 maps of the North-West Nelson area. They provided Jennings with most of the topographic information he needed for navigating through remote and serious terrain:

> On the plus side the map enabled us to plan a trip in general terms which was, with minor modifications, accomplished. Ridges, creeks, rivers, spurs, tracks and huts were where we expected them. We were able to arrange transport to our starting point and from our finishing point. We were able to leave behind a record of our plans so others would know where to look for us if we got into trouble. We were able to balance our time in valleys and on open tops in the proportions we wanted. We were able to plan alternative routes we could use if the weather became really bad.[10]

Jennings criticised only two aspects of the maps, and only mildly. They lacked detail in some places (gorges not shown), and they needed enhancing to distinguish tracks from unmaintained routes. (An improvement introduced by LINZ in the late 1990s, as we shall see.)

The NZMS 1 series had taken a long time to reach Fiordland. In 1979 the editor of the fifth edition of *Moir's Guide Book* (southern section) referred to the NZMS 1 maps as 'a new series of topographical contour maps', although the series was forty years old. He wrote: 'These maps are extremely useful for travel in untracked valleys or along open ridges, and they are an essential supplement (if not a substitute) for this book in respect of the remoter areas of Fiordland.'[11]

New Zealand's topographical maps in 1979 were comparable to, or in some cases more advanced than, those of other western countries, and they improved further with the coming of the Topographic Map 260 series, the first sheet of which had been published in 1977. Writing in 2004, Dave Mole, the manager of topo-hydro standards for LINZ, addressing the members of Federated Mountain Clubs, sounded pretty happy with the 260s:

> In its nearly thirty year history the series has been known as NZMS 260's, Infomap 260's, Topomaps and the 260 Topographic Map Series. By any name the 260s are world-class maps which have served New Zealand well.[12]

Fair enough, except in one respect, which we discussed earlier: regarding the accurate showing of all foot-tracks, Mole's statement called for some specific but heavy qualification. My big moan about our maps concerned not areas such as the Darran Mountains, where the map had to show only the Hollyford Track and relatively few others, but areas like the surrounds of Dunedin, where – in April 2005 – the depiction of foot-tracks was so out of date and incomplete that a 260 map was like chilli con carne

without the chilli. Furthermore, instead of hounding LINZ to update the substandard maps, the city council produced a heap of free track leaflets, paid for by the ratepayers. Half the trouble seemed to be that few of us thought in terms of topographic maps as the foremost sources of track information.

As I mentioned in Chapter 23, the budget in May 2005 contained a cash response to the 2003 Acland report: $7.6 million for the development of the walking-access policy. Some of this money would pay for MAF's preliminary work on mapping.

In June 2005 LINZ released its Topographic Information Strategy 2005–2010.[13] I doubt whether many recreational map-users read this esoteric government document. The few who did might have viewed it with ambivalence. On the one hand, the strategy expected the introduction of a new paper 1:50,000 topographic map series, NZTopo50, in 2008–9. LINZ would undertake considerable planning and consultation in the lead-up to this event. On the other hand, the strategy repeatedly emphasised the needs of LINZ's primary customers. The LINZ statement of intent for 2005–6 carefully listed these special groups:

> Primary Customers
> Primary customers are those for whom LINZ has responsibilities mandated by statute or by Cabinet. They are (in alphabetical order):
> Cadastral surveyors
> Conveyancers
> Crown lessees
> Defence forces
> Emergency services, including Civil Defence & Emergency Management
> Local authorities
> Mariners
> Port Companies
> Prospective overseas investors and their agents[14]

The list excluded recreational map-users. Giving such overriding importance to defence forces and other government needs was straight out of the history of 19th-century topographic mapping. Applied to the 21st century the restriction was anachronistic, unimaginative, bureau-centric and, most of all, a squandered opportunity.

It remained to be seen whether NZTopo50 maps would incorporate up-to-date track data. Regarding the showing of foot-tracks, it seemed likely that the 'new' series would use the same data as the Topographic Map 260 series. Some of this track data was rumoured to be over thirty years old. Elderliness alone did not necessarily mean that the data was inaccurate. But, apparently, many remote tracks had been drawn in by hand rather than surveyed.[15] Also, in some areas, new tracks built in the last thirty years may not have been added to the national topographic database. Furthermore, there were anecdotal allegations of map censorship: claims that when DOC supplied track data to Land Information New Zealand, DOC sometimes omitted some of the tracks, despite their remaining physically evident and usable.

Map Censorship

Map censorship as just described was not an issue mentioned in the 2003 Acland report. Yet the subject cropped up during my research for this book. It seems important enough to warrant some space. Firstly, we will examine what appears to have been a case of LINZ properly resisting pressure to omit some tracks off a map. Then I will air some anecdotal suspicions about the removal from the maps of tracks that still physically exist and which used to be shown.

In the late 1990s, LINZ began changing one of the symbols on the Topographic Map 260 series maps. On new editions, it replaced the foot-track symbol with two symbols: a 'foot track / route' and an 'unmaintained route (defined by usage)'. One of the first sheets to carry the new symbols was the 1999 edition of *Egmont* Topographic Map 260-P20. On 22 May 1999, the *Taranaki Daily News* ran a story titled 'Trampers Warned Off Using Hunting Tracks on New Map':

> Trampers in Egmont National Park are being warned to keep away from hunting tracks, even though the routes will appear on maps due out next month. Taranaki Search and Rescue heads and local Department of Conservation officers are concerned that the new LINZ maps could cost lives and public money. The new P20 *Egmont* topographic map will show all features that exist on the ground, including tracks not maintained, and will be available to the public.
>
> Such information could cause major safety concerns with people wandering on to tracks never intended for public use, Taranaki Search and Rescue co-ordinator sergeant Noel Watson said yesterday. 'There are no problems using the maps, just stay away from the hunting tracks,' he said. People could get easily lost on the tracks, which were not [way]marked. Search and Rescue operations could escalate on Mt Egmont if people used the tracks, he believed.
>
> DOC Stratford area manager Rex Hendry had the same concerns and was also angry his department might end up having to spend cash on tracks not intended for public use. 'If you put a track on a map [of a national park] you imply it's there for recreational use,' he said. 'Because the tracks are on the maps people will expect structures, signs, huts and that's not what [the hunting tracks] are there for. We should not be forced into providing that level of service just because the tracks appear on a map … We maintain hunting tracks to a minimum standard. There are no structures, no signs and the tracks are cut only about every five years.'
>
> LINZ acting chief topographer Dave Mole said that after consultation with DOC, tramping clubs, Search and Rescue and police, LINZ included a note on the map stating [that] the un-maintained routes shown were not recommended for public use. He advised people to use DOC park maps. Mr Mole said LINZ policy for the maps, designed for emergency and defence purposes, was to show all features that existed on the ground including un-maintained tracks.[16]

This outcome was, in my view, correct. Topographic maps should show all physically evident tracks; by 'physically evident' I mean visible on the surface of the ground or adequately waymarked. They should also show all routes that meet a defined standard. (I discussed the pros and cons of showing poled routes and unmaintained routes in a 2005 paper.[17]) A map can usefully include a warning note for safety reasons, as described for the *Egmont* map, provided that – for most situations involving recreational public land – the note is phrased to be advisory rather than prohibitive.

Interestingly the homepage of NZTopo*Online* in February 2009 carried a prohibitive warning note: 'Closed tracks or routes in NZTopo*Online* are defined as being no longer maintained or passable and should not be used by recreationalists [*sic*]. The Department of Conservation visitor centres or other authorities should be contacted for the latest information on tracks or huts.'[18] This explanation raised more questions than it answered. If NZTopo*Online* showed a track as being closed, did this mean that access to that track had been legally stopped? If yes, what law was involved? Or did the closed attribute merely advise the map-user against using the track, perhaps for practical or safety reasons? There's more on this in Chapter 32.

As regards the map censorship alleged of DOC, two well-informed correspondents wrote to me in similar vein. One wrote:

> I note your interest in tracks that have never made it into the system, but I am just as concerned about existing tracks that are being deliberately removed from the system. This includes tracks that are still perfectly followable and tracks that simply need to be downgraded to 'unmaintained'. I suspect that DOC are behind this and I speculate that they regard maps as management tools rather than as a source of real world information.[19]

The second wrote:

> LINZ rely on DoC for track info in all of the Conservation Estate. I think it's more a case of censorship by [accidental] omission, rather than any deliberate policy. Maybe it's a loss of corporate memory as the loss of track information on the current topomaps is particularly bad on former New Zealand Forest Service land. The Eyre Mtns are a classic case. Then there is the well marked, graded and cut DoC stoat trappers track up the Landsborough, which is not on the topomaps. (DoC have even got a sign at the start of the track warning it is not suitable for public use – even tho' it's in a better state than most non-Great Walk tracks that I know of.)
>
> Comparison of the current topomap database with the old inch-to-the-mile maps will reveal the full extent of the removal of huge numbers of tracks from the current database (although I admit that some, especially in the West Coast, are no longer followable).[20]

Did any officers within DOC have their own private Machiavellian plans to hasten tracks into disuse by omitting them from maps? I do not know. But what is certain is that unmapped tracks become vulnerable.

In September 2003, while discussing the proposed closure of little-used tracks, the minister of conservation Chris Carter said: 'Some of these kinds of tracks are used so rarely they no longer appear on maps.'[21] He should also have pointed out that one effective and insidious way to minimise the use of a track was to leave it off the map.

Investigation into the question of map censorship is needed. If indeed map censorship does occur, it may be a process without open discussion or external monitoring. Land-managers ought not to be able to prevent physically evident tracks from being shown on our national series of topographic maps. Topographic maps should show all existing tracks, whether or not the public has the right to use them or the land-managers want to maintain them.

MAF's Mapping Work Survives the General Election

MAF's mapping ambitions re-emerged in November 2005 when MAF released its *Briefing for Incoming Ministers*. Had this briefing been addressed to incoming National Party ministers, the walking access issue might have received a thundering uninterest. Addressed, though, to Jim Anderton and Damien O'Connor, the mapping issues survived as crucial aspects of the evolving national access strategy.

The Briefing for Incoming Ministers pointed out that

> even with the deferral of the proposed land access legislation, much work can be undertaken to help improve access. Existing rights known colloquially as the 'Queen's Chain' (such as unformed legal roads, marginal strips and esplanade reserves) are not mapped in a comprehensive way which is readily available to the public. There is agreement among interest groups that landowners and the public would both benefit from existing legal rights of access to water margins being mapped and held in a readily accessible form.
>
> A pilot mapping project which focuses on existing rights of access only is under way. It is establishing the necessary mapping tools and techniques needed to ascertain those access rights. Funding for this purpose is included in Vote: Agriculture and Forestry for 2005/06. If the pilot is successful it is proposed that a comprehensive mapping of access rights be undertaken across the whole country.[22]

So there were grounds for optimism over MAF's determination to tackle the mapping issues. But there were also grounds for confusion over LINZ's future role. LINZ was assisting with MAF's trial mapping. Yet at the same time LINZ was emphasising that it was mandated to produce only 'core topographic mapping', implying – contentiously – that such mapping could not easily accommodate the requirements of walkers.

LINZ and Core Topographic Mapping

In a letter to me in October, Kevin Kelly, LINZ's general manager of policy, had spelt out the current situation, which had arisen since the 1996 restructuring and renaming of the Department of Survey and Land Information:

> The government decided that LINZ would only undertake core topographic mapping, i.e. that required for defence and emergency services and constitutional purposes. Where appropriate, recreational mapping was transferred to the Department of Conservation, and value-added mapping was outsourced to Terralink (formerly a State Owned Enterprise and now a private company) and the private sector in general.
>
> As a result LINZ is currently restricted to producing topographic and cadastral information in accordance with the collective business needs of government. The private sector, which can be far more market responsive, is left to meet the value-added needs of individual sections of the community.[23]

I shall express the message of this letter more bluntly: LINZ was not required to care much about the forty-nine well-established tracks in the Dunedin area that were not shown on the LINZ 1:50,000 maps. (Unless the defence forces or the emergency services or another government department complained about the out-of-date maps.) But this lack of responsibility would be no problem, the letter implied, because the private sector would respond to the need for improved mapping of tracks, for the Dunedin area and for all the other areas in New Zealand that were not covered by DOC Parkmaps and Trackmaps or by Terralink recreation maps.

Kevin Kelly's belief in the effectiveness of the profit motive in map-designing and map-marketing was more optimistic than it should have been, but not completely unwarranted. It was unlikely that commercial firms would produce paper recreational topographic maps for areas where the demand for such maps would be low. High-quality paper recreational maps for these areas, showing public access, would not appear unless a government body, such as LINZ or the proposed access agency, were to produce them. On the other hand, several software firms were already selling or developing maps on CD-ROMs and DVD-ROMs that enabled the user to combine cadastral and topographic data. We will examine these commercial products later in this chapter.

Trees in the Way?

Kelly's letter mentioned some of the difficulties of mapping foot-tracks. He pointed out that

> frequently during aerial photography of the land, tracks are obstructed for example by trees. Such tracks are then identified from local and district Councils and Department of Conservation records or by field checking. Ensuring that we gain suitable update material for topographic data has often proven difficult in the past, as the case you highlight shows.

His point about trees was important and valid. But there was little bush on the Otago Peninsula. Before the then most recent edition (2002) of the 1:50,000 *Dunedin* sheet, all the Otago Peninsula tracks were already shown on a city-council leaflet. Despite this information being available,

the 2002 edition did not show, or only partly showed, seventeen Otago Peninsula tracks.[24] Who did not talk to who?

Kelly also said that 'the information standard for geographic data that LINZ collects and provides is based primarily on international best practice'. If he was correct, then there was something acutely wrong with the international yardsticks for data on foot-tracks. To be blunt, regarding the showing of foot-tracks, I used far more accurate maps in my daily work on the hills of northern England in the late 1960s than the LINZ maps of the Dunedin area in 2006.

Government Unwilling to Broaden the Role of LINZ

Everywhere you looked, the news on the mapping issues was contradictory. Good and bad. For example, MAF and LINZ were working together to investigate ways to identify the location and extent of existing public access rights. But Kevin Kelly's letter seemed to say that outdoor recreators would have to rely on the private sector to provide topographic maps showing these rights, such as foot-tracks open to the public.

The government's proposed walking-access policy would prioritise the provision of accurate, sufficiently detailed, up-to-date information. The most efficient way to provide that information is on topographic maps, either on paper or digital. Yet we were to leave the national provision of such maps to the market-responsiveness of the private sector.

For several years there had existed a discernible public consensus on the need for improved information. A cross-party commitment to a public-access map series was not out of the question. But it seemed that the Labour-led government, which had started the examination of walking access, was unwilling to broaden the map-making role of LINZ.

Perhaps the government had other LINZ-related matters on its mind. In February 2006 Ann Brower produced a report examining the South Island high-country land reforms. Assembling the topographic maps that walkers needed was one area in which LINZ was not considering and meeting the needs of the public. According to Brower, but disputed by some other academics, tenure review was another. Brower argued that during tenure-review negotiations, LINZ was overrelying on 'the myth of apolitical administration'.[25] LINZ should have been sticking up for the crown's vested interests in the land; instead, it was acting as a neutral party in the negotiations. As a result, she asserted, the public was losing out. The bureaucracy was allowing a few farmers to defeat the many taxpayers. (More on this, which was controversial, in Chapter 33.)

Recreational Topographic Maps, on Paper, Available in 2006

Let's talk about what recreational maps, on paper, were available from the Department of Conservation and from the private sector. Did it look as if the market responsiveness of commercial firms would solve walkers' mapping needs, nationwide? To answer this question, I will adapt a section from a short paper I wrote in 2006 arguing for the development of a national topographic map series, either on paper or electronic, that would meet the needs of walkers and other recreators.[26]

In 2006 there were about thirty-one Department of Conservation Parkmaps and Trackmaps, about ten Terralink International recreational

maps[27], and two NewTopo (NZ) maps[28]: fifty-three sheets altogether if you took into account that the Terralink maps were double-sided. Yet to cover the whole of New Zealand at 1:50,000 would have required about 300 sheets.

Terralink Recreational Maps

Terralink's recreational maps represented an advance, a considerable contribution to the evolution of our recreational topographic maps. Fanny LaRiviere of Terralink was fully justified in stating that 'the ever-increasing popularity of the maps amongst outdoor enthusiasts is highlighting an increasing reliance [on] the content of the maps compared with the established national topographic series produced by the New Zealand Government.'[29]

The Terralink maps demonstrated that depicting the boundaries of public land at 1:50,000 was absolutely achievable, except for narrow strips such as unformed legal roads. For this accomplishment alone, Terralink will deserve a mention in the list of a hundred great events that changed access. But the method that these recreational maps used to indicate tracks open or closed to the public – notes in writing – was hardly at the leading edge of cartographic art. For example, in several places on the *Queenstown and Cromwell Recreation Areas* map, there appeared a warning in red letters: 'ATTENTION. No access on these tracks (private land)'. These warnings were positioned over a track or were vaguely plonked over a few intersecting tracks. This approach represented an important improvement compared with the information contained on a Topographic Map 260 sheet. But the device was a crude, partial and inefficient way to show access information.

People had different opinions on this cartographic nicety. Hugh Barr, the national advocate for the New Zealand Deerstalkers' Association, cited the Terralink *Kaweka and Kaimanawa* recreational map as an example of exactly what trampers and hunters needed. He pointed out that 'many access messages can readily be shown on a paper map'.[30] While I agreed with this statement, I disliked my maps being covered with text-boxes. New Zealand's cumbersome mix of different legal foot-track statuses, and its stupendously unnecessary lambing breaks (which we discussed in Chapter 14), had made it difficult for Terralink to avoid some text-boxes. Even so, the more text-boxes that Terralink could in the future replace with track symbols or boundary lines, the better.

NewTopo (NZ) Maps

The objective of the NewTopo (NZ) maps was 'to encourage walking excursions by presenting a design emphasis that shows the positions of the foot tracks and routes, and how to get to them, on an informative topographic background'.[31] The two maps, *Wellington Walks* and *Tararua Tramps*, were at a scale of 1:75,000. They were printed incredibly clearly on Polyart synthetic paper, a rugged waterproof material. My immediate reaction, on examining *Wellington Walks*, was that it looked like the product of a team of experts backed by the financial resources of a large company. That it had come, on the contrary, from the efforts of one 'retired' cartographer, astonished me. If one guy could do this, what could a team do? If you could show such fine detail at 1:75,000, what could you show at 1:50,000? And at 1:25,000? If you could shift vehicle tracks into the

family of roading symbols – as Geoff Aitken had logically and elegantly done – might that create more scope for differentiating between public and private foot-tracks? And between pedestrian-only tracks (which could be shown by pecks) and multi-use tracks (which could be shown by dashes)?

*

The Terralink recreational maps and the NewTopo (NZ) maps served as up-to-date sources of information. Thousands of outdoor recreators were already using them and commending them. These inspirational maps also gave us the visionaries' look into the future. Our recreational maps still needed to evolve considerably. The Terralink and NewTopo (NZ) examples showed that we had the know-how, and also the ingenuity and creativity, to develop a public-access map series.

NZTopo50: a Missed Opportunity

The government's examination of walking access was coinciding with one of those rare occasions when a new series of paper topographic maps was being contemplated. But the ordinary members of the public who would use the new maps did not know how different NZTopo50 would be from the Topographic Map 260 series. NZTopo50 might form just a minor evolution, with small and inconspicuous changes, plus the change from NZMG (the New Zealand Map Grid projection) to NZTM (the New Zealand Transverse Mercator projection). Or it could be a basic redesign, with evident improvements such as more colours, different sorts of foot-tracks, and boundaries of public land. Apparently the design phase of NZTopo50 would be accompanied by comprehensive consultations with map-users. Would this dialogue occur before or after the main design decisions? Could walkers sufficiently influence the basic design of NZTopo50 if LINZ did not even view them as notable customers?

Achieving influential input into the design of the proposed new 1:50,000 series would be immensely important for walkers. They and other outdoor recreators needed a national 1:50,000 map series that:

- would show all physically evident foot-tracks (except in urban areas where the crowded detail would make it difficult to show all tracks);
- would show the boundaries of sizeable public lands, such as national parks, conservation parks and all largish reserves; and
- would distinguish between foot-tracks open to the public and foot-tracks not open to the public (this would require a commitment to identify the legal statuses of all tracks or sections of tracks).

A map series designed with these qualities could future-proof some of the government's walking-access policies in a way which an act of parliament would not necessarily do. The resulting maps would still satisfy defence and emergency requirements. But without a change to its cabinet-mandated responsibilities, LINZ's freedom to respond to walkers' needs would probably remain limited or even minimal. If access advocates could not persuade the government to broaden LINZ's mandate, to better serve the needs of the recreational public, then who *would* produce a map of the Otago Peninsula that did include all its tracks? And I'm sure many readers could quote other places where accessways and other foot-tracks were missing off the then LINZ maps.

To obtain the answers to these questions, in October 2005 I wrote to Pete Hodgson, the minister for land information, discussing the design of the proposed new topographic maps. I raised some of the points that I had made in 'Maps for the People', such as the urgent need for a map symbol demarcating foot-tracks that are open to the public. He replied that

> the first edition of the new maps [expected in 2008–9] is not currently intended to include any more information than that depicted on the current NZMS 260 series maps. A subsequent review of primary customer core data requirements … may result in subsequent inclusions or exclusions of mapping information.[32]

As we discussed earlier, ordinary walkers like me were not primary customers. The conclusion that walkers had to draw from these contradictory signals was that, in the absence of any change to LINZ's cabinet-defined role, any consultation with recreational map-users on the design of NZTopo50 would be a pretence. It would be a fruitless exercise for those users. One wondered whether the general public of New Zealand would ever gain a respect for and a pride in a map series from whose design decisions they had been so firmly excluded. We will return to NZTopo50 in Chapter 32.

Paper Maps of Tracks: a Nation of Haves and Have-nots

To sum up, regarding the available paper maps of tracks in 2006. Some New Zealanders lived in areas adequately covered by modern topographic maps showing all physically evident foot-tracks. Many did not. We were, in the matter of recreational topographic maps, a nation of haves and have-nots.

The haves were enjoying the fruits of 'the latest automated GIS [geographic information system] software and tools for styling, label creation, editing and updating'.[33] They were benefiting from the existence of paper maps whose 'quality and currency of topographical and recreational data [had] earned international recognition' for their publisher. The Wellingtonian haves could take pleasure in products influenced by Bertin's semiology and created on LorikCartographer.[34] In about a dozen areas of New Zealand, the haves were lapping up maps printed on water-resistant materials. The haves did not face any barriers of officialdom, because the private sector had responded to their needs.

The have-nots languished somewhere in the 1970s or even earlier. I had used more accurate and complete topographic maps in Britain in the late 1950s than were available to me for the Otago Peninsula in 2006. Those had been the days when cartographers scribed lines on wax-covered glass plates. The British maps of the 1950s showed all physically evident foot-tracks, using black dashes. In 1959 the first one-inch-to-one-mile sheet to show public rights of way was published, based on the larger-scale definitive maps prepared by the local authorities.[35] Then gradually all the 1:50,000 maps of England and Wales (except those covering the twelve inner London boroughs) acquired their public rights of way, shown by long magenta dashes and magenta pecks; they hence gained the x-factor. Here in the Dunedin area in 2006, the LINZ Topographic Map 260

sheets hadn't yet reached the 1950s stage: they lacked perhaps a third of the necessary black dashes. Furthermore, they carried a disclaimer in red specifically acknowledging their complete lack of rights-of-way information: 'ATTENTION: The representation on this map of a road or track does not necessarily indicate public right of access.'

The have-nots would have liked to look ahead optimistically at NZTopo50, but little justified this optimism. In the LINZ direction, the have-nots could see only rigid limitations. So they were looking hopefully ahead instead at the proposed access agency, which might become a national mapping organisation, subsidised by the taxpayer. But didn't we have one of those already, called Land Information New Zealand? Surely having one state mapping body would be more economical and efficient than having two?

In pointing out the deficiencies of the LINZ 1:50,000 topographic maps available in 2006, I am not denigrating the skills and labours of New Zealand's present or past cartographers. Earlier in this chapter, we noted that the one-inch-to-one-mile NZMS 1 maps, the first of which was published in 1939, were of a high quality and had met most of the needs of trampers and mountaineers for many years. The earlier editions of the Topographic Map 260 maps, from 1977 onwards, may have been among the finest available anywhere in the world, especially for a sizeable alpine country with a small population. Still in 2006, for tramping in our alpine areas, these maps probably met most requirements. On the other hand, for walking or mountain-biking in areas like the Otago Peninsula, these maps were impoverished and inadequate. They hindered rather than assisted the government policies that promoted a physically active nation. They did nothing to help the diversification of New Zealand's outdoor tourism. We should have regarded them as a national embarrassment.

Electronic Developments in Mapping and Navigation

The first digital electronic recording equipment for mapping in New Zealand had been introduced to the photogrammetric branch of the Department of Lands and Survey in 1960. This had enabled the department to intensify the completion of the production of the one-inch-to-one-mile topographic series.[36] In 1986 the science mapping unit of the Department of Scientific and Industrial Research had produced New Zealand's first fully digital map, titled *Maps of Masterton Urban Environs, North Island, New Zealand Showing Land Attributes*.[37] In 1996 the Department of Survey and Land Information had completed the building of a national cadastral database. By 2006, therefore, the electronic age had been creeping into New Zealand's mapping for nearly fifty years. But in the new millennium the digital developments were happening so rapidly that it was difficult to keep up with them. To take an example from outside the subject of mapping, in 2003, when Jim Sutton had set up the ministerial reference group, only computer geeks had heard of flash memory; by 2006 most first-year university students were carrying their work around on USB flash drives, typically holding one gigabyte.

A growing number of outdoor recreators were navigating either using printouts from digital maps or using hand-held GPS devices containing digital maps; did these digital maps, in 2006, show the foot-tracks

more accurately and completely than the available paper maps? Several companies were providing CD-ROM or DVD-ROM products that enabled the user to superimpose cadastral information, such as public roads, upon a topographic base; would these commercially produced maps lessen the need for the proposed access agency to produce authoritative access maps? Some enterprising individuals were using hand-held GPS receivers to plot existing foot-tracks and were making the resulting data available to the public, either on paper or electronic maps, or as waypoint files. Would this bonanza of locally produced data from Tom, Dick and Harry reduce the need for definitive professionally processed data? Would GPS devices, in time, relegate paper maps to mere backups?

These were the questions wafting around in 2006. We can partly answer the first. The second, third and fourth may not be answered conclusively until long after the publication of this book. Only time will tell.

Digital Maps Available in 2006-7

In the decade preceding 2006, the internet, CD-ROMs, DVD-ROMs and microchips had revolutionised the delivery of maps from the map-maker to the map-user. Let's look first at what was available on the internet.

NZTopoOnline and Other Web-maps

In Chapter 13, I mentioned that LINZ provided an online topographic map, NZTopo*Online*, freely available on the internet and covering the whole country. But my 2005 study of the showing of tracks on the parts of NZTopo*Online* that covered the Dunedin area had suggested that this online map duplicated many of the deficiencies of the LINZ 1:50,000 Topographic Map 260 series. Colour LaserJet printouts from NZTopo*Online* were little short of sensational – until you realised that the underlying foot-track data was maybe two or three decades old.

LINZ had, with some good reason, advised the minister for land information that NZTopo*Online* was 'an improvement on the traditional approach of amending and reissuing new editions of paper maps'.[38] Yet this technological miracle would always be of limited use to walkers if the foundation foot-track data – from the NZTopo database – remained twenty years out of date, inaccurate, and lacking in detail. If we judged from the Dunedin area (in April 2005), and if we looked at the completeness of the foot-tracks, the results from NZTopo*Online* provided a luminous example of 'garbage in, garbage out'.

Nevertheless, new technology was making it cheaper to survey tracks. Already, in 2005, private individuals were surveying foot-tracks by GPS and were drawing maps showing those tracks. Hand-held GPS receivers usable by the general public could yield a horizontal accuracy of ten metres, given a fix to at least four satellites.[39] (The accuracy was sometimes worse than this in unfavourable terrain, such as in dense bush and deep gullies.) So in the future LINZ would probably be able to update the foot-track data on the NZTopo database more regularly and cheaply, and hence realise the full potential of online mapping.

In early 2007 Doug Forster, the designer of Freshmap, informed LINZ of several track errors on its national topographic database, one being fairly serious. Within six months LINZ had corrected some of these

errors on NZTopo*Online*.[40] Whether this efficient response to feedback about tracks would become normal remained to be seen.

*

In 2006, internet access to Land*online* remained unavailable to the general public except at prohibitive expense. Partial local exceptions to this situation occurred in some local authorities. For example, Dunedin city council provided the City of Dunedin WebMap, which included some cadastral information derived from Land*online*'s spatial view.[41] One of the view-options on this web-map produced coloured aerial photographs overlaid with property boundaries. But to transform the screen displays into useful 'photo-maps' required a laborious process of printing many coloured extracts, identical in scale, and then pasting these together into a mosaic. This artwork produced a sort of cadastral 'map'. The procedure was too time-consuming and awkward to be considered an effective way of providing cadastral information for a largish area. For researching possible walking routes across rural land, the paper cadastral maps of twenty-five years before had been far more practical. In a paper in 2005, I reproduced an extract from the City of Dunedin WebMap and an extract from the relevant cadastral map, which had been published in 1982.[42]

Despite its practical shortcomings, Dunedin's web-map did have its recreational uses, especially for indicating, at no expense, the locations of likely public roads or marginal strips. Using the web-map for this purpose required the user to guess the statuses of the strip-lands. Some strips of land that looked like public roads had never been dedicated as public roads. We were still in the early days of these sorts of web-maps. Nobody could predict the rate at which they might advance.

By 2007 about twenty-four local authorities around New Zealand were providing web-maps similar to Dunedin's.[43] Wellington city council's web-map, for example, showed property boundaries derived from LINZ data, superimposed upon colour orthophotographs taken by Terralink International.

Commercially Produced Maps on CD-ROMs and DVD-ROMs

We saw in Chapter 13 that by 2004 several software firms were producing topographic maps on CD-ROMs or DVD-ROMs. Some were also offering cadastral maps on CDs or DVDs, which showed all public roads and all property boundaries. All these digital maps were based either on LINZ's national topographic database or on LINZ's national cadastral database. What lay behind this sudden blossoming of entrepreneurial provision?

After its beginning in 1996, LINZ had been initially required to price its bulk cadastral and topographic information on full-cost-recovery principles. So LINZ initially charged an annual licence fee of about $800,000 for a national copy of the cadastral database. It charged a one-off fee of some $1,800,000 for a copy of the 1:50,000 national topographic database. Also, companies that bought, adapted and on-sold this information were required to recover royalty fees from third parties. According to Kevin Kelly, LINZ's general manager of policy, 'these fees … restricted the ability of the land information industry to produce affordable value-added products and services such as [recreational maps]'.[44]

In 1997 the government adopted new principles for the management of government-held information, including pricing principles. LINZ then sought and was granted government agreement to release bulk cadastral and topographic information at the cost of dissemination. The thinking behind this pricing was that the entire population of New Zealand would benefit. There was also an argument that it was administratively inefficient to seek to recover nonmarginal costs by means other than general taxation. The subsequent re-pricing of topographic mapping at $1,500 and cadastral information at $270, with no requirement to pay royalty fees, 'paved the way for the development of a range of innovative products and services'.[45]

In 2007 the topographic maps available on CD-ROMs or DVD-ROMs included Fisheye, Standard TUMONZ, Freshmap Topo and Streets, MapToaster Topo/NZ, and Memory-Map Topo. Fisheye was available on one DVD that included some cadastral information, such as public roads. TUMONZ offered cadastral data as an optional add-on, called the Property Module. Freshmap offered Freshmap Cadastrals, which could function as a stand-alone product or be superimposed upon the Freshmap Topo and Streets topographic mapping.

In just three or four years of development the designers of these digital maps had added an abundance of features. Hell's teeth! We walkers didn't need to venture outside any more. We could just switch the computer on, zoom in to the day's walk, change to 3D view, and enjoy the scenery without getting wet. Instant gratification.

Various makers presented different features. The range of electronic magic across the market place included: multiple map types; wide choice of map scales; many levels of zoom; exporting of maps to other programs or to disk as files; drawing tools; place-name and road-name searching; trip-planning tools; distance-measuring tools; printing at different scales; 3D views; profile creation; uploading of waypoints or tracks from the map to a GPS device; downloading of waypoints or tracks from a GPS device to the map; and choice of coordinate systems such as New Zealand Map Grid (NZMG) or latitude and longitude.

There seemed nothing that these maps couldn't do, except perhaps show the dark matter of the universe. More to the point, could we expect these maps to show all physically evident foot-tracks?

What very much mattered, from a walker's perspective, was that all the digital topographic maps available on CDs or DVDs were based on the NZTopo database. The reliability of the foot-track information on these digital maps hinged upon the correctness, up-to-dateness and comprehensiveness of the underlying topographic database. And, as we have already seen, if we judged from some of the LINZ Topographic Map 260 sheets, some of the track data coming from the NZTopo database was twenty or thirty years old. When I looked at the CD and DVD product information on the makers' websites in October 2007, it was impossible to determine to what extent the middlemen field-checked or supplemented the track data that they received from LINZ.

*

Several of the products enabled the user to overlay spatial cadastral information upon a topographic base. How well did this cadastral-topographic merger solve the walkers' need for maps showing access rights?

The ability to superimpose public roads onto a topographic map of the countryside was an important advance. Even though many walkers could not afford the necessary software and hardware, the knowledge that others could afford it and were using it affected the government's views on the future of unformed public roads. It was becoming apparent that, in time, more and more recreators would locate and seek to follow previously unused roads. The government would need to resolve the issues surrounding these roads.

The commercially produced cadastral-topographic software did not yet generate the complete and ideal national public-access map. A few knotty loose ends needed unravelling. As mentioned in Chapter 13, the blend of cadastral and topographic data did not show some access rights that only appeared on titles and legal survey plans, such as esplanade strips and access strips.

Nor, as discussed in detail in Chapter 13, did the cadastral overlays include marginal strips established since 1990. This was because LINZ's spatial cadastral database depicted these ambulatory strips using a notation rather than drawn lines. In June 2006, David Parker, the minister for land information, said that there were more than 130,000 parcels of land with a marginal strip notation on the title. Based on an initial desktop survey, approximately 16,000 of these parcels contained or adjoined qualifying waterways.[46] The 2007 Acland report drew attention to this problem:

> A shortcoming in the spatial cadastral data is that the geographic location of the marginal strips established since 1990 is not identified.[47] The database identifies only those areas of land disposed of by the Crown that were subject to the statutory provisions establishing the strips. Data on the marginal strips established from 1987 to 1990 are also understood to be incomplete. LINZ is considering how this problem might be overcome. The Panel considers that this issue needs to be resolved in a timely way.

The matter was important enough for the panel to allocate it a specific recommendation, namely that 'the Government sets a definitive timetable for LINZ to complete its assessment of the means to map marginal strips created since 1987'.[48]

LINZ had successfully developed Land*online*, the world's first fully integrated survey-accurate digital database of its type.[49] But Land*online*'s spatial view lacked some fundamentally important ownership information relevant to recreational access.

In summary, in 2007 the business of merging spatial cadastral information and topographic information to produce a 1:50,000 public-access topographic map was still in its infancy. It seemed inevitable that the finished product would gradually improve, gaining esplanade strips, access strips, and the missing marginal strips. In the long term, as a result of recreators using GPS receivers or of official problem-solving or of

resurveying, more unformed public roads would faithfully match the location of tracks on the ground. For access advocates, the prospect of the cadastral-topographic blend becoming complete and authoritative was exciting. In some places, using a modern GPS receiver in combination with cadastral data would adequately locate unformed public roads and other public lands and would prevent accidental trespass. Even so, in looking ahead, caution was necessary. Even if an authoritative 1:50,000 public-access map became available, there would still be places where landowners and walkers would be uncertain about the exact location of the access. In rural areas, and particularly in remote areas, the boundaries shown on LINZ's cadastral records in 2007 were sometimes based on 19th-century surveys of limited accuracy. Because of this, a record could show an unformed public road up to fifty metres away from its true position.[50] In the event of a dispute, what would ultimately determine the legal boundaries, such as the edges of an unformed public road, would be a land-surveyor and pegs in the ground.

*

There was one other important issue about the commercially produced maps on CDs and DVDs. This was their affordability. On the subject of the availability of cadastral information, such as maps showing public roads, the 2003 Acland report had said:

> It is not satisfactory for major sections of the community to be excluded from being able to access public information conveniently and at minimal cost. The Group sees provision of this information as a public interest activity that benefits all parties, and should be funded as a public good.[51]

In October 2007 Freshmap's list price for Freshmap Topo and Streets (whole of New Zealand version) was $285. The firm's list price for Freshmap Cadastrals (either North Island or South Island) was $195.

The October 2007 TUMONZ list price for Standard TUMONZ, covering the whole of New Zealand, was $195. The list price for the Property Module, covering the whole of New Zealand, was $150.

There was an irrefutable argument that these software products provided excellent value for money, considering the astonishing amount of information they contained. On the other hand, as well as owning the software, a user of these maps needed a reasonably modern computer and a colour printer (or a GPS receiver). It seemed likely that the total cost involved in the use of the CD and DVD maps would become an important consideration in a debate about the provision of access information to *all* New Zealanders.

Hand-held Global Positioning System (GPS) Receivers

The Global Positioning System consists of a constellation of at least twenty-four Earth-orbit satellites that transmit precise microwave signals. A GPS receiver can use these signals to determine its location, its speed and direction, and the time.[52]

A GPS receiver calculates its position by measuring the distance between itself and three or more GPS satellites. Measuring the time

delay between the transmission and reception of each GPS microwave signal gives the distance to each satellite, since the signal travels at a known speed near the speed of light. By determining the position of, and distance to, at least three satellites, the receiver can compute its position, subject to a time correction. Receivers typically do not have perfectly accurate clocks and therefore they track one or more additional satellites, using the satellites' atomic clocks to correct the receiver's own clock error. Because of needing this time correction, GPS receivers require at least four satellites to obtain a fix.

The first satellite navigation system, Transit, used by the United States Navy, had been successfully tested in 1960. Using a constellation of five satellites, it could provide a navigational fix approximately once per hour. During the following decades, the United States Department of Defense had gradually developed and deployed improved systems. In April 1995, what was officially named NAVSTAR GPS achieved full operational capability. In 1996 the US president Bill Clinton issued a policy directive declaring GPS to be a dual-use system, available to civilians as well as for military purposes. GPS would be free for civilian use as a public good. On 2 May 2000, selective availability, which had deliberately limited the accuracy of civilian use of the system, was discontinued, allowing civilian users to receive a non-degraded signal globally. Overnight, this allowed GPS receivers to be used in many more recreational situations, as they were now accurate to about ten metres instead of to a hundred metres or so.[53] The age of the hand-held GPS receiver was upon us.

Russia maintains its own constellation of satellites. The European Union and China are developing their own systems, which are scheduled to be operational by 2013 and 2015 respectively.

Hand-held GPS Receivers Reach New Zealand

In February 2003 the environment court in Wellington heard a case involving the proposed stopping of part of Johnsons Road, a public road extending from Whitemans valley over a ridge into Moores valley, Wainuiomata. The Upper Hutt city council had proposed to stop an unformed section of the road. The Akatarawa recreational access committee was objecting to this permanent closure. In probably one of the earliest references to a GPS receiver in a New Zealand court, 'Mr K D McAdam gave evidence that he had walked over the route of the unformed section, using a global positioning system to identify it'.[54] The report of the court's decision mentioned that the position of the unformed section in question 'can only be identified reliably by survey, or by use of global positioning system equipment'.[55]

In April 2003 the New Zealand Recreational GPS Society was formed to focus on the recreational use of the Global Positioning System in New Zealand. One of its stated objects was 'to foster and promote GPS use'.[56] Its members included trampers, mountain-bikers, hunters and anglers, as well as geocachers and geodashers.

New Zealand's farmers were quick to recognise the potential uses of GPS receivers. The ability to determine the receiver's location allows GPS receivers to perform as surveying tools as well as aids to navigation. When I was researching the use of GPS receivers in New Zealand, the first article I found was not about trampers or mountain-bikers using

these new tools to find the way; it was about a company using them to make maps for Fonterra.

In September 2003, the *Central Districts Farmer* reported that a Feilding firm, Farmworks, had gained a contract from Fonterra to map and measure the length of 13,000 farmtracks spread nationwide. The extensive use of GPS receivers would enable the Farmworks technicians to complete the surveying within a specified time. The precise measurements of the farmtracks would allow Fonterra to calculate how far its milk tankers travelled yearly on private tracks. Fonterra expected that the data would lead to a reduction in the road-user tax that it paid. 'The money saved by this system [was expected to be] huge.'[57]

They never miss a trick, our farmies.

The 2003 Acland report did not comprehensively examine the likely impact of the Global Positioning System on walking-access matters. But in a brief mention under the heading 'New Technologies', the report recognised that walkers might use hand-held GPS receivers to navigate agreed routes across private land.[58] The reference group, like our farmers, had also appreciated that GPS receivers could be used for surveying; the report said that use of the Global Positioning System and aerial photographs might reduce the survey costs associated with the establishment of walkways under the New Zealand Walkways Act.[59]

Few submitters on the 2003 Acland report seem to have mentioned the Global Positioning System, but at least one did. This person or organisation argued that maps showing public roads should be made more readily available to recreators and landholders. The submitter went on to say that 'many hunters today possess GPS navigation aid[s] that are extremely accurate and would stop or reduce the chance of trespass [off the public road and] onto the privately owned land'.[60]

New Zealand's shopkeepers quickly spotted the new market. Recreational magazines began to carry advertisements for GPS receivers. In the December 2003 *Wilderness*, Dick Smith Electronics offered us a hand-held GPS receiver, with 'true one-hand operation', for $429. Compasses were cheaper; but were they on the way out?

A Tool for Land-surveying as Well as for Navigating

Although this period was still only the beginning of the use of GPS receivers by outdoor recreators in New Zealand, the effects of these new tools on walking access seemed likely to be extensive. The better GPS receivers could perhaps achieve, if we talk nontechnically, a horizontal accuracy of about ten metres (except in deep gullies in heavy bush). In connection with using your GPS receiver for navigating, you could load digital maps, waypoints and tracks into it. You could then use the instrument either to assist traditional map-and-compass navigation or to replace it. If cadastral information became available on a microchip, compatible with your receiver, you would be able to locate unformed public roads with unprecedented ease (dependent on a land-surveyor's confirmation). Thanks to the United States Department of Defense, the long-standing debate over New Zealand's unformed public roads would never be quite the same again.

Nor would the on-the-ground surveying of existing walking tracks be the same again. This work, for inclusion of the tracks on 1:50,000 maps,

would no longer be an expensive job that only registered land-surveyors could do. In 2003–4 there seemed to be an often-unspoken assumption that the showing of foot-tracks on our topographic maps could not be improved in completeness, accuracy and up-to-dateness because the surveying of tracks that were not plotable by photogrammetry would cost too much. The capacity of a hand-held GPS receiver to function as a surveying implement would, in time, silence that argument.

It looked as if, in the years to come, Land Information New Zealand would probably be able to greatly improve the accuracy and comprehensiveness of the foot-track data on the NZTopo database, perhaps by gathering GPSed data from the Department of Conservation, local authorities and other reliable bodies or individuals. The challenge would be how to harness volunteers or minimally trained technicians to survey physically evident tracks by GPS in an organised way that would meet whatever standards of accuracy were necessary for 1:50,000 output. Even if the surveying were to remain a closed shop for qualified technicians, GPS receivers would greatly speed any field work, compared with older surveying methods. Abroad, the 2004–5 annual report of Britain's Ordnance Survey announced that 'the widespread use of more advanced real-time GPS receivers in our data collection activities has already achieved an impressive 40% increase in our field staffs' effectiveness.'[61]

Antony Hamel of Dunedin, a lawyer by trade, a tramper and a guidebook-writer by inclination, spotted the surveying potential of GPS receivers almost as quickly and eagerly as the farmers had done. In mid-2004 he began using his Garmin GPS 76, with an external aerial, to collect foot-track data for the maps for a new Dunedin-area guidebook. By October 2007 he had accumulated about 150 pairs of track and waypoint files.[62] The current LINZ 1:50,000 Dunedin map (2002 'full' revision) lacked nearly all of these tracks. This was partly explainable by some tracks being recently built or informal; but others had appeared in Hamel's co-authored guidebooks of 1993 and 1997. Some that the LINZ map did show, it showed inaccurately, according to his GPS results. Hamel's guidebook was destined to demonstrate admirably the track-surveying ability of a hand-held GPS receiver.

This foray into land-surveying did not, of course, make Hamel into a professional surveyor, able to comment authoritatively on the mathematical charisma of the data produced by a hand-held GPS receiver. But the December 2005 issue of the *New Zealand Surveyor* carried an article suggesting that, while the cost of surveying walking tracks might have been prohibitive in the past, it should in the future be lower:

> Barriers to Access
> Surveying
> In the past, certainty about rights has usually required a clear surveyed definition, Crown ownership and some compensation for land taken. The clear and unambiguous spatial definition of land parcels is the ideal upon which our property law is based. This usually means surveyors' pegs in the ground. The costs of surveys of tracks, easements and boundaries can impose a financial barrier to the development of more countryside tracks. Cadastral survey regula-

> tions and standards have been strictly adhered to in keeping with the law's emphasis on clear and distinct property rights. It would appear that such strict compliance is not really necessary for what could easily be promoted as a casual or informal establishment of relatively nonintrusive foot traffic. High levels of survey accuracy are redundant in such a situation when all that is really required could be a line showing a public walkway marked on an aerial photo' – a visual representation that is clear and simple enough for public recognition. Just as some land boundaries may be defined by the ambulatory boundary of an adjoining watercourse, so too can strips of land be defined by reference to a bank, a ridge, a fence, a track and a set width beyond that feature. It is therefore possible to remove the impediments of intensive survey definition and high survey costs from the equation.[63]

The writer of the above, Mick Strack, a lecturer at the School of Land Surveying of the University of Otago, later did point out to me the need to be wary of trying to relate GPS output to map projections and datums. He also added the rider that reducing the high costs of surveying, although feasible for the context discussed, would require explicit exemption from the normal survey standards that applied. A policy to allow that would need to be negotiated with Land Information New Zealand.

Two professional cartographers commented to me on the issue of surveying costs. Both said that hand-held GPS devices gave an accuracy that would be acceptable for mapping foot-tracks at 1:50,000. The results, according to them, would be fine for the NZTopo database. One of these cartographers suggested that teams of volunteers could use GPS devices to survey existing tracks. The work would require some local quality control and audit. Some overall management would be necessary to facilitate and coordinate the work.

Remarkable Technology – at a Price

What, in 2006, were we to conclude on the electronic developments in mapping and navigation? How relevant was the new technology to the issues of walking access to the outdoors?

Regarding walkers' informational needs, digital maps and hand-held GPS instruments offered some obvious advantages over paper maps. By 2006 it was possible to load the entire national topographic database into a late-model GPS receiver. In addition, the holding of topographic data and cadastral data simultaneously in a GPS receiver promised hitherto unheard-of ease of navigation along unformed public roads, marginal strips and other water-margin reserves (subject to the accuracy of the cadastral data).

For some GPS enthusiasts, the situation was simple: end of story! Paper maps would just become backups or references for the big picture. One GPS-device user wrote to me at length, discussing some of the issues I have talked about in this chapter:

> I don't agree with you that the situation is bad and that anything by LINZ needs to be done. There are plenty of other alternatives to topomaps in NZ [for] showing information about walking oppor-

> tunities and tracks, particularly in urban & peri-urban areas: eg brochures, websites, guidebooks (I've written one myself), information offices, DoC offices, Councils etc etc. If you really want information, its readily available (usually for free!) and just as convenient for most people who, unlike you and I, are not topomap freaks …
>
> There is already a good partial solution in the many inexpensive digital mapping systems out there such as TUMONZ, Freshmap, Memory map, Fisheye, Terraview & Maptoaster. For an incredibly cheap price (a fraction of the cost of buying a full set of paper maps) you can get the nationwide 1:50,000 topographic database along with an extract from Landonline's 'spatial view' (the so-called cadastral database) on a computer disk. While not perfect in that many access rights that only appear on individual titles and legal survey plans are not shown, at least you get all legal public roads, landowners names (public and private) and the approximate location (within 100m or so, much better in urban areas) of all property boundaries, including national parks etc. A fantastic deal I reckon & you can interface it all with your hand held GPS.[64]

Did GPS receivers have any disadvantages, when used for way-finding, compared with paper maps? Some users of GPS receivers qualified their praise for these new tools. As mentioned above, for two years Antony Hamel of Dunedin had been using a hand-held GPS instrument to collect track information. The gadget had enabled him to survey tracks accurately enough for inclusion on 1:30,000 maps. For this use, the GPS device was invaluable. Even so, in June 2006 Hamel said: 'My primary tool for navigation is still a map. GPS [devices] need to get cheaper, consume less batteries and have bigger screens before they can match a piece of paper.'[65]

Some other users of GPS receivers, however, told a different story. Talking about the merits of GPS versus paper, they said, was the wrong way to look at things. They said that the old and the new technologies worked in tandem. Paper maps gave the big picture, and GPS receivers gave the little picture. Both pictures were necessary. For actual detailed navigation, a GPS receiver won hands down. You could leave your compass at home, even on a misty day.

Hamel could have mentioned one other drawback of GPS receivers. In 2007, MapWorld's list price for a Garmin GPS 60, 'an affordable [model] for outdoor enthusiasts', was $395. The list price for a GarminMap 60CX, which could take a data card, was $895. Freshmap's all-of-New Zealand 1:50,000 topographic data card for the Garmin X series instruments was available for $345. Remarkable technology. But hardly what the 2003 Acland report had meant when it had talked of mapped information readily available to the public 'at minimal cost'.

In June 2006, in its submission to the Walking Access Consultation Panel, the New Zealand Recreational GPS Society raised several issues relating to the use of information that is owned and managed by public-sector organisations. The society said that to ensure that information relevant to public access is accessible to all, ideally it should be free.[66] Some further notes on this submission will be in Chapter 29.

This chapter has provided only a rough snapshot of the attractions and drawbacks of the digital maps and GPS receivers that were available in about 2006–7. By the time that this book is published, further developments in these areas will have occurred.

A National Topographic Map Series to Meet the Needs of Walkers

I mentioned in Chapter 13 that in 2003 Bruce Mason, writing in a PANZ submission, proposed a public-access topographic map series. This idea had probably been evolving in his head for some years. In 1993, writing about public access to and along the coast, he had proposed that regional and district councils be required to 'produce definitive maps of access ways and public lands'.[67] Walkers may come to view his call for a national public-access map series as Mason's most insightful and important contribution to recreational access.

It would have been unfair and short-sighted to have accepted the incomplete coverage of recreational maps, in 2006, as a permanent feature of New Zealand's topographic mapping. The *whole* of New Zealand, except for the brick and concrete of the towns and cities, was an area of importance for outdoor recreation. But it was extremely unlikely that DOC and the commercial firms would produce recreational maps to cover the whole country. The only equitable solution would be a national topographic map series, on paper or digital, designed to meet the needs of recreational map-users. At a minimum, such maps would accurately show all physically evident foot-tracks. They would also depict waymarked tramping routes that met yet-to-be-defined criteria.

Scale

Although Mason and other people had called for a national public-access map series, combining topographic and cadastral data, there had been little public discussion on the most suitable scale for these maps. Then in 2006 several submitters to the Walking Access Consultation panel pointed out the advantages, in some situations, of 1:25,000 mapping for showing foot-tracks and boundaries. To show crowded clusters of tracks in urban-fringe areas, the larger scale would be essential. Similarly, to show *all* unformed public roads and marginal strips, overlaid upon a topographic base, would probably require a scale of at least 1:25,000. But it would have been far easier for submitters to comment on this cadastral-topographic blend – perhaps a unique New Zealand mapping challenge – if 1:50,000 and 1:25,000 trial maps had been available.

Greater Wellington regional council's submission to the consultation panel tried to find a practical solution to the dilemma of scale:

> Public access [ie foot-tracks open to the public and the boundaries of public land] should be depicted on paper maps at a scale of 1:50,000. This scale would only just be adequate for walking access … In addition, internet access could be made to pdf files at a scale of 1:25,000 to be downloadable and printable on A3 format.[68]

It seemed unlikely that New Zealand would ever need or be able to afford a national paper 1:25,000 series, which would require perhaps

1,200 sheets. Yet if LINZ or the proposed access agency could make 1:25,000 mapping available on the internet, for selected recreational areas such as some urban fringes, it would greatly improve the quality of information available to walkers, provided that the source data was complete and accurate and provided that LINZ adopted procedures to keep this data up to date.

This discussion of scale seemed to be leading us towards a dual system: paper and digital. As things were to turn out, the much-talked-about public-access map series would not be developed in a paper form. Instead the Walking Access Commission would produce walking-access online mapping.

One of Life's Mysteries

Which brings me to the crucial question that, in 2006, was still unanswered: who would design and produce the necessary national series of topographic maps that would meet the needs of walkers and other recreational users? I remained convinced that the main source of information on foot-tracks ought to be the national series of topographic maps. New Zealand's state mapping organisation was Land Information New Zealand. Why did not the Labour-led government broaden LINZ's mandate to require LINZ to design and produce maps to meet the needs of the recreational map-user? Walking was the most basic part of our outdoor ethos, and yet we did not require our national mapping body to consider the special information needs of walkers. How on earth did the Ministry of Agriculture and Forestry end up with the job of running the pilot study for the proposed new recreational maps?

The fact that LINZ contracted out many of its topographic chores was immaterial. LINZ developed the topographic-map specifications as a prerequisite to the outsourcing of data capture, data maintenance and map production. It was LINZ, not the contractor, that was responsible for all the basic design decisions. And it was the government that had the power – but did not see the need – to widen the meaning of the much-quoted term 'core mapping'.

LINZ had carried out a large GPS control survey in the Ross Sea.[69] It had completed survey work for the Continental Shelf Project.[70] It had digitised millions of cadastral records and it claimed to be leading the world in this respect. But it had not – and seemingly could not – map Buskin Track, a track just a few miles from where I lived, impeccably based on an unformed public road and first publicised by Bruce Mason in 1989.[71] (Buskin Track finally arrived on NZTopo*Online* in 2007 or 2008.)

The Department of Lands and Survey had published its first 1:50,000 topographic sheet in the NZMS 260 series (sheet T12, Thames) in 1977.[72] Land Information New Zealand was now designing a new series, perhaps to last for the next thirty years. Recreational patterns were changing. Map-users' expectations were rising. Technology was improving. Surveying foot-tracks was becoming cheaper. But bureau-centric priorities and 19th-century thinking were denying New Zealanders the topographic mapping that they needed and deserved.

I love maps. I like them for the secrets they open up. They have an allure, an exciting promise of journeys and discoveries to come. They lead us up to hidden waterfalls and down to lonely beaches. They take us into

sunny glades and onto windy ridges. Years ago I relied on them to help me find my way up and down alpine peaks. Now I expect the maps to show me where I can ride on my mountain-bike, which might sometimes be on singletrack through native bush, and might at other times be on unformed public roads across well-crafted pasturelands. I spent many years working full time in outdoor education. Nearly every day included some teaching of map-reading to children or young people. The obvious place for children to first use topographic maps is in the countryside near where they live. In one week, if taught well using accurate and up-to-date maps, children can gain a respect for topographic maps and an appreciation of their usefulness that will last a lifetime. But it is difficult to build children's confidence in their map-reading skills and a pride in the maps if the showing of foot-tracks on the maps is incomplete and unreliable.

We had a national mapping agency that had no mandate, and little intention, to respond directly to the widely expressed needs of the general public. This was surely wrong and unsustainable, even in the short term. It said to the public, 'Topographic maps are nothing to do with you lot! Leave that sort of thing to the experts. They know best.'

There's a sense in which you can judge the maturity of a country from the quality of its maps. New Zealand in 2006 was still a teenager. We needed to acquire a few more qualities. We still had some growing-up to do. The next four years would witness a distinct growth spurt.

Chapter 28

Three Bills, Government Takings, and Compensation

Over the same period as the government's looking into walking access, parliament dealt with three other matters involving the question of compensating landowners affected by government takings. One was Gordon Copeland's private member's bill, the New Zealand Bill of Rights (Private Property Rights) Amendment Bill. Another was Nick Smith's private member's bill, the Overseas Investment (Queen's Chain Extension) Amendment Bill. The third was the government's Overseas Investment Bill.

My aim here is to look exclusively at those aspects of these bills that related to walking access to the countryside. Regarding their potential effects on walking access, the three bills pulled in different directions. Gordon Copeland's bill carried implications that could have impeded the creation of new walking tracks across private land in general, including water margins. Nick Smith's bill was concerned only with extending the Queen's Chain; he was trying to speed up its incremental extension. The government's bill headed in the same direction as Smith's bill but covered a much broader range of issues.

The parliamentary discussions on each bill further demonstrated members' different views on compensation. So these bills formed, if you like, three sideshows to the main walking-access debate. To describe each sideshow from its opening to its closing, lumping them together into one chapter, I will have to upset the chronological structure that Part Four has mainly adhered to until now.

The Gordon Copeland Bill: Life, Liberty and Property

Fairly soon after his arrival at parliament in 2002, the United Future MP Gordon Copeland was contemplating a bill that would guarantee a right to compensation should a landowner be deprived of property. On 6 March 2003 in a press release titled 'UF Bill Strengthens Kiwis' Grip on Their Patch of Godzone', he announced that he had entered his New Zealand Bill of Rights (Private Property Rights) Amendment Bill into

parliament's member's bill ballot system.[1] The bill, according to Copeland, would be 'about redressing the balance … about getting back to what private property ownership has always been about – the right to enjoy the full and free use of your land and to sleep soundly in your home at night'.

Outdoor addicts who have followed the walking-access debate since then could justifiably be thinking, incredulously, What balance? Uncultivated farmland in New Zealand is already far more private than many parts of the equivalent land in northern Europe. Regarding walking entry to private countryside to enjoy the nooks and crannies of the pastoral landscape, the present 'balance' makes New Zealanders trespassers in the land of their birth.

Magna Carta

Gordon Copeland's press release referred to Magna Carta of 1215 as the origin of the right to own property. In doing so, Copeland followed a long tradition, for 'quite early in its history [Magna Carta] became a symbol and a battle cry against oppression, each successive generation reading into it a protection of its own threatened liberties'.[2]

King John's charter of English liberties recognised the rights and privileges of the barons, church and freemen. Some historians have cited it as a forerunner of the Declaration of Independence and the Declaration of the Rights of Man and of the Citizen. Yet before we become too carried away with admiring the private property rights of 13th-century feudalism, we should remember that the Norman Conquest in 1066 – Britain's most dramatic ever act of land reform – had prepared the way for the laws of trespass that were to restrain the movement of people in the countryside.[3] (The Saxons had largely viewed rural land as a resource for all.[4]) Magna Carta did little to reverse this dispossession of the common people. On the contrary, it strengthened the powers of the warrior-landowning aristocracy. It was followed by seven hundred years of obsequious deference to landowners. For much of the 18th century, deer-poachers were likely to be imprisoned or transported or hanged, thanks to laws written by the landowners, whose authority and influence originated partly from Magna Carta.[5] The death penalty was available for taking rabbits or fish. Only recently has radical reform of Britain's land law restored a right of pedestrian access to private countryside. In comparison, the legal right of New Zealanders to walk across private rural land remains wretchedly limited.

Property Rights versus the Public Good

Copeland's bill was partly intended to counter the allegedly inadequate compensation provisions of the Public Works Act 1981. It was also intended to prune the perceived regulatory excesses of the Resource Management Act 1991. If compensation became payable for regulatory takings or for curbs on a landowner's right to refuse access, as well as for actual confiscation of land, governments would be more reluctant to pass new laws – or to apply existing laws – that restricted the exercise of property rights. The state would be less inclined to pass laws defining appropriate property use. The bill, if passed, would strengthen the powers of individual and corporate landowners. But Copeland's proposed changes could have made it harder, or more expensive, for local authorities or an access agency to create permanent walking tracks over private farmland;

in this sense the bill could have weakened the recreational rights of the citizenry.

Copeland's 2003 private member's bill vanished into the parliamentary archives: but not for ever. Eighteen months later, during questions in parliament, he reminded Jim Sutton of United Future's high-minded stance on private property rights:

> Gordon Copeland: Should the Government finally decide to bring about a law change to provide public access through private property to access waterways, can he assure the House today and the affected landowners that they will receive full, just, and fair compensation?
>
> Hon JIM SUTTON: I can only reiterate that Cabinet has yet to determine its position on that issue.[6]

The cabinet's take on access to waterways was of course slightly different from United Future's; the government had been emphasising that natural water is owned by all New Zealanders. We have already seen that Sutton at this time was reluctant to compensate landowners affected by the proposed footways but that he later accepted the possibility of compensating landowners for verifiable loss. We have also seen that leading a puny and isolated anti-compensation movement was Fish and Game New Zealand, which later summarised its views on compensation in one sentence: 'It would be rare and exceptional for walking access to result in demonstrable loss of a kind that ought to attract compensation."[7]

Full, Just, and Fair Compensation

At one level, Gordon Copeland's message was simple and unambiguous: no confiscation without compensation. But at another level – that of applying this principle to situations involving takings less than the appropriation of land – his ideals posed problems.

Take, for example, the related matters of privacy and curtilage. In Chapter 18 I pointed out that, in the context of privately owned countryside, the government had accepted the need to route foot-tracks a reasonable distance away from houses, to avoid intruding on the occupiers' privacy. Federated Farmers, though, had implied that an accessway or a riverside footway – even, say, fifty metres away from the farmstead – could jeopardise the occupiers' privacy. There were completely different interpretations of the phrase 'loss of privacy'.

The government's footway plans had implied that a walker passing by fifty metres away from your home would affect your privacy only minimally. Many farmers seemed to view such a possibility as a potential gross intrusion on their seclusion and freedom from disturbance. Ought compensation for such a contentious loss of privacy be nominal or lavish? How would authorities and lawyers put a value in dollars on 'full, just, and fair compensation' for a claimed loss of privacy? The task would be expensively subjective – a source of income for lawyers. The results could be unavoidably tendentious.

*

On 7 April 2005 Copeland's bill was drawn from the member's bill ballot. A short bill, it proposed the insertion of two new sections, 11A and 11B, into the New Zealand Bill of Rights Act 1990:

> Private property rights.
> 11A. Right to own property.
> Everyone has the right to own property, whether alone or in association with others.
> 11B. Right not to be arbitrarily deprived of property.
> No person is to be deprived of the use or enjoyment of that person's property without just compensation.

The Copeland Bill's First Reading

The bill received its first reading on 11 May 2005.[8] Gordon Copeland reminded parliament that 'an Englishman's home is his castle', apparently unaware of England and Wales's Countryside and Rights of Way Act 2000. National's Wayne Mapp philosophised about private property rights being an inherent part of democracy, and he seemed to suggest that all compensation should be bounteous rather than merely adequate. Stephen Franks of ACT New Zealand heroically offered the theories that 'individual property rights save environments' and that ' it is property rights that protect the weak against the strong, not democracy'.

Mike Ward of the Green Party said that the Greens opposed the bill because it 'puts property rights into the same [elevated] category as the right to life or the right to vote'. He was the only speaker to specifically refer to walking access across farmland; alluding to the government's intended footways, he said: 'I believe that if farmers are able to go on using their land and lose nothing … then maybe there is no need to compensate them. In a country like ours, sharing what we have would not be a bad start.'

Michael Cullen, the deputy prime minister, gave the Labour Party's view:

> The Labour Party will be voting for this bill to go to the select committee, but it has extremely serious reservations about the language used. I think the bill is cast much more widely than similar provisions overseas, including those of the United States constitution, the Canadian legislation, the European legislation, and so on.

Referring to Wayne Mapp's belief that compensation should be 'more than generous', Cullen warned the House not 'to erect property rights, at the individual level, into a right that far outweighs that of the public good'.

On a party vote the bill passed this first reading, the Green Party being the only party to vote no. Nearly the whole of parliament seemed to be backing, albeit with some reservations, a bill that had received wholehearted support from ACT New Zealand and the Libertarianz party. New Zealanders' views on private property rights could hardly shift any further right, yet this appeared to be happening. This bill, if passed, could only undermine the nonlandowners' already feeble rights to enjoy

the farmed – and justifiably famed – landscape. Nandor Tanczos, a Green Party member of parliament, later wrote that the bill's

> unspoken message is that there should be no constraints on what people can do on or with their own property. It implies that private property rights should trump all other rights, such as rights to clean air, clean water and a climate fit for human habitation. It denies that rights have a flip side – responsibility. The Green Party cannot support that denial.[9]

Copeland's initiative to make New Zealand a better place for landowners disappeared into the sedate considerations of the justice and electoral committee. It wouldn't re-emerge for two years.

A Foot in Both Camps

Meanwhile he continued to support the government's examination of walking access. Having a foot in both camps was not necessarily contradictory; you could advocate the improvement of walking access conditional on the compensating of affected landowners.

In March 2007 David Carter remorselessly issued yet another pernicious anti-access press release that talked absurdly of 'Labour's right to roam plans'.[10] Carter also asserted that the cost of mapping public roads ought not to be borne by the taxpayer or ratepayer. Gordon Copeland responded immediately with a statement titled 'Copeland: You Cannot Be Serious David?!' He argued that the accurate mapping of unformed public roads was fundamental to the right of the public to access the outdoors. He said that 'to insinuate that it is a waste of money to map these roads properly and provide the New Zealand public with the information to use them is ridiculous'.[11]

Two thousand and seven became a disenchanting year for Gordon Copeland. In May he resigned from United Future, mainly because of its exercising a conscience vote on Sue Bradford's anti-smacking bill. The *New Zealand Herald* reported that 'in the space of a single, rambling press conference, Gordon Copeland yesterday catapulted himself from political obscurity to political oblivion'.[12] He became an independent member of parliament, earning the disapproval of those fellow-MPs and members of the public who opposed the liberty of list MPs to jump ship.

In June 2007 Copeland switched his proxy vote from Labour to National for all matters that were not of confidence and supply. If he was hoping for National support for his private member's bill, he was to be disillusioned. On 6 September 2007 the National Party advised him that it would not be supporting his bill. His press release expressing disappointment pointed out that Federated Farmers, the New Zealand Business Roundtable, Business New Zealand and the Coalition of Treaty Tribes had strongly supported the bill. 'My new party, Future New Zealand', he said, 'will have a commitment to property rights because they are a Judeo-Christian value.'[13]

This reminded me of a comment attributed to the American politician George Mitchell. Mitchell was talking about politics in the United States, but he might equally have applied this comment to politics in

New Zealand: 'Although he is regularly asked to do so, God does not take sides in American politics.'[14]

The termination of the bill followed swiftly. On 11 September 2007 the justice and electoral committee reported on the bill, recommending that it not be passed. The committee acknowledged that the notion of a right to compensation for loss of property had some merit, but nevertheless considered that the bill was not an appropriate way to protect private property rights in New Zealand or to establish an equitable compensation regime for loss of property. The committee agreed with submitters who had raised concerns over the definitions of 'property', 'deprived', and 'use and enjoyment' proposed in the bill.[15]

The committee's report included a New Zealand National Party minority view. The National Party, while strongly supporting property rights, could not support the passage of this bill for a number of reasons. The amendment could cause a great deal of litigation against the crown. Much more research would be required on the amendment's implications. The minority view concluded:

> This bill illustrates the dangers of Members' bills which seek to amend legislation in a way which could have wide-ranging consequences without proper analysis or full advice from the Crown and its agencies. If there is to be any amendment of this nature to the New Zealand Bill of Rights Act, it can only be passed after exhaustive consideration. That exhaustive consideration has not occurred in this instance.[16]

The Nick Smith Bill: a Lone Ranger Effort

On 24 June 2004 the National MP Nick Smith introduced his member's bill to protect water margins from increased foreign ownership. At the first reading of the Overseas Investment (Queen's Chain Extension) Amendment Bill, Smith, who had been called National's resident greenie, explained the bill's purpose:

> This bill tackles the difficult issue of public access to our coast, rivers, and lakes, in the context of increased foreign ownership of land in New Zealand. The bill enables the area of land immediately adjacent to a river, a lake, or the sea to become an esplanade reserve, and therefore guarantees public access to those public resources when a property is sold to an overseas person. This bill reinforces a unique part of New Zealand's heritage and culture – the right of all citizens to have access to our magnificent coast and beaches, our stunning lakes, and our bountiful rivers. This bill is about ensuring that these resources are public assets for the enjoyment of all New Zealanders, and that they are not to be monopolised by a privileged few.[17]

He then launched into a self-determined and spirited defence of the Queen's Chain, more enthusiastically then we might have expected of a senior National Party member of parliament. Michael Cullen, not an unqualified fan of property rights, later called the unorthodox speech 'a

fairly sustained assault on some aspects of property rights … a kind of Lone Ranger effort'.

Several compelling cases had reinforced the Lone Ranger's desire for law change:

> A … recent example is Waitai Station on D'Urville Island, which has been subject to considerable controversy and public media coverage after it was purchased by the Powell family, a very wealthy American family. This property has no Queen's Chain, and [it therefore has] a riparian right down to the high-tide mark. The Powells have erected signs on the beach prohibiting any person from setting foot on that area [above the high-tide mark]. These signs are an affront to New Zealanders' way of life, and will become more common if this bill is not advanced.

Smith summarised the key mechanisms provided for in the bill:

> The bill does not extend [to] those land sales that already need to go to the Overseas Investment Commission. They include coastal properties, properties over 10 hectares, or properties adjacent to lakes of over 0.4 hectares. It simply requires that if the property includes riparian rights, then the Commission would notify the local territorial authority, which shall within 20 days consider whether a new esplanade reserve or strip should be created, having regard to the potential recreational use, the benefits, the public access, the impact on water quality, and the cost of compensation. [The bill proposed that if an esplanade reserve or strip were created, compensation would be paid.]

He concluded optimistically:

> It is a very sensible and practical bill. It carefully balances the rights of landowners wishing to sell to foreign people, with the wider public good of extending the Queen's Chain and protecting the New Zealand ethos of rivers, lakes, and the coast being public property. I urge members to support the bill, so our children and grandchildren may inherit and enjoy all the benefits of access that are part of this wonderful country of New Zealand.

Michael Cullen raised several technical matters and issues of principle. It was not clear, he said, 'whether the existing landowner or the purchaser receives compensation for a strip or reserve that is created, because the fact the strip is to be created will affect the value of the land on transfer'. He pointed out the oddity that the sale of land to an overseas purchaser could enable better provision for public access than its sale to a New Zealand buyer.

United Future's Paul Adams, blissfully happy with the promise of compensation, said his party would support the bill's first reading. Jeanette Fitzsimons, the co-leader of the Green Party, spoke in favour of increased public access to the rivers, lakes and seashore. The response of the National

Party's Shane Ardern suggested that Nick Smith might not be such a Lone Ranger: 'As a farmer myself, I have looked at the bill and I see nothing in it that would threaten most farmers.'

Dail Jones of the New Zealand First Party, which favoured reduced foreign ownership of New Zealand's resources, was impossible to please; somewhat contrarily he called the bill 'the biggest rort ever exercised on the New Zealand ratepayer [who might have to pay some of the compensation]'. Ken Shirley for the ACT party called the bill 'a gross reversion to socialism'. He was surprised that 'the National Party caucus [had] allowed this bill to slip through and get caucus approval'.

Nick Smith wound up the proceedings: 'This bill is an honest attempt to deal with a very real, practical issue in my constituency, where foreign ownership has resulted in extra restrictions on public access.'

On a party vote, the bill passed this first reading.

Smith's task in promoting his bill would be difficult. The Labour Party would welcome the possibility of extending the Queen's Chain but might balk at the idea of compensating the vendors, whose ancestors might have acquired the land cheaply and – luckily for their heirs – without any Queen's Chain reserves.

Smith's own party, National, had no history of devotion to the Queen's Chain. Amidst great controversy the National government of the mid-1990s had tried to amend the Conservation Act to allow the minister of conservation to issue leases, licences or permits to people wanting exclusive use of marginal strips. This law change would have amounted to a privatising of fragments of the Queen's Chain through leasing.

*

In November 2004 the government introduced its own legislation subjecting overseas people wanting to buy sites of special heritage or environmental value in New Zealand to a tougher screening and monitoring regime. The government's bill, the Overseas Investment Bill, could override Nick Smith's bill, making Smith's bill redundant. Whether this would happen would depend upon the final contents of the Overseas Investment Bill. In the event, the overriding did not happen, and both bills remained in process.

Smith's bill received a mixed reception when it came before the local government and environment committee on 15 December 2005. The New Zealand Fish and Game Council and Public Access New Zealand supported the bill, saying that it would improve access to water margins; but they had reservations about the bill's wording. Federated Farmers opposed the bill, arguing that the proposal would reduce the number of prospective purchasers of land and consequently would reduce the sale price. The Law Society and Carter Holt Harvey agreed with the federation that if the bill were passed the law change would reduce the amount of foreign investment in New Zealand.[18]

After more than four years in the parliamentary slow lane, and having survived two general elections, Smith's bill was killed off in February 2009. The local government and environment committee recommended that it should not be passed. In the opinion of this committee, the policy agreements reflected in the Walking Access Act 2008 adequately addressed the public-access concerns at the heart of the Overseas Investment (Queen's

Chain Extension) Amendment Bill. The committee considered that the bill had therefore become superfluous.[19]

In reaching these conclusions, the committee was laying much store by the Walking Access Commission's negotiatory and mediative roles. Some riverside and lakeside lands could continue to be sold to overseas investors without referral to the Overseas Investment Commission or the Walking Access Commission and without triggering the creation of esplanade reserves or esplanade strips.

The Overseas Investment Bill

In late 2003 the government embarked on a thorough review of the Overseas Investment Act 1973. This thirty-year-old act prescribed the regime for screening foreigners' investments into New Zealand. The aim of the review was to give stronger recognition to New Zealand's natural and historic heritage while also recognising the benefits that flow from foreign investment.

Although walking access was only one aspect of dozens covered by the review, it was important enough for the Treasury to seek a consultant's comments on. Roger Lough, a land-management consultant, discussed the workability of proposed clauses relating to environmental, heritage and walking-access provisions. For example, he wrote that

> to secure the desired walking access or to achieve protection of environmental and heritage values, the emphasis should generally be on using legal instruments such as easements and covenants (via the appropriate statutory bodies) rather than management plans or agreed access plans.[20]

The minister of finance, Michael Cullen, tabled the Overseas Investment Bill in the House on 10 November 2004. It contained a number of changes to tighten the controls on foreigners buying New Zealand land 'of special heritage or environmental value'.[21] For example, overseas applicants wanting to buy land but not intending to live in New Zealand would 'have to include in the asset management plan attached to their application how they will manage any historic, heritage, conservation or public access factors relevant to the property as well as any economic development planned'.

Select Committee Recommends Compulsory Creation of Marginal Strips

In May 2005 a select-committee report on the Overseas Investment Bill expressed concern over the increasing foreign ownership of the land bordering our rivers, lakes and foreshore:

> We had clear evidence that foreign ownership of large rural properties is concentrated around our water bodies in our most scenic areas. This lends weight to the submissions we received that foreign owners from jurisdictions with low tax regimes or higher concentrations of wealth can and do outbid New Zealanders and obtain access to some of our waterways. Sometimes their ethic to public access is more restrictive than has been the historical norm. We had evidence

> of rural property being advertised in an airline magazine in United States dollars, placing emphasis on the sale of 'private water'.[22]

The select-committee report recommended adding new clauses to the bill so that sales of New Zealand land over five hectares in area to overseas buyers would trigger the compulsory creation of crown-owned marginal strips next to certain rivers, lakes and the foreshore or within sensitive land. The five-hectare threshold would be reduced to 0.4 hectares for land on smaller islands or adjacent to lakes. It would be reduced to 0.2 hectares if adjacent to the foreshore. David Parker, the member of parliament for Otago, had initiated these recommendations.[23]

Then came a tempting idea for the Labour-Progressive government, but one that the minority coalition would find difficult to pilot through the parliamentary shoals, a no-compensation suggestion:

> The majority [of the select committee] also recommends the bill provide that no compensation would normally be payable to either a vendor or an overseas purchaser where a marginal strip is created for vesting in the Crown. The majority of us note that compensation is not ordinarily payable when marginal strips are created upon the subdivision of land.[24]

As a result of these select-committee marginal-strip proposals, one part of the bill – that concerned with extending the Queen's Chain – now overlapped Nick Smith's bill, which was still crawling through the parliamentary procedures. The Overseas Investment Bill, however, dealt with a far broader range of issues than Smith's bill. It covered the sale of non-land business assets, such as buildings and fishing quotas, as well as the sale of land. (Although nearly all the transactions covered by the overseas investment regime are land-related.) My purpose here is to look solely at those parts of the bill that related to walking access to the countryside.

The select-committee report included several minority views. United Future, although supporting the creation of marginal strips next to rivers, lakes and foreshores, did not agree that private land should be acquired for this purpose without the payment of compensation. On this matter, United Future was unequivocal: 'If the creation of such marginal strips is seen to be of value to the people of New Zealand then the Crown, on behalf of its citizens, is duty bound to pay compensation.' The National Party supported the bill's general intention but would vote against the bill because of the late addition of the provision to create marginal strips without compensation. According to National, 'a Government that acts in this manner fails to recognise the foundation of our society'. The ACT party saw the bill as an attack on property rights: 'Every restriction on New Zealanders' right to sell their property to whomever they wish is an attack on the right to own property, a key right in a free society.'

Rod Donald, the Green Party member of the select committee, had different concerns. He recognised some positive provisions in the bill, such as the establishment of marginal strips, but would oppose the bill because its 'overwhelming effect … will be to make it even easier for

foreign investors to purchase and control New Zealand land, buildings and businesses'.

United Future Disappoints Outdoor Recreators

To secure the passage of this bill, including the marginal-strips provision, the government needed the support of United Future. In April 2004 United Future had affiliated with Outdoor Recreation New Zealand. Furthermore, United Future was proud of its contribution to what it saw as successful minority governments; it had cultivated a public image of 'innovative pragmatism', 'commonsense', and 'compromise'. So one might have half-expected some accommodation from United Future on the marginal-strips issue. But instead Peter Dunne's party stayed true to its conservative property-rights principles. There was to be no confiscation without compensation, even if it meant tolerating foreigners buying New Zealand riverbanks and erecting signs saying PRIVATE PROPERTY – KEEP OUT.

Rod Donald, the co-leader of the Green Party, questioned whether United Future really was committed to improving public access to the countryside: 'I am extremely disappointed that some parties in this House that I thought supported public access and the ability for people who enjoy the great outdoors to get access to that public space are now voting against this [marginal-strip] provision simply because there is no provision for compensation.'

Marginal-strip Clauses Dropped

To ensure a parliamentary majority for the legislation, the government took steps to remove the select committee's marginal-strip provision. On 14 June 2005 the bill went through its second reading, committee stage and third reading. The debates occupy eighty forthright pages in *Hansard*.[25] Overseas investment into New Zealand was a sensitive topic. The speeches form a predictable parade of right-wing, centre and left-wing views on foreign ownership of New Zealand, property rights, compensation, the Queen's Chain and the common good. With a little electioneering thrown in for good measure. And frequent mentions of the David Parker amendment, also dubbed by right-wingers the 'steal clause' and the 'Mugabe clause'.

One of the more balanced and lucid contributions, pleasantly free of moral outrage, came from John Key, the National Party's spokesperson on finance. He agreed that there was a genuine and warranted concern that New Zealanders might become tenants in their own country. 'I think the long-term future of New Zealand is not that of a bunch of people running around serving lattes to foreigners who own our country.' He continued:

> That is the dilemma New Zealand faces. We have a global world now where the Internet is playing an interesting role. A large number of people are surfing the Internet looking to buy prime pieces of land around the world, and New Zealand is one of those places that is very attractive because – as we know – it is a beautiful nation. Therefore New Zealand is highly attractive because of its price, because of the global nature of the world, and our free capital markets that allow people to come in and buy land. By definition, of course, if one thinks about New Zealand in one sense, most New Zealanders

> would recognise that the land that is actually attractive to foreigners – and primarily we are talking about high-country stations, and beachfront and lakefront sites – is the land that is likely to be purchased by foreigners when they come to New Zealand. The truth is that they will not come to New Zealand to buy some piece of dirt that is out in the middle of nowhere. Generally speaking, they are coming for the choice bits of a great little country.

Regarding the marginal-strip provision – the Parker grab – Key summarised the issue succinctly:

> The issue becomes one where, if we are not prepared to require that compensation be paid for allowing for access rights to the Queen's Chain in private property sales, then we are really taking a significant property right from those who are selling, because the purchaser will almost certainly pay a bit less. That leaves us with the vexed question of whether the Crown wants to pay for the costs required to acquire the Queen's Chain. In that respect I take it that the current Minister of Finance potentially shares my view – as a possible Minister of Finance – that it is a cost that we do not necessarily want to pay, if I understand that correctly. But National does not think it is fair to demand that the Queen's Chain be applied on a non-compensation basis.

David Parker later employed an ambitious but double-edged argument in reply to this logic. He pointed out that until 1995 there had been an almost total prohibition on the sale of rural land to foreigners. The sale of land to foreigners had not merely been subject to conditions about marginal strips; it had been virtually forbidden. Given this history, the position at law, according to Parker, was clear: private property rights did not include the unrestricted right to sell rural land to overseas people.

This line of reasoning did not affect the outcome of the debate. If nothing else, though, Parker's illustration – from recent history – did demonstrate that property rights do change over time. The 1995 changes, for which the public good may have been the main parliamentary motive, had enriched some New Zealand landowners.

As the debate progressed, the marginal-strip provisions – ten pages of the bill – were duly dumped. With this barrier down, the National Party and United Future were able to support the bill. It passed its third reading emphatically, eighty-four ayes against twenty-seven noes.

Even without the David Parker amendment, the Overseas Investment Act 2005 looked likely to lead to improved walking access to some properties bought by foreigners. When the regulator – the Overseas Investment Office (OIO) of Land Information New Zealand – examined a foreigner's application to purchase sensitive land, it could take into account improvements to walking access. Enhanced or completely new walking access along a river or lake could become a condition of consent. For some sites the parties would probably voluntarily agree to the creation of marginal strips. The consent process could result in mutually advantageous arrangements. New walking access had sometimes been

negotiated even under the old regulations, such as when Shania Twain and her husband Robert 'Mutt' Lange purchased Motatapu and Mt Soho stations between Wanaka and Arrowtown. Their agreement to the building of a new walking track across the property, a three-day tramp across a wonderful stretch of country, had crucially secured the regulator's assent.[26] Such outcomes looked set to become more common.

Chapter 29

New Consultation on Walking Access

In the 2002–5 Labour-led government, Jim Sutton had clearly been the main leader and spokesperson on walking access. In the new government the minister of agriculture Jim Anderton and the minister for rural affairs Damien O'Connor seemed to be sharing these responsibilities. In January 2006 Damien O'Connor told the *New Zealand Herald* that 'sorting through the land access issue sensibly is a big challenge'.[1] Two days later, as if to illustrate the continuing political aspects of that challenge, *The Economist* carried a one-sided article titled 'The Last Battle; New Zealand: Farmers Are Fighting for Survival in the Backdrop to Narnia'.[2]

It wasn't long before David Carter, the National Party's veteran landguard, aggressively reminded O'Connor that he – Carter – did not see the need for any more consultations on walking access to land:

> National's agriculture spokesman, David Carter, is calling on Damien O'Connor to explain why the Government-commissioned walking access panel is months behind in its work and is barred from publicly releasing its agenda. 'This committee has cost $33,000 so far and it hasn't got a thing to show for it,' Mr Carter says.
>
> … 'The Minister was always going to struggle fixing a problem that didn't exist … Stop wasting taxpayer money and disband this talk-fest now.'[3]

Some people might say that Carter was just doing his job, working hard as a senior member of the opposition, attacking the government, what we paid him for. Grandstanding. Negativity from a senior politician sells newspapers and gets his or her name onto their pages. Regarding the access problems that didn't exist, though, one had to wonder whether Carter had been living not in Wellington or on his Banks Peninsula farm but on the far side of Pluto.

O'Connor responded almost immediately.[4] The walking-access panel was pleased with the way its meetings had gone. It had approved a consultation document, which would be published within four weeks. There would then be a series of meetings around the country. People and

organisations could submit their responses to the consultation document (if they weren't suffering from submission fatigue). The panel would report to the minister in about late 2006.

Much of the 2003 Acland report had concentrated on identifying the problems. The panel was now focusing on identifying possible solutions, particularly ones that would be politically achievable.

A week later a *New Zealand Farmers Weekly* article spoke of John Acland challenging David Carter to 'get positive' on the access issue.[5] *Rural News* reported that John Aspinall, the Federated Farmers representative on the consultation panel, had 'been pleasantly surprised by the amount of consensus among the … panel'.[6]

Changes at Public Access New Zealand

Since its formation in 1992, PANZ had filled a unique role as a non-governmental organisation whose main purpose was to uphold and enhance public access to public lands and waters. From 1992 to 2005, PANZ's assiduous researcher and frequent spokesman, Bruce Mason, had exercised an invaluable knowledge of the legalities of access. The factual information available on PANZ's comprehensive website had greatly helped other access-promoters and access-researchers. Much of what the amateur needed to know about public roads and the Queen's Chain was conveniently at hand on this website. I have heard of lawyers accessing some of the tenure-review material, such was its extent and authenticity. Although other bodies such as Federated Mountain Clubs of New Zealand and Fish and Game New Zealand had helped to focus public attention upon access, one wonders whether walking access would ever have reached the Labour Party's manifestoes had PANZ not existed.

On the other hand, the government's 2004 plans to establish footways along significant water margins might have survived but for Mason's personal orange-ribbon shenanigans of June 2005. Mason had been unwilling to compromise on the issue of the footways. He had stridently criticised Jim Sutton's plans only months before the general election. He had helped to cause the dropping of a substantial bill.

So it had been evident immediately after June 2005 that relations between PANZ and the government would probably stay sour for some time. Similarly, relations between PANZ and Fish and Game New Zealand could hardly become amicable and productive without either some healing or a change in chiefs.

Bruce Mason Resigns

In the event, one of the chiefs had quietly departed quite soon after the Action Orange week, although for reasons unconnected with the uproar over the footways: PANZ had run short of money, making it impossible to continue to employ Bruce Mason. It had tried to raise the funds but had been unsuccessful. Mason had resigned in August 2005, a despondent exit for New Zealand's most effective access champion since the tenacious Harry Ell.

According to Mason, there was no policy difference behind his departure. He did, however, allege 'an entrenched unwillingness of most PANZ trustees to do anything to secure PANZ's financial future, despite consistent high praise for my work'.[7]

In October 2005 the PANZ website had become unavailable, a considerable detriment to the cause of access. Six months later, PANZ had still made no public announcement about PANZ's future. No new contact details were easily available to nonmembers. PANZ appeared to be on life support, needing a financial transfusion to survive. Research and the provision of information to the public had formed a large part of PANZ's role. As things were to turn out, PANZ would regain its informative website but not its old-warhorse researcher.

Meanwhile Rural Women New Zealand celebrated its eightieth birthday and appointed a part-time policy analyst, a new role to help RWNZ in lobbying the government on behalf of rural communities.[8] Also, RWNZ and Federated Farmers reaffirmed their cooperative approach to advocacy on behalf of their rural members. Access advocates could not afford to underestimate the power of rural women.

Outdoor Recreation New Zealand Returns to Its Roots

After its 2002 registration as a political party, Outdoor Recreation New Zealand – the huntin' shootin' fishin' party – had tried to broaden its appeal to attract the support of the wider recreational public. If we judge from ORNZ's newsletters of 2005, which had concentrated mainly on hunting and fishing issues, this desire to evolve into a party representing all outdoor recreators had gone unfulfilled. An item in its November 2005 newsletter suggested that ORNZ might have been struggling to keep going:

> ORNZ, like many small organisations such as fishing/hunting clubs etc, has suffered from a serious lack of funds. We have managed to survive so far by the goodwill of a few dedicated team members and [of] members who have put their hands in their pockets, helping to fund the party.[9]

In March 2006 an ORNZ newsletter announced that ORNZ had restructured its board and that as part of the restructuring ORNZ had decided to return to its roots, with a focus mainly on hunting- and fishing-related issues that affected its members.[10] These matters included game management, the use of 1080 poison for pest control, recreational fishing, marine reserves, and access (including vehicular access).

The restructuring of the board of this huntin' shootin' fishin' party did not seem to have brought attention to the party's most obvious need: a renaming to something more specific and less confusing than the all-encompassing 'Outdoor Recreation New Zealand'. Nobody disputed that ORNZ's hunters and fishers were outdoor recreators. But the term 'outdoor recreation' covered a wide range of pursuits. Many members of the Royal Forest and Bird Protection Society of New Zealand, a leading conservation organisation, enjoyed walking in native bush. They were outdoor recreators in the full sense of that expression. Yet Forest and Bird and ORNZ sat poles apart on such issues as the place of introduced species and the use of 1080 poison. ORNZ as a political party for hunters and fishers represented the views and interests of an important propor-

tion – but by no means all – of New Zealand's outdoor recreators. The party's name would continue to confuse many New Zealanders.

ORNZ Ends Its Affiliation with United Future

As well as returning the party to its roots, the restructuring of the ORNZ board led to another change: in late March 2006 the acting chairman of ORNZ, Phil Hoare, announced that the party's board had terminated the party's agreement of affiliation with United Future. Hoare reportedly said that ORNZ

> had had a 'very warm and constructive personal working relationship' with United Future leader Peter Dunne, but had experienced difficulties with the evangelism of Christian members, brought on board in an earlier merger between United and the Christian Future New Zealand party.[11]

A tiny number of Christian-missionary members of United Future had disturbed one or two people in ORNZ. In response Peter Dunne said that ORNZ's comments about United Future's religious overtones were misplaced and inaccurate. United Future had no religious affiliations.[12]

Some aspects of walking access, such as accessways across private land to reach the coast or to reach public hunting areas, were highly relevant to the needs of salt-water recreational fishers and hunters of game animals. So, in March 2006, there was an expectation that ORNZ would still occasionally involve itself in the issues of walking access. (In late 2007 ORNZ would cease to be a political party, its membership having fallen below the necessary 500 paid members.)

Softly Softly

On 21 April 2006 the Walking Access Consultation Panel released *Outdoor Walking Access: Consultation Document*. The document's Foreword and Introduction summarised the work of the ministerial reference group of 2003 and the failed efforts of the government to introduce a walking-access bill. The Introduction made it clear that, despite this setback,

> the wider objective of the walking access policy remains unaltered. Cabinet confirmed that the policy objective is to complete the Queen's Chain so that 'as far as practicable the public will have access on foot around the coast of New Zealand, along rivers and around lakes'. The means of achieving this objective require further consideration and consultation … To ensure that appropriate access to land is guaranteed for current and future generations, the Walking Access Consultation Panel is seeking to create a consensus about solutions for formal access to land for recreational purposes.[13]

Simultaneously with the release of its consultation document, the panel opened its own website, the homepage of which was titled 'Have Your Say about Walking Access in the Outdoors'. Available online were the consultation document, background notes, frequently asked questions, the calendar of public meetings to be held in May and June, and a form for written submissions.

Restrictions Shaping the Scope of the Consultation

Before we look at the general categories of access issues covered by the consultation document, we should remind ourselves of the several predetermined restrictions that had powerfully shaped the content and character of the consultation. Firstly, the panel's terms of reference, set down by Jim Sutton and endorsed by Damien O'Connor, required the panel to limit its enquiries almost wholly to the matters of access to water margins and public land. The question of linear walking access to the whole pastoral landscape, for its intrinsic value, was not part of the panel's remit.

Secondly, the Labour Party's confidence-and-supply agreements with the New Zealand First Party and United Future included the intention to progress 'non-statutory proposals to negotiate improved public access along rivers, lakes and foreshore'. The two words 'non-statutory' and 'negotiate', crucial in these contracts, helped to calm the whole access debate. These words meant that private property rights would remain inviolate. But they also limited the track-making power of the possible outcomes.

The panel would need to think in terms of negotiation rather than legislation, agreement rather than decree, incremental progress rather than radical reshaping. If, on some important issues, the panel could not establish widespread agreement … Tough luck, access lobbyists! … Damien O'Connor and Jim Anderton would not stir up the farmers – our big export-earners and land-barons – so soon after Jim Sutton's downfall. The whole of the government's approach to walking access would be softly softly. O'Connor would become the minister of diplomacy. There was also, however, a plausible argument that if the panel found a public consensus on some solutions, the resulting policies and approaches would endure.

Overall Aim and Set of General Principles

The consultation document proposed an overall 'aim for walking access to land'. Note the word 'land'. In keeping with the panel's narrow brief, this overall aim was, contradictorily, wholly aquatic: 'The Panel proposes that the aim is for New Zealanders to have fair and reasonable access on foot along the coastline and significant rivers, and around lakes.'[14] Tracks over private land that did not follow water margins – such as tracks across fields and along field edges, tracks contouring or climbing hillsides, tracks up spurs and tracks over hilltops – would remain the discounted and forgotten elements of our foot-track networks. The screamingly obvious fault of the proposed aim was its failure to acknowledge the importance of walking access to the farmed landscape in general.

The panel also advanced a set of general principles under the headings 'Quality of Access', 'Respect for Property and the Environment', 'Information and Maps', 'Reinstating Lost Access', and 'New Access'. Under Principle 1, that of the quality of access, the panel proposed that access should be free, certain and enduring. This putting together of these three priorities reaffirmed a government goal that had first emerged in Jim Sutton's update brochure of August 2004.[15]

Thirteen General Access Issues

The main body of the consultation document dealt with thirteen sorts of access issues. In drawing up these, the panel had benefited from the

work of the ministerial reference group; thanks to the consultations of 2003, the access issues were well known. The general categories chosen by the panel were:

1. Location and status of existing access rights to water margin land.
2. Code of responsible conduct.
3. National leadership and policy co-ordination.
4. Refusal of access by landholders.
5. Intersection of private and public property rights.
6. Impact of erosion and accretion on water margin access.
7. Establishing new access.
8. Use of unformed legal roads.
9. Health and safety liability of landholders.
10. Fire risk and liability.
11. Biosecurity risks.
12. Rural crime and security.
13. Treaty of Waitangi concerns, access rights to Maori land, and wahi tapu and rahui.

For each of these thirteen matters, the panel summarised the concerns expressed by the submitters on the 2003 Acland report. The panel also suggested possible solutions and it posed questions related to those solutions.

The consultation panel was about to reconsult on a range of issues, nearly all of which had been consulted on, either thoroughly or less so, by the 2003 Acland group. Earlier chapters of this book have covered most of these. The following notes deal with some issues and aspects that I haven't previously mentioned.

Refusal of Access by Landholders

The panel's consultation document said that many recreational submitters on the 2003 Acland report had acknowledged that there were, at times, genuine and necessary reasons for access to be restricted. But they also felt that sometimes landholders denied access on unreasonable or inappropriate grounds. The consultation document discussed five possible developments that either could clarify whether landholders were entitled to refuse access to land or could lessen the incidence of refusal: better information and better access to information on access rights and boundaries of private land; better information on the limits of landholder liability to the public; a code of responsible conduct; a statutory limit on liability; and the provision of a means of dispute resolution. The first three of these solutions have been discussed in earlier chapters.

A Statutory Limit on Liability

In Chapter 14 we talked about landholders' liabilities under the Forest and Rural Fires Act 1977. In Chapter 15 we looked at the landholders' concerns over their obligations under the Health and Safety in Employment Act. The consultation document's coverage of these issues focused mainly on the need to improve the information available on these issues and to distribute it expeditiously. There was a need to emphasise the limits of the landholders' responsibilities.

The consultation document also aired the possibility of placing statutory limits on landholders' liabilities.[16] But the document did not develop

this idea beyond a mention. (The consultation panel's report of March 2007 would contain a useful review of the liability issues and would recommend a minor amendment to the Health and Safety in Employment Act and an amendment to the Occupiers' Liability Act.)

The Provision of a Means of Resolving Disputes

The 2003 Acland report had suggested that one of the functions of the proposed access agency could be to provide a mediation service for access problems. The report said that an interest-based dispute resolution process (mediation), rather than a rights-based process (courts), would seem an appropriate mechanism for dealing with conflicts over access in the first instance. Failure to resolve conflict by mediation could then require the matter to be dealt with by some other process.

Not all access proponents approved of this proposed emollient role. With characteristically blunt suspicion, Bruce Mason had spurned the idea of the access agency mediating between the parties in access disputes. Mediation was 'a politically attractive, soft option' that 'ignore[d] existing legal rights over roads, marginal strips, esplanade reserves etc'. Were these rights, Mason asked, to be negotiated away in cases of conflict with private interests? Mediation would avoid 'hard, distasteful action like upholding the law'.[17]

But there was little doubt that nonbinding mediation had the potential to resolve some disputes more amicably and less expensively than proceedings in court. Mediation could suit some quarrels over the reinstating of access lost by erosion or accretion. These reinstatement cases would sometimes involve two landowners and the crown

The panel's consultation document agreed that there could be merit in providing a means of mediating disputes involving uncertainty about rights or responsibilities. Whatever access arrangements were agreed to, arguments were still likely to occur over exactly where access was permitted and about the behaviour of people granting or exercising access. Referring to the pitfalls of merging cadastral and topographic data, the panel pointed out that 'the information about the existing Queen's Chain, however provided, will be subject to a margin of error which will depend on the accuracy of the source information'.[18]

The panel asked its submitters how they thought that disputes between landowners and recreators could be resolved. It also asked them whether mediation ought best be conducted by an access agency, a government department, local authorities or someone else. What or who would be the ideal mediator?

This last question was important and not an easy one to answer. It raised a dilemma. Some officers of the proposed access agency might be well equipped professionally to assume this role. But the mediator role could conflict with their main focus, which ought to be on improving access. Also, landowners might not view them as impartial. A mediator who enjoyed the confidence of landowners, walkers and the crown could be the first resort of all parties in some disputes. It would be unfortunate if all parties wanted to go to mediation but no obviously impartial mediator were available.

Establishing New Access

The panel's consultation document said that many recreational submitters on the 2003 Acland report had expressed concerns that access along water margins was incomplete. Some had also raised concerns about access across private land to reach water margins and other public lands, such as national parks, conservation parks, recreation reserves and scenic reserves. The consultation document discussed several possible ways to establish new access: the use of Resource Management Act mechanisms on the subdivision of land; providing more central-government guidance by way of the New Zealand Coastal Policy Statement or by a National Policy Statement; using the provisions of the Overseas Investment Act 2005; and creating walkways under the New Zealand Walkways Act 1990.

The Use of Resource Management Act Mechanisms on the Subdivision of Land

We saw in Chapter 7 that the first PANZ newsletter, in September 1992, had alerted its readers to the National government's plans to dilute the Resource Management Act requirements for esplanade reserves on subdivision. In Chapter 9, I pointed out that, in 2003, subdivision was one of the main triggers for extending the Queen's Chain and that the way this trigger operated – or didn't operate – concerned some walkers, particularly anglers.

Two of the main subdivision-related issues in 2003 had been whether a radical solution to extend the Queen's Chain was needed and, if yes, whether such a solution would be politically achievable. Now, in April 2006, Jim Sutton's ambitious footways aspiration had faded into memory. Radical solutions were not on the agenda.

But other, long-standing subdivision-related issues remained in the line-up. These included whether the government ought to review the local authorities' discretion to waive the esplanade reserve and esplanade strip requirements; whether subdivision into lots of over four hectares ought to trigger the creation of esplanade reserves and esplanade strips; and whether esplanade strips were legally secure and lasting means of providing walking access. Under the heading 'Resource Management Act', the consultation document raised seven questions about or connected with the creation of esplanade reserves and esplanade strips.

New Zealand Coastal Policy Statement

The 2003 Acland report had said that the Resource Management Act (RMA) was the primary statute guiding local government in its decisions about the sustainable management of New Zealand's environment.[19] Part II of the RMA explicitly mentions public access as being a matter that local authorities are obliged to recognise and provide for when developing and implementing their policy statements and plans. Section 6(d) states that 'the maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers' is a matter of national importance. Section 6(d) does not guarantee a right of access to all areas of the coast, but it does acknowledge the importance of coastal access.

The 2003 Acland report had gone on to say that the New Zealand Coastal Policy Statement, a mandatory requirement of the RMA, provided more-specific guidance to local authorities about managing the coast. One aspect of the New Zealand Coastal Policy Statement dealt

with providing recreational access to land, especially in connection with the conditions attached to coastal subdivisions.

In April 2006, when the consultation panel released its consultation document, the New Zealand Coastal Policy Statement was under review, a process being coordinated by the Department of Conservation. The panel asked its submitters whether they thought that the government should adjust the New Zealand Coastal Policy Statement to provide more guidance on access.[20]

National Policy Statements

The 2003 Acland report had mooted the idea of using the Resource Management Act to develop a National Policy Statement on access.[21] A National Policy Statement is the highest-level policy declaration under the RMA. It provides direction to local authorities on matters of national importance. It also influences other documents prepared under the act, such as regional policy statements and regional and district plans. A National Policy Statement on access could therefore influence local government rules relating to the provision of esplanade reserves and esplanade strips during subdivision.

But the report was careful to point out that a National Policy Statement on access would only influence the implementation of the RMA, not the implementation of the many other statutes that affect access. Nor would it necessarily influence the nonstatutory mechanisms used to negotiate or manage access. The existence of an access National Policy Statement under the RMA 'would not address the problems relating to the lack of coordination between different statutes and organisations'.[22]

Nearly three years after the release of the 2003 Acland report, the Walking Access Consultation Panel had come to no conclusion on the need for a National Policy Statement on access. The panel was undecided whether a National Policy Statement on access was worthy of consideration.[23] It asked its submitters to say whether they thought that an access National Policy Statement under the RMA would help to establish new access.

Regional and District Plans

The 2003 Acland report had indicated that high-level policy statements formulated in Wellington, such as the New Zealand Coastal Policy Statement, affected regional policy statements, regional plans, coastal plans and district plans. For example, stances and guidelines in the New Zealand Coastal Policy Statement explicitly related to the maintenance and enhancement of public access were – or should have been – reflected in regional coast plans.

The 2006 consultation document did not dwell on this filtering-down, but I want to discuss it now, looking casually at a couple of Otago regional council documents. A quick inspection of the regional council's *Regional Plan: Coast for Otago* (2001) revealed a whole chapter on public access and the occupation of coastal space. This chapter considered the need to preserve and improve public access to and along the coastal marine area, while also bearing in mind those places where occupation or restricted access was required. The chapter assigned much importance to the issue of access, specifically responding to section 6 of the Resource Management Act:

> 7.2 Issues
> 7.2.1 Public access to parts of Otago's coast is limited and it is important that public access to and along the margins of Otago's coastal marine area is maintained and where possible enhanced.
>
> Explanation
> Section 6 of the Act states that it is a matter of national importance to maintain and enhance public access to and along the margins of the coastal marine area (and the margins of lakes and rivers). At present there are places along Otago's coastline where public access is either restricted or limited and this should be remedied. Improving public access to Otago's coastal marine area is a matter that needs to be considered in conjunction with the relevant territorial local authority and land owner having responsibility for the access points. Access to the coast across land within the planning boundary of a city or district council can only be enhanced by provisions in a district plan. Where possible, city and district councils have a responsibility to provide for Section 6 of the Act 'matters of national importance', which requires the maintenance and enhancement of public access to and along the coastal marine area. The city and district councils can make provision for access through the use of esplanade reserves, esplanade strips and access strips. When considering future developments within and adjacent to the coastal marine area, provision for public access is essential.[24]

In a later section, laying down policy, the coastal plan made clear that the regional council intended to create esplanade reserves, esplanade strips and access strips when land along water margins was subdivided:

> 7.4.6 The creation of esplanade reserves or strips, and access strips in subdivisions adjacent to the coastal marine area will be encouraged, and they will be required on reclamations unless it is demonstrated that in the interests of public health and safety that they are not practicable.

Viewed in isolation, Otago regional council's coastal plan held good intentions on access, albeit dependant on the pace of subdivision. But in 2006, whether these intentions would lead to the building of any sizeable coastal walking tracks remained to be seen. The 305 pages of *Regional Plan: Coast for Otago* did not contain one instance of the word 'walkway'. It contained only one occurrence of the word 'track(s)', and that was in connection with vehicular access. The word 'walking' appeared seventeen times, typically in the phrase 'swimming, walking and surfing', used as part of a beach description. If any coastal paths were under discussion in the offices of the regional council, they hadn't yet reached its coastal plan in a noticeable way.

In July 2005 I had been interested to learn that the final *Otago Regional Council Annual Plan 2005/06* included two brief mentions of walking tracks in the Dunedin area: investigating the possible extension of the

proposed Ravensbourne walkway; and commencing construction (if feasible) of a Dunedin coastal walkway. Then in April 2006 the regional council sent me its *Draft Policies and Long Term Council Community Plan 2006 – 2016*. I searched through this to see what walkway developments were planned for the next ten years. The only references to walkways and walking tracks, in a comprehensive document, were extremely brief and general. I expected a ten-year plan to contain more-detailed and specific information about the regional council's walkway developments. Neither of the two above-mentioned plans explained which section of the coast 'a Dunedin coastal walkway' referred to.

It may have been that annual plans and long-term plans were not the appropriate places for describing the details of a regional council's walking-track developments. If this was the case, the council ought to have provided the information somewhere else. In July 2006 the council informed me that it was considering adding a page to its website, containing information on the council's past and present walking-track developments.[25]

Although not a major track-builder for the Dunedin area, Otago regional council had been involved in a few worthwhile walkway projects. In 1999 it opened the Upper Leith Walkway (also called the Water of Leith Walk), as part of its Streamscapes Plan, which aimed to provide access to several Dunedin waterways. The Upper Leith Walkway links Woodhaugh Gardens with the Ross Creek tracks, thus forming a short but vital connection. Just 600 metres long, it immediately became one of the busier bits of track in the city.

On 21 December 2006, the chairman of Otago regional council and the mayor of Dunedin opened the Ravensbourne Walkway-Cycleway, 1.2 kilometres of sealed path running along the harbourside from Dunedin's Boat Harbour Reserve to Ravensbourne.[26] The planning of this walkway-cycleway had required a community effort involving representatives from the regional and city councils, Port Otago, Port Chalmers Community Board, Transit New Zealand, Ravensdown Fertiliser Ltd, On Track and the Ravensbourne Yacht Club. The walkway-cycleway cost $220,000 to build. Otago regional council paid 40 per cent of this, Dunedin city council another 40 per cent, and Transit New Zealand the rest.[27]

A feasibility report on extending this walkway-cycleway from Ravensbourne to Port Chalmers, a distance of 8.4 kilometres, estimated the cost as $3.4 million. Dunedin city council and Transit New Zealand looked likely to fund this extension, provided that the regional council paid a share. There was talk of spreading the work over five years. But on 11 June 2007 the *Otago Daily Times* reported that Otago regional council's annual plan committee had decided that the project did not meet the regional council's objectives and therefore should not be funded. Dunedin's mayor, Peter Chin, said that the regional council committee's decision was 'disappointing in the extreme'.[28]

The level of use and the popularity of the 1.2 kilometres of off-road waterside path exceeded all expectations. The community passionately supported the proposed Ravensbourne to Port Chalmers extension. Perhaps a fair verdict on the walkway achievements of Otago regional council, until 2007, was 'some progress, but could do better'. My impres-

sion was that the development of walking tracks was a discretionary activity for this regional council and was a low priority.

(Regarding the Dunedin to Port Chalmers walkway-cycleway, community pressure kept things moving. A 1.3-kilometre extension from Ravensbourne to Maia was opened on a sunny spring day in October 2008.[29] This section cost $350,000, money that came from a national pool dedicated to alternative transport. At some point, Otago regional council reinstated its support for the project. In May 2009, the proposed Maia to Port Chalmers section remained a high-profile local issue. Otago regional transport committee's draft regional land transport programme contained a figure of $4,903,212 to build this section over three years.[30] This funding awaited government approval.)

Using the Provisions of the Overseas Investment Act 2005

In Chapter 28 we followed the life of the Overseas Investment Bill, which led to the Overseas Investment Act 2005. Even without any provisions for creating marginal strips, dropped to gain the support of United Future, the act appeared likely to result in improved walking access to areas of countryside sold to foreigners. Overseas residents wanting to buy land of a particular category must apply to the Overseas Investment Office (OIO) for consent. The OIO then considers whether there are or will be adequate mechanisms in place for providing, protecting or improving walking access over the land to be bought.

The Overseas Investment Act had passed into law on 16 June 2005 and had come into effect on 25 August 2005. So in April 2006, when the panel released its consultation document, the act had operated for less than a year. The consultation document said that 'it is unclear at this early stage if this [regulatory] requirement will provide significant new walking access'.[31] This comment may have been less optimistic than was justified. In 2007 the application of the Overseas Investment Act would result in greatly improved access across Poronui Station, which had been an access problem area on and off since 1969. We will look at the sale of Poronui Station in Chapter 32.

Gazetted Walkways: the Situation in 2006

Chapter 6 described the development of walkways from 1975 to 2003. The chapter ended with a list of walkway issues meriting investigation by the ministerial reference group. Chapter 9 related that the subsequent 2003 Acland report did not examine any of these walkway questions in depth. This report did say, however, that the Department of Conservation's implementation of the New Zealand Walkways Act had been heavily deficient. The reference group thought that the Walkways Act and its administration needed a fundamental review.

Now, three years later, the new walking-access consultation would provide a second chance to look deeply into the concept of walkways and at the reasons for the apparent stagnation in the growth of gazetted walkways over private farmland. The consultation document pointed out that the existing New Zealand Walkways Act contained a statutory mechanism for negotiating new access. The document said that the consultation panel would consider the possibility of transferring the administration of the act to an access agency. Handing over this respon-

sibility to an organisation focused on walking access could reinvigorate the growth of walkways.

Use of Unformed Legal Roads

The issues surrounding public roads have already thrust themselves imploringly into eight previous chapters. A fairly detailed update, however, is necessary. Several developments concerning public roads had occurred in 2004–5. Also, by 2006 public roads were at last receiving the official scrutiny they deserved. First, though, a leap back six years.

A Federated Mountain Clubs Petition on Public Roads

On 21 March 2000 John Wheeler presented a petition to the House of Representatives, on behalf of Federated Mountain Clubs of New Zealand. The petition sought to change section 344(1) of the Local Government Act 1973 to require that, where a fence was permitted across any road, a cattle stop or swing gate should be provided. It also sought an additional section to the act to make it mandatory for a council, upon receiving a petition from twenty of more residents of the district, to comply with the new requirements and section 344(2) of the act. (Section 344(2) required landowners who erected gates across public roads to fix a notice to the gates clearly saying PUBLIC ROAD. Most landowners ignored this law.)

On 8 November 2004 the local government and environment committee reported that:

- it did not support the proposed amendments;
- it considered that the act already adequately covered the issues; but
- it acknowledged that the law in some areas was not being complied with or enforced; and
- it considered that the issues were important and that work should be done to ensure that local authorities met their obligations under the law.[32]

As a result of this report, Chris Carter, the minister of local government, wrote to the president of Local Government New Zealand (LGNZ) to draw his attention to the petition and the select committee's recommendations. John Wheeler later wrote: 'If some, if not most, local authorities have totally ignored their responsibilities under the Act over the last 31 years, is a reminder from Chris Carter going to make any difference?'[33]

But the select committee's report was not the government's last word on public roads. On 20 December 2004 came the cabinet paper 'Walking Access in the New Zealand Outdoors'. This acknowledged that the ministerial reference group had discerned 'issues surrounding the identification and use of unformed legal roads'. The cabinet paper proposed

> that the access legislation [later dropped] would give the access agency or any person the ability to apply to the District Court for an order that obstructions to walking access be removed from unformed legal roads … [and also] proposed that officials assess the implications of this initiative for local government and the Local Government Act 1974.[34]

The walking-access bill anticipated by this cabinet paper proved, as we know, to be highly perishable. The paper's proposal regarding obstructions

of public roads, however, did survive. It would reappear two years later, when the Walking Access Consultation Panel would recommend that 'an effective legislative remedy be available to the public (and enforceable in the District Court) for the removal of unlawful obstructions on unformed legal roads'.[35]

The Blocking of Public Ways: Not a Problem Unique to New Zealand

The obstruction of public ways where they crossed agricultural land was not a problem exclusive to New Zealand or one that would ever vanish completely. Blockages will always occur, to some extent. The important things about such blockages are to have effective laws that minimise their occurrence and that clear the blockages quickly. In the United Kingdom today, legally definite public footpaths are frequently blocked. As they were too over a hundred years ago. In 1892 *The Times* reported on some of the work of the National Footpath Preservation Society:

> The National Footpath Preservation Society has issued its annual statement of the cases of footpath interference, encroachments, &c., in which the society has been concerned, this being the eighth year of its existence. From this statement we learn that the cases dealt with in the year in question – from October 1, 1891, to September 30 this year – were 157 in number, making the total number of cases in which the society has acted since its foundation, 880. In each case a short description of the obstruction is given. In many cases the right of way was disputed; in some cases fences were put up; in others the path was ploughed up. In one case in Wales a bull was kept in the field through which the path ran, and a woman was frightened to death. At Windhill, in Yorkshire, there was a remarkable attempt to close a footpath by squirting hot water and steam on people using the path.[36]

Present-day UK references to blockages of legal access are abundant. In Scotland, under section 14 of the Land Reform (Scotland) Act 2003, access authorities can serve written notices on landowners to remove alleged obstructions of common law rights of way or of statutory responsible access. Between 9 February 2005 and 31 March 2008, nineteen section 14 notices were issued to remove obstructions. In six of these cases, the landowners appealed against the notice.[37]

In New Zealand, obstructions on unformed public roads have typically taken the form of locked gates, fences (including deer fences and electric fences), stockyards, farm machinery, scrapped vehicles, rubbish, dense vegetation (gorse being particularly troublesome), fallen trees, mounds of earth, deep trenches, farm buildings and plantation forest. And occasionally, as in the UK, large animals or argumentative landowners.

A word that had featured strongly in the 2003 Acland report (over thirty occurrences) and in subsequent debate was 'certainty'. Walkers wanted certainty of access; landowners spoke of certainty of property rights. The contexts varied: national-park boundaries, reserve boundaries, marginal strips, unformed public roads, etc. Unformed public roads seemed to be the greatest cause of confusion and disagreement.

They had always caused problems. We associate unformed and partly formed roads with long-drawn-out disputes. Sometimes these disputes have been heated. In rare cases they have been tragic. The newspapers of 1936 tell of such a case, which more than matches the British examples given earlier. I have gleaned the following account from newspapers reports, which I am assuming were accurate enough for our purposes here.

William Beatty farmed at Waitepeka, near Balclutha. On 22 February 1936, Hugh Gunn drove a horse and cart into Beatty's farmyard. A witness understood Gunn to have claimed that the farmyard was on the line of a public road. Beatty approached Gunn and turned the horse away.[38]

Later the three Gunn brothers arrived at the yard, again with the horse and cart. They had no weapons. Beatty approached them carrying a walking-stick and some pepper in a paper bag (to throw at the horse, presumably). A witness said that Beatty did appear to be looking for trouble. The Gunns and their horse and cart continued on their way, into a paddock.[39] In the paddock, there was an altercation. Beatty received head injuries that resulted in his death six hours later.[40]

It was later alleged that, following a dispute over Hugh Gunn's right to use a roadway through Beatty's property, Hugh Gunn had hit Beatty on the head with a heavy manuka stick.[41] Gunn was charged with murder.

At an inquest and preliminary hearing,

> Francis Stothart Little, surveyor, said that according to records the legal road went through Beatty's garden. The felling of a tree which he saw there made it impossible to get access from the farmyard to the paddock, and the tree had probably been deliberately felled across the roadline.[42]

On 10 May a jury returned a verdict of not guilty. The judge discharged the accused.[43]

The common thread through the British and New Zealand examples that we've discussed here and earlier in this book has been the disputing and blocking of a right of way. The main difference between the typical course of events in Britain and that in New Zealand has been the visible and often indispensable involvement of the land-surveyor in resolving the New Zealand disputes.

Local Government New Zealand's Concerns about Unformed Public Roads

On 22 April 2005, in a report to the Road Controlling Authorities Forum, Local Government New Zealand listed its concerns about unformed public roads:

> We have sought the views from local authorities on this issue and as a result have advised the Minister that it may be reasonable or desirable to restrict public access along unformed legal roads. For example where:
> - use can cause public safety and maintenance problems particularly where geographical features and terrain prohibit easy use;
> - unformed roads criss-cross through not only local authority parks and reserves but national parks, stop banks and water collection

areas, where all forms of public access are inappropriate or where specific restrictions are needed;
- the cost of enabling access, particularly for vehicles, is prohibitive in relation to the access benefits gained;
- local authorities have a large number of unformed roads and are very concerned at the potential cost of maintenance should there be requirements to open up, mark out the alignment of the road, or even provide swing gate access.[44]

Firstly, a comment on 'geographical features and terrain that prohibit easy use'. One day in May 2006 two friends and I reconnoitred a missing link in a coastal walk to the north of Dunedin, between Heyward Point and Murdering Beach. We used a hand-held GPS receiver and paper aerial photographs with cadastral overlays. This enabled us to follow two unformed public roads that nobody had ever used. These roads wandered inland from the foreshore, and so no water margins were involved except at each end of the walk. In several places, keeping to the road lines, we scrambled up steep grassy slopes that in some people's eyes would be 'geographical features and terrain that prohibit easy use'. Yet, at nearly sixty years old, I managed these earthy coastal hillsides comfortably.

These two unformed public roads provide crucial connections. They therefore possess considerable recreational worth. There are also, however, several farmtracks in the same area, potentially offering more-logical routes, and so the ideal solution to this link between Heyward Point and Murdering Beach would be a negotiated agreement that took advantage of existing farmtracks. In the absence of such an accord, the public roads will remain essential. Regarding the possibility of terrain ruling out the 'easy use' of an unformed public road, the only topographic limitation on a walker's use of an unformed public road should be what is physically possible for a fit and experienced tramper.

Secondly, on the possibility of unformed public roads crisscrossing places 'where all forms of public access are inappropriate', there are procedures available to stop public roads in these sorts of circumstances. An example occurred in 2005 when Meridian Energy Ltd asked the Mackenzie district council to stop several public roads under the Waitaki hydro structures. In deciding whether to agree to the stopping, the council considered public-access aspects as well as safety aspects raised by Meridian. The council agreed to investigate the possibility of developing a management plan for the area, which would provide some public access if the public roads were stopped.

Thirdly, on the 'cost of enabling access, particularly for vehicles, being prohibitive in relation to the access benefits gained', this was three connected issues rolled into one. Nobody was suggesting that territorial authorities should spend money on improving unformed public roads to make them suitable for motorised recreational off-roading. The Walking Access Consultation Panel would need to report on the costs of locating and signposting public roads. The proposed access agency would need to formulate some access-value criteria to gauge the recreational benefits gained.

Fourthly, Local Government New Zealand had correctly said that local authorities had a large number of unformed roads. LGNZ was concerned at the potential cost of maintaining them, after the roads' locating and waymarking. This again was a complex issue, particularly regarding the use of public roads by motor vehicles. Later in this chapter we will consider the controversy around four-wheel-drive vehicles damaging unformed public roads.

An Increased Government Focus on Unformed Public Roads

In Chapter 24, I suggested that in defeating the government's footways plans, our farmers may have unwittingly goaded the government into a more thorough look at unformed public roads than would otherwise have happened. Whatever the cause, the consultation document was evidence of an increased government focus on the access potential of unformed public roads. Jim Sutton's walking-access cabinet paper of December 2004 had said little about public roads, just one mention in fourteen pages. Yet now, in the panel's consultation document, unformed public roads were firmly on the agenda. The consultation document used the term 'legal road', but this book will stick with the term 'public road', the two terms being perfect synonyms.

The consultation document summarised the well-known factors preventing walkers and other recreators from using unformed public roads. It said that in principle the roads could be mapped easily and, if necessary, signposted. It listed six issues that needed addressing. It asked submitters four questions about unformed public roads, designed broadly enough to elicit some comprehensive responses.

Further evidence of the government's intensifying emphasis on public roads emerged in a *Farmers Weekly* lead article in July 2006. The magazine said that John Acland had confirmed that 'the major focus of land access reform will be on negotiating access to paper roads'.[45] Unfortunately this article did not explain that all public roads are open to everyone, without the need for any negotiation whatsoever. I underlined this point in my submission on the consultation document:

> The consultation document puts its section about public roads into the general category of 'Issues on which agreement needs to be sought'. Many users and landowners would benefit from a resolution of the issues surrounding public roads. The more of these matters that are resolved amicably, the better. Negotiation should always be the preferred first option. Yet there is a sense in which users do not need to seek the landowners' agreement on the use of public roads. The public have the right to pass and repass on any public road. A member of the public does not need the agreement of the adjoining landowners or of the local authority before he or she exercises that right. With more people owning and using hand-held GPS devices, the frequency of individuals locating and following unformed public roads may increase, especially once authoritative maps become easily available.[46]

This was mainly old stuff, much discussed since 2003, but you couldn't repeat it too often. And while we are on old stuff, the recognition of the

need to signpost public roads was downright ancient. In June 1890 W F Howlett lost his way near Blackburn, Napier. He wrote to the *Hawke's Bay Herald*:

> For fifteen years I have incessantly urged [the] erection of sign posts, all to no purpose. Last week I attempted to pilot the Rev. J. Knipe about Blackburn. I used every diligence, made enquiries; got lost; finally came out on the Waipawa river. Then we got into a *cul de sac* where the road was fenced across. At last we reached Mr J. Rhodes' place, and learned that the 'road' we came was *not* a legal road, and consequently he had fenced across it. Is it not a public scandal that a well marked road should be left open at one end, so that travellers may go down it only to find a fence at the other? Of course the Road Board ought to put up sign posts. There is no extant map whatever shewing these roads, so without sign posts what can one do?[47]

The Damaging of Unformed Public Roads by Motor Vehicles

A newer issue, which had gradually come to the fore with the growing popularity of sport-utility vehicles (SUVs) and off-road motorcycles (trail bikes), was the damage that motor vehicles could inflict upon unformed public roads. In February 2001 an article in *Public Access* had talked about a 'phenomenal growth in 4WD sales in recent years' and an 'upsurge in damage' to unformed public roads. Regarding the right of motor vehicles to use unformed public roads, the article had said:

> Four-wheel-drive users do not have an absolute right to use and to damage backcountry roads.
>
> Public Access New Zealand has responded to concerns by the Central Otago District Council and the Dunedin City Council about severe damage being inflicted on the historic Dunstan Road and other high country roads in Otago. There are reports of ruts up to 60cm deep spread across road surfaces. Some roads have become so rutted that they have become unusable and even difficult to ride a mountain bike along.
>
> PANZ is a staunch supporter of public rights of use over public roads as these provide essential rights of access for everyone. However PANZ research indicates that the common law right of unhindered passage at all times is not absolute. Our delving into English common law, which applies to New Zealand, reveals that in exercising passage if damage results to a road surface to the extent that normal passage by other users is adversely affected, then a public nuisance is created. This opens the damaging party up to a liability to be sued. Administering councils, other road users, or adjoining land occupiers could take action …
>
> Greater awareness among 4WD owners of their rights and [of the] limitations to those rights may help alleviate the problem. The 'tread lightly' ethic promoted by most [4WD] clubs needs greater recognition in practice. There has to be general cognizance that when a road is clearly unsuitable for wheeled traffic, use is not a right it is an abuse. There is no God-given right to drive everywhere regardless of the damage inflicted.

> PANZ advises that in wet conditions on soft, unmetalled roads susceptible to rutting, recreational users should park their vehicles and use their legs, or defer their trip until there are dry conditions.[48]

The 2003 Acland report had not discussed the environmental harm caused by motorised off-roading; the closest the report got to this subject was 'the Group also considers that access issues related to the use of motorised vehicles, especially the off-road use of these, need to be further investigated'.[49] Now, three years later and with thousands more SUVs rumbling around, the issue was attracting much attention. In its list of public-road matters needing attention, the consultation document included 'concerns by territorial authorities about inappropriate use of unformed roads, especially by off-road vehicles'.[50]

One of these authorities was Dunedin city council. In 2004 this council had received an increasing number of complaints about four-wheel-drive vehicles causing deep ruts on unformed public roads around the city. Transportation planning staff suggested to councillors that the best way to overcome this problems would be to pass a bylaw enabling the council to erect gates preventing vehicular access. Walkers, cyclists and horse-riders would still be able to use the roads. Several councillors doubted whether a bylaw would be the best solution. One described the possibility as 'punitive'. He suggested that the council restrict access to some unformed public roads but create a defined four-wheel-drive circuit on other unformed public roads.[51] The council then installed gates across one or two public roads.

My submission on the consultation document agreed that this potentially controversial problem would be likely to become more widespread and more urgent:

> Question from consultation document:
> If unformed legal roads traversing farm or forest land are marked on maps and/or signposted, what issues are likely to arise and how might they be addressed?
>
> Response:
> The mapping, unblocking, signposting and waymarking of an unformed public road should eliminate the users' issues regarding the impossibility of using that road. These well-documented users' issues, however, might sometimes be replaced by new users' issues. In particular, conflicts of interest may arise between walkers, cyclists, horse-riders and motor-vehicle users.

I suspected that the basic conflict would be between nonmotorised track-users and four-wheel-drive enthusiasts. Although the panel's walking-only terms of reference did not seem to provide for any discussion of the possible conflict between different users, the panel would hardly be able to ignore this obviously relevant issue. The policies of local authorities on the use of public roads by four-wheel-drive vehicles were still developing.

In late 2006, Dunedin city council would propose a new bylaw to restrict the use of motor vehicles on four more unformed public roads.

Also about then, a group of mainly four-wheel-drive enthusiasts would form the Paper Road Society. We will catch up with these developments in Chapter 30.

Hardly a Murmur

In late 2003 the nationwide consultations of the Land Access Ministerial Reference Group had taken place in an atmosphere of rural alarm over and opposition to the group's proposed deeming of water-margin access. The careful explaining of the facts contained in the 2003 Acland report had competed against, and been overshadowed by, the pandemic misinformation that circulated in ignorant press stories and in deliberately deceiving media releases. Now, in 2006, the consultations of the Walking Access Consultation Panel went ahead with hardly a press murmur. Headlines about negotiated solutions and consensus and gradualism and hand-shaking do not sell newspapers.

That is not to say that the government's political opponents did not try to foment the customary them-and-us antagonism. On 6 May 2006, in a speech to members of the National Party, David Carter interrupted the ceasefire:

> The issue that was of most significance to rural New Zealand at the last election was Helen Clark's wish to give [the] public the right to access privately owned farmland. [Actually, along selected water margins only.] For any of you who think this issue is now off her political agenda, think again. Last month, Helen's little helper, John Acland, released another discussion document on public access, which was designed to encourage another round of meetings so vested interest groups such as Forest and Bird and Fish and Game could create the impression that all farmers are bastards who try to keep New Zealanders from accessing rivers, lakes and beaches.
>
> Most, in fact nearly all, farmers are happy to share their land with the public. All they want is the courtesy of being asked – [a] system that has served this country well for 150 years.[52]

Carter's audience probably accepted this address as a pugnacious and justified defence of the status quo: plain talk, a politician doing his duty. Perhaps I was the only access advocate to read the speech. To me, it seemed … well, there are cleverer ways of insulting people than by calling them little.

A Relaxing of Mood in Rural New Zealand

The government's three and a half years of work on walking access had encountered some serious and embarrassing setbacks. The government and John Acland, however, deserved credit for perseverance. During May, June and July the panel held forty-three consultation meetings throughout the country.[53] About twenty-five of these meetings were with the public. The rest of the meetings were with invited representatives of interested organisations.

On 17 May Gerry Eckhoff, one of the chief anti-access actors in 2003–5, made a cameo appearance at the Cromwell meeting, still preaching property-rights fundamentalism.[54] But the muted tenor of the public

meeting in New Plymouth a week later probably indicated a relaxing of mood in rural New Zealand as a whole.

Firstly, jump back to October 2003 in New Plymouth, where about two hundred people, mainly farmers, had attended a consultation on the Acland report. In an article titled 'Rural Land Access Fires up Meeting', the *Taranaki Daily News* had reported that 'emotions ran high at a public meeting in New Plymouth last night to discuss changes to public access over private land to rivers, lakes and the sea'.[55] Gerry Eckhoff had turned up (he attended many of the meetings throughout the country) and had claimed that legislating improved access to land would lead to an upsurge in rural crime.

Now jump forward again. On 23 May 2006 in New Plymouth, about a hundred people attended a consultation on *Outdoor Walking Access: Consultation Document*. In an article titled 'Land Access Meeting Low Key', the T*aranaki Daily News* said that 'the Government should have better success getting land access legislation through if the consultation meeting they held in Taranaki this week was any indication'.[56] The article described the debate from the audience as 'low key'. One of the main issues discussed had been 'what might happen in the case of paper roads': an important change of focus since 2003.

Marlborough Farmers Still Grouchy

It would be incorrect, though, for me to give the impression that a new, more acceptant attitude towards the government's access plans had permeated our entire countryside. Feelings weren't quite so subdued in Marlborough. About 120 people attended the panel's public meeting in Blenheim. An article in the *Press*, titled 'Walking Panel Blasted', reported that 'members of the Walking Access Consultation Panel bore the brunt of rural frustration in Blenheim on Wednesday night'. Once again, as in 2003, some farmers at the gathering did not seem to have read the document that the meeting was supposed to be discussing: 'Only minutes into the presentation, the terse questioning began, with one woman asking what the purpose of the meeting was when rural people had already decided they did not want people freely roaming on their properties'.[57] Pat O'Sullivan, a Marlborough district council councillor and the president of the Marlborough branch of Federated Farmers, 'accused the panel members of sucking off the Government's teat'.[58]

According to a report in the *Marlborough Express*, a number of landowners at this Blenheim meeting suggested that the existence of some paper roads should be kept quiet.[59] Commenting on this proposition, Neil Deans, the manager of the Nelson-Marlborough regional office of Fish and Game New Zealand, said that Marlborough had thousands of kilometres of unformed public roads of which the public had little knowledge but to which it had a right of access. John Acland pointed out that paper roads would be an issue for farmers in the future because people with hand-held GPS receivers would know where these strips are and would be able to exercise their right to use them.

Misinformation and Misconceptions Linger On

In late June, towards the end of the meetings, Acland said he was pleased with the progress achieved.[60] He believed that 90 per cent of those attending agreed that the issues needed resolving.

A few weeks later, however, he told *Rural News* that the panel had found it extremely difficult to get the message across that its proposals were not about the right to roam.[61] He said: 'We are talking about walkways and keeping access defined to certain areas.'

This comment about the difficulty of educating people on the facts of the panel's proposals, although correct, understated the panel's achievements. True, many New Zealand farmers had still not grasped the acute differences between area access and linear access. On the other hand, during the 2006 consultations, the press coverage of the access issues was reasonably informed and accurate and even becalming, at long last beginning to reflect Acland's three and a half patient years of countering incessant misinformation.

To sum up on the consultations, they went ahead mainly uncontroversially, mostly free of property-rights belligerence and talk of Armageddon. Perhaps the main irritant for John Acland was David Carter's inextinguishable nagging about the administrative cost of the consultations. Seldom a month passed without a curmudgeonly Carter zealously guarding the public purse, questioning the need for a government examination of walking access.

Carter's questioning of a select committee in late June showed that administrative support around walking access had cost $140,000 for the 2005-6 financial year. The government had budgeted another $100,000 for 2006-7. Damien O'Connor commented on this expense: 'The panel has gone to every corner of New Zealand and that comes at a cost.' He said the panel was worth 'every penny'.[62]

The Submissions and the Analysis of Them

The panel invited written submissions on its consultation document, to be received by 30 June 2006. After South Island snowstorms, this closing date was extended to 28 July.

'If at first you don't succeed, try try again,' said Confucius or someone. In 2003 the Ministry of Agriculture and Forestry had received 1,050 submissions on the Acland report. In 2006 MAF received 1,397 submissions on the consultation document, and it was likely that a patient thousand of the submitters were trying for a second time to convince a committee of worthy citizens that public roads needed or did not need mapping or that, for access to private land, single-occasion entry-by-permission would or would not suit the 21st century.

MAF employed an independent analyst to evaluate the submissions. The resulting analysis was not released to the public until March 2007, but it was completed before then and the panel used it to inform its discussions.

Submitters' Views Fall into Two Categories

One would not have expected people's broad views on walking access to land to have changed much over three years: the analysis of submissions showed that they had not. The summary page of the 2007 analysis closely matched the executive-summary page of the 2004 analysis. The examination of the 1,397 submissions received in 2006 showed that:

> Very broadly, submitters' views fall into two categories.

1. Enhance public access, largely through having clearer and more certain access arrangements and preserving New Zealanders' ability to make recreational use of the outdoors. This view is expressed largely but not exclusively by submitters with recreational interests.
2. Retain the status quo, particularly in relation to voluntary negotiation of any new arrangements and access users asking landholders' permission to cross private land. This view is expressed largely but not exclusively by submitters with landholding interests (including farmers, iwi and industry groups) and some local authorities.[63]

The analyst wrote that these two views were not entirely mutually exclusive. There were areas where submitters across interest groups expressed similar views.

Conversely, he or she could have added that the two views *were* partly mutually exclusive. There were areas where submitters disagreed and where adoption of one of the preferred approaches would exclude the adoption of the other. Most submitters with recreational interests, for example, advocated the mapping and signposting of unformed public roads; this would radically improve people's access to these roads, ending the 'don't know – won't go' impasse. Many submitters with landholding interests opposed the mapping of unformed public roads, being 'extremely concerned that land management [would] be hindered in a variety of costly ways if all unformed legal roads were mapped and signposted'.[64]

Views on Twenty Main Issues

When I then glanced through the rest of this 154-page record of submitters' opinions and convictions, I initially thought, Another one of these bloody things to wade through. I was wrong. It contained much of interest, including articulate and relevant quotations from the 'extremely thoughtful' submissions. Even after four years of public debate, many submitters were able to provide fresh insights into the issues relating to walking access to land. Partly *because* of the four years of debate, the factual knowledge behind many submitters' views, such as their awareness of the legal basics of public roads, seemed to be improving.

The analysis recorded people's or organisations' views on twenty main issues, plus their views on some additional matters. For each main issue, a list of key points was followed by a deeper look at each key point.

You might be tempted to think of this analysis as merely a working document that has served its purpose, which was to impart to the panel in a condensed and generalised form the access notions and sentiments of 1,397 people or organisations. The analysis met that purpose well. It identified ten matters on which submitters commonly agreed.[65] But we would be wrong to archive the analysis as being completely dispensed with, of no further interest or use. It also listed and described nine matters, such as unformed public roads, on which the submitters' views varied widely.[66] Many of those issues will be with us for years to come. Landholder submitters in 2006, for example, feared that the mapping and signposting of unformed public roads would vastly increase visitor numbers, 'bringing a proportional increase in the amount of time-consuming interaction

with access users, litter, vandalism, disturbed stock, theft, fire, invasion of privacy, and calls for help from recreational users in difficulty'.[67] Putting this another way, not only had our farmers in 2003–5 exhibited a collective paranoia about area access (despite the government never planning to introduce an entitlement to roam), but also, having got that larger ogre out of the way, they were now full of miserable pessimism about linear access.

Recreational GPS Society – Implications of New Technology

One submission to the Walking Access Consultation Panel that deserves a special note was that of the New Zealand Recreational GPS Society. This submission dealt with a fast-moving development likely to have far-reaching ramifications. The society had formed in April 2003. In the three years since then, GPS receivers had acquired powerful mapping capabilities. You could load the entire topographic database of New Zealand into a late-model GPS receiver. These receivers had also dropped in price. In future, the society predicted, our paper maps would stay in the bottoms of our backpacks:

> There will always be a place for paper maps for navigation, but the Society believes that electronic maps integrated into a mapping GPS will fast become the primary means of navigating, and paper maps will be carried solely as a backup means of navigating. This will happen because of the vast amount of information that can be stored in recent mapping GPS receivers, combined with the decreasing prices, and the ability to accurately locate the position of [a] GPS receiver on the map.[68]

The society's submission raised several issues relating to the quality of information that was owned and managed by public-sector organisations. For walkers and other recreators to use GPS receivers to their full potential would require a comprehensive and accurate spatial database of public access information. In 2006, the society said, that authoritative access-rights database did not exist. For example, the roading datasets most available to recreators did not distinguish between public and private roads; this distinction was critical when people used roads to reach areas of public walking access.

The society's submission also raised the issue of the licensing of and copyright on information relating to public access. The submission argued that there would be little point in providing the information on access rights unless people could produce derivative works and redistribute these free of charge. To ensure that the information would be accessible to all, it ideally would need to be free. Restrictive copyright and licence conditions would reduce the availability and updating of any spatial information produced.

Federated Mountain Clubs's Submission

One part of one other submission caught my eye, for the significance of the point it was making and the elegant presentation of that point. The Federated Mountain Clubs of New Zealand submission emphasised the importance of the proposed access agency recording and reporting on its work:

> The possibility that the coercive power of the state might be used to diminish an occupier's long-settled legal rights is a sensitive and emotional issue to landholders. Conversely, it is a sensitive and emotional issue to a wide spectrum of New Zealanders that the tradition of free public access to areas of recreational and scenic value might be extinguished overnight by any landholder who, for no apparent reason, decides to assert to the absolute limit his or her strict legal rights against all the world, at all seasons of the year.
>
> As an illustration, the ban imposed by a lessee on walking access to Mt Tarawera has caused continued public disquiet. The best legislative approach to such a sensitive and emotional issue is a moderate and measured one. FMC suggests that the Agency should first see how much can be achieved by negotiation. After two or three years of experience it will be apparent whether there is a significant inventory of problem cases and, if so, whether the difficulties encountered follow a pattern which would lend itself to a legislative solution.[69]

Why would that inventory be so vital? Earlier in this book we saw that in 2003–4 many landholders argued that the public did not need improved access to land. In Chapter 11 we examined a Federated Farmers statement of September 2004 that implied that there were few access issues of concern. The federation claimed that advocates of enhanced access had exaggerated the frequency and seriousness of the access problems. The federation's argument had seemed to be 'if it ain't broke, don't fix it'. But much evidence had amassed to indicate that New Zealand's old, traditional admission system was decaying.

Despite this evidence, in 2006 the submissions to the consultation panel showed that some people remained in obdurate denial: 'Some submitters feel that public access is deteriorating and the issue urgently needs to be addressed; other submitters consider there is sufficient public access and little demand for any increase.'[70]

The access agency's inventory of problem cases would provide statistical evidence of the frequency and type of access difficulties that were occurring. Exactly what would constitute an access problem, worth recording, remained to be decided. As I saw it, some situations would demand zero tolerance. One instance of the blocking of an unformed public road, for example, would be one instance too many. Even if only one walker were to be affected by the illegal obstruction, the event would still be unlawful and unacceptable and therefore recordable.

Chapter 30

Interlude

The Walking Access Consultation Panel had completed most of its consulting with the public by the end of July 2006. Little else would be heard from the panel until the publication of its report in March 2007. Meanwhile, several developments relevant to walking access occurred. These included the reappearance of Public Access New Zealand, Kay Booth's completion of her doctoral thesis on rights of public access, a rising concern over motor-vehicle damage to unformed public roads, the formation of the Paper Road Society, and the formation of Recreation Access New Zealand.

Public Access New Zealand Resurrects Itself

Since the resignation of its researcher and co-spokesperson Bruce Mason in August 2005 and the loss of its website in October 2005, PANZ itself also had seemed to have vanished. Behind the scenes, it was still operating, even if still poverty stricken. Alan McMillan, the PANZ chairperson, a discreet operator content to keep a low profile, represented PANZ at meetings with the consultation panel in February and May 2006. In June PANZ made a comprehensive submission to the panel.

In July 2006 PANZ published issue number 14 of *Public Access*, its first newsletter for over five years. The newsletter acknowledged Bruce Mason's enormous contribution to outdoor recreation. It also said that the trustees had re-established a supporter-subscriber list and were satisfied that PANZ possessed the knowledge base to continue to advocate for free public access to public lands. PANZ's aims would stay unchanged. But, now lacking a paid researcher, PANZ would concentrate on national access matters rather than be distracted by local issues. In what seemed to be a reference to Mason's abrasive style of advocacy, the newsletter said that 'undoubtedly there will be changes to the way PANZ presents itself to the public, and to Government agencies'.[1]

In October 2006 PANZ restored its website, using a slightly different internet address but with few other apparent changes apart from new contact details. Superficially, the situation looked like business as normal. Behind the website lay an organisation with unchanged written objectives.

But its public face would from now on be more moderate and tactful than the outspoken brusqueness of the Mason years. Whether anyone in PANZ still had the time and know-how to keep its website up to date remained to be seen; this once vigorous website appeared to be turning into mainly an archive, with just a trickle of post-2005 material. (When I checked this website in January 2010, it contained only a few documents later than 2005.)

A Doctoral Thesis on Public Access Rights

By late 2006 I had been observing the government's walking-access consultations and the associated discussions and arguments for four years. I was not an academic and could not judge reliably how much research into recreational access was taking place in New Zealand. My impression, however, was that few New Zealand academics were specialising in access rights.

This apparent lack of academic interest in access rights in general or in the government's work on access in particular, and the corresponding scarcity of facts based on research, had surprised me. Often, one could not easily discover the answers to basic questions. How many kilometres of unformed public road existed? Nobody knew (until 2006). How many of Canterbury's twenty-five approved walkways included sections on private land and what was the legal basis of the public access along those sections? This sort of information, crucial to the access debate, was not readily available. (I discovered later that DOC had possessed the answers to these Canterbury questions since a report in 2002.[2]) How out of date and inaccurate were the maps of the 1:50,000 Topographic Map 260 series, in terms of showing foot-tracks? There seemed few if any geographers interested in this issue. I tried my hand at some map research myself.[3]

Was *any* university research into public access rights proceeding in New Zealand? There was a well-established body of knowledge on the management of national parks and other publicly owned recreational areas; but recreation managers and researchers had not considered public access to be a management or research issue.[4] Outdoor recreation had received a fair amount of scholarly attention; by 1992 one bibliography was listing about two hundred papers, theses, books and reports on river and lake recreation in New Zealand; but for the most part these sources only touched on access issues in passing or they dwelt on the access to specific sites.[5] The subject of tenure review had spawned some erudite writings, especially from tourism researchers and economists; all these tenure-review papers had relevance to recreational access. Over several decades, a trickle of land-surveying students and lecturers had contributed papers connected with walking access, often about public roads or the Queen's Chain or walkways. Even so, it seemed that only one university researcher had made it their job to thoroughly and widely examine public access rights for outdoor recreation in New Zealand. This person was Kay Booth, a senior lecturer in parks, recreation and tourism at Lincoln University. In 2006 she completed a doctoral thesis on rights of public access for outdoor recreation in New Zealand.

An Area of Research Neglect

An often stipulated requirement of doctoral research is that it should be an original and noteworthy contribution to knowledge in the discipline in which it was conducted. The requirement to be original was no problem here. You could not, in 2006, walk into a bookshop and buy a book that comprehensively described the public's legal access rights for outdoor recreation in New Zealand as presented in legislation – in more than twenty-five acts of parliament – and in case law; such a book did not exist.[6] Nor was this information easily available, in one summative document, from any government department or nongovernmental organisation. Kay Booth had chosen an area that cried out for analysis and which had been strangely unattended to by other scholars. Her abstract for the thesis spelt this out: 'Within New Zealand, public access represents an area of research neglect. This thesis provides the first comprehensive study of rights of public access for outdoor recreation in New Zealand.'[7]

Firstly, the easy stuff. Booth explored these rights by examining three inter-related broad areas. Her research objectives were:

1. To describe and critique the public policy arrangements for rights of public access for outdoor recreation in New Zealand.
2. To examine the social constructions of access rights in New Zealand, and the resultant contest between access actors.
3. To investigate the contemporary issues surrounding public access for outdoor recreation in New Zealand.[8]

Secondly, the more esoteric side of things, and getting into technical language, to achieve rigorous objectivity and to evaluate interrelated strands Booth adopted an approach known in her field as institutional arrangements theory. She agreed with earlier researchers that 'tourism and recreation cannot be studied in isolation from the complex economic, environmental, political and social milieux in which they occur'.[9] The institutional arrangements approach, which had not before been used to examine rights of public access, enabled her to assess the interactions of eleven factors that influenced rights of public access for outdoor recreation in New Zealand.

Booth grouped five of these factors together as public policy arrangements: legislation and regulations; policies and guidelines; administrative structures; political structures and processes; and land tenure and property rights. She categorised the other six factors as social representations: changing socio-economic-political environment; contemporary values and norms; historical and traditional customs and values; values and power of access actors; economic and financial arrangements; and hot issues.[10]

Regarding the hot issues – part of her third main research objective – her examination focused especially on two New Zealand access matters: the controversy over the ownership of and access to the foreshore; and the issues raised by the government's consultations on walking access in 2003 and 2006.

The abstract for the thesis summarised the general situation reached by 2006:

> A threshold has been reached in the evolution of access rights in New Zealand. Societal changes are perceived to be reducing the public's traditional rights to access land for outdoor recreation. Owing to the importance of these rights within conceptions of New Zealand national identity, the Government is codifying access rights in a bid to protect them. Thus a shift in access arrangements is occurring, from reliance upon social customs to increasing use of public policy instruments.
>
> Access rights are being renegotiated within a highly contested environment. The debate is being staged within the political arena and via the national news media; access has become a significant national issue. As a result, the level of engagement has shifted from localised access transactions between landholders and recreationists, to a national discussion regarding competing rights to land. Access actors have reacted in different ways to the reforms of access arrangements, driven by the manner in which the proposals affect their property rights, social values and norms. Some reactions have been strident and confrontational.[11]

By December 2006 the stridence and confrontation had been in hibernation for eighteen months. All was fairly quiet on the access front. The government was no longer contemplating any radical access legislation. Yet Booth was correct: access rights for outdoor recreation stood at a threshold. Three months later the report of the Walking Access Consultation Panel would recommend a fairly substantial (though relatively uncontroversial) legislative initiative to rejuvenate the New Zealand Walkways Act 1990. The report would also recommend a review of people's rights and obligations in respect of unformed public roads.

Kay Booth's Conclusions

Booth concluded her study by revisiting her three main research objectives. Regarding New Zealand's public policy arrangements for rights of public access, she judged that

> public policy has failed to supply a recreation planning regime that meets New Zealanders' needs for public access provision. This failure encompasses legal complexity, policy scarcity, institutional indifference and enforcement failure, all of which is enacted upon a national stage devoid of a written constitution.[12]

One manifestation of this vacuum in public policy was that there was 'no institutional access champion within the government structure'.[13] Translated into concrete examples, such as access to unformed public roads, this statement echoed Bruce Mason's long-held view, cited previously, that the biggest obstacle to resolution was invariably official reluctance to bat for the public interest.

Regarding social constructions of rights of public access, Booth pointed out that laws and policies reflect societal norms. She suggested that in New Zealand there was possibly a discontinuity between social and legal definitions of issues. One example had been the foreshore-access issue,

in which, before the Foreshore and Seabed Act 2004, public expectations of access had not been represented within legal code. Such disjunctions, she argued, were more likely to occur where public policy was inadequate or unclear. Clearer public policies on rights of public access could, and ideally should, lead to alignment between social and legal constructions.[14]

I had touched on this alignment myself, in my submission on the 2003 Acland report:

> When legal rights and moral rights diverge, the diverging can continue only for so long, because it is moral sentiment that writes the law of the land. As Ralph Emerson wrote: 'The statute stands there to say, yesterday we agreed so and so, but how feel ye this article today?'[15]

Looking back in 2011 at these arguments of 2003–6, one could see that moral sentiment in New Zealand still had a long way to go before it secured high-quality nonmotorised public access to the pastoral landscape.

On the cultural aspects of rights of public access, Booth concluded that 'access in New Zealand is underpinned by several "traditions": the dominant "production" construction of rurality, virtually inviolate private property rights, the nature-dominant ethos of public conservation lands, a struggle for national cultural identity and Maori determinism (seeking official recognition of rights).'[16] Because of the tradition of unchallengeable private property rights, the formulating of access policy focused upon enlarging public rights across privately-owned land, such as the 2004 proposing of water-margin footways, was bound to be contentious.

Booth's third main research objective had been to investigate the contemporary issues surrounding public access for outdoor recreation in New Zealand. She deduced that in recent times legal and social constructions of access had collided and were continuing to do so. On property rights, she argued that the simultaneous existence of the landholders' right to exclude and the public's rights for land access created a dilemma. She summarised the acute contradiction of the land-access situation in New Zealand, an island as famous for its pastoral scenery as for its alpine savagery:

> A characteristic of the New Zealand access regime for privately-occupied land is the supremacy of private property rights over RPA [rights of public access]. The generous extent of New Zealand public lands, and the statutory rights of access they provide, contributes to this position. As a result, public lands play the dominant role in providing the setting for outdoor recreation. More particularly, New Zealand's access position, relative to other nations, is determined by the strong link between public access and land tenure in New Zealand law. As a result, *de jure* public access provision on privately-occupied land is very limited in extent.[17]

We can slightly enlarge on the description 'very limited in extent'. Bearing in mind that unformed public roads and marginal strips and esplanade reserves are public lands, we can say that legal access to private lands for

recreational walking in 2006 comprised a few dozen gazetted-walkway easements, some easements across freeholded South Island high country, and an indeterminate number of esplanade strips, access strips and other easements.

*

Someone who welcomed Booth's pioneering work was Bruce Mason, who in late 2006 was probably at home watching the grass grow in Central Otago, wondering what life-after-PANZ had to offer. He later wrote:

> Kay's thesis has re-vitalised me. The circumstances compelling me to cut my ties with PANZ caused me to doubt the worth of my work. However Kay's documentation of my contributions, in the national context, has shown these to have had some effect after all. My approach, and my reasons for various stances over the years, has proven valid. Much more can be achieved.[18]

It has been said that a doctoral thesis is a completely worthless document that will not be read but which is apparently important to someone because it requires nearly impossible tasks to complete. One or two doctoral theses probably do fit this irreverent description. Kay Booth's thesis, though, is a relevant work that is comprehensible to the nonexpert. It has the potential to inform and sway access thinkers. Its Chapter 6 was probably, in 2006, the most complete overview obtainable of public access rights for outdoor recreation in New Zealand.

Off-road Motor Vehicles and Unformed Public Roads

In Chapter 29 we talked about the proliferation of off-road motorcycles and four-wheel-drive vehicles and about the damage that motor vehicles could cause to unformed public roads. The panel's consultation document had said that some city and district councils were concerned about the use of unformed public roads by off-road vehicles.

I expected this issue to crop up in the news again soon, somewhere. It did. Two related developments suggested that the matter might arise quite frequently.

Paper Road Society

Firstly, sometime in 2006 (I believe) a group of people keen on motorised off-roading formed the Paper Road Society. My requests to this society for a brief statement of its aims went unanswered, as also did my question about when the society was formed. I gathered that the society had been established to raise awareness of the issues surrounding unformed public roads and to oppose the stopping of such roads. I understood that the Paper Road Society endorsed and promoted the approaches of Tread Lightly.

Based in Ogden, Utah, Tread Lightly was a nonprofit organization with a mission to protect recreation access and opportunities in the outdoors through education and stewardship initiatives. It described itself as 'the nation's signature ethics message for outdoor enthusiasts that use motorized and mechanized vehicles'.[19] The goal of Tread Lightly was 'to balance the needs of people who enjoy outdoor recreation with our need to maintain a healthy environment'. Among Tread Lightly's

'platinum official partners' was the Hummer Division of General Motors. Among its 'gold and silver official partners' were Kawasaki, Polaris, Nissan, Jeep, Toyota, Yamaha, Suzuki and Land Rover North America.[20] A New Zealand branch of Tread Lightly had its own website.

Dunedin City Council Bylaw

Secondly, in December 2006 Dunedin city council proposed a new bylaw to restrict motor vehicles on sections of four unformed public roads. The bylaw was to be created under section 72 of the Transport Act 1962. The purpose of the restriction was to prevent damage to the surface of the unformed public roads:

> The intention of this bylaw is to prohibit motor vehicles from a number of unformed legal roads in Dunedin. Currently these 'paper' roads are being used for recreational purposes by all-wheel drive vehicles. However these 'paper' roads have never been formed as roads and so are unsuitable for motor vehicle traffic. Current vehicle use is severely damaging the ground surface and putting other non-motorised users of the roads at risk. Adjacent property owners are experiencing vandalism and damage to their properties. By prohibiting unauthorised motor vehicles from the 'paper' roads, they will be protected from damage and available for use by walkers, cyclists and horse riders.[21]

The statement of proposal included maps showing the sections of public road to which the bylaw would apply. The affected roads were Abbots Hill Road, Karetai Road, Paradise Road and Brinsdon Road.

The city council faced an obvious dilemma involving conflicting interests. The division was clearly between nonmotorised and motorised track-users. The nonmotorised side included walkers, mountain-bikers and horse-riders.

Abbotts Hill Road and Brinsdon Road formed part of a mountain-biking circuit known to Dunedin mountain-bikers since the 1980s and promoted by the city council since its publication in 1995 of the leaflet *Mountain Bike Rides in Dunedin*. The same leaflet also recognised Karetai Road and Paradise Road as being suitable for off-road cycling. Similarly, all four of these unformed public roads featured on the city-council webpage that listed local mountain-biking circuits.[22]

Karetai Road had numerous parallel wheel ruts, formed by motor vehicles and deepened by rain-water runoff; while Abbotts Hill Road and Brinsdon Road were often quagmires, bad enough without 4WD damage but likely to be rendered even worse if left open to recreational motors. Abbotts Hill Road had already been badly damaged by four-wheel-drive vehicles, despite its being promoted primarily as a walking and cycling track:

> Off-road driving enthusiasts had apparently organised a 'mud plug' event on it. 'They wait until it's really wet and then try to get up it, winching each other up and wrecking it in the process,' he [the council transportation manager, Don Hill] said.[23]

From a cyclist's viewpoint, the best argument for the proposed restrictions was the astonishing transformation of Halfway Bush Road since the exclusion from it of motor vehicles (in about 2005) and since its subsequent grading. What had previously been a famously rutted track, rideable only with great care and considerable skill, was now much flatter and was attainable by novices and older riders.

On the other hand, a quandary confronted the city council. Unformed public roads can be great places for recreational motorised off-roading as well as for walking and cycling and horse-riding. The council would be unable to please everyone.

The council invited the public to submit on the proposed bylaw. By the closing date for submissions, 26 February 2007, the council had received twenty-four written submissions and two telephone submissions. Seventeen supported the proposed bylaw, five fully opposed it, and four outlined some concerns or recommended alternative conditions.

On 23 April 2007 a hearings subcommittee met to consider a transport engineer's report on the issues and to hear oral submissions. (For continuity, I will continue this account here, rather than in its chronological place in the next chapter.) The engineer's report included recent photographs of damage to the public roads. The photographs showed deep wheel ruts, water-filled potholes and churned-up morasses. The report also discussed the twenty-six submissions, dividing the objections into general arguments against the proposed bylaw and specific arguments relating only to particular roads.[24] We will cover the general objections in some detail, as they included opinions and ideas that could reappear in similar public-road controversies throughout New Zealand.

The first general objection, raised by Public Access New Zealand and the Otago Land Rover Owners Club, questioned the legal right of the city council to proceed with the proposed bylaw. These two objecting bodies said that section 72 of the Transport Act 1962 did not authorise the city council to restrict general vehicle access on a public road. Instead, the objectors said, the act only authorised the council to restrict certain classes of vehicles, such as heavy vehicles that would be unsuitable for the road. The Otago Land Rover Owners Club supported its submission by referring to *Roading Law as It Applies to Unformed Roads*. (The club must have obtained a pre-publication copy of this.)

In *Roading Law as It Applies to Unformed Roads*, Brian Hayes wrote that 'section 72 of the Transport Act 1962, which extensively authorises roading bylaws, seems largely inapt for passing bylaws affecting unformed roads'.[25] According to Hayes, such bylaws, created under this act, would probably not pass the 'reasonable' test that all bylaws must meet. If its real intention was to exclude four-wheel-drive vehicles, a bylaw excluding all motor vehicles might not pass the test of reasonableness. He later wrote that there appeared 'to be no case law to test the validity of bylaws made under general authority to regulate the use of roads which remain in a state of nature'.[26]

The city council sent the submissions of PANZ and of the Otago Land Rovers Owners Club to the legal firm Anderson Lloyd for a second opinion. Anderson Lloyd agreed with Hayes that new special powers would be more appropriate than general bylaw-making powers. However,

in the firm's opinion, section 72(1)(i) of the Transport Act 1962 did authorise the council to adopt the proposed bylaw.[27]

A second general objection to the proposed bylaw argued that the council should upgrade and maintain the roads to an adequate standard so that all road-users could use the tracks all the year round. The engineer's report gave several reasons why the tracks had not previously been formed to a council standard. Maintaining a gravelled surface on a road with a grade steeper than 1:6 is difficult, and so it was not the city council's practice to maintain such steep roads unless they were formed with a concrete or asphalt surface. Karetai Road and Paradise Road both had sections steeper than 1:6. Another reason why the council had not formed the tracks was that the council had not regarded them as important links in the roading network that would justify the cost of forming and of regular maintenance. The four sections of road had not been identified as priorities during consultations on the council's seal-extension programme or during consultations on rural road-safety projects. But the council did recognise the tracks to be important walking and mountain-biking routes; adopting the bylaw would allow the tracks to remain in such use at a minimal cost.

A third general objection contended that the adoption of temporary road closures over the winter months would provide a more appropriate solution than the proposed bylaw. The engineer's report said that the council had investigated the idea of closing the roads in winter but had considered that this solution would be ineffective in the Dunedin climate. The average monthly rainfall figures for Dunedin from 2000 to 2006 showed a similar level of rain throughout the year, with the highest average monthly rainfall in December and January and the lowest in July. Although the rain evaporated more quickly in the summer, there was still the potential for the development of muddy rutted tracks during wet periods in summer.

A fourth general objection reasoned that recreational off-road motorcycles (trail bikes) should be exempt from the proposed bylaw. The engineer's report recognised that trail-bike users gained recreational benefits from using unformed public roads. However, the speed and power of trail bikes meant that if they were allowed on the four tracks in question, the trail bikes would be likely to further damage the tracks. They would also endanger nonmotorised users.

The hearings subcommittee deliberated on these general objections and it also examined the objections relating to specific roads. The subcommittee subsequently recommended that the council adopt the bylaw, to come into effect on 1 August 2007. The council accepted this recommendation.

*

The stance of Public Access New Zealand had been interesting for two reasons. For one thing, PANZ was without Bruce Mason and wanted to project a more affable and less outspoken image. For another, given the opportunity to firmly back the interests of nonmotorised track-users, PANZ had sat on the fence. Although it did not support the view that motorised off-roaders had an absolute right to use and damage unformed public roads, neither did it back the city council's plans to protect four roads from further damage. Instead, PANZ had sought compromises.

Many members of PANZ's supporting organisations, had they been canvassed for their views on the principles at stake, might have disagreed with one another. A divergence of views existed, as shown by the following three quotes from submissions to the Walking Access Consultation Panel:

> Ultimately, local authorities should be given the power to decide the type of access permissable [*sic*] on particular unformed legal roads. There are many reasons, from both environmental and recreational viewpoints, why there should be limits on the extent to which motorised vehicles can use them.[28]

> I am seriously worried that we are about to see large numbers of four wheel drive enthusiasts, armed with global positioning systems, bolt cutters and chainsaws, attacking the countryside as if they have sole rights to it. I think district councils need to be able to control the use of paper roads without going to the extent of closing them – used correctly the paper roads should be an access asset for all New Zealanders, not just those who want to drive on them. Uncontrolled motor vehicle recreation is causing environmental problems and conflict throughout the whole country – the access agency simply must have some ability to audit local councils' actions in the way access is allowed on all public land.[29]

> Where 'paper roads' are considered, access must be kept, up to at least the 4WD level it is now – such roads are not to be 'traded off' for foot access only.[30]

We had not, incidentally, heard the last of Bruce Mason. In February 2007 a revitalised Mason reappeared in the form of a new enterprise called Recreation Access New Zealand (RANZ) and taking a stiffer line on vehicle damage to public roads than PANZ had taken in Dunedin.

Recreation Access New Zealand (RANZ)

On 16 February 2007, using a new website that was in many respects a clone of the Public Access New Zealand website, Bruce Mason started the campaign Recreation Access New Zealand. Regarding the replicating of the PANZ website, to be fair to Mason, he had contributed much of what was on the PANZ website. There was as yet no formal group behind this initiative. Mason wrote that 'to make RANZ a permanent part of the recreational landscape, some form of durable organisation, and means of financial support, will be required'. The website provided a supporter application form. RANZ would accept subscriptions and donations.

The homepage of the RANZ website began with a statement of the campaign's aims, couched forthrightly and critical of the management practices affecting recreation on public lands. Over the course of 2007 some of the wording on this homepage changed. In December 2007 the opening sentence stated that 'Recreation Access New Zealand is a campaign seeking protection of public access rights *and* better management of recreational resources by public authorities'. The statement of aims read:

RANZ's objects:

- The promotion of non-motorised recreation on New Zealand's public lands and waters.
- Sympathetic land management for non-motorised recreation.
- Public ownership and control of resources of value for public recreation.
- The supremacy of the public interest ahead of private or commercial interests in the management of public lands and waters.
- Secure public access to recreation areas.[31]

RANZ on the Intrusion of Motor Vehicles into the Public Outdoors

The statement of aims continued in a resolute, Masonesque style. In Mason's view, the issues surrounding the undesirable effects of motorised recreation on public lands were not an area for consensus or compromise:

> There is continual challenge to public rights through attrition, lassitude, ambivalence and expediency on the part of politicians and the bureaucracy.
>
> Self-interested pressures from the commercial sector, and destructive activity by many motorised recreationists, is making large inroads into the integrity of recreation areas. This is adversely affecting everyone else who are trying to enjoy the outdoors. The disjunction between the motor-dependent and others is too great to expect a common view of recreational needs.
>
> Despite the minimum-impact rhetoric of most club 4WDers, the damage done to natural areas and access roads has become widespread and intense. The 'dirt bike' sector is out of control. The intrusion of recreational machines into the public outdoors has become a defining issue.
>
> RANZ is a dedicated advocate for natural quiet and tranquility, free from the adverse effects of motor vehicles.[32]

RANZ on the Management of Recreational Resources

On the alleged need for better management of recreational resources by public authorities, Mason castigated the Department of Conservation:

> Under the Department of Conservation, being the primary manager of public lands, recreation planning has all but dropped off the agenda. Instead DOC has an unhealthy fixation on 'assets' such as flash lodges, 'Great Walks', and removal of perceived 'liabilities' like the simple overnight shelter. There is no apparent attempt, or staff capability, to plan effectively for present and future needs including the separation of incompatible recreation activities through zoning. It appears that anything goes, everywhere.
>
> Commercial interests are running rampant. RANZ is pushing for greater recreational planning and restraint on the commercial sector. These lands are supposed to be primarily for public benefit. However DOC is fostering tourism and only, begrudgingly, 'allowing' recreation – the reverse of its statutory duty.

> There is a particular perversion of public policy currently at play. Due to political pressure DOC is actively encouraging off-road vehicle use as an 'imperative' even if sound protection reasons for exclusion exist. Given the statutory duty to protect conservation areas such a directive may prove to be unlawful. RANZ is actively pursuing this.
>
> Clearly there is a pressing need for more recreation-sympathetic management of public lands and access-ways by central and local government, and for government agencies to greatly improve their performance in recreation provision and public rights protection.[33]

Mason also used the RANZ homepage to restate his long-held view that 'access is not an end in itself'. A clearer way of saying this, I think, is that access is only one aspect of outdoor recreation. Access is a pre-requisite that makes recreation possible. The protection of recreational environments, Mason said, is as important as protecting access to them. 'There is little point in providing access if the area becomes degraded or developed for incompatible purposes.'[34] This is true. But to discuss this RANZ belief any further, we need to supply some contexts. Mason was probably talking here about protecting *publicly owned* recreational lands. But he might also have had in mind the farmed countryside, such as the Port Hills. The ways to gain access to and to preserve the character of the pastoral landscape are different from the management challenges of national parks, conservation parks, recreation reserves and scenic reserves. We talked about the Port Hills and Belmont Regional Park in Chapter 7. As I see it, there is a sense in which linear access to the working countryside can absolutely be an end in itself. Both PANZ and RANZ had yet to grant this aspect the weight that it deserved in the national recreational scheme of things.

Bruce Mason Now (More than Ever) a Free Agent

Finally, Mason talked about the advantages of access advocacy rooted on rigorous and comprehensive research. Well-informed argument was necessary to counter non-evidence-based opinion. Public Access New Zealand, he asserted, had dropped its commitment to promotion founded on facts. Recreation Access New Zealand, he said, would fulfil that role. In May 2007 Alan McMillan, the chairperson of PANZ, told me that PANZ would not be responding to Bruce Mason's criticism of PANZ.

The first versions of the RANZ homepage contained scathing disparagement of Jim Sutton and the government officials who had advised him. Mason wrote that 'the Sutton approach has been a botch-up from start to apparent finish'. On 18 February 2007 Mason issued a press release titled 'Government Should Sack Land Access Group'. This headline sounded like the headline of a typical piece of David Carter anti-access invective. Behind RANZ, the new access group – as yet neither a trust nor an incorporated society – lay the same old scarred campaigner with a talent for outspoken scepticism:

> Labour is rapidly running out of time. [The] government allowed former Rural Affairs Minister Jim Sutton to hijack Labour's election policies. This badly backfired, as it caused a massive rural backlash.

> Consequently [the] government's plans ground to a halt. Sutton's hand-picked successors have delivered nothing for months and seem incapable of doing so. After three terms of unfulfilled promises to the electorate, Labour is becoming known as the party promising the most but delivering the least.[35]

When he wrote this, Mason was probably unaware that the consultation panel had nearly finished writing its report. In March 2007 the panel would deliver to the Labour-led government a report derived from four years of consultations and adopting some of the approaches and priorities that Mason himself had fought for over many years. But he was outside the loop – and likely, writing stuff like that, to stay outside it. Not that this position would worry him or be at all unusual for him. In April 2007, after the publication of the panel's report, he would express a preference for being 'outside the tent'.[36] His style of lobbying, he would claim with some justification, had transformed many people's thinking on some crucial areas of the government's proposed access strategy, especially the provision of information and the use of unformed public roads.

Chapter 31

Report of the Walking Access Consultation Panel

On 7 March 2007 Damien O'Connor released the consultation panel's report *Outdoor Walking Access: Report to the Minister for Rural Affairs*. He also made available three supplementary publications: *Outdoor Walking Access: Analysis of Written Submissions*; and Brian Hayes's *Roading Law as it Applies to Unformed Roads* and *Elements of the Law on Movable Water Boundaries*.

O'Connor described the panel's report as 'a blueprint for the way forward on an extremely complex and longstanding issue'.[1] He said that the report's recommendations were the culmination of years of work (four years and two months if we include the 2003 consultations). These recommendations, in his view, would fairly balance the rights of landowners with the expectations of the public. In the Foreword to the report, John Acland wrote of the panel's belief that the report reflected 'a consensus that common-sense solutions based on voluntary negotiation are needed'. The buzzwords seemed to be 'balance', 'consensus' and 'negotiation'. This was no surprise. The panel had aimed its report directly at the middle ground – as any informed person had known that it would have to, ever since the Labour Party's signing of confidence-and-supply agreements with the New Zealand First Party and United Future.

Free, Certain, Enduring and Practical

Acland ended the Foreword: 'It is my sincere belief that this report will help to achieve the aim of providing free, certain, enduring and practical access for everyone who lives in this wonderful country.' The four adjectives 'free', 'certain', 'enduring' and 'practical' were now fixtures in the access thinking of the Labour-led government. In August 2003 Jim Sutton had asked submitters on the first Acland report the question: what current processes for access are working well and why?[2] Since then, the MAF officials and one or two politicians, and then the members of the consultation panel, had been mulling over what constitutes high-quality access. They had come to appreciate that high-quality access was desirable.

They had also come to agree that the main attributes of such access were entry without charge, certainty of existence, permanence and practicality. And they had come to realise that if the government's access policies adopted these principles and stated them at a high level, further down the line many improvements to walking access would gradually happen.

Part 1 of the report covered introductory matters including a summary of the four-year lead-up to the report and a summary of the access issues identified by the ministerial reference group in 2003 and by the panel in 2006.

Part 2 of the report was a short but crucial declaration containing firstly a proposed aim for walking access and secondly a set of principles generally applicable. The panel believed that a high-level, overarching aim-statement was needed to guide future walking-access policy. The panel had concluded that the aim for walking access should be that 'New Zealanders have fair and reasonable access on foot to and along the coastline and rivers, around lakes and to public land'.[3]

Several times in this book, particularly in Chapter 22, we have examined the government's overemphasis on access to and along water margins, a bias installed into the access consultations in 2003 and since then (up to March 2007) reaffirmed rather than corrected. The panel's recommended aim was patently lopsided, although it was foreseeable, politically understandable, and likely to be approved by the government and adopted as official policy. If this happened, sooner or later a future government would need to modify the wording to reflect the truth that there is more to a sophisticated appreciation of the countryside than just riversides, lake shores, coasts and publicly owned wilderness.

Take the Port Hills, for example. We saw in Chapter 7 that 84 per cent of the Port Hills was privately owned (in 2004) and that the walkways acts had largely not secured legally permanent tracks across the privately owned farmlands. (I do not know whether the Crater Rim Walkway passed over any private land. It had never been gazetted.) Increased linear access to the Port Hills pasturelands was needed for two reasons: firstly, to join up existing publicly owned reserves; and secondly, for its own sake – to enable people to enjoy the farmland itself. Improved, more virile walkways legislation could potentially succeed where the old acts had failed. But water-margin tracks would play only minor roles in the improvements necessary in the Port Hills[4], and so a government access plan heavily weighted towards the Queen's Chain would hardly match the needs of the Port Hills.

Not that we should understate the problem caused by 30 per cent of our water margins having never possessed Queen's Chain reserves. In many places, the locating and waymarking of unformed public roads that intersect rivers will draw attention to a lack of access along the rivers. For example, in 2005 there were reportedly eighteen unformed public roads that potentially would give access to the Waingongoro River in Taranaki, but all the adjacent riverbanks were said to be privately owned.[5] Gaining access to and along such rivers will be important, especially for anglers and kayakers. But walkers will also need foot-tracks across the working countryside in places other than riversides, lake shores and coasts. The panel's proposed top-level all-embracing aim failed spectacu-

larly to make this point. Three years later, the overarching objective of the completed National Strategy for Walking Access would be a much broader statement.

Part 3 formed the central part of the report, containing twelve sections. Each section scrutinised an issue, or a group of related issues, raised during the consultations. At the end of each section the panel set down its recommendations.

Damien O'Connor was correct in calling the report a blueprint for the way forward – even if that blueprint was flawed. The twelve sections that analysed the access issues contained sixty-four recommendations on solving or responding to those issues. (I have reproduced these recommendations in Appendix 1.) The recommendations included six proposals on the functions and form of the access organisation; eight proposals to do with managing and bringing into use unformed public roads; ten proposals on providing information about existing access; fourteen proposals on providing new access; and two proposals connected with access to Maori land. The proposals on providing new access included a recommendation that any new walking access over private land be gained by negotiation and agreement, a recommendation to establish a contestable fund for access, and a recommendation to transfer the administration of the New Zealand Walkways Act 1990 to the access organisation.

Anybody who is interested in the issue of walking access to New Zealand's countryside should keep a copy of this report close to their desk. It describes most of the access issues, as of 2007, clearly and accessibly. With the benefit of hindsight, we can see the 2003 Acland report as merely a prelude to the far more fully developed proposals of the 2007 report. The 2007 report will remain a handy reference grab-bag for some years to come.

We will not go deeply into all the issues discussed by the report; most of them have been covered previously in this book. We will, however, look at some of the main recommendations.

Recommendations on Access Leadership

The 2003 Acland report had said that New Zealand needed strengthened leadership on access matters. The ministerial reference group had agreed that 'a separate access agency [would be] an appropriate mechanism to develop and help to implement an access plan and would address the lack of direction … illustrated by many of the issues relating to access'.[6] In Chapter 9 we discussed the group's preliminary thoughts on the functions of an access agency and on what sort of an organisation might be suitable. We also saw that the views of interested parties on the need for an access agency had varied from enthusiasm for the idea, through half-hearted backing, to absolute hostility

Now, in 2007, one did not have to delve far into the second Acland report to discover the latest news on access leadership. The Summary, on page 1, was categorical on this matter: the panel believed it had found a consensus that 'there is a need for leadership, guidance and policy making at a national level in respect of walking access, and this will require the establishment of a new access organisation.' Regarding this consensus, the situation had apparently improved since Federated Farmers, in its

submission on the 2003 Acland report, had flatly opposed the creation of a national access agency.

Functions and Form of the Proposed Access Agency

Obeying the maxim 'form follows function', the leadership section of the report first identified nine core functions of the access organisation. I will list just the headings; the report itself explained the functions in detail:

- Leadership.
- Negotiation and acquisition of new access.
- Co-ordination and provision of information about access.
- New Zealand Walkways Act 1990 (the Walkways Act).
- Administration of a contestable fund.
- Conflict resolution.
- The holding of interests in land.
- Monitoring of and reporting on the activities of central and local government organisations that have an access-related role.
- Provision of advice on access.

Having decided the functions of the access organisation, the report then discussed its possible form. There were five realistic options: a parliamentary commissioner; an access ombudsman; an access trust; the Queen Elizabeth the Second National Trust; or a statutory authority.

Appendix G of the report evaluated these five possibilities. The panel had concluded that neither a parliamentary commissioner nor an access ombudsman would deliver the outcomes sought by submitters. Regarding the Queen Elizabeth the Second National Trust, the panel said that the public access provision in the Queen Elizabeth the Second Statute was almost always negated in covenants; visitor access to the covenanted land was usually only available with the landholder's prior permission. So the choice of organisational form boiled down to either a statutory organisation or an access trust. The appendix said that a statutory organisation would have the characteristics identified as necessary by the panel. An access trust, depending on the trust deed, could undertake some but not all of the recommended functions; for example, an access trust could be a vehicle for negotiating new access.

Reflecting this evaluation of the possible forms, the first of the panel's sixty-four proposals to the government read: 'The Panel recommends that an access organisation be established that combines the characteristics of a statutory organisation with those of a trust (the Panel considers that this option is most likely to involve local landowners, users and enthusiastic volunteers).'[7]

The panel proposed that the access organisation be called the New Zealand Access Commission. The government later added the word 'Walking'. The panel also suggested that the organisation's Maori name be Te Ara o Papatuanuku, which translates literally as 'the pathways of mother earth'.[8] (This name appeared frequently in the 2007 Acland report and it will reappear in several of my quotations from that report. But it was never officially adopted. The Walking Access Act 2008 did not give the commission a Maori name. In August 2009 the board of the New Zealand Walking Access Commission agreed that the commission's Maori name would be Ara Hikoi Aotearoa, which translates as 'walking pathways New Zealand'.[9])

The access organisation would be accountable to a minister and would be required to report to parliament as laid down in the Crown Entities Act 2004. Further recommendations envisaged the access organisation having a national governance board and a structure that reflected the need to carry out work at a local level, such as coordinating and promoting the recreational access activities of local government and voluntary organisations.

A Statutory Body

A concern of some submitters in 2003 and 2006 had been the possibility of the proposed access agency becoming just a Wellington manufacturer of numerous documents. A few submitters in 2003 considered that it would be important for the agency 'to avoid capture by unnecessary bureaucracy or to avoid being subsumed by different priorities'.[10] They had expressed concern that if an agency was established within another organisation or department, such as in DOC or LINZ or MAF or in local authorities, the budget could be used for purposes other than access.[11] Most submitters in 2006 had agreed that bureaucracy should be minimised.[12]

The report's recommendations answered the concerns about the access organisation being captured by its parent department. The organisation would be a statutory body, not a branded agency within a government department.

On the need to minimise bureaucracy, while nobody disputed the necessity for efficiency, one had to be wary of vague statements expressing concern about the idea of the access organisation being part of a central government bureaucracy. The national office of the access organisation would inevitably carry out its work mainly with words and only occasionally with gumboots. It would need secretaries. There would be meetings. It would publish reports. It would be administrative and official. It would itself be a cog in the whole government machine. The important thing was that it should be able to pursue its objectives without being overruled or sidelined or dominated or bullied by influences from other arms of the government such as DOC, MAF and LINZ.

An Alternative View on Access Leadership

One member of the panel, Bryce Johnson, believed that the panel's recommendations, if adopted, would not be sufficient to achieve the objective of completing the Queen's Chain and would not deal effectively with the issue of exclusive capture. The report included his alternative, more reformist views and recommendations.

Johnson agreed with his panel colleagues that the country needed strong national leadership on public-access issues, but he thought that the access organisation proposed by most of the panel would lack a strong-enough mandate to do the full job.[13] It would not be able to negotiate from a position of strength and would not be able to guarantee an outcome when a landowner refused to negotiate:

> [Mr Johnson] is concerned the Panel has … explicitly required the new access organisation to position itself as an impartial and knowledgeable adviser on access issues, as opposed to it being an advocate or champion for public access. It has also been given what

> he believes is a relatively weak functional role, without any explicit powers to pro-actively initiate, pursue and settle the realignment of lost access (through erosion) or the creation of new access where none presently exists, or to decide best outcomes and disputes in the public interest. Rather, he feels it will have only a potentially inconclusive negotiation role in relation to both the restoration of misaligned (lost) existing Queen's Chain and the creation of new access, and only a mediation role [as distinct from an arbitration role], again with no certainty of result, in relation to the resolution of access related disputes.[14]

Many outdoor recreators will have agreed with Johnson that the access organisation ought to be an apostle for public access rather than an impartial and knowledgeable adviser. But in March 2007, with the New Zealand Walking Access Commission still unborn, it was difficult to judge whether his partial lack of confidence in the panel's suggested functions for the access organisation was justified. After all, the report talked about 'strongly focused leadership at all levels', 'strong national leadership to direct and co-ordinate access arrangements nationwide' and 'local leadership on access issues'.

Johnson received some moral support from an unexpected quarter. Bruce Mason, his erstwhile opponent on the footways issue, wrote: 'Bryce Johnson, from Fish and Game New Zealand, bravely, was the only dissenting voice on the panel. His minority report contained some useful suggestions.'[15]

One of these suggestions concerned the irrational four-hectare rule applying to the setting aside of esplanade reserves during subdivision. Johnson argued that 'the current four-hectare trigger be replaced with a requirement that all subdivision of land shall trigger the esplanade provision criteria test'.[16] We saw in Chapter 9 that in 2003 PANZ had advocated a review of the exemption provisions of the Resource Management Act to ensure greater provision of esplanade reserves. Mick Strack had developed the reasoning further, arguing carefully that

- the RMA (4ha lot area) exemptions for setting aside esplanade reserves be eliminated so that all sized lots being subdivided may be subject to an esplanade strip, subject to justification; and that
- the Local Authorities (under the RMA) and DoC (under the Conservation Law Reform Act) are required to justify and make explicit the need for any new esplanade and marginal strips and reserves – specifically focussing on the purpose of such strips (conservation, recreation or access), the physical characteristics of the water margin, and the local need for access.[17]

All these arguments for a review of or the abolition of the four-hectare limit were whole grain and high in fibre, but they faced one hefty snag: the question of compensating the subdivider. In the past there had not been any great demands for the payment of compensation during subdivision into lots of four hectares or less; Strack thought, however, that taking esplanade reserves from lots greater than four hectares would cause

significant property-owner protest. The consultation panel said much the same: 'Raising the [four-hectare] limit would, however, reignite concerns that this would be a mandatory taking of land (or an interest in the land in the case of strips) without explicit compensation.'[18]

Damien O'Connor was not going to rekindle those ever-smouldering concerns. But the panel did leave the way open for a future government to look again at this issue, recommending that 'Te Ara o Papatuanuku [the New Zealand Access Commission] works with central and local government to investigate how the use of the RMA for access could be improved, including the merits or otherwise of the four-hectare requirement for esplanade reserves'.[19]

Some aspects of the law surrounding the status of land at the water's edge had become political footballs, kicked about by frequent legislative changes.[20] Bits of legislation had become 'pawn[s] in see-sawing arguments between landowners' private property rights and public obligations'.[21] In the absence of any fresher metaphors, the four-hectare limit looked destined to remain a soccer ball or chessman for some time to come.

*

The panel's proposals on the functions of the access organisation may have been constrained by the necessity to find a consensus. Even so, the list of recommended functions was comprehensive. It reflected the results of nearly five years of consultations. The immediate, post-report challenge for access advocates, it seemed to me, would lie not so much in confirming these functions but in persuading the government to allocate enough money to enable the access organisation to perform its tasks.

In the longer term, if the report's recommendations were acted upon, the government would periodically review the effectiveness of the strategy for walking access and the success or otherwise of the New Zealand Access Commission. It was important to bear in mind the timescale. The report predicted that mapping the existing access rights would take about three years to complete.[22] John Acland, in the Foreword to the report, remarked that there would be 'plenty to do over the next 10 years'. Damien O'Connor said that negotiating public access to significant waterways and important sites throughout the country could take ten to twenty years.[23] Meanwhile, Bryce Johnson's reservations and progressive recommendations were in print, clearly articulated, and would remain available on the shelf, ready for reconsideration.

Recommendations on Unformed Public Roads

According to Pei Te Hurinui Jones, the Ngati Maniapoto used several peace trails, which were special tracks on which any person could travel in safety. As discussed in Chapter 1, these seem to have been exceptions rather than the rule. The European equivalent was the king's highway, and safe travel was the rule rather than the exception:

> Four aspects of Anglo-Saxon law overlap[ped] to create the medieval English theory of royal jurisdiction over the highway: in short, the highway was a zone under a special peace, where strangers could

> travel without fear of being branded a thief and where everyone could travel temporarily immune from the dangers of feuds.[24]

By 2007, thanks to Bruce Mason and PANZ, access advocates were well aware that New Zealand's unformed public roads carried the genes of the medieval English highways and the Anglo-Saxon freeways. But nobody knew the total length of these roads.

The first time I picked up the panel's report, it opened by chance at page 133, an appendix listing the estimated lengths of unformed public road in each of the seventy-two district and city councils in New Zealand. Although these figures were only estimates, the sources were authoritative enough to suggest that the estimates would be reliable. This was revolutionary data. All the numbers that we had seen before had been pure guesses. In 1999 Bruce Mason had lobbed a total figure of 100,000 kilometres into the arena.[25] We now knew that the total figure was 56,900 kilometres. Future debate about unformed public roads would be founded on this fact, not on a guess. Moreover, the report's being accompanied by an authoritative sixty-four page examination of the roading law that covered unformed public roads suggested that the government was acknowledging their recreational potential.

For confirmation of that acknowledgment, you needed only to reach the opening paragraph of the report's section on unformed public roads:

> The Panel is acutely aware that the nature, status and use of unformed legal roads are matters of intense public interest. Roads are a very important component of the public access network. For this reason, the Panel spent much time considering their legal nature. This part of the report deals with the topic in detail, as there is a great deal of misunderstanding about the legal status of unformed legal roads. Hayes [*Roading Law as it Applies to Unformed Roads*] provides a very comprehensive analysis.[26]

This strongly stated recognition of the recreational importance of unformed public roads was a personal triumph for Bruce Mason and a collective success for the organisations – such as Federated Mountain Clubs, the Council of Outdoor Recreation Associations of New Zealand, and Public Access New Zealand – that had defended these roads. Not that Mason himself greeted the roads section of the report jubilantly; the panel had attached much weight to the advice it had received from Brian Hayes, but Mason disagreed with some specific aspects of Hayes's analysis. Yet the fact remains that without Mason's decades of ardent publicising of the facts about them, public roads might never have attained such prominence in the panel's thinking.

By 2007 few readers of this report will have needed its bulleted list of road issues that required addressing. Other publications had already done these matters to death. Of more interest were the panel's recommendations, which related to four areas: improving territorial authorities' management of unformed public roads; exchanging impractically sited roads for alternative, useful access; mapping of all unformed public roads; and removing unlawful obstructions on roads.

Improved Management of Unformed Public Roads

Regarding better management of unformed public roads by local authorities, the most explicit suggestions were not in the report itself but in Hayes's *Roading Law as it Applies to Unformed Roads*. Hayes said that the existing statutory powers of councils to create bylaws were clearly more applicable to roads that were formed and in use than to unformed roads.[27] In a later publication he added: 'The existing provisions relating to bylaws on roads have to be forced into a shape which may accommodate unformed roads. The result [is] neither good practice nor good law.'[28]

Hayes proposed that 'unformed roads across land or along water boundaries could be subject to management and control through bylaws, to ensure that rights of passage are preserved, obstructions are removed, and dangers which have been artificially created are dealt with'.[29] He also suggested a statutory framework for these bylaws.

Exchanging Unformed Public Roads for Alternative Access

Of the four broad areas covered by the panel's recommendations, the business of swapping illogically sited unformed public roads for logical access to and along water margins and to public land was the most legally complicated and challenging. The report said:

> This topic is legally very complex and requires more analysis. The concept is that 'swapping' or trading could form part of negotiations for access with landholders. Some groups – including four-wheel-drive and hunting enthusiasts – are suspicious of this suggestion. They fear that the road might be traded for access of lesser value, such as a walking path, to the detriment of vehicular access rights. The Panel believes that the opening position for negotiations should be an exchange for the same rights.[30]

Despite this endorsement of the road-for-a-road principle, the report then discussed the incongruous road-for-a-walk idea: the stopping of a public road in exchange for walking access based on an easement. For intricate legal and procedural reasons, the report said, 'stopping a road in exchange for walking access may be difficult to achieve if there is an objection from someone seeking to maintain vehicle access'.[31]

The report then proposed a new way of exchanging a road for 'alternative access', but without saying whether the alternative access would include motorised entry:

> Consideration should be given to the use of the Crown's power to resume ownership of the land comprising unformed legal roads to facilitate an exchange for alternative access. This approach would involve the exercise by the Minister of Lands of the power in section 323 of the Local Government Act 1974 to return the land to the Crown. This power must, in the Panel's view, be the subject of a clear government policy statement on the circumstances where the Minister would exercise it, to assure the public that their interest in the use of the roads is being protected. The Crown could then enter into binding agreements for the exchange of road for alternative access.

> The Panel notes that the advantage of this process is that it would avoid the difficulty of any prior agreement prejudicing the outcome of an Environment Court hearing in the event of there being an objection to the stopping of a road under the Local Government Act 1974.
>
> The form of the alternative access, for non-water margin access, would most likely be an easement over the land, registered against the title.[32]

So within the space of a couple of pages, on the idea of trading unformed roads for alternative access, the report had moved from opening positions emphasising like for like to the possibility of closing positions that replaced roads with easements.

There would be a gulf between an opening position that insisted upon an exchange of a road for a road and an outcome that tolerated an easement possibly carrying onerous and debatable restrictions, such as a two-month lambing closure or a ban on bicycles. It was hard for access advocates to view this solution, involving bartering in lawyers' offices, with anything other than alarm. Was it realistically flexible? Or was it exploitably fuzzy, weighted towards the preferences of landowners? My feeling was that the government should demand that the exchanges be like for like. Failing that, all easements negotiated in exchange for public roads should be open 365 days a year and should be available to all nonmotorised track-users. (Easements negotiated in other circumstances, not tied to the disposal of a public road, would be a different matter.)

Recommendations on Information about Access

In Chapter 6 we saw that in 1979 John Kneebone, a past president of Federated Farmers, emphasised the importance of information on access. People needed to be able to find out where they could walk; Kneebone was concerned that there was no single source where this information was available. He thought that a central inventory of tracks and walkways was essential. He also said that, in his view, the best way of disseminating information was 'the visual one of using a map, preferably showing the status of the land as well as the tracking systems'.

Now, in 2007, the report of the Walking Access Consultation Panel echoed Kneebone's words. The report said that the consultations of 2003 and 2006 had confirmed that there was 'a lack of authoritative and readily available information about the location of public access'.[33] The panel agreed that the public and landholders should be able to readily obtain information on the location of water-margin reserves and of public accessways to or along water margins and to public land. Many recreational groups and individuals thought that this information needed to be identified on topographic maps.[34]

The panel made ten recommendations on providing information about existing access. (See Appendix 1.) Six of these proposals directly concerned topographic maps. If the government took up all six of these, which looked likely to happen, the sequence of mapping developments would be:

- The government would make the New Zealand Access Commission responsible for coordinating the provision of access maps. The Access Commission would prioritise this work.
- Before the preparation of any new maps or the collection of any new data, the Access Commission would take stock of existing mapping information and would analyse the public's likely requirements.
- The Access Commission would then, by contracting the work to commercial firms, establish and manage a single, publicly accessible and officially recognised database of access information. This database would be capable of showing spatial cadastral information overlaid upon topographic maps.
- Public-access topographic maps derived from this database would become available both through the internet and on paper, at a reasonable cost.
- The public-access topographic maps would distinguish between public roads and any private roads that they show.
- Marginal strips established between April 1990 and June 2007, shown on LINZ's spatial cadastral database only by a notation (as described in Chapters 13 and 27), would be added graphically to the Access Commission's mapping database when the means to do so had been developed.
- Esplanade strips and access strips, not shown on LINZ's spatial cadastral database, would be added to the Access Commission's mapping database by searching elsewhere on the LINZ cadastral database.
- Finally, the report suggested, further enhancements to the database could add 'the location of walkways, … the location of formed tracks, and perhaps information about access on private land that is open to the public'.[35]

On adding walkways, in the last-listed point, the panel should have been more definite and insistent. Walkways would be essential elements of the public-access topographic maps; even if left until last, they would not be optional extras. The cartographers would need to decide whether the maps would distinguish between walkways on private land and based on easements or leases, walkways on private land and based on informal agreements, and walkways on public land.

Regarding the enhancement of the New Zealand Access Commission's mapping database by adding formed tracks, this was a confusing suggestion except for anyone who had been closely following the mapping issues. The Access Commission's database would be based partly on LINZ's national topographic database. In May 1999 Dave Mole, the acting chief topographer of LINZ, had reportedly stated that LINZ's policy was for the Topographic Map 260 series maps to show all features that existed on the ground, which meant showing all physically evident tracks.[36] If LINZ were to succeed in doing this, the New Zealand Access Commission would not need to add any foot-tracks to its database, because they would all be there already, imported from LINZ's national topographic database. But, as mentioned in Chapter 27, a study in 2005 suggested that the showing of foot-tracks on some of these LINZ 1:50,000 maps was out of date and incomplete. In 2007, it was difficult to predict whether

LINZ would comprehensibly improve the accuracy and completeness of the foot-track data on its national topographic database.

The panel estimated that the process of developing the Access Commission's mapping database and producing maps showing existing access rights could take up to three years to complete.[37] As well as drawing on existing LINZ data, the process would make maximum use of existing data held by local authorities.

The Complications of Overlaying Spatial Cadastral Information upon Topographic Maps

In 2005–6 LINZ had compiled a pilot database that could show spatial cadastral information overlaid upon either topographic maps or aerial photographs. The panel concluded that this pilot database demonstrated that the mapping of most legal access was technically feasible. But the merging of large-scale cadastral plans and 1:50,000 topographic maps presented problems of scaling and accuracy. The panel recognised the limitations of the proposed public-access topographic maps derived from the Access Commission's mapping database:

> The Panel concludes that, whatever access arrangements are agreed to or promoted, there still may be disputes about exactly where access is permitted … For example, the information about existing access rights, however provided, will be subject to a margin of error that will depend on the accuracy of the source information. There may also be uncertainties about the application of the information in practice.[38]

To cope with these sorts of disagreements, the panel proposed that the New Zealand Access Commission provide a nonbinding mediation service to help resolve any dispute or uncertainty about the legality of any access.

The report might have understated the likely frequency and technicality of uncertainties. Peter Dymock, a land-surveyor, explained to me the potential complications:

> Combining cadastral and topo databases. Hmmm … be very careful when doing this!
>
> On the one hand the electronic topo database was never designed to be used other than at a small scale (1:50,000). On the other hand the cadastral electronic database comes from a wide variety of sources of hugely varying levels of mapping accuracy. In urban areas and rural areas undergoing rapid subdivision into lifestyle blocks ('data capture areas') LINZ have gone back to the original legal survey plans and entered all the boundary dimensions off the plans into the database and have mathematically calculated the boundary positions from scratch. The accuracy of these mathematically calculated boundaries in the database is better than 1m, compared to their real monumented (pegged) position on the ground. However, in rural areas and small country towns where there is little subdivision and development taking place, the boundary information in the database has often been scanned or digitised from old small-scale

hand-drawn record maps (often drawn 30–40 years ago at imperial scales, eg 20 chains to the inch, and sometime not even drawn on a recognised map grid). These record maps were never intended to be an accurate plot – simply just an indexing system for the original legal survey plans and an approximate depiction of the overall boundary situation in a given area (hence the name 'record map').

In rural areas, the electronic cadastral database can be anywhere from 2m to 200m in error from the true boundary positions as pegged on the ground. The database as made available to third-party suppliers does not contain any clues as to the source or integrity of the data. I cringe every time I see non-surveyors overlaying both databases, blowing the resultant plot up to scales the topo database was never intended to be used at (eg 1:5000), and then claiming for instance that formed roads are/aren't within the legal road reserve. There is no way you can tell this for sure in rural areas using the topo and cadastral databases. The only way is to go back to the original legal survey plans and locate/reinstate the pegs on the ground. This is also becoming a big problem with local-body GIS systems where they are overlaying survey-accurate (1–5m) rectified true-scale aerial photography (orthophotography) over the cadastral database and then finding that the boundary information doesn't match the photography.

There is always an assumption that just because data is electronic or in a GIS receiver, then somehow it must be correct! But it's the old saying, rubbish in – rubbish out. I hope MAF knows what it's doing with this 'pilot study'.[39]

Dymock here was here elaborating on the point made only briefly in the report. His words of caution were necessary. The Access Commission's public-access topographic maps would authoritatively indicate the existence of public access, such as an unformed public road. But the ultimate arbiter in cases of uncertainty about the exact location of that access would not be the 1:50,000 map or a GPS receiver but a land-surveyor.

New Zealand's water-margin reserves and unformed public roads were products of a short but complicated history. They were a terrific accomplishment, owing much to the foresight of 19th-century lawmakers. But in many places they were either blocked or nonsensical or landlocked by private land or of uncertain location. One way or another, we needed to assemble public-access maps and then, where necessary, gradually remove the blockages and resolve the anomalies. The Access Commission's single, publicly accessible and officially recognised mapping database would be an essential start. Signposted or waymarked foot-tracks, where such signposting or waymarking was necessary, would be the eventual result.

Recommendations on the New Zealand Walkways Act 1990

We saw in Chapter 6 that in 1990 the New Zealand Conservation Authority replaced the Walkway Commission as the central coordinating body responsible for controlling the administration and promotion of walkways. We also noted that a year earlier, Federated Mountain Clubs

and others had forecast that this change would 'be the death knell of Walkways, or at least of effective user group involvement'. Although the Walkways Act 1975 had originated in the idea of a 1,200-mile national trail, in practice the New Zealand Walkway Commission and the district walkway committees had recognised and focused upon the need for walking access to the countryside close to urban populations. Often this had meant negotiating, or trying to negotiate, access across privately owned farmland. The government in 1990 should not have put this taxing job into the hands of the Department of Conservation, a body whose hands would be more than full managing publicly owned lands. Since 1990, it had taken seventeen years for the lawmakers to recognise that Federated Mountain Clubs had been right.

Better late than never, though. The report divulged that although there were 126 walkways throughout New Zealand (a figure taken from *New Zealand's Walkways*, 2003), only thirty-one of these were gazetted and could be considered legal walkways under the Walkways Act 1990.[40] This was new information, I think. Nobody before had counted the number of gazetted walkways and made the results public. (The figure thirty-one would prove to have been slightly low. In 2008 MAF would receive information from DOC that would indicate, still with some uncertainty, that thirty-six walkways had been formally established by notice in the *New Zealand Gazette*.[41])

Significantly, in 2007 DOC had not gazetted a single walkway since it gazetted the Waihao Walkway in 2000.[42]

In what the report described as 'the major legislative initiative recommended by the Panel' (one that 'a small Walking Access Bill' could deal with), the report recommended that 'the administration of the New Zealand Walkways Act 1990 be transferred to Te Ara o Papatuanuku [the New Zealand Access Commission], subject to a Memorandum of Understanding between Te Ara o Papatuanuku and DOC on the operational management of walkways'.[43]

The panel saw the transfer as a means of revitalising the spirit of the walkway legislation. 'This transfer has the potential to give impetus to the creation of new walkways, especially if some funding is available to acquire access over private land.'[44]

Negotiatory Approach, Plus Compensation

Two years earlier, the government had been planning to impose walking access along selected water margins without compensating the affected landowners (except possibly for demonstrable losses). Now the panel was advocating a wholly negotiatory approach (for gazetted walkways), accompanied by the compensating of landowners who agreed the necessary easements. The money for the compensation would come from a contestable fund for access.

The report left one question only half answered: how much compensation would be paid for an easement in perpetuity? Ask a lawyer that question, and he or she will often pick a random amount out of the ether. The panel proposed that the board of the New Zealand Access Commission should set policies on compensation.[45] This task would not be easy, for reasons we discussed in Chapters 23 and 24, the chief one being that quantifying the compensation to be paid to a landowner

burdened by a walking track is a feverishly subjective exercise dependent on influential and contestable value judgments. The panel acknowledged this subjectivity when it suggested, optimistically, that some landowners might agree access at minimal cost:

> The Panel believes that, with goodwill on the part of those involved, compensation will not always be necessary. In its experience, some landholders will agree to access, especially if it is confined to walking access, at little or no cost. Some landholders may find it difficult, however, to agree to permanent formal access, especially in the form of an easement that will transcend changes in ownership, without some form of recompense.[46]

In the context of the New Zealand Walkways Act, paying for the public rights of way would be a radical departure. For the first time since the beginning of walkways in 1975, an officer responsible for negotiating with a landowner would have a bag of money to buy the necessary easement. The Access Commission would need to use this fund conservatively and thriftily, setting reasonable levels of compensation for the easements rather than agreeing to any inflated or extortionate demands. (Chapter 36 includes an example of the cost of an easement for a nonmotorised track negotiated during a tenure review.)

In response to the panel's report, some sceptics on the potential of negotiating new walkways pointed out that, thirty-two years after the Walkways Act 1975, New Zealand possessed – if all our gazetted walkways crossed private land – only thirty-one gazetted walkways that provided access to privately owned countryside. (The true total was less then thirty-one. Figures provided by the New Zealand Walking Access Commission in May 2009 showed that nine of our thirty-six gazetted walkways were entirely on public conservation estate.) Bruce Mason characteristically disembowelled the panel's walkways vision as 'a waste of time and effort'.[47]

The panel had noted that the unwillingness of landowners to commit to certain and enduring access by means of an easement or lease, in the absence of compensation, had been an impediment to the establishment of legal walkways under the Walkways Act. Mason responded:

> As an active past-participant trying to establish NZ Walkways, I can say this [unwillingness] is not just *an* impediment, it is *the* impediment. It is difficult to see how any inducements could overcome property owner reluctance, short of weakening public rights and security of use to the extent that walkways become uncertain and unenduring – the opposite of the Panel's Number One Principle for achieving quality of access.[48]

It remained to be seen – assuming that the government would act upon the panel's suggestions – whether the optimists or the sceptics would be proved right. An important function of the access organisation would be its periodic reporting, descriptively and statistically, on its efforts to negotiate various forms of access, including gazetted walkways.

Recommendations on Restoring and Realigning Lost Water-margin Access

In Chapter 9 we discussed erosion and accretion. We saw that erosion and accretion could cut off the legal access to or along a river. Erosion of a coast could result in a new coastline to which there is no legal access. In 2003 the ministerial reference group and Public Access New Zealand had both assessed the access difficulties caused by river movement and coastal erosion. They had reached roughly the same conclusion on the nature of the problem. But they had suggested different solutions, each needing potentially controversial law changes. PANZ had wanted the government to amend four acts to make all marginal strips, esplanade reserves and public roads movable along water margins. The reference group had put forward the idea of deeming walking-access rights to exist along selected water margins.

By March 2007, neither of these two legislative solutions had come to pass. I did not expect them to reappear in the report of the Walking Access Consultation Panel. They did not. The panel began its comments on restoring and realigning lost access by reiterating the legal complications involved:

> Many access-related discussions touch on the high level of legal complexity associated with land law. The matter of how and whether to realign 'lost' water margin access illustrates this complexity. The Panel examined this topic in detail, as solutions are not immediately evident and it is sometimes not clear whether the solutions are readily workable.[49]

The panel's recommended approach for restoring entry to water margins relied almost totally on negotiation – and a wing and a prayer.

Realignment of Access Along Rivers

Regarding the realignment of access along rivers, the panel's report described the legal complexities in some detail and then listed the panel's deductions:

> The Panel concludes that:
> - the restoration of water margin access where it has been affected by movement in the water margin is legally complex, and must take account of any impact on property rights;
> - the common law on water margin boundaries can result in gains and losses of land to property owners when the boundaries are affected by erosion and accretion, and these impacts can be complicated by the existence of water margin reserves;
> - there may be scope in some circumstances for restoration of access to water margins to be negotiated and agreed by the affected landholders and the Crown, given that there may be opportunities for trade-offs between the effects of erosion and accretion.
> - where negotiation and agreement among landholders and the Crown cannot be achieved and restoration of the eroded access is important, consideration should be given to direct negotiation

> of access with the holder of the land that has been affected by erosion.[50]

Reasoned discussion was to be the panacea for all the ills of erosion and accretion. The New Zealand First Party and United Future, who were supporting the government on matters of confidence and supply, had put no other tools into the government's access armoury. The government, in turn, had put no other tools into the panel's armoury. Anglers and river-lovers could forget, in the medium term, any ideas of radical action to realign riverside reserves. Regarding solutions to erosion and accretion, only in one respect – the law of trespass in the context of water margins – did the 2007 Acland report contemplate any legislative changes.

As I mentioned earlier, one member of the panel, Bryce Johnson, dissented from the majority view:

> Mr Johnson believes it is insufficient to leave the restoration and realignment of misplaced (lost) existing Queen's Chain to a simple 'participation optional' negotiation process. In his view, given that in this situation a Queen's Chain already exists and is generally known to all parties, albeit in the wrong place due to accretion or erosion, the issue should not be *if* it should be realigned with the water margin, but rather *how* it should be realigned and under *what* settlement agreement. Compensation could be paid in cases where the need for realignment arises because of erosion.[51]

Perhaps it was slightly surprising that on this issue Johnson was in a minority of only one. Time could still prove his reservations partly justified.

Restoring Lost Coastal Access

Whereas with rivers, erosion and accretion are equally evident processes that change the geography, with coasts, erosion is the main activity producing change. With rivers, where public access has been lost because of river movement, there may have been a gain in public land through accretion, and, consequently, there may be the possibility of swapping gained public land for lost water-margin access. With coasts, this possibility does not usually exist.

We can divide coastal-access considerations into two main types. Firstly, access *along* the foreshore. At the time of the panel's report, virtually all the foreshore was crown land. The Foreshore and Seabed Act 2004 provided rights of public access along the public foreshore.[52] But the right to walk along a beach was of little use to most of the public if private land bordered the entire landward side of the beach, preventing entry to it.

Which brings us to the second type of consideration: access *across* the dry land to reach the foreshore. In the aftermath of the Foreshore and Seabed Act, access across private land to reach the foreshore, rather than access along the foreshore itself, emerged as a key unresolved issue.[53]

Public roads sometimes intersect the neighbouring privately owned land and reach all the way to the foreshore; but in some places no such road exists. There may also sometimes be road reserve parallel to and

contiguous with the foreshore. But a significant amount of this parallel coastal road reserve has been completely eroded. The panel was concerned about both of these aspects of the lack of access across the dry land to reach the foreshore. It considered that access across private land to the coast should be negotiated in the same way as other new access.[54]

Negotiating walking access to the coast has had a chequered history. I will give one example. In August 1990 Dunedin city council set up the Otago Peninsula Public Access Working Party to plan walking opportunities on the Peninsula. The year of consultation that followed is most often remembered for its polarised controversy. What is less often recalled is that – after much careful and expert examination – the twelve-member working party produced a plan (a sketch map) of walking routes and a proposed programme for their development.[55] The working party's report included six main recommendations. On 21 October 1991 the policy and resources committee approved the first five of these recommendations, with one minor amendment. On 4 November 1991 the city council approved the access plan. The plan depicted, among various classes of foot-track, several public accessways across private land that were yet to be negotiated. One of these was a 400-metre walking link from Pipikaretu Road to Pipikaretu Beach, an occasional destination for surfers. The programme of development foresaw 'ongoing negotiation with landowners to extend the [track] network through provision of walkways under the provisions of the Walkways Act 1990'.[56] Eighteen years later, in 2008, there was still no public walking access to Pipikaretu Beach from any point on the neighbouring dry land. The beach lies in a section of coast that has private land adjacent to the foreshore (ie, there is no Queen's Chain reserve).[57]

The Law of Trespass in Relation to Water Margins

Although wholly committed to negotiation as a sovereign remedy, the panel did have one minor legislative idea up its sleeve. This idea concerned the Trespass Act 1980 in relation to water margins. In his paper *Elements of the Law on Movable Water Boundaries*, Brian Hayes proposed minor changes to the law to provide a defence against trespass where there is uncertainty about the exact location of public access along water margins or uncertainty about crown ownership of riverbeds.[58] To safeguard the interests of landholders, this defence would depend on walkers keeping as close as reasonably practicable to the dry margin of the relevant water margin. The panel said that this proposal was interesting and that it could also apply more generally, for example to unformed legal roads that did not adjoin water margins.

A Wider Look at Trespass

The 2007 Acland report allocated one page to to the subject of trespass, and this page focused mainly on trespass in relation to water margins. The narrow focus resulted in a limited treatment of a law that applies to far more land than just water-margin strips. Trespass deserves a wider look. In New Zealand, a landowner's right to charge people for admission derives obliquely from the law of trespass. It is a curious thought that many of the early cases of trespass in English law concerned not so much a trespasser's unlawful presence on land but his damaging actions there:

assault and battery, taking goods, abducting servants and villeins, abducting wards and daughters, abducting and ravishing wives.[59] Similarly in 19th-century Central Otago, when the runholders talked about trespass, often they may have been referring not to people being harmlessly on their land but to invading cattle. In August 1870 in the Cromwell area there was a falling-out, over trespassing cattle, between some cattle-owners and the station-holders. To cut a long story short, the grass was greener on the other side. The cattle-owners agreed 'to pay certain sums annually, that their cattle might enjoy certain privileges'.[60]

This glimpse of bygone days raises two questions. Firstly, was our law of trespass designed or intended as a means for farmers to supplement their incomes by charging entrance fees? Secondly, are there any moral objections to their using it as such, when the trespassers are not cattle that eat the pasture but people who have no effect on the grazing or the land?

In 1958 Herbert Evans, writing in the annual journal of the Tararua Tramping Club, factually summarised the then law of trespass, as it applied to trampers:

> In the course of his wanderings the tramper goes over land which is not his own. Once he has left the public road or a public reserve he has to realise that he has no rights except such as he may derive from express or implied permission or invitation of the owner of the land or the person lawfully in possession of it … There is implied permission to go on land for such purposes as the transaction of business or the delivery of goods, or visits to or communication with the occupier, but such an implied permission, like an express permission, can always be terminated by the occupier requiring the other person to leave. That other person then becomes a trespasser if he does not leave.
>
> The purpose of a tramper crossing a property is usually the single purpose of his own pleasure and recreation, and therefore he cannot as such claim the justification of an implied permission or invitation.[61]

In 1968 Ralph Hannan, the minister of justice in the National government, said of the Criminal Trespass Bill:

> The Bill strengthens the position of owners and gives them greater rights against trespassers … There are many instances of stock being shot recklessly and wilfully, sometimes on a large scale. Property has been damaged and the safety of occupiers and their families has been endangered.
>
> The Bill will not of itself solve all the problems – far from it – because surely the mischief is not so much the trespass as the damage that is done and the difficulty of apprehending offenders and ensuring their conviction.[62]

Hannan had not the slightest inkling that his proposed new trespass law would lead, indirectly, to turnstiled walking tracks. He said: 'The ordinary decent citizen who does no harm to stock or property, who wants merely

to picnic by the river, to roam across the hills, or to catch fish, is not likely to be affected in any way or to any degree by this Bill.'[63]

When the Trespass Act 1968 came into force, it made trespass a criminal offence. Gordon McLauchlan, writing in the *New Zealand Journal of Agriculture*, described the effect of this change:

> The new Trespass Act enlarges farmers' rights to control public access to their land …
>
> The initiation of proceedings under the Act must be by the occupier … so that an interfering neighbour cannot lodge an application because X is trespassing on Y's property.
>
> But, where an occupier does decide to take action by beginning a prosecution, the police are now authorised to come in and conduct the prosecution for him. This will be regarded by farmers as a considerable gain. They are not left to conduct a private prosecution in the courts.[64]

McLauchlan also described several new powers that the act bestowed upon landholders. The landholder could order an alleged trespasser, orally or subsequently by registered letter, to keep off the land for a period of six months. 'The farmer, his employees and agents, and members of his family are given the right to demand the name and address of any [alleged] trespasser.'[65]

Thirty-four years later, and one trespass act further on, Bruce Mason offered a different perspective: 'The reality is that the Trespass Act [1980] is probably the most draconian deterrent to public access over private land anywhere in the western world.'[66]

Kay Booth, drawing partly on John Baldwin's thesis[67], has summarised the parliamentary origins of New Zealand's trespass laws:

> Statutory trespass law was introduced to New Zealand in 1968 and strengthened in 1980. Hotly contested Parliamentary debates preceded both Trespass Acts (1968, 1980) and revolved around the rights of citizens for recreational access versus the rights of farmers to have protection from irresponsible trespassers … Both Acts were put forward by the 'pro-farmer' National Party and opposed by the 'pro-public access' Labour Party. Issues raised by Parliamentarians when debating the Bills included concerns over foreign owners closing off access, lack of public information about legal access, sale of access rights and unclear private land boundaries … These issues, amongst others, remain at the heart of access debates in the twenty-first century, suggesting that trespass law in itself [is] not adequate to resolve access issues.

The Trespass Act 1980 'limits public access by giving the land occupier the power to exclude people from entry to the land and from remaining on the land if already present'.[68] Trespass law makes a private landholder's rights supreme and ascendant over citizens' rights for recreational access. Trespass itself is not an offence, but it becomes one if the person trespassing ignores a lawful occupier's request to leave. Penalties under the act can

be severe (fines of up to $1,000 or imprisonment for up to three months), reflecting the offence's belonging in criminal, rather than civil, law.

Walkway-users and landowners discussed the law of trespass at the New Zealand Walkways Conference in 1989:

> Landowners' Views
> C Horne spoke about tough Trespass Laws and asked Mr Marshall [the National Party's spokesperson for conservation] if he was interested in re-vamping the Act so that the provisions were not so tough.
>
> Mr Marshall said that was something that had to be worked out, as there was an element which made these laws very necessary.[69]

It was not clear from the conference report whether any delegates asked Marshall the obvious question: who *are* they, this element? Our farmers deserved all the help the law could give them against sheep-rustlers and equipment thieves, dope-growers and gun-shooting idiots. Yet the argument for severe trespass laws was an argument for extreme protection for the landowner. Such an argument supported only one side of the debate over private property rights and freedom of movement. Ralph Emerson, the US poet and essayist, provided the other viewpoint: 'Good men must not obey the laws too well.'[70]

For a hundred and forty years, until neoliberalism and its deregulation, privatisation and commercialisation, a flexible approach by many landowners had informally modified the trespass laws that protected the property rights of freeholders and pastoral leaseholders. Landholders had often allowed access, on their terms and with their consent. They had seldom charged for walking access. But by the 1980s, goodwill was fraying and in some cases disintegrating. The catchphrase of neoliberalism was 'user pays'. De facto access was breaking down, leaving an intimidating Trespass Act to rule alone, unsoftened by common sense and feelings of fairness.

The 2003 Acland report described submitters' proposals on amending the Trespass Act. Some submitters had proposed legislating so that entering onto private land for noncommercial customary or recreational purposes would not be an offence under the Trespass Act. The report said, however, that this change would erode the landowner's right to exclude. It would affect his or her property rights. The proposal did seem to contradict statements elsewhere in the report that no general as-of-right access (ie, no area access) was envisioned.

Part of this proposal argued 'that a reasonable request for access should not be turned down on an unreasonable basis'. There was some bizarre logic at work here and there was scope for a conference on the meaning of 'reasonable'. On the one hand, this proposal accepted the continued primacy of the need to obtain permission; on the other hand, it said that permission *must* be granted. This circular argument went nowhere; it was another form of the core question about property rights and societal expectations.

A P Herbert, the English writer and politician, wrote that 'the Common Law of England has been laboriously built about a mythical figure – the figure of "The Reasonable Man" '.[71] The law of trespass already relies

heavily, in practice, on the ability of a jury to picture a reasonable person. But asking a jury to decide what constitutes a reasonable request for access would be inviting it to range over the whole access debate, including property rights, *allemansrätten*, and customary rights.

How important an influence upon access is the Trespass Act 1980? On the one hand, few cases concerning trespass in the countryside have gone to court, and there is little case law interpreting the act in outdoor-recreation situations.[72] Also, in the overall scheme of things the Trespass Act is merely one piece of legislation out of more than twenty-five acts that, favourably or detrimentally, affect rights of public access to land for recreation. On the other hand, from an ideological perspective the Trespass Act is a potent exclusionary tool that contrasts diametrically with the laws of some other countries, such as Scotland.

Compelling arguments for amending the Trespass Act, without creating in effect informal area access, may exist. Many walkers probably view the perceived severity of the present law as a sheer anachronism. The trespass issues still demand a deeper look than what they received in the 2003 and 2007 Acland reports.

Recommendations on Maori Land and Access

We saw in Chapter 9 that the 2003 Acland report had suggested various measures to extend the Queen's Chain. But it had been cagey on whether any measures that the government adopted should apply to Maori land, which formed 5.7 per cent of New Zealand's total land area. Sixteen months later, however, the walking-access cabinet paper of December 2004 had said that the proposed water-margin footways would be established on Maori land as well as on general land. We covered the political reverberations of this decision in Chapter 24. Then, in June 2005, the government had decided not to proceed with its walking-access bill. After this climbdown, the controversy over creating footways on Maori land had fizzled out – in public, that was.

In private, the issue remained alive, poorly understood and potentially divisive. The report of the consultation panel recognised this division in New Zealanders' thinking:

> Many submitters stated that Maori land should be treated like any other private land, and in some instances implied that Maori had been given special privileges regarding their land. However, this view does not reflect the history of Maori land ownership, the grievances associated with the transfer of ownership away from Maori, the special legislation governing Maori land and the positive actions of Maori regarding public ownership and access. Concerns were expressed to the Panel that Maori land is frequently subject to 'public roaming' without permission, as if it were public land.[73]

The report pointed out that understanding the history of Maori land title was important for understanding why, in 2007, Queen's Chain reserves did not exist on most Maori land. Between 1862 and 1909 almost all Maori customary land was converted to Maori freehold land. The crown did not at any stage own this land. Had the crown wished to create

publicly owned water-margin reserves, during the conversions, the crown would have had to acquire the coastal and riverside strips. It did not do this.

The Land Subdivision in Counties Act 1946 provided for the taking of water-margin land on the subdivision of general land. Maori land, not being general land, was exempt from this provision.

Subsequent legislation made various provisions for laying aside reserves during the subdivision of Maori land. After 2002, under Te Ture Whenua Maori Amendment Act 2002, any water-margin land reserved on the subdivision of Maori land was set apart as a Maori reservation for the common use and benefit of the people of New Zealand.[74]

*

As with access across general title land, the report said, public access along the margins of waterways in Maori land required the permission of the landholder. The rules for general land and Maori land, in this respect, were the same.[75] In practice, though, Maori land often had multiple owners and no defined ownership structure; in these cases it was often difficult to identify whom to ask for permission.

The report mentioned the access strip along the shore of Lake Taupo as an example of a special access arrangement within Maori land. This access strip was created through the Maori Land Amendment and Maori Land Claims Adjustment Act 1926 as part of an agreement between Ngati Tuwharetoa, the tangata whenua of the Lake Taupo region, and the crown. Although in 1992 Ngati Tuwharetoa regained the ownership of the bed of Lake Taupo, the public still enjoys access to the lake:

> The deed in respect of Lake Taupo allows continued freedom of entry to, and access on, the lake waters for recreation and enjoyment, subject to conditions and restrictions by the Taupo-nui-a-Tia Management Board to protect and control public use. To reflect the access privileges given to the public, the Crown makes an annual payment to Ngati Tuwharetoa equivalent to half of the annual income from fishing licences for the Taupo fishing area, which is administered by DOC.[76]

In 2007 an adult full-season licence to fish in the Taupo area cost $81.00. An adult twenty-four-hour licence cost $15.50.

The report suggested that the Lake Taupo arrangements could be a useful model for negotiating access. A more searching piece of advice might have phrased this 'useful but not ideal'. Entry whose continued smooth running relies partly on a yearly payment may not be as secure as entry that is not tied to any perpetual financial provisions.

The panel made two recommendations on Maori land and access. Firstly, it recommended that access over Maori land (other than access already provided by law) be arranged by negotiation and agreement with the owners; the New Zealand Access Commission would need to consult with Maori about a suitable negotiatory approach. Secondly, it suggested that the commission should explore opportunities to improve access by Maori to taonga.[77]

Reactions to the 2007 Acland Report

The 2003 Acland report had led to nearly two years of acrimony in rural areas of New Zealand, resentment and hostility that was undeserved either by the report itself or by the government's subsequent footway plans. The 2007 report, despite its ambitious recommendations on the bringing into use of potentially hundreds of kilometres of unformed public roads, received a widespread if sometimes qualified welcome. How fickle people are.

The 'new', self-restrained Public Access New Zealand described itself as 'greatly encouraged by the content and general tone of the report'.[78] Alan McMillan, the PANZ chairperson, thought that 'much of the report [would] be greeted with acclaim by most interested parties'. Hugh Barr, the spokesman for the Council of Outdoor Recreation Associations of New Zealand, said that 'the report provides a unique opportunity for the Government to redress the erosion of public access rights that has occurred in the last twenty years'.[79] Barr pointed out, however, that CORANZ strongly supported Bryce Johnson's minority view and his recommendations, especially concerning restoring and realigning lost water-margin access. Brian Stephenson, the Federated Mountain Clubs president, said: 'The panel's proposals are well thought out and achievable. We are delighted with the outcome, and we think the whole thing is good news for everyone.'[80]

For the first time in over four years, Federated Farmers sang in unison with the recreational organisations. Bruce McNab, the federation's access spokesperson, said that farmers and other landowners were mainly pleased with the report.[81] The federation's press release verged on the effusive:

> [Mr McNab said:] 'The Federation would like to thank the many members who participated in the access consultation process. Our members' voluntary contributions have helped ensure an outcome that, on balance, is fair and reasonable. We also appreciate the opportunities for collaborative dialogue with other groups such as Public Access New Zealand, Federated Mountain Clubs and the New Zealand Four Wheel Drive Association, and finally we thank the consultation panel for listening to all points of view.'[82]

Brian Stephenson commented to me:

> It's been a useful exercise from several vantage points. It brought together various recreational groups to identify points of agreement and to minimise any potential damage from points of disagreement. It's also ended in a repaired relationship with Federated Farmers … When one reflects that 18 months earlier, the parties had been waving placards at each other outside Parliament, it's a good turnaround.[83]

Bruce Mason, who in June 2005 had not waved a placard on the steps of the Beehive but *had* tied an orange ribbon to his gate, called the report 'a step forward – with a sting in the tail'. Never one to be deferential to

government-sponsored reports by panels onto which he had not been invited, he greeted the report ambivalently.

On the plus side, Mason recognised that the report had adopted two of the key planks of PANZ's July 2003 submission, which he had written: the need for improved information on existing access, and the need to preserve and bring into use unformed public roads. He expressed some satisfaction that these central parts of the approach that he had advocated would, presumably, come to pass.[84]

On the minus side, he said that the report's 'failure to provide measures to extend the Queen's Chain, as promised by Labour at the last election, is a major breach of faith to the electorate'.[85] (Before the 2002 general election, the Labour Party had explicitly promised to extend the Queen's Chain. Labour did not, as far as I am aware, repeat this definite promise before the 2005 general election.)

Mason and Hayes Disagree over Some Aspects of Roading Law

Mason saved his severest criticism for some aspects of the report's recommendations on public roads:

> The panel identifies the public road network, unformed roads in particular, as an immensely valuable recreational resource. However, their recommendations as to how to utilize this, if given effect, will gravely lessen [the network's] public worth.[86]

Three months later, Mason would expound this criticism, publishing a thirty-four-page critique of Hayes's *Roading Law as It Applies to Unformed Roads*.[87] A Mason press release said the critique addressed six key contentions of Hayes.[88] Perhaps the most serious difference of opinion between these two access exponents was a basic factual disagreement on whether a local authority or a private individual could dedicate a new unformed road over private land. Hayes had written:

> There are formidable if not insurmountable difficulties in exchanging unformed road for a new unformed road in the same vicinity. The whole network of unformed roads is predicated on the laying out of unformed roads on Crown land whether pegged on the ground or laid out as paper roads. It is not possible to lay out unformed roads in a state of nature over private land; since the enactment of the Public Works Amendment Act 1900 it has been unlawful for the owner to do so when land is subdivided. The Public Works Amendment Act required all new roads to either be formed (in rural areas) or formed and metalled (in boroughs and in proximity to boroughs). Over the last 100 years standards of formation have been progressively increased. A private owner cannot dedicate road without the acceptance of the council. Councils do not accept the dedication of roads which are unformed.[89]

Mason replied contradictorily:

> Hayes's recommendations for 'access strips' (with much inferior public access) are based on a flawed assertion that there are insur-

> mountable difficulties to creating new unformed roads when realignment of poorly sited unformed roads is justified … There are no significant statutory obstacles in the way of dedicating new unformed roads from private (or Crown) land.[90]

Mason's alternative views on the finer points of roading law, which were knowledgeable but hardly as highbrow as Hayes's, did not gain much immediate traction. Nonlawyers like me were not qualified to judge whether Mason was in his element or out of his depth. By now, most of us nonlawyers had already drowned.

Hayes later wrote – we are discussing a critique of a critique – that

> Mr Mason repeatedly misrepresents the author of *Roading law* even to the extent of attributing to the author the opposite of what he has said. In his commentary on 'occupiers' he shows that he has a limited understanding of the basic principles of land law and legal language; and appears not to understand the methods of legal scholarship.[91]

Roading Law as It Applies to Unformed Roads combined erudition with painstaking legal research. Brian Stephenson, himself a barrister, described it as superb.[92] A link on the homepage of the PANZ website called it brilliant. Even Mason, its main critic, conceded that it was 'a major contribution to public understanding of roading law'.[93] Hayes's credentials were irreproachable: ten years as a land titles officer (assistant land registrar and legally qualified examiner of titles); fourteen years as a district land registrar; sixteen years as registrar-general of land; and eleven years as a consultant barrister initially providing advice to other lawyers in land law and latterly providing policy advice.[94]

The Hayes–Mason contretemps over some aspects of roading law worsened the already awkward relationship between PANZ and RANZ. In December 2007, Mason, as disputatious and as brusque as ever, issued an open letter to PANZ. The letter contained the quoted words of an anonymous RANZ supporter: 'I was appalled at the garbage this bloke Hayes was spouting – I have to wonder if he isn't compromised in some way, by ill-health maybe – or something more sinister (don't discount this, there is a lot a[t] stake!)'.[95] As well as criticising some parts of Hayes's *Roading Law as It Applies to Unformed Roads*, the letter attacked the PANZ trustees' apparent endorsement of it. The letter also implied that there was a conflict of interest between Alan McMillan's role as PANZ chairperson and his role as a member of the Walking Access Advisory Board.

For two years, the walking-access debate had been fairly free of the caustic adversarialism that had predominated in 2003–5. Now Mason seemed to be reintroducing it and directing some of his displeasure at fellow recreation advocates. He was alienating the people who should have been hero-worshipping him.

Political Parties' Reactions to the 2007 Acland Report

Political reactions to the 2007 Acland report were subdued and a bit yawnful. Gordon Copeland, the outdoor recreation spokesman for United Future, welcomed the release of the report. He drew attention to Bryce

Johnson's alternative recommendations, particularly the one about the arbitrary four-hectare rule applying to subdivision-derived esplanade reserves.[96] Two months later, Copeland would resign from United Future.

Metiria Turei, the Green Party's conservation spokesperson, agreed that negotiated agreements would be the best first approach. She was concerned, however, that if a negotiation failed, the access agency would end up on the back foot. She thought that the proposed review of the agency should take place after five years, not ten as suggested by the panel.[97]

A press release from Pita Sharples and Tariana Turia, co-leaders of the Maori Party, welcomed 'the step down from the Government' (which had actually occurred in June 2005). They saw a contradiction between this backdown and the government's unyielding stance on the foreshore and seabed. Tariana Turia said:

> It seems there is a massive double standard of citizenship in operation. It is obvious that the Government has been leaned on by an influential group of New Zealanders, has agreed to allow the private property right to remain; and to even establish a Commission … That's all good – but tell me the difference between that, and what 50,000 New Zealanders marched to Parliament for in the hikoi opposing the Foreshore and Seabed Bill.[98]

She said that tangata whenua had provided extensive advice to the consultation panel. They had 'described the obligations of the Crown to actively protect the property interests of Maori land; and to provide for economic and development opportunities'.[99]

She also said:

> A central theme throughout the submissions [of Maori] was that Te Tiriti o Waitangi guaranteed tino rangatiratanga … o ratou whenua o kainga me o ratou taonga katoa – the full and undisturbed possession of their lands, and estates, fisheries and other properties.[100]

On 16 April David Carter issued another instalment of disinformation. Titled 'Right to Roam Still Costing Bundles', the press release said that 'Rural Affairs Minister Damien O'Connor needs to reveal how much taxpayer money he has wasted on Labour's right to roam agenda'.[101]

Governments sometimes do something, legislative or administrative, that they have promised not to do. On the other hand, members of the parliamentary oppositions sometimes accuse a government of planning a change that it has no intention of making. How should we view these two behaviours? Merely the merciless rough and tumble of politics? Or are they reprehensible actions, like breaking promises and telling lies? Some words of Franklin D Roosevelt come to mind: repetition does not transform a lie into a truth.

Chapter 32

Once Bitten, Twice Shy

Improving the walking access to the New Zealand outdoors was proving to be, like cheesemaking, a great exercise in patience. Five months were to pass before the government would announce its response to the 2007 Acland report. A further seven months would slide by before Damien O'Connor would table the Walking Access Bill, in April 2008. In the meantime, a range of access-related issues lay ripening. An old insolvable one, Poronui Station, was solved. A newer problem, motor-vehicle damage to unformed public roads, became more acute. Tenure review remained grimly controversial at different intellectual levels. LINZ announced that preparatory work on NZTopo50 was well under way. *Consumer* published a report on unformed public roads. Talks carried on about public access to the privately owned sections of the Queen Charlotte Track, raising the wider issue of the vulnerability of permitted tracks. Dunedin city council decided to buy a central wedge of the Otago Peninsula. Parliament passed a bill to protect the Waitakere Ranges. This chapter covers all these matters except tenure review (which Chapter 33 will deal with). It finishes with a random sample of track developments of 1998–2008.

Poronui Station, Exclusive Capture and the Overseas Investment Act

We saw in Chapter 5 that Taharua Road, a public road across Poronui Station, was the centrepiece of an access controversy in 1969–74. Then in Chapter 9 we learnt that access along the banks of Taharua River was a problem recorded in 1993. Access problems connected with Poronui Station still existed a decade later, as discussed in Chapter 19. In *Reel Life* in 2005, Dave Witherow had written that 'time has caught up with New Zealand, and the freedoms that we have always enjoyed are now being touted on the global market'.[1] By 2007 Poronui Station was an access black spot of some notoriety, awaiting legislation to end the practice of exclusive capture, legislation that did not look at all imminent.

A solution that provided public access across Poronui Station came not through any new laws ending exclusive capture but by chance, when the

American family that owned the station decided to sell it to the American company Westervelt Sporting Lodges Ltd. The prospective buyer applied to the Overseas Investment Office for its approval of the purchase. On 27 March 2007 the government announced that the Overseas Investment Office had consented to the sale, a condition of this consent being plans to make important riverbeds publicly owned and to ensure permanent legal walking access through the station to reach the Taharua and Mohaka Rivers and to reach the adjoining Kaimanawa Forest Park. The station's commercial eco-tourist activities would continue, including guided trout fishing, sika deer hunting, mountain-biking, horse trekking and hiking.

The minister of finance, Michael Cullen, stated the obvious when he said that 'the new terms agreed for public access and conservation are a big improvement on the status quo'. The minister for land information, David Parker, saw the Poronui case as 'an excellent example of what we have been achieving for some time using the 2005 [Overseas Investment Act] legislation'.[2]

Neither minister, in the day's press release, drew attention to the situation's deep irony: had Poronui Station been sold to a New Zealand resident, the sale would not have come under the ambit of the Overseas Investment Act, and the access improvements would probably not have occurred. During question time in parliament that day, Metiria Turei, a Green Party list member of parliament, alerted the members to this peculiarity:

> Metiria Turei: Does the Minister agree that there would be greater access [to the countryside] for New Zealanders and improved conservation values if the sale of sensitive land to New Zealanders included the same mechanisms for providing, protecting, or improving walking access over land as the Overseas Investment Act requires for land sales to overseas investors; and, if he does not agree, why not?
>
> Hon DAVID PARKER: The walking access panel recently reported with some recommendations that will make some very good advances in terms of walking access over New Zealand land, particularly by the proper definition of marginal strips and paper roads. I think that is good progress in respect of those lands.[3]

The mapping and waymarking of marginal strips and unformed public roads would indeed be welcome progress, but David Parker's answer did not directly answer Metiria Turei's question.

Mid-term Blues

On Saturday 26 May 2007 the *New Zealand Herald* released a Herald-DigiPoll survey that showed National well ahead of Labour as the party that people would vote for in a general election. The survey also showed National's John Key to be the preferred prime minister, ahead of Helen Clark. The next day, a ONE News Colmar-Brunton poll showed similar results.

The Labour Party was halfway through its third term of leading coalition governments. For the first two of these terms, Labour had enjoyed

dominant working majorities. It had been in power since the general election of November 1999, before which it had promised to 'develop a strategy for the extension of the Queen's Chain to ensure New Zealanders have improved access to our waterways and coastline'.[4] Labour had kept to this intention for eight years, albeit watered down to 'non-statutory proposals' after the 2005 general election. There had been plenty of talk; the Labour-led governments had consulted us to death. Public discussion of the issues, which had rumbled through 2003–5, had abated. But we had not yet seen any concrete results, such as the adoption of a government access strategy or the creation of an access agency. The report of the Walking Access Consultation Panel was still on Damien O'Connor's desk, waiting for his and the government's response. If we were to judge from the political opinion polls, the time available for this response would be a year and a half at the most.

More from RANZ on Motorised Recreational Off-roading

In Chapters 29 and 30 we saw that the issue of motor-vehicle damage to unformed public roads had been written about in 2001 and that it subsequently escalated into an urgent concern for some city and district councils. I described the action taken by Dunedin city council to prohibit motor vehicles from several unformed public roads. I also showed that Bruce Mason, under the name Recreation Access New Zealand (RANZ), was taking a harder line against vehicle damage than Public Access New Zealand. We saw that one of the central aims of Mason's new campaign was 'the promotion of non-motorised recreation on New Zealand's public lands and waters'. Inversely connected with this aim, if you see what I mean, was Mason's resolve to crusade against the undesirable effects of motorised recreation on unformed public roads and publicly owned conservation areas.

The evolution of this RANZ stance overlapped the publication of the 2007 Acland report. Before we look further at the RANZ standpoint, we should bear in mind what the 2007 Acland report said about four-wheel-drive vehicles, trail bikes and unformed public roads. You have to search around a little. The report acknowledged that some territorial authorities were concerned 'about damage to the surface of unformed legal roads, especially by vehicles'.[5] None of the sixty-four recommendations of the Walking Access Consultation Panel explicitly mentioned vehicle damage to public roads, but the matter was implicitly, if vaguely, covered by recommendation number eleven: 'territorial authorities be provided with more powers to manage the use of unformed legal roads, provided that this is associated with a duty to keep unformed legal roads open to appropriate uses'.

Regarding how to provide the city and district councils with these further powers, Brian Hayes suggested that territorial bylaws, under a statutory framework, might be the most appropriate way to regulate good order on an unformed road intersecting private land and to prevent damage to the surface of the road.[6]

Back to RANZ. As part of Mason's offensive against motor-vehicle damage to the environment, in August 2007 he published *Recreational Off-road Vehicles Destroying the Environment, and Others' Enjoyment of the*

Outdoors, a ten-page paper supported by additional appendices. On an introductory webpage associated with this paper, Mason said that

> wilful or unintentional damage to the outdoors from off-road vehicle use is reaching a crisis point. Increasing sales of ATV's, SUV's, trail and dirt bikes is overwhelming the outdoors …
>
> There is a clash of cultures between those who have become dependent on their machines to, literally, go everywhere, and the rest – those who wish to recreate and enjoy the outdoors in peace, on its own terms and without mechanical props.
>
> Many recreationists are in both camps but are content to just use their vehicles for access to their favoured recreation spot, park, then head off to engage in walking, fishing, bathing, mountain biking, or other minimal impact recreation. The inevitable restrictions that will come as a result of the damage inflicted by the thoughtless and the hoon will impact on everyone.[7]

The paper itself discussed off-road vehicle damage to New Zealand's lightly formed and unformed rural roads and to the land surface in publicly owned conservation areas. It also noted the adverse effects of motor vehicles on the experiences of nonmotorised recreators. It also outlined a range of existing statutory and bylaw mechanisms that Mason believed could be usefully applied to manage vehicle use of public roads and conservation areas.[8]

Mason was sceptical about what he described as the 'public relations green-wash' of the New Zealand four-wheel-drive clubs. He claimed that most of the clubs had adopted Tread Lightly approaches primarily to deflect criticism of their activities. He also argued that Tread Lightly's recreation tips – its codes of practice – did not emphasise the havoc that off-road vehicles could inflict upon tracks in wet conditions. He said that

> many 4WD owners show little apparent concern for the environment or for other recreationists. 'Tread lightly' codes of practice have not moderated overall driver behaviour or attitudes discernibly. While it will be asserted that this is because most users are not club members subject to restraining peer influence, there is plenty of antidotal [*sic*] as well as direct evidence of non-compliance with codes of practice by club members.[9]

These were still the early days of this issue. Perhaps it would gradually die away as we progressed further into the Long Emergency (the end of cheap oil). In the meantime, it was likely that the arguments contained in Mason's paper, and opposing views, would reappear frequently as more unformed public roads became waymarked and known to the public.

The Government Accepts the Recommendations of the Consultation Panel

On 27 August 2007 the government announced that it had accepted the recommendations contained in the 2007 Acland report. The government was in the process of setting up an advisory board to oversee

an interim establishment unit within the Ministry of Agriculture and Forestry. Damien O'Connor's press release was titled 'Negotiation and Agreement the Way Forward on Walking Access'. He said that 'the Labour-led Government's approach to securing new public walking access involving private land is based on building on the existing goodwill and co-operation of landholders, rather than [being] one of confrontation and compulsion'.[10] There were no surprises in the details contained in the press release. It received little media coverage.

David Carter, whose goodwill went only as far as guarding the Great New Zealand Status Quo, tried to open up old sores, wounds resulting partly from the misinformation that he himself and others had spread:

> National's Agriculture spokesman, David Carter, says it's an absolute disgrace the Government has frittered away more than $600,000 to confirm that the status quo on land access should remain …
>
> 'It's an insult to rural New Zealand that their views fell on deaf ears, and that now, farmers and all other taxpayers are being hit in the hip pocket to fund yet another Labour talk-fest which has come up with no new answers. It's a case of "I told you so", and yet another example of the Labour Government being too arrogant to listen to the voice of reason. Helen Clark's agenda was always to let people trample through farmers' properties. This is another humiliating defeat for a government hell-bent on foisting its views on the people.'[11]

The media largely ignored Carter. I shall not be so compassionate because his enchantment with a doctrinaire single focus on the status quo requires commenting upon. I need to borrow the words of John Maynard Keynes, which apply to more than just the study of economics: 'The difficulty lies, not in the new ideas, but in escaping from the old ones, which ramify, for those brought up as most of us have been, into every corner of our minds.'

One of those old and resilient ideas, which had reverberated through the access debate of 2003–5, was that individuals or groups could obtain access across private land by soliciting landowners for permission. Therefore, some farmers had repeatedly argued, there was no need to alter the status quo. Why bother establishing a public foot-track across a farm when people can already simply knock on the farmhouse door and ask permission for access? In 2007 we hadn't yet completely escaped from this stagnant reasoning, although it was gradually losing its quaint appeal.

Walking Access Advisory Board

In October 2007 Damien O'Connor announced the appointment of an eight-member Walking Access Advisory Board. This group would help advise the government on:

- the development of a Memorandum of Understanding with the Department of Conservation (DOC) on the operational management of walkways on land administered by DOC;
- the development of a New Zealand Access Strategy, including new access and priorities for funding;
- the development of a voluntary code of responsible conduct;

- the public's likely requirements and priorities for walking access;
- the development of an appropriate mapping database for walking access; and
- the options for a new walking access organisation.[12]

John Acland (Geraldine) was to chair this advisory board. The other members were: Brian Stephenson (Auckland), John Aspinall (Wanaka), John Forbes (Opotiki), Peter Brown (Gisborne), Claire Mulcock (Christchurch), Dr Jenny Ross (Christchurch) and Alan McMillan (Dunedin).

Five of these appointees had also served on the Walking Access Consultation Panel, which would help the board to maintain continuity. The three new members all had close associations with recreational interests.

Brian Stephenson, a barrister with extensive experience in employment law and dispute resolution, was the current president of Federated Mountain Clubs of New Zealand.

Dr Jenny Ross was an associate professor in recreation studies at Lincoln University. She had been a board member of SPARC and she had health and life sciences research experience, along with governance and management experience in recreation, physical activity and sport.

Alan McMillan was the chairperson of Public Access New Zealand. He was also a former president of and a current executive member of the New Zealand Federation of Freshwater Anglers. He had extensive knowledge of recreational access issues.

In Praise of Walking

In an article about the government's appointments, the *Otago Daily Times*, quoting Alan McMillan, acknowledged the physical and mental health benefits that could result from people gaining improved walking access to the countryside. McMillan had had the courage to state the obvious: 'clearly, exercise in the outdoors was good for people's physical health … however, for many people, including those with sedentary jobs, there was also a mental tonic'.[13] But he apparently had not drawn the *ODT*'s attention to the emphatic lack of public engagement of Sport and Recreation New Zealand (SPARC) in the five-year debate on walking access.

Academics often chisel away at the self-evidently obvious; they take pleasure in verifying or demolishing people's intuitive beliefs. Shortly after McMillan's linking of walking tracks with physical and mental welfare, the *New Scientist* carried an article titled 'The Greening of Healthcare'. Jules Pretty, professor of environment and society at the University of Essex, wrote that 'the natural environment is important for more than its biodiversity, and it's time policy-makers recognised as much'.[14] He continued:

> How do you feel after you go for a rural walk? In a green place, whether in city or countryside, being close to nature seems to improve our well-being, even when it is bitterly cold, fiendishly hot, or pouring with rain. The moderate physical activity of walking in an environment like this seems to bring clear benefits to physical health and well-being.
>
> In addition, there is growing evidence from the UK, Scandinavia and the US that being active outdoors ('green exercise', for short)

> can also bring substantial mental health benefits by reducing stress levels and enhancing mood.[15]

Regarding the outdoors benefiting your mental health, Jonathan Calder has summarised the research behind this idea. Approaches based on evolutionary psychology, 'the flavour of the month in hard science' (in 2004), have identified a link between the natural world and human wellbeing.[16] But walkers don't really need the scientists to prove this connection. Most of us would agree with the writer and naturalist Richard Jefferies, whose 1883 autobiography began with a rapturous account of a walk up Liddington Hill in the Wiltshire Downs:

> Moving up the sweet short turf, at every step my heart seemed to obtain a wider horizon of feeling; with every inhalation of rich pure air, a deeper desire. The very light of the sun was whiter and more brilliant here. By the time I had reached the summit I had entirely forgotten the petty circumstances and the annoyances of existence. I felt myself, myself.[17]

Much more recently, Bill Bunn has argued that 'walking is a primal transport, embedded in the human psyche, expected by the world's creatures, and the land itself, evidence of an ancient arrangement between humans and their world'.[18] He suggests that

> there is only one way humans are made to move. They are basically made to walk. There are many other ways to get around. You can canoe, for instance, or paraglide, or jog or swim. But these transport modes are not the staple of human mobility. Walking is unavoidable, a necessity for those with two working legs. The entire scheme of nature, and the human's place within it, is built around the understanding that humans use their legs to move. It's a great unspoken assumption. The earth expects humans to walk.[19]

Modern societies, Bunn says, are obsessed with speed and mechanical forms of transport. This addiction alienates humanity from nature and from each other.

> But walking is a cure. When we walk we take our place in nature. We untie our minds and improve thought. We restore our humanity. So, walk. After all, it's what we were designed to do, and what our planet expects of us.[20]

By 2007, according to Jules Pretty's *New Scientist* article, there was already a growing pile of research substantiating what for many people was gnawingly obvious: that exercise in the outdoors boosts a person's physical and mental health. Policy-makers, as he proposed, needed to acknowledge this fact. In 2008 Hutt city council, knowingly or coincidentally, responded to Pretty's suggestion when it produced its track-management plan Draft: Making Tracks. This ten-year scheme included a section detailing the mental, physical and spiritual gains that recreational tracks bring.[21]

Being active outdoors was good for us. The natural home for a national access agency, therefore, was Sport and Recreation New Zealand (SPARC). Or was it?

An Access Agency within SPARC?

In December 2007 Damien O'Connor presented a cabinet paper proposing that the cabinet policy committee confirm its earlier decision in principle approving the establishment and functions of a new crown entity for walking access.[22] The paper contained little that we didn't know already, except for a discussion of the possibility of making the access organisation an operational function of Sport and Recreation New Zealand. This suggestion was not entirely illogical, but it had come out of the blue and the Walking Access Advisory Board had rejected the idea for several reasons.

The rejection was predictable and, in my view, sensible. We saw in Chapter 24 that in the heated access debate of 2003–5, a supine SPARC had succeeded in achieving near-invisibility. It had missed the opportunity to earn the confidence and loyalty of outdoor recreators. Over the five years from January 2003 to December 2007, I had picked up hundreds of media releases on walking access from many organisations, but I had yet to come across a public statement from SPARC on the issues. SPARC had informed me that Deb Hurdle of SPARC had made an oral submission before the 2003 Acland report. This fact, however, seemed to merely confirm that walking access to land was of little importance to SPARC. The organisation's views on walking access should have been in writing from the start, accessible to the public and to researchers. But they were not. If you accept the premise that walking in the countryside is recreation, SPARC had been derelict in its duties. The Walking Access Advisory Board was blunt: an access entity within SPARC would risk being insufficiently visible, would lack the focus on access issues that was being sought, and would have little expertise in access issues.[23]

On the other hand, and better late than never, Clayton Cosgrove, the minister for sport and recreation, had requested that the proposed walking access crown entity and SPARC be required to work closely to ensure that 'policy and implementation on these issues are aligned and coordinated'.[24] I had said something similar myself, in 2003: dealing with access issues demands joined-up government.[25]

Kay Booth has argued that during the land access review of 2003–5, there was no coordinating government agency for outdoor recreation.[26] The absence of such an agency had meant a lack of national recreation planning and guidance. This in turn had led to the access discussion being 'divorced from its recreation planning and management context'. The review had taken it for granted that new access arrangements would be desirable outcomes, rather than being the means to realise previously formulated recreation opportunities and associated benefits.[27]

The root cause of SPARC's silence on access had been that while outdoor recreation formed a part of SPARC's brief (and some people said a neglected part), access was apparently not in SPARC's brief at all.[28] A move to improve national leadership on outdoor recreation would occur in May 2009, with the establishment of the Sir Edmund Hillary Outdoor Recreation Council, an independent six-person advisory group.

One presumes that, in future, close ties between SPARC and the New Zealand Walking Access Commission will bring access goals closely into line with national outdoor-recreation plans and policies.

The Government Starts Drawing up Walking Access Legislation

On 14 December 2007 Damien O'Connor announced that 'a new government agency to advise on and implement walking access policies' would be established in 2008.[29] The government was drawing up legislation to establish the access agency as a crown entity. This legislation, planned for 2008, would also transfer the administration of the New Zealand Walkways Act from the Department of Conservation to the access agency. In a rare personal media release, John Acland welcomed this news and the prospect that 'this new agency will help provide free, certain, enduring and practical access to New Zealand's great outdoors'.[30]

Meanwhile, even as the ministry officials laboured on the bill, the commercialisation of the New Zealand outdoors continued apace. Tim Cronshaw of the *Press* enthused on the South Island's latest private walking track, which was on Four Peaks Station, 'a picturesque high-country property overlooking the downs of Geraldine'. In an article titled 'Old Trail Good Little Earner', he reported that 'running a private walking track [was] a good way to bring in extra income during times of low lamb prices'.[31] Steve and Jo McAtamney, the landowners, had routed their track mainly along the natural stock tracks, with the odd deviation onto four-wheel-drive tracks. In the first year, with limited promotion, 130 clients had walked the forty-kilometre route, bringing in $30,000. The earnings had yet to cover the setting-up costs, but there was potential to earn four times the first year's income.

Update: NZTopo50

In Chapter 27 we discussed NZTopo50, LINZ's planned new series of paper 1:50,000 topographic maps. Since June 2005, when LINZ had announced that it was planning this new series, all the indications had been that the main task in creating the new maps would be mathematical: the job of manipulating the existing, elderly data from one geodetic datum to another and from one map projection to another. In June 2007 LINZ announced that preparatory work on NZTopo50 was well under way. LINZ intended to have available the new printed maps in 2009. The announcement said that 'although the map projection and geodetic datum will be different, the maps will be similar in appearance and content to the current 260 map series, which is internationally recognised and uses cartographic conventions that are well established around the world'.[32] In August 2007, using new mapping technology, LINZ produced a prototype sheet. Peter Dymock, a land-surveyor, mountain-biker and tramper, commented to me:

> Looks like we are getting a new paper map series after all! … Unfortunately it uses the same tired old base mapping data (that is now 30–35 year old) as the current map series, just digitally manipulated to fit a new geodetic datum (NZGD2000) that is compatible with GPS datum (WGS84) & plotted on a new map projection. There-

> fore, I doubt whether there will be any improvement so far as the mapping of walking tracks is concerned.[33]

Another informed correspondent, Doug Forster, later wrote: 'Unfortunately LINZ has forgotten to plan a mechanism for [the updating of cartographic data] to actually happen at anything but a snails pace'.[34]

LINZ addressed its publicity about the new maps series to the emergency services, the defence forces, other government bodies, and utility providers such as power companies. Its workshops on NZTopo50 were also directed at these users. None of the NZTopo50 promotion that I saw mentioned recreational map-users.

One feature of the NZTopo50 maps that would help some walkers was that the new geodetic datum would be compatible with Global Positioning System (GPS) receivers. This would mean that, should people use digital versions of the new maps in their GPS instruments, the programming of these instruments would be straightforward.

On the other hand, LINZ's June 2007 announcement merely confirmed that the new maps would be the old maps rehashed. The first editions, apparently, wouldn't even show the boundaries of our national parks. Like the Topographic Map 260 sheets that they were replacing, they would carry a disclaimer acknowledging their lack of rights-of-way information: 'IMPORTANT INFORMATION: The representation on this map of a road or track does not necessarily indicate public right of access.' LINZ was clinging imperiously to its narrow and conservative views on what topographic maps ought to contain. According to the 2007 Acland report, LINZ had 'explained to the [Walking Access Consultation] Panel that topographical maps do not purport to represent legal or cadastral data'.[35] That's debatable, I thought. Showing public rights of way on topographic maps was not an outlandish idea. Far from it. English and Welsh topographic maps had been showing public footpaths and bridleways – legal data – since 1959.[36] In 2008 Natural England calculated that at least 225,000 kilometres of off-road public rights of way – footpaths, bridleways and byways that the public was free to use – were recorded on official maps in England and Wales.[37]

Perhaps LINZ actually said, or meant to say: '*Our* topographic maps do not distinguish between public foot-tracks and private foot-tracks.' This would have been far more accurate. But LINZ seemed to imply that such maps cannot be made. The statement surfaced quietly in the report, phrased is a way that made it sound like the gospel truth. The provision of access information was one of the main subdebates within the overall access debate. LINZ's erroneous and unenterprising advice had the potential to mislead the Consultation Panel and the public on an important aspect of this subdebate.

Cartography is blessed with many suggestions and principles on designing a map effectively, but 'they are all very vague due to the fact that there are so many ways to do the same thing'. There is an argument that 'the only definite rule in cartographic design is that there is no rule'.[38]

NZTopo50 and Closed Tracks

One small detail in the design of NZTopo50 raised an important question about closed tracks. In 2007 a prototype legend for the new series

showed four types of track: 'vehicle track', 'foot track', 'closed track' and 'poled route'.[39] The names 'closed track' and 'poled route' were new terms. I assumed that one or other of these two terms would be applied to each track previously denoted as an 'unmaintained route (defined by usage)' on some of the 260 series maps. The mock-up legend also included the warning: 'Closed tracks or routes on this map are defined as those being no longer maintained or passable and should not be used by recreationalists [*sic*]. The Department of Conservation or other authorities should be contacted for the latest information on tracks or huts.'[40]

In Chapter 27 we learnt of a similar situation involving NZTopo*Online*. The warning note posed more questions than it answered. Would the 'closed track' symbol on an NZTopo50 map signify a track to which access had been legally stopped? Or would the closed attribute merely recommend the map-user against using the track, for practical or safety reasons?

We saw in Chapter 27 that in 2005 LINZ's topographic maps of the Dunedin area lacked many long-established and officially promoted foot-tracks. LINZ's topographic maps of many other areas of New Zealand were probably similarly out of date and incomplete. Some of the LINZ track data was rumoured to be thirty years old. It took LINZ and its forerunner the Department of Survey and Land Information about eighteen years to add Buskin Track to the NZTopo database.[41] LINZ seemed incapable of providing reliable and complete information on open tracks; yet now, in 2007, LINZ seemed to be going out of its way to equip itself to tell the public about closed ones.

One of my contacts speculated on the thinking that lay behind the introduction of the closed-track symbol: 'This smells like some sort of compromise … between DOC and LINZ where I suspect DOC would prefer that the tracks were removed [from the maps]'.

In February 2009 I wrote to LINZ, asking for some further information about the meaning of the 'Closed track' symbol:

- If an NZTopo50 map shows a track as being closed, will this mean that access to that track has been legally stopped?
- Or, alternatively, will the closed attribute merely advise the map-user against using the track for practical or safety reasons?

In reply I received a phone call explaining that, in answer to my two questions, it was likely that in most situations the symbol 'Closed track' would indicate a track shut for practical or safety reasons. The caller said that LINZ relied on DOC for the information about tracks on DOC-managed lands and was aware that DOC sometimes omitted some obviously usable tracks. The matter was delicate. LINZ's policy for the maps, designed for emergency and defence purposes, was to show all physically evident tracks. Some DOC officials, apparently, would have preferred some tracks not to be shown. This sort of disagreement, for example, had arisen over the LINZ 1:50,000 *Egmont* map of 1999 (see Chapter 27). LINZ faced a dilemma. The 'Closed track' symbol was a compromise that avoided outright map censorship.

We probably had not heard the last of the 'Closed track' symbol and its imprecise and ambiguous warning note. The name 'Unmaintained route' would be a more accurate description in many cases.

On the plus side, the caller mentioned that LINZ was now picking up some tracks from satellite images. This, he said, would help to improve the accuracy of some of the NZTopo50 maps.

Consumer Report on Unformed Public Roads

The September 2007 issue of *Consumer* carried a report about unformed public roads, referring to them as paper roads. The issue also included a report on hand-held GPS receivers. For access promoters, the significance of these reports was not just in their contents, which would help educate the general public. Of greater significance was that the Consumers' Institute, an independent, non-profit organisation, had considered these matters important enough to be worth five pages in its magazine. The appearance of these reports in a widely read national magazine showed that unformed public roads, for so long an esoteric subject for access proponents, were becoming a matter of public interest that people in general could and should know about.

The report on unformed public roads, titled 'Roads to Somewhere', covered some of the main points surrounding these roads, in an accessible style that avoided legal jargon. Perhaps there was only one important point missing from the article: an acknowledgment of Bruce Mason's twenty years of impassioned campaigning to defend our public roads, to inform us about them, and to promote their use.

The report on hand-held GPS receivers, titled 'Are We Lost Yet?', began:

> Not long ago this would have been science fiction: a cellphone-sized gadget that can tell you exactly where you are, anywhere in the world. It can also show you a map of where you are, and then tell you which way to go next. There's some very clever technology at work here.[42]

The 2003 Acland report had only briefly mentioned that technology. It had not used the abbreviation 'GPS'. Now, just four years later, *Consumer* was telling the New Zealand public that they could use hand-held GPS receivers to help them locate unformed public roads (subject, in the event of a dispute, to a land-surveyor's verification). The GPS receiver had come of age remarkably quickly. The basic maps sold with the receivers did not include cadastral information, but users could buy cadastral information on CD-ROMs or DVD-ROMs. It was only a matter of time before maps showing public roads would be available on microchips designed for GPS receivers. Even a National-led government, which was a looming possibility, would not be able to ignore people's growing demand for access to their unformed public roads.

Permitted Tracks: Some 2007 Examples

Occasionally in this book I have used the term 'permitted track', meaning a track that crosses private land and is open to the public but which rests on an informal arrangement, either spoken or written. Permitted

tracks do not necessarily last. A change of landowner can cause the loss of such a track. While a permitted track may greatly benefit us today, it may become an access headache for someone in the future. Recreational advocacy bodies that succeed in negotiating permitted tracks have the best of intentions coupled with an admirable, but sometimes unwarranted, optimism.

You might be surprised at some of the high-profile tracks that, in 2007, remained based upon Mickey Mouse arrangements. The following notes describe just a representative fraction of these permitted tracks. One was nationally prominent, some were regionally important, and one was only locally known but was locally crucial.

Parts of the Queen Charlotte Track

In the late 1970s the Marlborough Sounds Maritime Park Board began 'opening up the bush with walks'. One newspaper article tells us, vaguely, that in 1979 the board completed a track that '[took] the hiker to Ship Cove'.[43]

In March 1983, singing telegrams were all the rage, the *Marlborough Express* was advertising 'Computers for Farmers', and from the 13th to the 20th of the month was a national walk week.[44] During this week the New Zealand Walkway Commission opened sixteen walkways. One of the press reports mentioned that 'the commission was now developing a track between Portage and Endeavour Inlet to join up existing walkways which [ran] from Anakiwa to Portage and from Endeavour Inlet to Ship Cove'.[45]

This missing link was opened on 16 November 1983 by Bing Lucas, the chairman of the Walkway Commission. Lucas, who was also the director-general of Lands and Survey, was a visionary bureaucrat who for thirty years promoted national parks. Zoe Lawrence, a member of the Marlborough Sounds Maritime Park Board, cut the ribbon. Lucas congratulated the Marlborough district walkway committee on its enthusiasm and enterprise and he thanked the local authorities and landowners for their cooperation. Labourers employed by the Department of Lands and Survey through employment schemes had built much of the track, with help from the Outward Bound School.[46]

Some parts of the Queen Charlotte Walkway were on privately owned land. The landowners expected that 'there would be a few thousand New Zealand families walking the track to get an idea of the New Zealand bush'. These landowners never expected the track to become a busy internationally known attraction.[47]

The Story of Marlborough Sounds Maritime Park, published in 1986, gave several pages to describing some sections of what it called the Queen Charlotte Sound Walkway. This book included a fold-out map that showed a continuous foot-track between Anakiwa and Ship Cove.[48]

The *AA Guide to Walkways, South Island, New Zealand*, published in 1987, included the Queen Charlotte Walkway as a four- or five-day walk from Anakiwa to Ship Cove.[49] The Walkway Commission had established it as an approved walkway but had not gazetted any sections of it.

In 1990 the Department of Conservation (DOC) became in charge of the track when the New Zealand Conservation Authority replaced the Walkway Commission as the central coordinating body responsible

for controlling the administration and promotion of walkways. In about 1992, DOC proposed to close the Queen Charlotte Walkway because bracken and blackberry were growing across it. Hugh Barr wrote to the department on behalf of Federated Mountain Clubs, arguing that DOC should keep the track open as it was one of the great walking tracks of New Zealand. 'In the end,' he said, 'that is what they did'.[50]

On 6 May 1993 the community services committee of Marlborough district council welcomed a proposal to improve the track and to change its classification from Tramping Track to Walking Track. About 5,000 people a year were using the track; the upgrade would aim to increase this number to 10,000. 'Marlborough marketing officer Mary Anne Webber said that if 10,000 people a year used the Queen Charlotte Walkway, and each stayed a night in Picton, the economic benefits for Marlborough could be enormous.'[51]

A development plan prepared by DOC had estimated that the upgrading would cost $394,000 and would take three years. The community services committee recommended that the council should support the upgrade and should share the cost with DOC.[52]

In the mid-1990s, the improvements and the change in classification went ahead as planned. At about this time, the walkway's name changed from Queen Charlotte Walkway to Queen Charlotte Track.

In 1999 about 15,000 people a year were using the section between Ship Cove and Furneaux Lodge.[53]

The Department of Conservation continued always to acknowledge the landowners' pivotal role but it never got around to negotiating easements under the New Zealand Walkways Act 1990. Nationally, according to Hugh Barr, few landowners were willing to sign permanent walkway easements because they thought that such easements would lower the value of their land.[54]

We discussed the Queen Charlotte Track in Chapter 9, in connection with DOC's implementation – or nonimplementation – of the New Zealand Walkways Act 1990. The seventy-one-kilometre track was managed by the Nelson-Marlborough Conservancy. In 2003, when the ministerial reference group commenced its work, about half of the section of track between Kenepuru Head and Portage was thought to be on private land.[55] Access across the private land existed on a goodwill basis; there were no formal legal agreements with any of the landowners.[56] Although over twenty-five acts of parliament contained matter detailing or touching upon rights of public access to land, no law obliged the landowners to allow the public to use the track. The landowners received no payment for permitting the entry. DOC liaised with them over track issues. Thousands of walkers and mountain-bikers had benefited from the informal access arrangements.

The track had become nationally important. In January 2002 Geoff Chapple of Te Araroa Trust, starting at Ship Cove, walked the Queen Charlotte Track as the first leg of the planned South Island half of Te Araroa (the Long Pathway).[57] In about 2004 Simon Kennett was asked to contribute the section 'Best Mountain Bike Ride' to a book containing an eclectic mix of New Zealand bests. Kennett, a co-author of *Classic New Zealand Mountain Bike Rides*, then in its fifth edition, was a knowledge-

able judge of quality. He chose the Queen Charlotte Track. He wrote: 'For me, as an old-school mountain biker, adventure and stunning scenery are critical ingredients for a great ride. The Queen Charlotte Track in the Marlborough Sounds offers generous portions of both, and much more – history, native birdlife and the chance to meet friends old and new.'[58]

In May 2005, ten of the landowners, five DOC representatives and three representatives of other relevant bodies met in Picton to discuss the Queen Charlotte Track. They agreed and wrote down some principles of cooperation and partnership.[59] The landowners would 'support the continuance of a walking and mountainbike track from Ship Cove to Anakiwa' and would 'support the track infrastructure being developed to match sustainable visitor capacity levels'. The Department of Conservation would have 'the legal liability for infrastructural facilities'. People in general would be expected to 'recognise and acknowledge that the track operated on the goodwill of landowners'. There would be a yearly meeting between landowners and DOC officials.

Adrian Griffiths of the Nelson-Marlborough Conservancy commented briefly to me about these principles.[60] He recognised a quandary that had existed since the New Zealand Walkways Act 1975. Easements, had they been negotiated and been in perpetuity and free of detrimental restrictions, would have provided longer-term certainty; but looser arrangements, such as those agreed with the track landowners, could sometimes encourage more landowners to participate.

In January 2005, in several places the land had changed hands, and DOC was having to negotiate with new landowners.[61] By the end of 2005, some track landowners were 'becoming unsettled with the way private tourism operators [were] marketing and making money from the track but [were] not contributing back to the community or the landowners who allow[ed] the track through their property'.[62]

In July 2007, the *Marlborough Express* reported continuing landowner unease:

> Access to parts of the Queen Charlotte Track which cross private land may be under threat if a solution to landowners' frustrations cannot be found soon. Department of Conservation Sounds area manager Roy Grose said a working group, representing all concerned parties, would be facilitated by the Marlborough Sustainable Tourism Strategy Group and meet for the first time later this month. Its immediate priority would be to introduce a $5 contribution from users of the track, but it would also investigate whether this could become a compulsory levy in future. He hoped the contribution would appease the 12 or so landowners, who, faced with rising rates and bills for public liability and fire insurance, are considering refusing users access if they do not get some contribution towards these expenses.
>
> 'Landowners have been very patient, they have been very hospitable, they have been very courteous but they've got increasing costs. Their goodwill is wearing thin. It could ultimately lead to portions of the track closing. We can't sit back and do nothing. It's not an option.'[63]

If we were to judge from the press stories, there was a range of feelings among the twelve or so landowners involved, but collectively this group of landowners had been tolerant and favourably disposed towards the Queen Charlotte Track. The track had opened in 1979. Yet for twenty-eight years since then, the New Zealand Walkways Act 1975 and its successor of 1990 had failed pathetically to fortify the walking access to the privately owned sections of this internationally renowned track.

According to a newspaper article citing a DOC survey, in 2005 about 30,000 people used the track, bringing $9.4 million into the Marlborough district.[64] The track was seventy-one kilometres long, about 40 per cent of which, reportedly, was on privately owned land. (The figure of 40 per cent may have been inaccurate, higher than the true percentage. The subsequent use of improved GPS receivers and refined maps, together with the rerouteing of some of the track off private land, would lead to a revision of the numbers.[65] In March 2010 a DOC press release would say that about 21 per cent of the track crossed private land.) The Department of Conservation administered the whole track and spent over $200,000 a year on maintaining it.

*

It looked likely that all users of the Queen Charlotte Track would have to pay some sort of fee, which in effect if not in name would amount to an entry fee, albeit only $5. This proposal exposed a crucial contradiction in the relevant parts of the 2007 Acland report, a contradiction fashioned by the need for a consensus from widely different sides. In the following extracts from the 2007 Acland report, I have italicised the conflicting statements:

> Principle 1: Quality of access
> Walking access should be free, certain, enduring and practical.
> Free – The public should be able to access, without charge, land that is open for public use. *The terms of access over private land are a matter for negotiation.*
>
> Principle 2: Private property
> *Landholders have the right to charge for any facilities or services*[3] that they provide on their property in association with the provision of access. They also have the right to recover any costs incurred in providing access. ([3]*Services do not include the granting of access permission* but could include the building of bridges or stiles, road maintenance or the provision of accommodation.)

If the government's access policy were to adopt the wording of the above extracts, the access agency would be saying that, under Principle 2, landowners could not charge for simply granting walking entry. Landowners, such as those of the Queen Charlotte Track, would probably reply that, under Principle 1, the terms of access were entirely a matter for negotiation, and that landowners had every legal right to charge for merely granting access.

There would be a danger that, in practice, everyone involved would avoid this irreconcilability by explicitly agreeing to charges for facilities and services, while tacitly recognising that the charges in effect would be entry fees.

I wrote to Damien O'Connor pointing out this apparent contradiction within the principles proposed by the 2007 Acland report. As part of his reply, he suggested that achieving access arrangements according to the proposed principles would be a desirable ideal rather than an absolute necessity:

> The Panel took the clear view in its report and recommendations that walking access over private land was a matter for negotiation and agreement. In this context, the principles could be seen as a guide to access negotiations. Certainly they could not be seen as binding on landholders, who are in general not legally obliged to provide access to walkers. As I understand the Panel's report, it was saying that negotiated access should have, if possible, the characteristics described in the principles. Whether this can be achieved in practice in respect of new access over private land will depend at least to some extent on the resources available to achieve the ideal of 'free, certain, enduring and practical' walking access.[66]

The Department of Conservation, apparently, was 'attempting to secure an arrangement that gives some surety over the future of the track'. The department acknowledged that some of the options could involve charging users on some parts of, or the entire track, either on a voluntary or a compulsory basis. The discussions were at an early stage.[67]

In November 2007 the Queen Charlotte Track committee announced that people using the Queen Charlotte Track would be asked to pay $5. The payment would be voluntary. The money would go into a trust fund to look after the track.[68]

Also in November 2007, evidence of the international standing of the Queen Charlotte Track appeared in an article in *National Geographic Adventure*. The magazine chose a four-day guided walk run by Wilderness Guides, at a price of $1,060, as one of the world's twenty-five 'best new outfitted trips' for 2008.[69] The 2008 edition of Lonely Planet's *New Zealand* guidebook talked about a hugely popular meandering track that offered 'gorgeous coastal scenery, isolated coves, luxury accommodation and pristine campsites'.[70]

In June 2008, according to the *Marlborough Express*, the former chairman of the Queen Charlotte Track committee, Rob Burn, said that the landowners wanted recognition and compensation for their part in keeping the track open. He said: 'Some of the [landowners] are getting older and their patience is wearing thin. They've been looking for financial acknowledgement for 15 years and they haven't got it.'[71]

A year and a half later, the range of issues and also the range of possible solutions seemed to have widened. The *Marlborough Express* reported that a landowner had closed a portion of the track while he or she shot goats on the property.[72] The Department of Conservation was consider-

ing rerouteing part of the track away from private land.[73] The mayor of Marlborough district council, Alistair Sowman, favoured this solution.

Further developments would occur in 2010. They would run counter to the axiom optimistically expressed in the Walking Access Act 2008 – that walking access to the outdoors should be free – and in doing so they would quietly signal the first serious failure of that act. (See Queen Charlotte Track update in Chapter 36.)

Canterbury's Twenty-five Approved Walkways

The 2003 Acland report had disclosed that Canterbury Conservancy had twenty-five approved walkways but that only one of them had been formalised under the New Zealand Walkways Act. I suspected that behind this intriguing snippet would lie facts that would back up my and others' concerns about the permanence of some of our walkways. In October 2007 I wrote to the Department of Conservation, asking the meaning of the word 'approved'. I also asked whether any of Canterbury's twenty-five approved walkways included sections on private land and, if yes, what was the legal basis of the public access along those sections. Was it by easements recorded on the title? Or had DOC negotiated less-formal arrangements?

The department replied informatively. An 'approved' walkway meant that a district walkway committee had approved it before the disestablishment of the walkway committees. (Ie, before the New Zealand Conservation Authority replaced the Walkway Commission as the body responsible for implementing the New Zealand Walkways Act.) In the absence of subsequent action to survey and gazette an 'approved' walkway, it had no formal status or protection in terms of the New Zealand Walkways Act 1990.

Only one of the twenty-five Canterbury walkways had been surveyed and gazetted. This was the Waihao River Walkway, thirteen kilometres southwest of Waimate. An easement had been entered into to secure the walkway, which was over private land.

The letter continued:

> As to the other 'approved' Walkways, they continue as long as the private land owners (where involved) permit public access. Since the Department was established there have in fact been few problems with maintaining public access to the Walkways. However increasing development and subdivision pressure, especially on coastal land, Banks Peninsula and the Port Hills may make retaining these unofficial Walkways more difficult in the future.
>
> Some Walkways are entirely on public land, some entirely on private land and some mixed public and private land. Those on public land are unlikely to face closure unless there is lack of use or they become hazardous.[74]

In a few words, in 2007 some of Canterbury's approved walkways, or some sections of them, were based on lax arrangements and were liable to permanent closure at any time.

The letter did not say whether the Department of Conservation had, at some time in its seventeen years of administering the Walkways Act,

sought to formalise these walkways or sections by asking the landowners to agree easements. Even if DOC had done so, it might have met resistance, partly because the Walkways Act 1990 did not provide compensation to landowners who approved easements. The 2007 Acland report had recognised this thirty-year-old problem.[75]

The same report had also identified a public consensus on five principles of access, the first of which was that walking access should be free, certain, enduring and practical. Walkways vulnerable to permanent closure would hardly accord with this principle. Formalising the legal status of some of New Zealand's existing walkways was likely, therefore, to become one of the tasks facing the proposed access organisation.

Mt Maude Walking Track, Wanaka

Mt Maude Walking Track, at present (2008) closed to the public, starts about five kilometres out of Wanaka on the Wanaka to Hawea road. The round trip up to the first summit point of Mt Maude and back to the road takes two to three hours. In October 2005, before this private track was closed, part of it crossed Mt Burke Station. Another part crossed land owned by Dublin Downs Management Ltd; some press reports referred to this landowner as the Wilson family.

In 2000 the Wilson Farm Partnership Trust had obtained resource consent to subdivide six lots under Mt Maude. But subsequent applications to develop a further four, then three and then two lots had been rejected.[76] Wilson Farm Partnership Trust had then appealed against the refusal of consent for the two-section subdivision. On 28 October 2005 Judge Lawrence Newhook and two commissioners declined the appeal on several grounds. They found that the landscape at Dublin Downs had reached a threshold beyond which further development would over-domesticate the landscape. They also said that the court could consider the adverse visual effects that the proposed subdivision would cause to walkers on the privately owned Mt Maude Walking Track.[77] Robert Wilson's lawyer had argued, unsuccessfully, that the aesthetic rights of people using private tracks should not be considered. He had also contended that the public, using the Mt Maude Walking Track, would be 'blissfully unaware' of the residential enclave surrounded by rural land.[78]

The Wilsons had allowed people access to their private walking track for the seventeen years that they had owned the property.[79] But on about 21 December 2005 the Wanaka newspaper *The Messenger* carried an advertisement placed jointly by Mt Burke Station and Dublin Downs Management Ltd and announcing that they had closed public access to the Mt Maude Walking Track indefinitely.[80] The secretary of the Upper Clutha Environmental Society, Julian Haworth, said that the track closure was 'sour grapes' after the environment court had declined consent to develop some of the land for houses. In response, Robert Wilson issued a media release saying his family regretted closing the track but that the closure was a 'logical and unfortunate outcome' of the recent environment court decision. The statement said that 'rather than sour grapes the decision is to simply protect the economic value of the property in terms of any form of potential future activity requiring resource consent'.[81]

After this environment court decision and the closure of the Mt Maude Walking Track, some observers called for the Resource Management Act

to be amended. Owen McShane, the director of the Centre for Resource Management Studies (a private body funded by a trust), said that the court was just following the letter of the law. As a result, regarding the encouraging of landowners to allow public access, councils and planners were creating more disincentives than incentives.[82] John Aspinall, acting as the spokesman for a Wanaka group called Lakes Landcare Access, said that

> landowners will be very reluctant to grant public access, or negotiate access easements, if this leads to their land being regarded as a public place and a reason for declining subsequent RMA consent applications. The recreational public, Queenstown Lakes District Council and [the] Environment Court really need to get their heads around this issue if they genuinely want to promote foot access.[83]

The mayor of Queenstown Lakes district council, Clive Geddes, pointed out that the view of the proposed development from the Mt Maude Walking Track was only one of a number of aspects considered by the environment court.[84] Denying access to the public would not necessarily mean that a landowner would obtain the approval for a development.

In February 2008 the Mt Maude Walking Track was still not available for public use: another example of the sorry failure of the New Zealand Walkways Act, over many years, to do what it was intended to do.

Cleghorn Street Track, Dunedin

Cleghorn Street Track appeared in Chapter 9. Until then, you had probably never heard of it, unless you had lived in Dunedin. Cleghorn Street Track typifies those fragments of walking track that are nationally insignificant and yet are local gems.

In 2005 Cleghorn Street Track was a permitted foot-track based on an oral agreement.[85] It crossed farmland on the edge of Dunedin. It was only three kilometres long but it formed an essential part of a popular skyline walk over Signal Hill and McGregors Hill, parallel to North East Valley and Otago Harbour. There were splendid views. Ten minutes' drive from the city, the area was typical urban-fringe open space. As early as 1914, a Dunedin guidebook was sending walkers this way: 'From the top [of the Government Scenic Reserve on Signal Hill] the visitor may … proceed along the range northwards and strike the Port Chalmers road close to the Upper Junction.'[86] According to a newspaper report, the farmer had allowed the public to use this track since about 1985.[87]

Some parts of the central section of Cleghorn Street Track were only faintly visible as a foot-track across paddocks, but the whole track was sufficiently waymarked with orange triangles and three stiles. Like many foot-tracks across pastureland, and unlike tracks in the bush, Cleghorn Street Track required minimal maintenance. The 2002 edition of *Dunedin* Topographic Map 260-I44 & J44 did not show the central two kilometres of this track. Neither did NZTopo*Online* (in April 2005).

In about April 2005, after an incident involving his cattle, the farmer threatened to close the track. Later that year he extended the annual summer closure – for that summer – from two months to four months (30 September 2005 to 31 January 2006), a depressing new precedent.

Four months is a third of the year. The public were not involved in the decision surrounding the lengthened closure.

Our having a Walkways Act for thirty-one years had not added any permanence to this foot-track. There were no water margins involved. As far as I know, there were no public roads involved. There would be no legal obligation on the landowner to keep the track open to the public. Would the proposed access agency, conceived to focus primarily on the Queen's Chain and public roads and armed only with walkways legislation that relied on negotiation, be able to improve the permanence of this track? What would the agency do to secure this route?

According to information I received from Dunedin city council, in March 2006 the farmer wanted to close this foot-track altogether. This wish or intention was, apparently, partly in response to the December 2005 environment-court decision that declined consent for the subdivision of some land near Wanaka.

The Otago Peninsula: an Update, January 2008

During the five years that I had worked on this book, the hilly farmland of the Otago Peninsula, half an hour's bike ride from my house, had occasionally pulled me away from the keyboard. The Otago Peninsula had also forced its way insistently into my writing. Chapter 7 described the foot-track developments on the peninsula in the early 1990s. These developments starkly illustrated two national issues concerning foot-track networks: firstly, the flaws of foot-track networks based largely on the chance existence of unformed public roads; secondly, the nonfulfilment of the aims of the New Zealand Walkways Act. Furthermore, highlighting the local importance of these two issues in the context of the Otago Peninsula, in Chapter 16 we saw that Dunedin city council's District Plan classed much of the peninsula as either an outstanding landscape area or a landscape conservation area.

In England and Wales many privately owned hill farms, forming centrepieces of exceptional panoramic views as do the farms of the Otago Peninsula, lie within national parks and therefore enjoy stringent protection from residential development. But on the Otago Peninsula, it seemed, a hill farm could come up for sale and be, at least in part, RIPE FOR DEVELOPMENT.

The Harbour Cone – Peggys Hill Farm

In late 2007 one of the largest farms on the Otago Peninsula came up for sale. Akapatiki A Block, loosely referred to as the Harbour Cone – Peggys Hill farm, spanned the midriff of the peninsula from near Broad Bay almost to Hoopers Inlet. The land included most of Harbour Cone (315 metres), a distinctive feature of some well-known Colin McCahon drawings and paintings. It also included the summit ridge of Peggys Hill, part of the peninsula's main spine. Peggys Hill (401 metres) is the second highest point on the peninsula. The 360-degree panorama from its summit takes in the peninsula itself, the ocean, the Otago Harbour, the city, and the Mount Cargill–Flagstaff skyline.

The property covered 328 hectares. It was on the market for approximately $2.5 million. Developers had expressed interest. It seemed that there was a possibility of splitting the property into lifestyle blocks. If

this happened, between eleven and twenty-one houses could be built on the land.[88]

In about November 2007 a group called Save the Otago Peninsula proposed that Dunedin city council buy the Harbour Cone – Peggys Hill farm as a recreational farm park for the city. The group was concerned about losing the integrity of this marvellous property if it was chopped into separate blocks and if houses were sprinkled over it. The group's proposal to the city council emphasised the rarity and importance of the opportunity that had suddenly arisen:

> One of the largest farms on the Otago Peninsula has just come up for sale, offering an unprecedented opportunity to secure some of Dunedin city's most iconic rural landscape in an area which is the centrepiece of Dunedin tourism, and to create a parkland that would be a significant asset to the residents of Dunedin.
>
> The property is outstanding: it sits at the core of the peninsula; is currently a working farm; includes significant forest remnants, historical and geological features; contains the most recognisable landscape feature on the peninsula (Harbour Cone); and provides commanding views. It already includes several short walkways, and would ideally accommodate a network of looped walking and mountain biking tracks, picnic spots and viewpoints. There is potential for farm tourism, and 3 kilometres of the scenic highway of Highcliff Road run through the farm.[89]

Regarding the recreational potential of the land that was for sale, the group's proposal listed the possibilities:

- There is amazing potential for developing a network of tracks on this property, including dedicated mountain biking as well as walking tracks.
- Existing tracks on the peninsula are often steep, and do not connect with one another, whereas the new tracks would include loop tracks, and gentle gradients which follow existing contoured farm tracks.
- The tracks would span the peninsula 'coast to coast' from the harbour to Hooper's Inlet, [would] offer exceptional views from many vantage points including the summits of Peggy's Hill and Harbour Cone, would take in forest as well as pasture, and connect with Broad Bay and Larnach's Castle, as well as with existing tracks.
- The track network could be reached by public transport, making it very accessible to people without cars.
- Road widening [of Highcliff Road] would not only make the road safer for vehicles, including buses, but might allow for a dedicated cycle-walkway alongside.
- This network of tracks could be the core of a walkway which allowed people to walk off-road from Dunedin City to Taiaroa Head.[90]

Four things struck me about the sale of Akapatiki A Block. Firstly, the Save the Otago Peninsula proposal to the city council described the views from Peggys Hill as 'breath-taking and dramatic'; equally impressive and worthy of exclamation had been the failure of the New Zealand Walkways Act, for thirty-two years, to create public walking access to this hilltop near Dunedin.

Secondly, it seemed that Akapatiki A Block's being largely within the Peninsula Coast Outstanding Landscape Area and partially within the Northwest Peninsula Landscape Conservation Area would not prevent its subdivision and the subsequent building of houses. The Resource Management Act, much criticised as too limiting by right-wing politicians, would not preserve this landscape. In this respect, the sale of Akapatiki A Block posed similar issues to those posed by the sale of Belmont Regional Park's Waitangirua Farm (Chapter 7) and by the freeholding of large parts of Richmond Station on the eastern shore of Lake Tekapo (Chapter 33).

Thirdly, Akapatiki A Block was a striking example of an area where many of the visualised new tracks had nothing to do with water margins or were only indirectly connected with water margins. The greatest recreational benefit of improved access to this farmland would be the gaining of walking access to the ridge-line of the peninsula. It was hugely important that the government's national access strategy, still under consideration, should accommodate not only the recognised need to improve access to Queen's Chain reserves but also the neglected need for non-water-margin access to the pastoral countryside. The proposed top-level aim excluded this second need, except where the pastoral countryside was publicly owned. I wrote to Damien O'Connor, making this point. His reply suggested that the planned legislation would empower the access agency to consider the need for access to areas other than just riversides, coasts and publicly owned lands:

> The focus of the walking access policy has … been on water margin access and access to public resources. The walking access policy approved by the Government in December 2007 does not, however, confine the role of the proposed access agency to these two priorities, and the agency will no doubt give consideration to other access in appropriate circumstances.
>
> I have asked the officials involved in the drafting of the proposed walking access legislation to ensure that the functions of the proposed Crown entity are sufficiently broad to enable it to consider access in any location. The resources of the Crown entity will of course be limited, and it will have to consider and determine priorities for its work.[91]

Fourthly, the Protect Harbour Cone campaign, mounted by Save the Otago Peninsula, aimed to conserve the landscape and to improve public access not by appealing to the civic spirit of farmers – unpredictable, variable and effervescent – but by means of public ownership. It seemed that the only way to enhance the walking and mountain-biking access to the peninsula's stunning farmlands was for the city council to buy a chunk of the peninsula.

And this was what the council decided to do. On 24 January 2008 Dunedin's mayor, Peter Chin, announced that the council had agreed to buy Akapatiki A Block. The council still had to decide how to fund the purchase. A settlement date had yet to be fixed. The council had 'been impressed with the quality of the hundreds of submissions' it had received.[92] It was clear that many Dunedin residents supported the purchase.

To sum up: as was the case with Belmont Regional Park's Waitangirua Farm, New Zealand's legal and institutional provisions for preserving the rural character of this privately owned farmland and for gaining recreational entry to it were so comically frail and ineffective that the only solution was for the council to buy the farm.

This outcome was predictable. Writing in 2004 about the wild property boom of the preceding decade, Mick Strack had questioned the ability of local authorities to plan for growth. The Resource Management Act 1991 required developers to avoid or mitigate adverse effects, but identifying effects on landscapes as adverse was riddled with subjectivity. Despite the good intentions of the act,

> precedents of consents for past developments make it difficult for consent authorities to deny later development. The free market dominates in land development and in spite of environmental management legislation, economic factors dominate over social or environmental concerns.[93]

Dunedin city council took possession of Akapatiki A Block on 1 July 2008, having paid $2.6 million for the 328 hectares. By June 2009 the council had opened several walking tracks on the property, which was to remain a working farm. The council was preparing a draft management plan that would take into account the protection of heritage sites and biodiversity, the provision of public access, and the continuation of farming.

Waitakere Ranges Heritage Area Act 2008

On 2 April 2008 parliament debated the Waitakere Ranges Heritage Area Bill for the third time. The bill sought to establish the Waitakere Ranges Heritage Area, which would comprise 27,720 hectares, nearly two-thirds of which would be the existing Waitakere Ranges Regional Park. The Waitakere Ranges Heritage Area would include 10,000 privately owned properties.[94] In 2005, more than 21,000 people lived there (outside the regional park), mostly in forest-dominated urban, rural, or coastal communities.[95] The legislation, if passed, would enable the three involved councils to more carefully manage development and to better avoid any adverse cumulative effects of subdivision.

A long history lay behind the bill. 'The Auckland City Council had begun buying land there for water-catchment purposes in 1899, as well as for scenic reserves. In 1924 the Auckland Blue Mountains Society called for creation of a park. The following year the Waitakere Association was founded to attain national park status for the area.'[96]

Some people considered the Waitakere Ranges to be too low and tame – not spectacular enough – to merit nation-park status. The mountaineer John Pascoe was surprised 'to learn that what looked like a hedge on part of Auckland's low horizon was the Waitakeres'. In July 1938 he 'went hedge-hopping on this range and found that … kauris gave a semblance of undulation to dull ridges in the way that a good whisker hides a receding chin'.[97]

Plenty of people disagreed with Pascoe; Aucklanders loved their 'glorious Waitakere heights'.[98] The ranges were the weekend home of the Alpine Sports Club, formed in Auckland in 1929. In 1941 an act of parliament created Auckland Centennial Memorial Park, New Zealand's first regional park.[99] But new concerns about the future of the ranges arose in the 1980s. By 2001 the unease had intensified into a desire, by some, for urgent additional restraints on developments. Morgan Williams, the parliamentary commissioner for the environment, referring specifically to the Waitakere Ranges, wrote:

> Of greatest concern to me and my team, it appeared that the planning processes, as they were being applied, were not sufficient to sustain the very characteristics of the landscape and its ecological qualities that most people in the community cherished. I concluded that the planning processes were leading inextricably to death by a thousand cuts: 100 years from now the freehold parts of the Waitakere Ranges would look like Remuera today![100]

During the third reading of the Waitakere Ranges Heritage Area Bill, David Cunliffe, the member of parliament for New Lynn, remarked that 'the people of Waitakere have been working for this day for 30 years'.[101] The event was the culmination of years of combined effort by many people at Auckland regional council, Waitakere city council and Rodney district council.

Cunliffe described the legislation as 'a solution to a complex conflict between the short-term and legitimate demands of property owners, and the long-term call by residents to protect an iconic resource'.[102] He said that the demand in the Auckland metropolis for land for subdivision would be unrelenting. Had the situation been left unchecked, the character of the ranges would have slowly changed for the worse. Many rural, coastal and bush areas, without protection, might have undergone creeping urbanisation.

The National Party opposed the bill. Nick Smith, National's spokesman on the environment, argued that the legislation would not improve the environmental management of the Waitakere Ranges. The bill would create 'unclear, fuzzy law' that would only worsen the problems of the Resource Management Act.[103] The government, he said, had presented only one substantive argument for the legislation, which was that the Resource Management Act did not properly deal with cumulative effects. 'We should fix those problems with the [Resource Management] Act,' he suggested, 'rather than introducing this sort of piecemeal legislation.'[104]

The bill narrowly survived this third reading, sixty-one ayes against sixty noes. The National Party, the New Zealand First Party, United Future, ACT New Zealand and Gordon Copeland voted against it.

The Waitakere Ranges Heritage Area Act 2008 is mainly a measure to strengthen other planning controls. It refers to recreation just three times and briefly; the act lists fifteen heritage features, one of which is 'the opportunities that the [heritage] area provides for wilderness experiences, recreation, and relaxation in close proximity to metropolitan Auckland'.[105] The act does not mention access or walkways or tracks or paths. By preserving the countryside, however, the act will help to safeguard the rurality of the area's foot-tracks, and so it deserves the attention we've given it here.

On 11 January 2010, Auckland regional council opened the Hillary Trail, a seventy-kilometre four-day tramp through the Waitakere Ranges, based on existing regional-park tracks but with new linking sections. The trail starts at Arataki Visitor Centre near Titirangi and ends at Muriwai.[106] Trampers can use the three Hillary Trail campsites, which are basic and cheap, or they can seek more-pampering campgrounds or backpackers.[107]

A Sample of Track Developments in 1998–2008

It would be useful, at this point, to scan a random selection of the track developments that were happening around New Zealand in the first decade of the 21st century.

Te Araroa (the Long Pathway)

Te Araroa Trust, with the advantage of its uniquely ambitious national project, had successfully negotiated with many landowners to arrange access where sections of Te Araroa (the Long Pathway) crossed private land. We regularly heard news of the opening of a new section of this national trail, which when completed would stretch for about 2,920 kilometres from Cape Reinga to Bluff.

On 26 February 2006 the prime minister Helen Clark opened Burtton's Track, a sixteen-kilometre piece of Te Araroa through the Tokomaru valley. This new track, built by a combination of volunteers, paid work gangs and army engineers, re-established a track first cut in the early 20th century by a reclusive backblocks farmer, James Burtton.

In March 2006 the Eastern and Central Community Trust approved a donation of $100,000 towards the cost of a new portion of the Manawatu Riverside Walkway in Palmerston North. The shared pathway, open to cyclists as well as walkers, would become part of Te Araroa.

On 5 April 2006, the ASB Trusts announced that it would allocate $100,000 towards the cost of the northern leg of the trail, from Cape Reinga to Mercer. This 712-kilometre section, about a quarter of Te Araroa, was expected to cost $1.4 million.

In April 2007, Te Araroa Trust's northern projects manager, Fiona Mackenzie, announced that private landholders had ushered Te Araroa through a difficult seven-kilometre stretch between Matapouri and Ngunguru. Rather than routeing the track along the coastline, the trust had chosen to go inland via several public and private forest and bush blocks and some paper roads. Negotiations had taken almost a year, but

the support and cooperation from landholders had been encouraging. The area was a hub of conservation effort. Mackenzie said: 'It's been a delight to work with so many people who care deeply about our country, and our environment.'[108]

In May 2007 the government granted $3.8 million, to be channelled through the Department of Conservation, towards those parts of Te Araroa that crossed the public estate. This money would pay for the construction of new tracks and the improvement of existing ones.

In April 2008 a Te Araroa construction team completed the 5.5-kilometre Onekainga track leading north from Whananaki, an estuary community northeast of Whangarei. Thanks to the generosity of the farmers, the track crossed private farmland and private protected bush. It passed close to Onekainga summit and finished at the edge of Mimiwhangata Forest Reserve, awaiting an agreement on a route through the forest.

Judged in terms of the length of new track opened during the year, 2008 was the best year yet for Te Araroa Trust. It opened fourteen sections of track, totalling 134 kilometres. Also 2008 marked the first full year of DOC itself being responsible for the funding of new pieces of Te Araroa across DOC-managed land; previously Te Araroa Trust had financed the building of such tracks.[109]

Some sections of Te Araroa did not take the most obviously attractive, ideal routes; instead they took second-choice routes as compromise solutions. Some of these compromise routes were viewed as temporary ways, awaiting the eventual negotiating of access to more-scenic routes. In July 2008 the *Dominion Post* reported on the progress of Te Araroa Wellington Trust in joining the dots between Wellington and Levin. One trustee, Bill Wakelin, had taken on the task of talking to landowners in areas where the trust wanted to route the track over private land. The trust's biggest headache, said Wakelin, was in negotiating access across private land. The *Post* described some aspects of this headache:

> Though the Wellington to Porirua section is technically complete, it's not the route of choice. The trust covets the views from the ridge above Ohariu Valley, rather than the dull plod of rural valley roads. But shifting the track to the ridge necessitates convincing four landowners that a public right of way won't compromise their privacy of land values.
>
> 'Just talking to farmers is difficult,' Mr Wakelin says. 'Some are scared of rustling or stock being damaged or hoons bringing on dogs and guns. It's hard to convince them the average walker doesn't do that. It takes a lot of energy to walk some of our walkways. Hoons don't tend to do that.'
>
> Every landowner is a different challenge – some want recognition, some compensation, some want the trust to buy the relevant tract of land. The group's treasurer, John Farrell, is also a lawyer and his skills have been critical to the voluntary trust. 'You've no idea how much time we spend getting access to land and putting it down on paper in legal terms.'
>
> He says the proliferation of lifestylers makes the job more difficult than it would have been 20 years ago. The sheer number of different

> landowners makes the task more onerous. And, while farmers are mostly worried about security, lifestylers want privacy and that's more difficult to ensure.[110]

Access was also the biggest challenge facing the project nationally, according to Te Araroa Trust's chief executive Geoff Chapple. In 2008, of the 2,920 kilometres planned, 84 per cent was already easily walkable, with about 70 per cent on good tracks and 14 per cent along back roads such as in the Ohariu valley. Another 10 per cent followed legal rights of way but was untracked. This left 6 per cent crossing land that could be traversed only with permission.

Te Araroa Trust aimed to have in place a New Zealand-long walking trail by the end of 2010. (Pushed back from an earlier completion date of 2008 and later revised to December 2011.) The 2007 Acland report acknowledged the excellent work undertaken by this and other trusts. The consultation panel also, however, said that it was unclear how much of Te Araroa, as existed in 2007, met the requirements of the panel's proposed Principle 1, ie that access should be, among other things, certain and enduring. Te Araroa Trust was not using the New Zealand Walkways Act to protect the new trail, where protection was needed. It was using alternative mechanisms.[111] These included easements and informal agreements.

Some Developments by Other Track Trusts

While Te Araroa Trust was working nationally, using regional arms such as Te Araroa Auckland Trust and Te Araroa Waikato Trust, most other track trusts were solely regional. The Waikato River Trails Trust, formed in 2006, had opened nearly twelve kilometres of public trails. It was planning to have opened over a hundred kilometres by 2010. Its long-term aim was to create a trail from Taupo to Hamilton.[112]

The Waiau Fisheries and Wildlife Habitat Enhancement Trust had been created in 1996 when the resource consents for the Manapouri Power Scheme were renewed. One of the key objectives of this trust was to facilitate public access to fisheries and wildlife habitats within the Waiau River catchment. The trust had built nine kilometres of walking tracks at its Rakatu Wetlands project.[113]

The Wakatipu Trails Trust had been formed in 2002 with considerable public support. It had decided to focus its efforts solely on creating 'a world-class network of trails in the Wakatipu Basin'.[114] In September 2008 the trust's retiring chairman, John Wilson, reported that during his six years of leadership the popularity of and public interest in walking and cycling trails had grown enormously. The trust's most notable achievement had been the building of the Lake Hayes walkway. The work of establishing the network of trails had been a team effort:

> Trails such as the Lake Hayes walkway came as a result of [the cooperating of] several agencies, namely Doc, QLDC [Queenstown Lakes District Council] and the WTT [Wakatipu Trails Trust], as well as adjacent landowner Jim Boult, who got on board enthusiastically to allow the track to cross his property.

> 'It's a classic example of the kind of teamwork a track often requires and of all these agencies being involved,' [Mr Wilson said]. 'I say building a trail is like an iceberg – you only see 10% of what's there. It takes lots of time and winning over the attitude of the landowners. As people see the success of the Lake Hayes trail, they will see that it doesn't impact on the landowner.'[115]

In November 2008 the botanist and author David Bellamy opened thirty-one kilometres of walking tracks in the Oparara valley near Karamea. The opening was the culmination of six years' work by the Oparara Valley Trust at a cost of $3.2 million. The work had included upgrading four kilometres of existing track, building twelve kilometres of new track, and making available fifteen kilometres of logging track for walking and mountain-biking.[116]

Some Track Developments by Local Authorities and Partnerships

A number of local authorities, sometimes in partnership with recreational groups, had made considerable progress establishing walkways. The Port Hills of Christchurch benefited from many years of gradual growth of their track network, which includes foot-tracks on hillsides, spurs and ridges as well as along rivers and streams. This comprehensive network of tracks originated from agitation for access that had started about 1900: 'The struggle to see the Port Hills preserved for public enjoyment, and, central to this, the dream of creating a walkway between Christchurch and Akaroa, was an obsession Harry Ell pursued for some 30 years, until his death in 1934'.[117]

The Port Hills Recreation Strategy of 2004 listed conceivable future enhancements to nonmotorised access. The possibilities included: the development of low-level contour tracks on the northern flanks of the Port Hills and around the harbour basin; building additional linkages from the plains and the harbour basin to the Summit Road; looking into a walking route across the top of Mount Pleasant to create a loop track with the Crater Rim Walkway; investigating a mountain-biking link from Major Hornbrook Saddle to Evans Pass; and investigating a mountain-biking link between Witch Hill and Castle Rock Reserve.[118]

Elsewhere in Christchurch, in 1998 Christchurch city council had completed a new walkway following a 147-year-old towpath along a bank of the Heathcote River. This project had involved ten years of research, consultation and planning.[119]

*

A considerable amount of track development was taking place in the vicinity of the upper Clutha River. In 1998 the Otago regional council had opened the Alexandra–Clyde 150th Anniversary Walk, thirteen kilometres of track designed to enhance public access to the Clutha River. This track was open to horse-riders and mountain-bikers as well as to walkers. It had become immensely popular. In about 2005 the Central Otago district council and the Clutha Fisheries Trust, in cooperation with other bodies and landowners, had proposed to develop walkways along the upper Clutha River. (Just in time. One report said that from 2000 to 2005, subdivision had resulted in the loss of one-third of the access to the Clutha River.[120]) In April 2006 the Wanaka community board of the

Queenstown Lakes district council approved a draft walking and cycling strategy for the upper Clutha basin that planned 'to improve and expand on the existing infrastructure such as footpaths, roading, multi-use trails and purpose-built tracks for either bikers or walkers'.[121]

In January 2008, the Teviot Valley walkway committee completed Commissioner's Track near Roxburgh, ending a ten-year project that had been 'an exercise in perseverance for the [track] committee, working through various members of Parliament to obtain permission for the track on Crown Land'.[122] Contact Energy had granted $64,000 towards the work on this track, part of which was on Contact Energy's land. Much volunteer labour had also been required.

In May 2008 the newsletter of the Clutha Mata-Au River Parkway group reported on the Albert Town to Luggate track and the Luggate to Maori Gorge track, a couple of the evolving links in what could become an unbroken Clutha River trail, potentially linking Te Araroa at Lake Hawea with Lawrence, 190 kilometres downriver.[123]

Further news on this Clutha River trail arrived in September 2008, after a feasibility study into the Roxburgh to Lawrence section, funded by the Central Otago district council and the Clutha district council. Rod Peirce, the chairman of the Roxburgh–Lawrence Trail working party, confirmed that conditional approval had been given for the proposed seventy-three-kilometre trail. Much negotiating with landowners still remained to be done. The working party estimated that building the trail would cost $5.5 million, which would be sought from private funders and corporate sponsorship. Entry to the trail would be free for individual walkers and individual cyclists. Tourist operators, however, would need to buy concessions to take groups along it. The money raised from the concessions would go towards the annual running costs of the trail.[124]

A track development was also taking place along the Kawarau River. In about March 2007, members of the Gibbston community association cleared about 1.5 kilometres of what would become the 8.5-kilometre Gibbston River Trail.[125] The association was working in partnership with the Queenstown Lakes district council, Wakatipu Trails Trust and the Department of Conservation. In January 2009 the association's top priority was to negotiate the easements required over private land. Of the $1.4 million required to build the trail, about $149,000 remained to be raised. The association was hoping to complete the trail in 2009.[126] (It opened on 4 December 2010.[127])

*

In 2005 the Greater Wellington regional council used existing tracks to establish a new twenty-two kilometre walkway-cycleway across Belmont Regional Park. About half of this signature traverse went through open pastures.

In November 2008 the parks and gardens division of Hutt city council produced its ten-year plan for managing and developing the council's track network, titled Draft: Making Tracks. Hutt city council was responsible for about sixty-four kilometres of track, which it managed as recreational assets. As well as considering the local track provision the council also recognised the importance of the regional track provision; it liaised with neighbouring councils to increase linear recreation opportunities.[128]

The council allocated about $114,000 annually for inspecting, maintaining and upgrading its tracks. With a few exceptions, all these tracks were equally available to walkers and mountain-bikers; the public of Lower Hutt accepted that most tracks in the city council's area suited this shared use.[129] The draft ten-year plan included information about the state of the existing tracks. It also proposed some new connections and it suggested how these might be ranked in order of priority, to be tackled over ten years. The document was to be released in December 2008 for public consultation.

In the Hawke's Bay area, the Napier city council, Hastings district council, Hawke's Bay regional council and the Rotary Pathways Trust were planning an extensive network of interconnected paths for walkers and cyclists.

On the southwestern edge of the Tongariro National Park, local individuals and community groups were working to reopen the Ohakune Coach Road. This road, built over a track mapped out by John Rochfort, has national significance as an example of a well-preserved, handmade road that is intimately linked with the final stages of the construction of the North Island Main Trunk Line.[130] The restored track, when completed, would provide a fourteen-kilometre walking track from Ohakune to Horopito. (A big step forward would happen on 14 February 2009, with the reopening of the Hapuawhenua Viaduct, restored jointly by the Department of Conservation and volunteers from Tongariro Natural History Society.)

In September 2005 the Royal Society of New Zealand, acting on behalf of the government, awarded a Hawera teacher, Diana Reid, a New Zealand Sciences, Mathematics and Technology Teacher Fellowship so that she could spend a year investigating the feasibility of building a walkway along south Taranaki's coastline.[131] She presented this study to the South Taranaki district council at the end of 2006. The council put the coastal trail into its fifteen-year plan, where it gravitated to a category of to do if finances allowed.[132] (In May 2010 the council was consulting with local hapu on a possible first stage, which would follow the foreshore from Ohawe to Waihi Beach, near Hawera.[133])

In July 2007 the Taranaki regional council published *Regional Walkways and Cycleways Strategy for Taranaki*, covering urban and rural paths, tracks and routes. This document included ambitious plans for future regional developments.[134] The new walkways and cycleways, with the existing ones, would form 'an integrated region-wide network of pathways'. A note at the end of the chapter on funding supplied some realism: 'Unfortunately a major limitation or barrier associated with the successful implementation of walking and cycling facilities in the region is the lack of available local funding … This can therefore be a major barrier to the achievement of the objectives and policies set out in the Strategy.'[135]

In 2004 in the South Waikato, Liz and Dick Johnson approved a new walkway along three kilometres of their farm boundary, following the old Hamilton–Taupo coach route alongside Lake Arapuni. The project followed approaches to the Johnsons from the South Waikato Economic Development Trust.[136]

Auckland city council had developed a draft plan for Churchill Park that, if adopted, would retain the reserve's countryside-in-the-city character. The plan included a new footpath network that would accommodate grazing cattle. On Waiheke Island, the network of walkways was growing steadily, thanks to the combined efforts of Auckland city council, the Waiheke community board and some Waiheke residents (see Appendix 2).

The regional councils of Fish and Game New Zealand had undertaken a comprehensive signage programme to inform anglers and (in appropriate locations) hunters where they could fish and hunt. For example, by 2000 the Nelson-Marlborough fish-and-game council had signposted about 250 river access points and had produced a brochure mapping these places.[137] In the six years up to 2007, the Eastern Region fish-and-game council had erected 280 access signs and had developed forty-five kilometres of stream and lakeside access tracks.[138]

Involvement of Volunteers in Track Developments

In some places, volunteers were building and maintaining walkways, keeping alive a long-established aspect of the development of foot-tracks in New Zealand. I shall give a few examples.

In the spring of 1998 in south Waikato, a working party of Putaruru College students and other local volunteers started designing and building the 5.2-kilometre Te Waihou Walkway. The route would weave through rolling pastures and then wind into two narrow bush-clad gorges to emerge at the translucent waters of Blue Spring. Carter Holt Harvey donated wood for fencing and boardwalks. Coca-Cola and local businesses gave money. The walkway opened in 2000. In 2002 it won a New Zealand Recreation Association Outstanding Programme award. This success led to other developments, such as an annual water festival. Putaruru's mayor said: '[The walkway has] turned the town around and got it back on its feet – literally.'[139]

In March 2005 the *New Zealand Herald* reported that volunteers, including students from Hamilton Boys High School's outdoor-education class and from Te Awamutu College, were helping to build a walkway over the summit of Mount Pirongia. The walkway would eventually become part of Te Araroa (the Long Pathway).[140]

In the same month, the *Waikato Times* reported that volunteers led by Paeroa Lions and Rotary Club members were building a walkway along the top of the Paeroa stopbank. The volunteers were working on the project each Wednesday and Saturday. Also, a group of offenders doing community work was helping. Most of the funding had come from Paeroa's 2004 community day out. Hauraki district council had agreed to maintain the walkway once it was finished.[141]

In April 2006 the *Daily Post* reported that the Okareka Landcare Group was seeking volunteers to join a working bee on the Okareka Walkway, a five-and-a-half kilometre track through farmland, beach, lake and wetland scenery near Rotorua. There was rubbish to be cleared from the walkway area and mulching to be done. Sandra Goodwin, the group's secretary, said that the walkway was

> getting really popular, it's really awesome … It just makes the lake a nice place to live and nice for visitors to come [to]. It's too big a job for [the] council to do on [its] own. [The] council needs the support of its community.[142]

Also in April 2006 the *Dominion Post* reported that a community-driven do-it-yourself approach had overcome a budget blowout that had threatened to stop an upgrade and extension of the Deliverance Cove walking track. Masterton companies had donated pipes and discounted materials, and locals had supplied tractors, loaders and trailers. As a result, the work had been completed well within the budget.[143]

In the Far North, the Bay of Islands Rotary Club, with the support of other community bodies and the approval of the Far North district council, had started work in about 2005 on a walkway from Okiato to Russell.[144] In 2006 the *Russell Review* reported that the Bay of Islands Walkways Trust had been formed to 'implement off-road walking tracks and promote them as leisure routes and nature trails for the local community, schools, environmental groups and ecotour operators'.[145] The trust's initial priority was to complete the Okiato–Russell Walkway. The 2009 *Russell Review* said that tradespeople had donated much work and that weekly working bees were performing all the basic construction. Volunteers were also responsible for track-inspecting, plantings, and the clearing of weeds and excessive growth.[146]

In Lower Hutt in about 2008 the mountain-biking community provided a well-coordinated and abundant source of enthusiastic volunteers to work on several trails at Waiu Street.[147] Hutt city council promoted these tracks for mountain-biking, but walkers could use them too.

As indicated earlier, volunteers were involved in many of Te Araroa Trust's track-making projects up and down New Zealand. In November 2008, for example, conservation volunteers in Northland pushed a four-kilometre link through the Mackerel Forest near Ngunguru, thus eliminating twenty kilometres of road walking. The work involved cutting back bush, building a stile, and waymarking the route through the commercial pine forest.[148] In June 2009, with 70 per cent of Te Araroa in place throughout the country, the trust expected an increased need for volunteers to help with maintenance.[149]

Ending the Years of Inertia

We have already, back in Chapter 6, recognised that Te Araroa Trust's work between 1995 and 2010 amounted to a quiet upsurge in track-building in New Zealand. We need to expand that comment beyond the context of Te Araroa (the Long Pathway) to say that the list of track developments being undertaken in 1998–2008 by other trusts, local authorities, the regional councils of Fish and Game New Zealand and other volunteers was impressive. It was great that residents and tourists in the Wakatipu basin and the upper-Clutha basin could easily access a variety of interlinked trails. Similarly, the people of Christchurch could enjoy an ever-growing web of walking and cycling tracks on the Port Hills. But if in this decade we were witnessing a quiet revolution in walking access to privately owned countryside, then we were only at its

start. If there was one track-less Kaikohe in New Zealand, there were dozens. This would not change overnight.

Many small country towns still awaited their first walkway. Kaikohe, when I lived there, had not a single walking track recognised as open to the public.[150] It is not asking a great deal to be able to take a morning's walk, legally, through the farmland that surrounds the town where you live. I mean on foot-tracks, not gravel roads.

The extensive grazing of the Otago Peninsula, close to a city of 114,000 people, still waited patiently for an unbroken coastal walkway and for public walking access to most of its high-points. The peninsula's immature collection of foot-tracks was piecemeal and half-hearted. The tracks amounted to a sniffling network, like a blocked nose. The easternmost third of the peninsula, renowned for its albatross colony, should have been infamous for its unabundant public foot-tracks. The incipient developments in the Harbour Cone – Peggys Hill area were, in 2008, ending the years of inertia, but were just a sample of what was needed.

From 1990 onwards the minister of conservation could appoint a local authority (or any other statutory body) as the controlling authority of a walkway. But many local-authority walking tracks, sometimes called walkways, were not gazetted walkways under the New Zealand Walkways Act. There were no national statistics on the number and length of these ungazetted walkways nor on their legal statuses. There were doubts about the permanence of some of these so-called walkways. Under section 29 of the New Zealand Walkways Act 1990, the minister of conservation could revoke the *Gazette* notice declaring a walkway, without public involvement in the decision to do so; ungazetted walkways could be even more defenceless, at risk of peremptory closure regardless of their public value. Local statistics were available for some areas; so a few of us knew, for example, that in 1998 in the area administered by Dunedin city council, numerous tracks were based on half-baked agreements, vulnerable to changes in the landowner's attitude to public use.[151]

Near my desk as I write this is a file that I haven't yet organised into a coherent contribution to this book. It holds reports of vanished walkways and foot-tracks, no doubt once opened by dignitaries in walking boots, only to be closed a few years later. (See Appendix 2.)

Not Yet a National Network

In 2000 Geoff Chapple had questioned whether a pattern of public foot-tracks would ever cover New Zealand in an interlinked way: ' … [the word] "network" is not adequately descriptive of New Zealand circumstances or what can be realistically achieved.'[152] Three years later Public Access New Zealand seemed to agree with him: 'The founding object of establishing a coherent national walkway system has not been even remotely realised.'[153]

In 2008, the national collection of public foot-tracks was still acutely partial. Our foot-track systems were mature and world-class in some places, dazzlingly nonexistent in others. The national parks, conservation parks, forest parks and other reserves possessed long-established tracks, sometimes in a way that deserved the term 'network'; but many of these tracks were hundreds of kilometres away from where most of us lived. Te Araroa was our emerging end-to-end trail, likely to become

internationally known. Several east-west coast-to-coast trails were being talked about. Some of our towns had developed or were planning local webs. But elsewhere existed millions of trackless pastoral hectares.

Even if we took into account the achievements of some local authorities and the negotiating accomplishments of Te Araroa Trust and other track trusts, much of pastoral New Zealand stayed closed. Many areas of uncultivated land lacked even linear access, never mind area access. We did not need statistics to evidence this. We could drive across the countryside on roads, and we could step out of the car to stretch our legs on the roadside, but that was about as far off the tarseal as we could go, unless there happened to be an unformed public road or a Queen's Chain reserve or some other public land. The New Zealand Walkways Act 1975 and the New Zealand Walkways Act 1990 had, except in isolated scraps, fallen short of unlocking our rural land. Our farms, covering in 2007 about 42 per cent of New Zealand's area[154], possessed merely the fragmented beginnings of a public foot-track network. They still clearly amounted to a keep-out countryside. Our rigorous trespass laws inhibited innocent outdoor recreation. Private property rights remained paramount.

Time may yet prove Geoff Chapple wrong. Ironically, if it does, he himself, by adroit negotiating and consummate powers of persuasion, will have done more than anyone else to establish the backbone of the national network.

Chapter 33

Tenure Review Rolls on, 2004–2007

In Chapter 9 we saw that the 2003 Acland report suggested two measures that, if taken, had the potential to improve walking access to the South Island high country: reviewing the use of access easements and making more information available about the new accessways these easements were creating. In Chapter 11 we touched upon tenure review again but have hardly mentioned it since. The 2007 Acland report repeated, more or less, the comments of the 2003 report. Tenure review was never one of the main focuses of the government's walking-access enquiries. (Other arms of the government were continually involved with it.) Neither has it been the chief focus of this book.

Tenure review was always there, however, a chronically controversial process chugging away in the South Island's backblock mustering country, switched on in the mid-1990s, never switched off, regularly reaching the newspapers, periodically reconsidered and adjusted by governments, posing questions far wider than just access but containing some important access issues, and increasingly the subject of academic papers from fields as diverse as ecology, agriculture, economics, law, land-surveying and political science.

Detailed accounts of the history and controversies of high-country land reform are available in several books.[1] The following chronological summary of events just records some salient happenings of 2004–7.

In June 2004 Chris Carter, the minister of conservation, announced a $79 million package to fund the evolution of a new network of conservation parks and reserves from crown pastoral leases in the South Island high country. He described the money as 'a significant commitment by the Labour-Progressive government towards properly resourcing tenure review, a process that promises to create new recreation opportunities for the New Zealand public and new economic opportunities for high country farmers'.[2]

In the package, Land Information New Zealand would receive an additional $15 million over four years to fund the process of tenure review, and a fund of up to $46 million to cover the costs of tenure-review settlements negotiated with farmers. The Department of Conservation would

receive an extra $18 million over four years to fund DOC's involvement in tenure review and to fund the administration of new conservation lands flowing from tenure review and from land purchases.

In March 2005 the High Country Accord, a group claiming to represent a majority of the South Island's crown pastoral leaseholders, released a tenure-review fact-sheet. Although the High Country Accord supported tenure reform in principle, it argued that too much mid- to high-altitude tussock rangeland, normally lightly grazed by Merino wethers and ewes in summer, would be incorporated into the conservation estate and be lost to farming. The Accord's fact-sheet took issue with the Department of Conservation's interpretation of 'ecological sustainability', a key term in the government's South Island High Country Objectives.[3] The Accord wanted the government to revise its tenure-review policies to give economic and social sustainability equal weighting with conservation concerns.

In April 2005 the Royal Forest and Bird Protection Society updated its own tenure-review fact-sheet. Forest and Bird argued that, looking at the completed reviews, leaseholders had been the big winners as the crown had allowed them to freehold about 60 per cent of the land. Forest and Bird said that

> stock are being allowed to graze fragile alpine herbfields, and extensive areas of tussock grasslands and shrubland remnants. Grazing prevents regeneration and restoration of the tussocks and shrubs … Major changes are therefore needed if tenure review is to deliver better results for conservation and not become a privatisation exercise with lessees as the major beneficiaries.[4]

In the same month, two Lincoln University researchers produced a report assessing 'the economic benefits and costs of freehold versus crown ownership of high natural value land in the high country'.[5] The High Country Accord had commissioned this work. An edited summary was titled 'Who Should Own the Tussocks?'. According to this summary, from a strict economic perspective the benefits from land then in pastoral lease remaining in private ownership were likely to be substantially higher than if it became public land.[6] The summary contended that commercial use of land, based on private exclusive rights – such as for alpine skiing, Nordic skiing, heli-skiing, rafting, four-wheel-drive safaris, hunting and farmstays – would not necessarily conflict with conservation of the same land. A pluralism of approaches worked in many countries.

In December 2005, writing in the *New Zealand Surveyor*, Mick Strack added his voice to those others who had raised doubts about the public-access outcomes of tenure reviews:

> The land that reverts to Crown ownership and control under [the Crown Pastoral Land Act 1998] is added to the conservation estate, and at least in theory becomes open to public access. The terms of the settlement should include the provision of direct and legally secure access to that land. This is often provided for by an easement over existing farm tracks, or [by] ensuring that the Crown land has direct

> frontage to a public road. There has not appeared to be any overt promotion of the accessibility of this newly acquired Crown land, and it appears that the priority is merely to acquire the land into the conservation estate. There has been little focus on a management plan for ecological management, much less for promoting public access.[7]

Later in this chapter, I will list some access failings alleged to be typical of the tenure reviews that had been carried out.

Ann Brower's Report to Fulbright New Zealand

In February 2006 Ann Brower, a visiting American political scientist based at Lincoln University, completed a report arising from a year's study of the South Island's land-tenure reform.[8] Her report examined the political history, property-rights aspects, and administrative politics of the tenure-reviewing. It said that between 1992 and 2005 runholders had received collectively 58 per cent (or 165,446 hectares) of the reformed pastoral estate as freehold. This split was not necessarily surprising. What was questionable, according to Brower, was that the runholders had also received $15.5 million from the crown. Furthermore, some of them had subsequently subdivided the freeholded land for large profits. She concluded that the results of tenure reviews, until 2005, were 'strongly biased in favor of the farmer'.[9] She argued that Land Information New Zealand, the agency that should have been representing the crown's interests in the land, was instead acting as a neutral party in the negotiations. LINZ's attempts at neutrality were 'honest, competent, and well-intentioned'.[10] But by instructing its negotiators to be neutral, LINZ was letting the runholders dominate the tenure-reviewing unopposed. As a result the crown and ultimately the New Zealand people were losing out to 'powerful special interests motivated to diversify land use, be it for venison farming, viticulture, or lifestyle blocks'.

A startling and revealing secondary finding, not expected by Brower, was that whereas recreators in some parts of the American West enjoyed public access rights over pastoral leasehold land, recreators in the South Island high country had no such rights.[11]

A year of intense research, including undaunted fact-finding in the face of institutional secretiveness, had exposed a bureaucracy gone wrong. According to Brower, but vehemently disputed by the runholders, the land reform 'was benefiting farmers handsomely while costing the taxpayer dearly'.[12] She wasn't the first person to claim this, but her report was the first rigorously argued (and rigorously contested) evidence that it was indeed so. The report also suggested how and why this situation had arisen. Her radical analysis questioned some widely accepted beliefs about the rights of pastoral leaseholders. Its release prompted warm support from many people and an outspoken and condescending response 'from the farmers who stood to pocket the millions of dollars that the Crown was spending in land reform'.[13]

Brower's potentially influential but contentious evaluations first appeared on the internet on 21 February 2006. Two days later, Federated Farmers put out a press release saying that she had come to 'bizarre

conclusions that can only be a result of pre-conceived ideas or a poor understanding of New Zealand's political and government processes'.[14] In Christchurch, the *Press* described a range of reactions to Brower's work. Keith Woodford, professor of farm management and agribusiness at Lincoln University, reportedly said that Brower had correctly criticised the lack of transparency in the high-country reform process. He said that the fact that it took an American to ask key questions about the process indicated an absence of good public policy debate in New Zealand.[15]

Brower herself can take up the story:

> At 5:30 pm on the 26th of February 2006, I reported [my] findings to Fulbright New Zealand. At dawn on the 28th of February 2006, news of the findings hit *The Press* and the *New Zealand Herald*. At 4:00 pm that same day, a man walked into my office and commenced screaming at me. He stopped at about 4:45 pm. Within days of that media coverage, a barrage of letters, emails and cards arrived from New Zealanders all over the country and from as far away as Paris. They carried two messages: 'good on you for challenging the high country myths and mores' and 'brace yourself'.[16]

Three weeks after the publication of Brower's report, Geoffrey Thomson, the co-chair of the High Country Accord, wrote at length to Brower's divisional director at Lincoln University and to Fulbright New Zealand, expressing 'concern at the standard of scholarship inherent in [her] report'. Thomson said that Brower had 'drawn sweeping but ill-founded conclusions about the Tenure Review process by using biased and incomplete information, and wrong analysis'.[17]

This schoolmasterly reproof didn't tell laypersons anything about the quality of Brower's persuasive analysis. Unless you were an economist, you had to guess who was right. Were Thomson's ideas about pastoral leases blinkered and entrenched, encased in what Brower would call a sentimental and romanticised frame (or cognitive unconscious), which unpleasant facts bounced off?[18] Or was Brower, as asserted by Ben Todhunter, the other co-chair of the High Country Accord, 'ill-informed and prejudiced'?[19]

People's views on Brower's findings were polarised. Either she was a foreign interloper, meddling in matters she knew little about. Or she was focusing the light of Yale and Berkeley on some murky and seldom questioned pastoral-lease folklore. She later wrote: 'High country politics descended into mayhem in the autumn and winter of 2006. Farmers went ballistic, environmentalists hemmed and hawed, the government kept mum and I was caught in the middle.'[20]

Brower had marched knowingly into that middle. She wasn't a politically naive beginner who had stumbled upon the tenure-review story by accident. She had specialised in the politics of publicly owned land. She was the ideal outsider to probe and analyse the politics of the South Island land reform from an international perspective. And she herself had become a high-profile part of those politics.

The conservationists and outdoor recreators were initially of two minds. Although tenure review had its serious flaws, as revealed by Brower, it

had also produced some results that benefited conservation and public access.[21] But the conservation and recreation advocates didn't delay their reactions indefinitely. On 8 August 2006 the Canterbury-Aoraki conservation board called for an immediate moratorium on high-country land reform.[22] The board said that the land reform of high-country pastoral leases should be halted immediately, until an investigation was completed by the parliamentary commissioner for the environment. The board was writing to the minister for land information, expressing its concerns. The board believed that the privatization of hundreds of thousands of hectares was not meeting the aims of the Crown Pastoral Land Act 1998 or recent government objectives.

Canterbury regional council, Environment Canterbury and other environmental groups had criticised the sale of huge swaths of the high country. For the last three or four years the Canterbury-Aoraki conservation board had advised the lead agency LINZ, DOC and the government that high-country land reform had serious deficiencies and that the public interest and conservation were being sold short in the review process.

One of Brower's basic criticisms, later confirmed by two government pastoral land valuation reports,[23] was that the valuation process used during tenure reviews was not placing a value on the option to develop land beyond grazing once it became freehold. A prime example of this arose in August, six months after she had completed her Fulbright report, when the Richmond Station deal was signed off. The parties completed this transaction – as happened then with all tenure reviews – without any ministerial oversight. The pact privatised nine kilometres of the Lake Tekapo shoreline. The Richmond valuation document had described the most profitable use of the 540 hectares bordering the lake as 'very definitely deer farming'.[24] The valuation 'seemed to ignore the idea that land on the shores of Lake Tekapo might be developed some day, just as land on the shores of Lakes Wanaka and Wakatipu already had been.'[25] The fringes of Lake Tekapo faced the prospect not of deer-farming but of Wanakarisation. Regarding lakeside properties, David Parker later said: 'Until now we've been taking the position that the protection of these landscape values was a matter for the Resource Management Act. And it won't adequately protect them.'[26]

In September 2006 the Royal Forest and Bird Protection Society drew attention to the tenure review, then still in process, of Blairich Station in Marlborough's Awatere valley:

> Government plans to hand 92% of high country station Blairich into private ownership and protect just 7% as public conservation land have heightened Forest & Bird's concerns that tenure review is short-changing conservation.
>
> Blairich is the latest high country pastoral lease to undergo tenure review – a land reform process in which leaseholders gain freehold ownership of land, while other parts of the property are protected as conservation land.
>
> Forest & Bird South Island Field Co-ordinator Eugenie Sage says the split of Blairich in Marlborough's Awatere Valley, which will see 2941 hectares pass into private ownership, and just 230

> hectares protected as conservation land, falls alarmingly short of the 50:50 split promised by the government as the overall outcome of tenure review.
>
> 'Blairich is one of the very few areas of low altitude high country in this part of south Marlborough that is not in freehold ownership. It was a unique opportunity to protect low altitude indigenous vegetation and habitats, given their limited extent in Marlborough's reserve system,' Eugenie Sage says.
>
> She says the Blairich proposal will effectively deny the public access to more than 15 kilometres of the scenic Blairich River for tramping and walking because no public access easements are established up the river … The current unformed legal road up the Blairich River does not provide practical access to and along the river because of the steepness of the riverbanks in places and the paper road being in the river channel in places. DOC has negotiated access for its vehicles along a farm track close to Blairich River but not for the public on foot or mountain bikes.[27]

In reply to these Forest and Bird concerns, David Parker, the minister for land information, pointed out that the tenure review of Blairich Station still had some way to go before a final offer was made to the leaseholder.[28]

In September 2006 Public Access New Zealand issued a statement backing the Canterbury-Aoraki conservation board's call for a moratorium on tenure-reviewing. Among other concerns, PANZ doubted whether the system used for establishing valuations was consistently giving fair results to the crown.[29]

In October 2006 two Victoria University professors of economics, Lewis Evans and Neil Quigley, completed an appraisal of Ann Brower's report of earlier that year. The High Country Accord had commissioned them to review her assumptions, methodology and conclusions. Evans and Quigley argued that 'the value of the lessor's [Crown's] interest is no more than the present value of the stream of rental income from these leases, because the lessees have the rights to exclusive possession of the land, and this right is renewable in perpetuity at the discretion of the lessee'.[30] They said that there was 'no evidence that freehold development rights [were] being "gifted" to lessees as part of the Tenure Review process'.[31] Directly rejecting one of Brower's findings, they wrote: 'Our analysis of the property rights owned by the pastoral lessee, and our demonstration that … makes it implausible that the Tenure Review process has resulted in any substantial over payment by the Crown.'[32]

Evans and Quigley 'concluded that Dr Brower's concerns result[ed] from a series of conceptual and technical errors in the interpretation of pastoral lease rights, the Tenure Review process and data relating to its outcomes'.[33] Therefore, they said, 'it would be inappropriate for Brower's claims to result in any changes in public policy on Tenure Review or [in] the Tenure Review process itself'.

Both parties could not be right. And it was hard for any inexpert observer to take a neutral position between the academic heavyweights. Trampers threw their weight behind Brower, in the left corner, while runholders supported Evans and Quigley, in the right corner. Brower,

the political scientist, had argued that the administrative tools employed by LINZ to manage tenure reviews were 'fundamentally flawed'.[34] The two economists wrote of her 'comprehensive misunderstanding' of the transactions of tenure review.[35]

If the professors were right and she was wrong, it seemed to me, the land reforms would continue to be a get-rich-quick bonanza for any participating leaseholders of land that was RIPE FOR DEVELOPMENT. To Brower herself, until mid-October 2006, 'the future of tenure review looked bleak. The gulf between the law and tenure review outcomes appeared deep, wide and unbridgeable.'[36]

Then that gulf suddenly narrowed. The Richmond Station deal of August had proved to be the last straw for environmentalists, who visualised residential subdivisions on the ecologically important lower altitude tussock lands and shrublands. They had called stop. On about 16 October the cover of *North & South* featured Lake Tekapo's Church of the Good Shepherd and the words 'High Country Hijack'. David Parker, the minister for land information, had told *North & South* that he would look at every proposed deal before it was signed.[37] There were several ways to interpret this procedural shift; the obvious one was that the minister no longer trusted LINZ and its contractors to obtain a fair return for the crown.

From then on, media scrutiny of the financial and environmental effects of tenure review gradually intensified. The public began to realise the extent to which the land reform was ripping them off. The dodgy deals became common knowledge instead of merely the concerns of trampers and landscape-protectors. The public began to demand that the government fix the problem. The heat came on David Parker. TV3's current-affairs show *Campbell Live* described the runholders as changing from 'farmers who rented' to 'landowners sitting pretty and ready to make a killing'.[38] The government, behind closed doors, began to contemplate policy change.

Revised Rents for Some Crown Pastoral Leases, May 2007

Land with views had been the hot topic of 2006, even for those leaseholders who had chosen not to enter tenure review. On 13 October government officials had signalled that, in future, the rents paid on pastoral leases in desirable locations would include a location value. In raising the rents, the government would be asserting the crown's property rights in the pastoral land. 'If a runholder could not pay the higher rent, the Crown would lower it in exchange for some concessions such as free access to recreationists or enhanced weed control. Runholders were furious and environmentalists [pleasantly] stunned.'[39]

On 4 May 2007 Land Information New Zealand announced the revised rents for sixty-five of 260 crown pastoral leases in the South Island high country. The average annual rent for all 260 pastoral leases was then $0.95 a hectare. The average rent for the sixty-five leases being notified would become $6.47 a hectare. The leaseholders of these sixty-five properties would on average face sixfold rent increases.[40]

Rents charged to pastoral leaseholders were reviewed every eleven years. Rents were set by law to be, if paid on time, 2 per cent of the land's value exclusive of improvements. (Or 2.25 per cent if paid late.) Market forces had increased the price of land and hence the rent that farmers had to pay. In the past, some rental valuations had included amenity values and others hadn't. Some land-valuers had taken a pragmatic approach by not including amenity values when assessing the land for rent, even though the law, in the crown's view, said that amenity values should be included.[41]

All the revised rents would reflect amenity values – inherent and locational values and natural characteristics – as set down in the Land Act.[42] This meant that, when setting the rents, LINZ's valuers would take into account two sorts of amenity values: typical rural amenity values such as sealed roads and access to services; and x-factor amenity values such as lake and river frontages and mountain views, for which some buyers were willing and able to pay a premium well in excess of the land's pastoral earning capacity. Leaseholders who disagreed with their rents could ask the land-valuation tribunal to set the rent.

Commenting on these rent increases, an *Otago Daily Times* article predicted 'more commercial ventures, greater tourism investment and a more hard-lined approach by lessees toward charging for public access and use of the land'.[43] Pastoral leaseholders clobbered with 600 per cent rent increases would not be favourably disposed towards continuing the tradition of allowing free recreational access to their land.

We hadn't heard the last of this. It looked as if the land-valuation tribunal would have a full workload. Most of the sixty-five leaseholders affected by the rent increases would appeal to the tribunal, leading to an important test case in October 2008 (see Chapter 35). The judgment on this test case would not appear until July 2009.

StopTenureReview

May 2007 saw the appearance of a new website representing some recreational and conservational interests. A group called StopTenureReview had set up the website as part of its campaign to persuade the government to 'stop and never recommence tenure review'.[44] Back in 2003 'the runholders had mobilised into an advocacy group, the High Country Accord … , but there had been no counterpart from non-farming New Zealanders'.[45]

The members of StopTenureReview described themselves as 'private individuals who have strong associations with the South Island High Country'. They had watched land-reform proceed for over fifteen years. They believed that tenure review was 'a disastrous process that destroys something immeasurably precious and fundamental to our national identity as New Zealanders'.[46] StopTenureReview claimed that

> results to date show when it comes to negotiations with the lessee, the Crown's main driver is to 'close the deal' – at almost any cost to the taxpayer. That means trading away ecological protection, fair financial return and good recreational access, time after time. In

short, tenure review is the sale of the century, and the NZ public is the loser![47]

On a webpage titled 'Public Access', StopTenureReview applauded the access outcomes of the government's whole-of-property purchases. It also detailed some access failings characteristic of the tenure reviews that had been completed:

The Crown has purchased lessees' grazing and trespass rights over high altitude land for recreation. We applaud the Crown for putting this land into public conservation parks. In the case of entire property purchases, e.g. Birchwood Station, Ahuriri Valley, access is not a problem. However, in tenure review only part of the lease is being relinquished. This means the public has to get from roads on valley floors through newly privatised land to conservation areas. In many cases DOC has taken an ad hoc and piecemeal approach to access. There has been gross neglect by LINZ. This has resulted in:

- Routes to this conservation land often run up scrub-filled gullies and stream beds, and traverses along steep slopes and difficult fence-lines. They seldom follow easily walked farm tracks.
- Many large areas only have one access point, making most conservation land inaccessible or through-trips impossible, or have no access line provided at all. The Mount Cook Station proposal does not provide for any access to the Jollie Valley. Richmond Station secured freehold title to the access road to Round Hill ski field on DOC land, but the access easement on the ski field road does not connect to the conservation land beyond, so it is useless to the public.
- Easy walking and biking tracks near rural communities are neglected.
- Negotiated access easements are not secure. For example: Clayton Station simply moved one out of the way in order to establish a safari hunting enclosure.
- Established vehicle tracks are seldom secured for public access in deals, even where unformed legal roads are more or less aligned with them. Is public access to conservation land being made deliberately difficult, so farmers can charge at the gate for hunting and fishing safaris and exclusive tourism?

Our predecessors came to New Zealand to leave behind landed gentry, aristocracy, stifling class divisions and exclusive land access rights. While those societies in Europe have moved on, the High Country Accord, an exclusive group of South Island high country lessees is calling for privatisation of entire leases from lakeshore to mountain tops. This would re-create the dreaded conditions our predecessors crossed the planet to escape.

Some lessees already charge for foot and bicycle access along farm tracks on leases. A High Country Accord member recently tried to charge for access to a popular legal public walkway!

Rural communities benefit greatly from freely available public walking and bicycle tracks. There needs to be generous allowance for

> such tracks in the immediate vicinity of settlements. The example of modern Europe where tourism and farming go hand in glove should serve as a model for New Zealand.[48]

The tenure-review arguments were now being conspicuously publicised and exchanged at two different levels: in plain English on the websites of the High Country Accord and StopTenureReview; and in jargon and discourse exchanged between adversaries with doctorates.

Policy Adjustment, June 2007

In June 2007 the ministers of conservation and for land information announced a fundamental adjustment of tenure-review policy, influenced by Ann Brower's thinking. They had asked their officials to identify pastoral-lease properties that had 'highly significant lakeside, landscape, biodiversity or other values that [would be] unlikely to be protected satisfactorily by tenure review'.[49] The government would not allow such land to pass into private hands unless the change of ownership was demonstrably in the public interest. Tenure review had always been a voluntary process for the crown and the leaseholders; the effect of the government's decision would be that the crown would exercise its discretion not to participate in tenure review in some cases.

The ministry officials would be looking at about forty properties bordering lakesides. Other, nonlakeside pastoral leases could still undergo tenure review as before, but in future the ministers would see all the proposed settlements. In addition, tenure reviews proposals would need funding approval from the minister for land information before they could proceed.

The officials would 'also report on how existing provisions in the 1948 Land Act can be used to provide public access through pastoral lease land'. Any proposals in this regard were to be integrated into the government's response to the report of the Walking Access Consultation Panel. Writing in the *Press*, Alan McMillan, the chairperson of Public Access New Zealand, said of this Land Act possibility:

> As far as access is concerned the Minister of Land's power to resume land under section 117 of the Land Act [has] been completely overlooked until recently, yet this is an obvious way to resolve high country access difficulties. The fact that the provision has not been used in the past as far as I am aware is no reason to hold back now.[50]

Regarding the overall progress of tenure review, of the 304 pastoral leases eligible for tenure review under the Crown Pastoral Land Act 1998, fifty-eight had completed or nearly completed tenure review. One hundred and thirty other leases were in the process. One hundred and fourteen were not in the process. Two leases had been bought (in whole) by the crown outside tenure review.[51]

Tenure review under the CPLA and lease purchases using the Nature Heritage Fund had, in total, resulted in an overall fifty-fifty[52] split between land being transferred to public conservation land and land being freeholded.

Regarding the future of high-country farming, the government was committed to high-country farming that was environmentally sustainable and economically viable. The crown was willing to remain a high-country pastoral lessor indefinitely.[53]

How important were these procedural changes? Brower again:

> In sum, Cabinet drastically enhanced oversight of tenure review. In taking budgetary authority away from officials, Cabinet tacitly expressed distrust and displeasure with their performance to date. In directing officials to identify places where tenure review should cease altogether, Cabinet said that some high country land was too precious to privatise.[54]

The High Country Accord immediately issued a press release calling the rule changes 'another punishing blow for families who have sustainably managed the High Country for decades'.[55] Not that one could take such disapproval too seriously. For years the runholders had criticised the tenure-review process: and had flocked to sign up. Strategic hypocrisy was a strategy that all parties to the tenure-review discussion had employed since the mid-1990s.[56]

With 130 pastoral leases still being reviewed and 114 pastoral leases having not even entered the review process, tenure review was still in its teens. There was still time for further debate and for the adjustment of policies. A cabinet paper in October 2007 (released on 15 November) contained further details of the toughened tenure-review process. The list of requirements included a stipulation that, for all properties (not just those near lakes), the minister for land information would 'look to ensure that' significant access feature were protected, such as 'access routes that are of "prime interest and enjoyment" '.[57]

On 15 November 2007 David Parker announced that the government had identified sixty-five lakeside properties for which it did not favour tenure review proceeding.[58] (The figure of sixty-five was an increase from the forty mentioned in his June press release.) Thirty-eight of these properties had already entered tenure review; nearly all of these reviews would cease. Spectacular lakeside landscapes, he said, were part of New Zealand's identity and would be protected from inappropriate subdivision and development.

Even as I hoped for a lull in proceedings, so that I could conclude this section, the *Waikato Law Review* published another penetrating paper on the property rights in South Island high-country crown pastoral leases.[59] This time, Ann Brower was not on her unorthodox own. She had teamed up with John Page, a lecturer in property law, to challenge the establishment belief that a pastoral lease granted the tenant exclusive possession and consequently the right to exclude others. New shock waves shot through the high country. The tenure-review saga was going to run and run.

PART FIVE

Free, Certain, Enduring, and Practical

Chapter 34

Walking Access Act 2008

Before the 1999 general election, Public Access New Zealand had described the Labour Party's policies on recreational access as 'a comprehensive programme which addresses many issues'.[1] This programme had included the intention to 'develop a strategy for the extension of the Queen's Chain to ensure New Zealanders have improved access to our waterways and coastline'.[2] The election on 27 November had resulted in a Labour-Alliance coalition with a strong working majority on many matters. During the following three years, though, with the exception of the funding of backcountry facilities, almost all of Labour's recreational-access aims went unfulfilled.[3]

Before the 2002 general election, the Labour Party's *Conservation Policy 2002* had 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.' After the election of 27 July, Helen Clark had continued as prime minister for a second term, heading a minority government yet enjoying a comfortable majority on some issues. But Jim Sutton's ambitious plan to create footways along selected water margins had collapsed painfully, battered by farmers' invective and crippled by recreators' corrosive disunity. On the Queen's Chain, people had talked and talked and talked, but nothing concrete had emerged and survived. Helen Clark's second term passed with the New Zealand access strategy still little more than a proposal in the 2003 Acland report.

By April 2008, Labour-led governments had held power for eight and a half years. The opinion polls were predicting that the general election later that year would result in a National-led government. Some polls suggested that the National Party would win enough seats to govern alone. Helen Clark's government was running out of time to legislate on walking access. On 8 April the government tabled the Walking Access Bill.

A Crown Agency to Provide National Leadership on Walking Access

The main legislative initiative recommended by the 2007 Acland report had been a review of the New Zealand Walkways Act 1990, and so it was no surprise that a large part of the Walking Access Bill merely re-enacted and modified the provisions of the 1990 act. There was every prospect that this bill, despite its docile track-making powers and its officious treatment of walkers, would awaken the walkways concept from its DOC-induced torpor.

More importantly, though, the bill also sought to create the New Zealand Walking Access Commission, a crown entity with the status of a crown agent under the Crown Entities Act 2004. (The government had added the word 'Walking' to the title recommended by the 2007 Acland report.) Clauses 6 to 14, the bedrock of the bill, established the commission and stipulated its objectives, functions and priorities. The commission's functions would include a leadership and coordination role in the provision of public access to the outdoors, the provision of information about the location of existing public access, the forging of a code of responsible conduct for the guidance of the public and landholders in respect of recreational access to the outdoors, and facilitating and funding the negotiation of new public access across private land. The creation and administration of walkways, which occupied the bulk of the bill when measured in words, would be only two of the Walking Access Commission's thirteen functions.

The explanatory note to the bill pointed out that the bill did 'not interfere with private property rights'.[4] The bill also found room for a lengthy and oppressive section about enforcement officers, offences and penalties. But nowhere in the explanatory note or in the bill itself did the term 'public property rights' gain a mention. An editorial in the *Otago Daily Times* would later comment that 'there will be regret in several quarters that private property rights have been protected seemingly to a greater degree than the public's rights of access'.[5]

Two words in the bill leapt out at me aggressively, depressing signals of attitudinal stagnation or even regression: 'enforcement officers'. Both of the walkways acts (1975 and 1990) had used the more neutral and welcoming term 'ranger'. But now, enforcement officers would be needed to keep walkers in check. No wonder the farmers were so afraid of us. The name evoked confrontation and suspicion and condescension and societal immaturity. I called to mind city bars and their bouncers. Were we New Zealanders really still so backward when it came to visiting the countryside in a civilised way?

First Reading of the Walking Access Bill

The first reading of the bill took place on 15 April 2008. In a low-key speech, Damien O'Connor viewed the access potholes from a safe distance:

> The one thing that can be learnt from any issue that polarises people is that there is usually wisdom on both sides. Walking access is one such issue. There is no easy answer. The public expects access to significant areas of the coast and to rivers, lakes, and other public

> land that is surrounded by private land, and landowners naturally expect to be able to decide for themselves who comes on to their property. The issue brings into focus two fundamental values that underpin our New Zealand character and lifestyle: access to our many natural recreational resources and having our very own piece of dirt. We have to work to solve any incompatibility between these two important values. There is need for a degree of public education on both relevant objectives.[6]

The expression 'having our very own piece of dirt' had appeared two years earlier, in Question 1 of the Walking Access Consultation Panel's consultation document. You could interpret it in several ways. Superficially, it was agreeable plain English. But behind the expression lay assumptions about the property rights enjoyed by the owner of each piece of dirt. To me, 'having our very own piece of dirt' implied, in New Zealand, possessing an absolute and unquestionable right to exclude the public from the pastoral countryside. This legal power meant that walkers were denied certain and enduring linear access across most of New Zealand's uncultivated farmland. Any officially endorsed objective that reinforced this property-rights absolutism, whether explicitly or implicitly, would prolong the status quo. Access advocates did not need to educate the public on this deep-rooted value, which in New Zealand was almost spiritually held; they needed to expose the value for what it was: a socially divisive hangover that was out of step with modern thinking on nonmotorised recreational access to the countryside.

Doug Woolerton of the New Zealand First Party spoke knowledgeably and coherently, using two concrete examples to decisively demonstrate the need for the bill. His first example laid bare the impracticality behind the much-heralded practice of requesting permission to walk across farmland:

> In this country we have a changing environment as far as land ownership goes. My own brother, my dearly beloved brother, has a farm that encompassed 10 farms when I was young. It is all very well to talk about access and going to him, the local cocky, to ask 'Can I go down to the lake at the back of your farm – or to the river or whatever?'. He is not at the farm most of the time; it is run by managers on various properties, and so on and so forth. The National Party, more than any other party in this Parliament, will understand that. Those managers in many cases do not have authority to grant access for people to come over the property, and in many cases they are unwilling to, because why should they shoulder some responsibility if they do not have to?[7]

For his second example of an access issue, Woolerton discussed the wondrous difficulties that Hamilton city council had confronted during its efforts to improve the walking access around Lake Rotoroa, a small peat lake. He concluded this account:

> [The Lake Rotoroa section of the Waikato River walkway is now] one of the most popular walking places in Hamilton City. I do not

> know of landowners suffering any harm to their properties; I do not know of any trespass by people. There might have been some, but by and large the boardwalk has worked very, very well and to the advancement of Hamilton City and its environs.[8]

David Carter, forlornly trying to turn back the clock, cranked out his well-oiled claim that the legislation set out to fix a problem that had never existed.[9]

The Walking Access Bill passed its first reading by 112 votes to 8, a result that reflected the bill's conservatism, the Walking Access Commission's proposed role being wholly negotiatory, advisory and mediative.

Bill's Understatement of the Commission's Mapping Responsibilities

Many walkers and hunters and anglers considered that the bill contained a bias, perhaps more imaginary than real but nevertheless disturbing. This imbalance included the relative importance of private and public property rights. It also included the relative importance of the mapping of access and the writing of a code of responsible conduct.

The 2007 Acland report had given considerable prominence to the provision of access maps, proposing that it become a function of the Walking Access Commission (recommendations 15, 16, 17, 18, 22 and 23). But the bill reduced access maps to sixteen words. Clause 10(c), purporting to stipulate the information function of the Walking Access Commission, did not even use the word 'map'. It merely referred to 'information about land'. In conspicuous contrast to this minimalist treatment of the commission's mapping responsibilities, the bill devoted two pages – about 450 words – to the code of responsible conduct, singling it out as something that the commission should draft 'as soon as practicable after the commencement of the Bill'. In fact, the 2007 Acland report had prioritised both the mapping of existing access rights and the development of a code of responsible conduct, suggesting that these works 'could be done in parallel'.[10]

Clauses 6 to 14, establishing the New Zealand Walking Access Commission, were to be celebrated, subject to some rewording of clauses 10(c) and 11. But to promote the refining of clause 10(c), a little cynicism wouldn't do any harm, during the select-committee stage of the bill. The Walking Access Act 2008 would, if passed, become law. The act would unequivocally and comprehensively oblige the Walking Access Commission to formulate a code of responsible conduct without delay. On the other hand, future governments would view the 2007 Acland report, like hundreds of other reports, as merely recommendatory. The report's recommendations on access maps, if not explicitly mentioned in the Walking Access Act, would remain exactly that: recommendations only.

Parliament had referred the Walking Access Bill to the local government and environment committee. I submitted some comments on the bill to this committee, including a suggestion that the committee expand clause 10(c) to more faithfully and explicitly reflect the 2007 Acland report's emphasis on access maps. Given this change, if the maps did not turn up, or if the production of them was unacceptably slow, access advocates would have an act of parliament to refer to.

In a similar vein, Federated Mountain Clubs's submission to the select committee argued that the information role was important enough to be included as a stated purpose of the bill, and not merely as a function of the Walking Access Commission.[11]

*

The slant in the bill, prioritising a code of conduct and demoting mapping, smacked of landowner influence on the bill-drafters, many landowners being far keener on codes of conduct than on maps of public roads. Damien O'Connor could not risk upsetting the farmers, hence the distinctly conservative draft bill. Its most controversial part concerned not private but public land. Clauses 23 to 28 empowered the Walking Access Commission to declare public land to be a walkway (given the consent of the land's administering authority). Furthermore, clause 25 allowed the commission to superimpose a walkway upon an unformed public road. Local authorities would be free to set any conditions in relation to who used the walkway and walkway closures. These statutory restrictions, such as lambing breaks or bans on bicycles, would override the public's common law right to pass along a public road at any time. But – hold your breath – landowners with legal frontage on, or direct access to, the unformed public road would 'retain the right to use the unformed legal road for the same purposes and to the same extent as if the walkway had not been declared'.

Clause 25: Unformed Public Roads Overlaid by Gazetted Walkways

Perhaps the sudden appearance of clause 25 should not have shocked track-users as much as it did. They had been forewarned. Section 6 of the New Zealand Walkways Act 1990 had explicitly provided for the declaration of a walkway over an unformed public road. (This provision was originally enacted by the Muldoon government in 1977.[12]) In 1991 Bruce Mason had expressed concern about access restrictions that could arise when a gazetted walkway was superimposed upon an unformed public road.[13] The ministerial notice in the *Gazette*, establishing such a walkway, could specify restrictions, such as lambing closures or no bicycles, that would not have been imposable had the public road remained free of the walkway. The Walkways Act 1990 would take precedence over the ancient law of highways.

Since then, sixteen years had passed without this issue arising much, partly because few gazetted walkways were being created. Few if any gazetted walkways followed unformed public roads. The 2007 Acland report did not examine the question. Bryce Johnson, a member of the consultation panel, later wrote:

> No discussion occurred at all on the matter of creating walkways over public land and unformed legal roads and I cannot recall this being discussed in any submissions or at any of the many public consultation meetings. If any one aspect of the current Walkways Act would have attracted serious discussion it would have been the modern inappropriateness of proposing walkways over existing public land and unformed roads (to which the public already have access) with their obvious/deliberate affect [*sic*] of diminishing public rights of use![14]

Brian Hayes touched upon this issue in *Roading Law as It Applies to Unformed Roads*. His comments corroborated Mason's worries of 1991:

> An unformed road may be included in a walkway with the prior consent of the territorial local authority in which the road is vested: s 6 New Zealand Walkways Act 1990. Before giving consent, the territorial local authority has to consult with every owner who has a frontage on or access to the unformed road. Those owners retain the right to use as a road the unformed legal road after it is incorporated in a walkway. However, the public are restricted to using the road as a walkway. The Minister of Conservation may specify any other conditions of use in the notice designating the unformed legal road as a walkway.
>
> Section 6 is a curious provision which is inconsistent with the common law, the statutory law protecting the status of roads, and the rigorous protection the New Zealand courts have provided for the interests of the public.[15]

Despite Hayes's criticism of this aspect of the Walkways Act 1990, the Walking Access Bill retained similar wording to section 6 of the 1990 act. Clause 25(5) of the Walking Access Bill said that 'if the local authority consents to the declaration of the walkway [superimposed on an unformed legal road], it may impose any condition in relation to the walkway when granting consent'.

Recreators' Responses to the Walking Access Bill

One might have expected recreation advocates to have met the long-awaited Walking Access Bill with a collective sigh of relief. As it turned out, the better informed recreational representatives greeted the bill ambivalently. Some parts of the bill inspired enthusiastic welcomes. Some parts encountered guarded optimism. Some aspects, such as the bill's underlying deference to our overdefensive landowners and its officious tone towards walkers, met resigned acceptance, a toleration closely linked to the realpolitik of mid-2008. But clauses 23 to 28, and particularly 25, generated a fiercely critical reaction. The road-users' acute concerns about this clause were made doubly disturbing for them by the knowledge that, with the Labour Party and the National Party both supporting the bill, there seemed little likelihood of altering it substantively during its select-committee stage.

Recreation Advocates Criticise Clauses 23 to 28

Bruce Mason argued that the imposition of gazetted walkways over public land, and especially over reserves and unformed public roads, would be 'unnecessary and dangerous to the public good'.[16] He said that 'centuries-old common law [provisions] protecting public rights of unhindered passage along unformed roads are being swept aside without any acknowledgement that such rights exist'.[17] Mason also condemned the compliance and enforcement regime that would apply to gazetted walkways. Taken together, he said, these developments would make

the bill an Act of Repression and 'a blatant assault on our fundamental rights'.[18] The rest of the bill, he said, was 'relatively harmless'.

Alan McMillan wrote:

> At various consultation points it has been a repeatedly expressed intention that a 'like for like' policy would be followed if swapping one type of access for another were ever envisaged. Swapping the comprehensive rights which the public hold over a legal road (formed or unformed) for the extremely restricted rights offered on a Walkway is not 'like for like' and ignores all previous positions expressed on this matter.[19]

Bryce Johnson described clause 25 as 'an apparent back-door attempt to set up the ultimate demise of unformed legal roads'.[20] Once a walkway was established overlaying a public road, he suggested, it would be far more difficult for anyone to oppose the stopping of that road. Clause 25 was 'a recent sinister move' that access advocates ought to trace to its origins.

The New Zealand Fish and Game Council's submission to the select committee said that any proposal to establish walkways over public land and unformed public roads would arouse deep suspicion. NZFGC argued that clauses 23 to 28, allowing the declaration of walkways over public land, should be deleted.[21]

Hugh Barr of the Council of Outdoor Recreation Associations wrote:

> The purpose of the Bill is clearly to downgrade public unformed roads. There are over 50,000 km of these publicly owned roads throughout New Zealand. They provide year-round vehicle access for boaties, anglers, hunters and trampers to lakes, rivers and the back country … This Bill has nothing to do with improving public access. It [is] mostly about privatising public roads to lock the public out of the countryside. This is the clear reason why Federated Farmers supports the Bill. It is so anti-access, it could even have been written by them.[22]

Brian Stephenson, the president of Federated Mountain Clubs, commented to me: 'My view is that the Commission should be reluctant to interfere with the high quality of access provided by the status of legal road … There is no reason why, for example, a walkway should not stop at a legal road and resume when it leaves the legal road.'[23]

Federated Mountain Clubs's submission on the bill argued repeatedly that the bill should explicitly state that no reduction in rights over public land, including unformed public roads, was intended.[24]

The local government and environment committee was to report on the bill by 31 July 2008. So this committee had about three months to investigate the likely ramifications of superimposing gazetted walkways onto unformed public roads.

Select Committee Report on the Walking Access Bill

With a general election no more than three months away, the local government and environment committee reported punctually on the bill on 29 July 2008.[25] The committee recommended a number of changes to the bill.

In clause 3(a), on the purpose of the act, the committee suggested the insertion of the words 'free, certain, enduring, and practical' in place of 'safe, and unimpeded'. This change would align the explicit purpose of the act more closely with Principle 1 in the report of the consultation panel. Also connected with the purpose of the act, the committee proposed the insertion of a new clause 3(c)(ii) to oblige the Walking Access Commission to consider types of access that may be associated with walking access, such as access with firearms, dogs, bicycles, or motor vehicles.

On the bill's glaring understatement of the Walking Access Commission's mapping responsibilities, the committee agreed with submitters that mapping ought to be an explicit function of the commission. The committee accordingly proposed adding the word 'maps' to clause 10(1)(c).

Clause 11 of the bill, as introduced, set potentially restrictive priorities guiding the Walking Access Commission's negotiating of walking access over private land. The narrowly focused wording, if left unaltered, would have allowed the commission little scope, if any, for negotiating walking access that was unconnected with water margins. The cock-eyed priorities faithfully matched the 2007 Acland report's high-level, overarching aim for walking access, which I have argued (Chapter 31) overemphasised the importance of access to and along water margins. The committee recommended changes in wording to provide the Walking Access Commission with more flexibility in deciding where to negotiate walking access over private land. The committee suggested the insertion of a new and broadly worded subparagraph 11(f), obliging the commission to take into account the desirability of walking access 'to areas of scenic or recreational value'.

Predictably, one of the main issues raised by the 136 submissions to the committee was the consequences of the creation of walkways over unformed public roads. In its commentary, the committee briefly discussed this matter and concluded that 'as the power to create walkways over unformed legal road is not critical to the success of the walkways regime, we recommend that clause 25 be deleted'.[26]

Taken together, the unanimously recommended changes, if adopted, would considerably smoothen the rough edges of this bill. Perhaps unexpectedly, the committee's handling of the Walking Access Bill had demonstrated the considerable virtues of parliament's select-committee process. The local government and environment committee had worked well and constructively on the legislation.[27]

The select committee's report included a Green Party minority view. The Greens warned that the Walking Access Commission could become 'a toothless bureaucracy':

> The Green Party remains unconvinced that the bill fairly balances the rights of private property with the rights of public access to public land and resources.

> We have long advocated a Commission with powers beyond voluntary negotiation. If the public has rights to land and resources, then there must be an authority with the power to uphold those rights against unreasonable exclusion and exclusive capture. The bill establishes a Commission to facilitate and negotiate, but not to arbitrate. While we support the amendment to specify in 10(1)(e) that the Commission can refer disputes to 'a court, tribunal, or other dispute resolution body', we are unconvinced that the public rights of access are sufficiently enshrined in law relative to well-entrenched private property rights. This bill was a chance to enshrine public rights, but it fails to do this.
>
> … The problem the Commission is established to solve is the growing number of access conflicts around the country, where private and public rights clash and negotiation has not been possible to date. This bill fails to give the Commission the statutory tools to make the hard calls to resolve these, and all the supplementary functions – the strategies, glossy brochures, mapping, information and education, advice provision and administration – leave little time or resources to focus on the real problem of securing reasonable public access to public land and resources. The Commission cannot provide leadership when it has no power to lead, and the bill is a massive backtrack on earlier Government policy of enshrining public rights and completing the Queen's Chain.[28]

Many of the lessons of the walkways acts, ruefully learnt over thirty years, gave the Green Party well-founded cause for its pessimism. Hugh Barr of CORANZ reportedly shared the same cynicism, contending that the bill was 'a disaster' for access:

> Barr complains that without powers to arbitrate on access disputes, the watchdog will be toothless. And giving the commission a home at the 'pro-rural, landholder-friendly' Ministry of Agriculture and Forestry will fatally blunt it.[29]

On the other hand, developments such as Te Araroa gave rise to guarded optimism. And the New Zealand Walking Access Commission, although resurrecting some of the functions of the old New Zealand Walkway Commission, would have a much wider overall role than that body ever had. By the time of the Walking Access Commission's proposed ten-year review, in 2018, there would be statistical evidence to enable people to judge whether to strengthen the commission's statutory powers.

North & South on No-go Zones

In August 2008, while the government was still considering the Walking Access Bill, *North & South* featured 'The No-Go Zones', an article ranging over some of the typical issues and main actors behind the bill.[30] The magazine's cover showed a strand of barbed wire stretched across a gravel road and it declared: 'This barbed wire stands between you and a magnificent stretch of coastline. Some of our best beaches and back-country are being locked away by private landowners, Maori tribes, even

DoC. Your access to public places is under threat.' (The article's reference to White Rock Station had to be corrected.[31])

Less than a year earlier, *Consumer* had reported informatively on unformed public roads (see Chapter 32), helping to make them into a matter of public interest that people in general could and should know about. Now, the publication of 'The No-Go Zones' in a monthly magazine read by New Zealanders from all walks of life indicated that access was increasingly becoming an issue of general public interest; it was no longer merely the preoccupation of a handful of recreation advocates.

The *North & South* article included the reported views of Nick Smith, the member of parliament for Nelson, who had been drawn in to several access rows in the Nelson area. The latest controversy centred on Towers Bay, north of Kaiteriteri. A popular walking track, the Venture Cove Walkway, had formerly led down to Towers Bay, a traditional favourite with locals. But the landowner had landscaped the track 'out of existence', resulting in Tower Beach being accessible only by boat or by walking around the foreshore at low tide. One local resident had said:

> This is about the principle that a beach that was once readily accessible to the public is no longer so … [The loss of the track] would seem to have created a private property right over access to that beach.

In this particular case, in making the track unusable the landowner had acted within his legal rights (see Appendix 2). But was the outcome acceptable to the public? Nick Smith risked the raised eyebrows of his National Party colleagues: 'There's a lot of talk about the importance of private property rights. We also need some respect for public property rights.'[32]

Entente Cordiale

The Walking Access Bill received its second reading on 26 August 2008. The speeches contained little that was new, but Moana Mackey (Labour Party), who had chaired the select committee, paid a rare tribute to the contribution of the civil servants (which we touched upon in Chapter 9):

> I also want to thank the officials who advised us on the bill. Certainly, the advice we received was very timely and of a very high quality. There is no doubt that there was a lot of passion amongst the officials for this legislation, and it was a pleasure to work with them on the bill.[33]

Rather than dwelling on the pros and cons of walkways, David Parker emphasised the access importance of unformed public roads. He pointed out that the six years of debate had helped to bring about a more widespread appreciation of people's rights to use these roads:

> This debate and the very good work that was done – particularly by Brian Hayes setting out the history of paper roads, but generally by the Walking Access Consultation Panel – has illuminated this issue

> and forced there to be an acknowledgment in Parliament that the public has public rights in respect of paper roads.[34]

Eric Roy of the National Party underlined Parker's point about the growing importance of unformed public roads. He held up a GPS receiver. He said that such a device, coupled with cadastral data, could sometimes provide a walker with more accurate information than the landowner has. This new technology was creating an issue that needed to be resolved. Roy, who had served on the ministerial reference group in 2003, recognised that the bill was a necessary step forwards. He suggested that parliament might eventually have to also address the issue of exclusive capture.[35]

Roy's parliamentary colleague David Carter, who farmed on the Banks Peninsula, remained in hidebound denial. The nub of Carter's speech was that the Labour-led government had imagined the existence of access problems; in reality, he claimed, these problems did not exist, because people could ask permission for access.[36] For over five years Carter had caressed his own prejudices (as we all do at times), refusing to recognise the changing face of rural landownership and of its conventions; he wasn't going to admit to having been wrong. But in a succulent show of generosity, he announced that he was looking forward to 'a sensible discussion between [himself] and the [walking access] commission' on improving the practical access across his land, many of the paper roads being unsuitable.[37]

Although the parliamentary mood on walking access was now bracingly jolly, as a result of the near-unanimous report of the local government and environment committee and the government's emphasis on consultation and consensus, there were still some serious limitations to that unity of purpose. Thanks partly to the second Acland report, there was now a deeper public awareness of and knowledge about unformed public roads. But the many illogically sited ones would remain problematic. Advocates of walking access had argued for like-for-like swaps that exchanged uselessly sited public roads for new ones providing natural routes. Unfortunately, such neat solutions were apparently, in many circumstances, impossible to achieve legally. Meanwhile, many farmers still saw public roads as a potential problem, not an asset. So the emphasis in the farming press remained on 'how local authorities that want to be rid of paper roads can do so cost-effectively'.[38]

The bill passed its second reading by 115 votes to 4. Only the Maori Party voted against it, partly because the legislation did not contain a Treaty of Waitangi clause.

On 12 September Helen Clark announced that parliament would be dissolved on 3 October and that the 2008 general election would be held on 8 November.

Parliament debated the Walking Access Bill in committee on 11, 23, 24 and 25 September. Most matters talked about were venerable, grey-haired issues. But Nick Smith, the National Party's spokesman for conservation, raised an important new question that few others seemed to be asking:

> If we look back to the [New Zealand Walkway] commission that was abolished by Labour in 1990, under the Lange-Palmer-Moore

> Government, we see that one of the key reasons that it failed was that it did not get the resources it required. So I am very interested to hear from the Minister [for rural affairs] what sorts of resources will back up this bill in order to make the commission worthwhile. The truth is there will be practical issues like providing fences, stiles, and signage, and if we are going to make some practical progress on these issues of access, then providing some budgetary allocation for this new commission will be critical to its success.[39]

Later in the debate, Damien O'Connor provided the information that Smith had asked for. Currently the Walking Access Commission's budget was $2 million a year.[40] This amount dated from budget day 2005, when Vote Agriculture and Forestry included $1.9 million a year for four years to pay for the development of the walking-access policy. O'Connor described this sum as 'modest … [but] an efficient and effective amount to undertake all the [commission's] tasks'.[41]

O'Connor's brief answer to Smith's enquiry did not include any breakdown of the $2 million, matching specific amounts against the thirteen statutory functions of the Walking Access Commission. I did not discover whether any such costing forecasts existed. Frugality could enable the commission to make this money stretch a long way. Yet O'Connor's optimism left several budgetary questions hanging. Would the commission have any regional officers and, if yes, how much money had been earmarked to pay for these vital local cogs in the national access strategy? One of the commission's functions would be 'compiling, holding, and publishing maps'; what form of nationwide recreational mapping was envisaged, and how much money had been allocated for producing these maps?

Many observers of the six years of debate over walking access might have agreed with Colin King, the member for Kaikoura and the last person to speak during the bill's third reading, who said: 'We have to be very mindful that [walking access] is an enormous issue, and with a budget of $2 million I cannot see how the commission will be able to address this situation fully and adequately.'[42] Nobody, of course, was expecting an immediate quantum leap forward. But outdoor recreators did bank on steady incremental advancement, and only time would tell whether a scanty $2 million a year would be enough to fund the commission's activities.

On the night of Thursday 25 September 2008, parliament passed the Walking Access Bill on a voice vote, the support for the bill being almost unanimous. Nearly everyone was happy, the Walking Access Act 2008 being a considerable advance for the walkers and a satisfying win for the status-quo-ists.

The next day, parliament was adjourned to allow six weeks of campaigning before the election. There was an end-of-term atmosphere. The members slagged each other off.

Chapter 35

Four Books, a Fair Rent, and Exclusive Possession

Earlier I said that you could not, in 2006, walk into a bookshop and buy a book that comprehensively described the public's legal access rights for outdoor recreation in New Zealand as presented in legislation and in case law. In 2008 the publication of Brian Hayes's *Roads, Water Margins and Riverbeds: The Law on Public Access* went a long way towards filling this gap. Furthermore, four notable books arrived within two months, each in its own way relevant to aspects of walking access.

While the Walking Access Bill had been journeying through parliament, two books on the South Island high country had appeared in high-street bookshops simultaneously, on about 1 September. One was Roberta McIntyre's meticulously researched *Whose High Country?*, a general social and environmental history of the region. The other was Ann Brower's *Who Owns the High Country?*

Whose High Country?, Roberta McIntyre

McIntyre's enterprising book attempted to cover the whole tale of human occupation of the South Island high country, from Polynesian settlement about eight hundred years ago to 2008. It was the first such all-embracing account. A trained historian, McIntyre endeavoured to maintain an independent stance, uncaptured by any one interest group.[1]

Whose High Country? includes a chapter on public access to the high country, covering the period from the early 1980s to 2008, during which the leaseholders and the conservationists and recreational users became increasingly divided.[2] McIntyre relates the competing arguments. In a brief reference to the national consultations that followed the 2003 Acland report, she recognises that Jim Sutton ruled out the right to roam; but she avoids mentioning the farmers' unscrupulous deceiving of the public on this matter, a national campaign of misinformation in which some high-country farmers had been complicit.[3]

In conclusion McIntyre describes the South Island high country as having become 'a new frontier for the domestic and international film,

advertising, hunting, tourism, wine, dairy and property industries'.[4] Since the 1950s, urban dwellers – as well as rabbits, *Hieracium* (hawkweed) and wilding pines – had increasingly challenged the pastoralism. This trend had continued into the 21st century:

> Nowadays, the status and traditional way of life of the runholder is under siege. Urban nature conservation and recreation organisations are vying strongly for political and economic control of the South Island high country. Global and New Zealand urban elites are intruding into the runholder domain by buying up high-country stations. And tenure review is threatening to break apart the unique and self-contained high-country social and cultural world for ever. A new frontier of exploitation by diverse industries and peoples is evolving.[5]

Reviewing McIntyre's book for *The Press*, Mike Crean wrote: 'A book as good as this is welcome at any time … The title asks who owns the high country. Rather than providing an answer, McIntyre explores the rights of claimant groups and leaves the question up in the air.'[6]

Who Owns the High Country?, Ann Brower

Brower's far more narrowly focused account, in contrast, is unashamedly partisan. For some readers, Brower's book forthrightly exposed the inner administrative and political workings of the land-reform process. Some other readers flatly rejected Brower's dissection; there was little wrong with tenure review, they said, but there was much wrong with her book.

The High Country Accord marked the publication of *Who Owns the High Country?* with a press release gifting the book some extra publicity:

> Ms Brower's book on the high country, due out today, will almost certainly repeat the inaccuracies and falsehoods which have characterised her past utterances, says High Country Accord chair Ben Todhunter. 'Since coming to New Zealand in 2003 [actually September 2004], Ms Brower has waged a campaign to cast doubt on the legal status of high country farms with perpetual leases from the Crown. An accomplished self-publicist, she has used her status as a Lincoln University lecturer to get substantial media coverage. Yet far from being an objective academic, Ms Brower came to New Zealand in 2005 [*sic*] from the United States with a track record in environmental activism and for courting media controversy.'[7]

In publishing Brower's ripping yarn, Craig Potton atoned for all the photographic tomes he has delivered to our coffee tables. I have already (Chapters 8 and 33) chronologically summarised some of the main tenure-review developments of 1994–2007. *Who Owns the High Country?* analyses how, for most of this period, according to Brower 'the Crown [gave] high country farmers hundreds of thousands of hectares of valuable land and millions of dollars' in a flawed process that was partly hidden from public view.[8] She based much of the book on her report to Fulbright New Zealand and on subsequent journal papers she had co-authored

with colleagues from New Zealand, the US and Australia. Her Fulbright research and the ensuing papers had caused ample controversy, as they deserved to, whichever side you were on. They had led, among other influences, to the June 2007 changes to the government's tenure-review process. More fundamentally, though, these writings had questioned popular ideas of who owned the high country.

But *Who Owns the High Country?* did more than try to answer the question posed by its title. It also revealed the unassailable farmer domination of high-country land reform that, until June 2007, allowed the allegedly defective process to go unchecked. Richard Thomson, reviewing the book, picked out this aspect as being one of two key messages that he received:

> Having read and cheered over this book, two things stand out.
>
> The first is the enormous social, economic, cultural and political power that farmers have and continue to wield in this country. It's something so colossal and seemingly immovable that perhaps we often don't see just how all-pervasive it is. Maybe we do, but choose to ignore it. Brower has chipped away at the monolith with the innocence and clear-sightedness of an outsider, and she's made it seem possible, to me at least, that a major study of farmers' dominance could become the defining text of Pakeha history in this country.[9]

This message from high-country land reform, about the farmers' ascendancy over other competing interest groups such as outdoor recreators and environmentalists, echoed the lessons of the fierce land-access debate of 2003–5, during which the farmers wielded power and influence out of proportion to their numbers. Brower had laid bare the dominance of the pastoral leaseholders. Heaven knows what she might have thought about the political might of the farming freeholders, who – in partnership with the leaseholders – had dispatched the hapless Jim Sutton into parliamentary oblivion.

The second key message, as expressed by Richard Thomson, indirectly warned the public to become better informed on, more alert to and more active in the policies and politics of South Island land reform. Brower herself, not a writer who found much use for euphemisms, put it this way:

> Entrenched power always stands ready to re-emerge. So, such a re-emergence might occur far below Cabinet. As we have learned, bureaucrats could simply ignore Cabinet and continue as before – buttressing runholders' dominance as they go.
>
> At the risk of sounding trite, the future of the high country lies in the hands of the public. If the public reverts to quiescence, farmer dominance will re-emerge with near certainty. If the public stays vigilant and engaged, the newly transformed power structures will settle into a new equilibrium that will guide high country policy, politics and landscapes into the future.[10]

Entrenched power re-emerged on 17 October 2008 in the form of a highly critical, totally dismissive review of Brower's book. Ray Macleod, the reviewer, was 'a director and general manager of Landward Manage-

ment, a specialist Dunedin land management company in the rural sector which also provid[ed] valuation, compensation assessment, arbitration and mediation services'.[11] He implied that he had approached the book impartially, with an open mind.

According to Macleod, Brower's use of language was emotive and divisive. Her writing was 'light on New Zealand case law to support her views'. He did not find her book to be a balanced and robust analysis of the facts available:

> Does this book engage the reader with its clear, concise and clinical academic approach? Well, no. Is it so convincing I was horrified by its revelations? Well, again no, but yes, I was horrified. Horrified because I felt the revelations were contrived and self-serving. The question remains. Why?[12]

It was sad that a book so revealing to some could be so revolting to others. This polarisation reflected the gap between town and country in New Zealand. The high-country tale had not yet concluded. Neither side was content to accept the August 2008 situation as a tranquil and equitable balance of rights. Even as these two books left the printers, a new chapter of their story was accumulating. Those farmers who faced huge rent increases would not limply acquiesce to the crown's new valuation methodology. And Fish and Game New Zealand, eagerly swayed by Brower's writings, decided to test the orthodox interpretation of leaseholders' property rights.

Setting a Fair Rent for a Nice View

Brower's tendentious Fulbright report of February 2006 had overflowed with a cornucopia of values: production value, recreation value, cultural value, conservation value, iconic value, aesthetic value, inherent value, heritage value, landscape value, historic value, relative value, desired value, intrinsic value and apparent value. Interestingly, though, the term 'amenity value' did not appear at all. But since the government's October 2006 announcement of rent increases based on valuations that would reflect amenity values (see Chapter 33), the consideration of amenity values, such as outstanding views and privacy, had taken centre stage in the tenure-review theatre.

A typical reaction of the runholders had been that of Geoffrey Thomson, co-chairman of the High Country Accord, who had said he was 'absolutely bewildered' by the government's announcement. He had said: 'We just feel it's totally, grossly unfair … The reality is that we can only pay rent on the business of what we are allowed to do and that's graze stock. You can't possibly make money from scenery.'[13]

Commenting to the *Press*, LINZ's general manager of policy, Kevin Kelly, had said that in recent years the value of landscape had risen. He had said: 'A property overlooking the Remarkables will attract more rent than a property not overlooking the Remarkables. We need to ensure these amenities, no matter how great or small, are included in the valuation.'[14]

Most of the sixty-five leaseholders affected by the rent increases had appealed to the land-valuation tribunal. Among them were the Wallis

family, the runholders of Minaret Station, a 19,752-hectare property with a twenty-nine-kilometre frontage on the western shores of Lake Wanaka.[15] Spectacularly beautiful, the land rises from the lake to the alpine area of Mt Aspiring National Park. Stocked with sheep, cattle and deer, Minaret Station was one of Otago's biggest farms. If amenity values were included within the value of the land exclusive of improvements, as proposed by Land Information New Zealand, the Wallises would face an increase in annual rent from the $4,900 set eleven years ago to $105,600.[16]

A crucial test case, over the rent set for Minaret Station, began before the Otago district land-valuation tribunal in Dunedin on 14 October 2008. (This was after the publication of *Who Owns the High Country?* and *Whose High Country?*) The three-member tribunal spent about three weeks hearing a huge volume of evidence.

Graeme Horsley, a Tauranga valuer and specialist in valuation methodology, gave evidence for the commissioner of crown lands. He said that 'there was little disagreement among valuers that amenity values should be included in capital value'.[17] This evidence backed up LINZ's 2006 conclusion that 'a proper interpretation of section 131 of the Land Act 1948 requires amenity values to be taken into account in rental valuations'.[18]

Nick Davidson, Queen's Counsel, represented the Minaret Station runholders. The *Otago Daily Times* reported that

> [Nick Davidson] said the valuation method proposed by the Crown was inconsistent with the legislation which, he asserted, dictated that [the] land be valued on pastoral values only. He said … 'the Crown seeks to impose a rent on values which already belong to the lessee, by virtue of the bundle of rights associated with the lease, including the right of occupation in perpetuity.' … Mr Davidson said the Crown risked creating a major problem if it continued including amenity values. 'It's going to be a problem if it is endorsed. It is going to have a huge practical effect, but also a huge legislative effect, because it rewrites the bundle of rights granted to the lessee by the pastoral lease.'[19]

It seemed likely that, if endorsed by the land-valuation tribunal, the sixfold rent increases proposed for some crown pastoral leases might further turn leaseholders against providing free walking and cycling access. As mentioned in Chapter 33, commenting in May 2007 on the rent increases, the journalist Neal Wallace had predicted a tougher, more mercenary approach by lessees towards charging for public access.

Closed for 364 Days a Year

Two thousand and eight slipped away, as we waited for the Otago district land-valuation tribunal's decision on Minaret Station. Meanwhile, in January 2009 a correspondent wrote to me raising an aspect of pastoral leases that had not received much critical scrutiny. He suggested that the commercialisation of outdoor recreation through multi-sport or mountain-biking events might be adversely affecting public access:

> Local examples in Central are the Goldrush (over land east of Alexandra), the Motatapu Challenge (through Shania Twain's place) and the Lake Hawea Challenge (around the Lake Hawea). These events are held over Pastoral Leases and are trumpeted by the event managers as being a 'once a year' opportunity to traverse through magnificent scenery 'not otherwise accessible to the public'. However, the pastoral lessees involved are now refusing access over their properties to everybody else for the rest of the year on the grounds that they have satisfied (and been paid for) any social/moral obligation to provide public access by letting a large number of people through on one day a year.
>
> This means that to have access to these mountain areas, I now have to pay some event manger $100s for the privilege and take part in a commercial lycra brigade circus on a fixed day, rather than travel through them on my own terms.
>
> Far from improving access to our back country, these commercial events are proscribing it.

I checked a couple of this person's facts (though not the fact of the events being held over pastoral leases). A glance at the websites of the three mentioned events seemed to substantiate his concerns. The website for the Motatapu Icebreaker 09 described this fifty-kilometre run or mountain-bike ride as a 'landmark event [giving] access on one day each year over a route that is otherwise not open to the public'.[20] In case this message didn't immediately sink in, the website later reminded us that 'there is absolutely no access permitted on any of the privately owned property prior to the event'.[21]

Goldrush was a three-day 375-kilometre event involving kayaking, mountain-biking, running and road biking. Its promoter described it as being 'set in the back country of Central Otago following the old trails opened up by the pioneers in their search for gold'.[22] One could question what proportion of Goldrush followed genuine goldminers' tracks. But that is not my purpose here. What is relevant is that much of the Goldrush route, particularly stages 2, 3 and 4, passed through private property, typically by mountain-biking or running on farm roads or on farm four-wheel-drive tracks.[23] Two set weekends were available to Goldrush entrants for practice runs on these properties. This arrangement implied that these hugely appealing tracks were not normally open to the public. The entrance fee for Goldrush 2009 was $495 per person.

The Contact EPIC, referred to above as the Lake Hawea Challenge, was promoted as being the 'ultimate mountain biking challenge'.[24] It was a single-activity event rather than a multi-sport event. It circumnavigated Lake Hawea, near Wanaka, following a tough 125-kilometre course. The organiser described it as 'a once a year opportunity to be part of [a] race and a great day out riding through the Hunter Valley and Dingle Burn stations of Lake Hawea which is only achieved through special permission from the land owners'.[25] The course description hammered home this exclusivity: 'Only through this event are competitors allowed access through the Dingle Burn Station homestead and then on to the

Dingle Burn Station Road.'[26] The entrance fee for Contact EPIC 2009 was $125 per person.

Be Thankful for Small Mercies?

A common thrust of the promotion surrounding these and some other commercial events was that gaining access to otherwise closed private land – even just for one day each year – was a noteworthy access advance and was a privilege and a heaven-sent opportunity for which people ought to have been grateful. The dismal reality behind this cocksure assertion was that the entry to some wonderful recreational routes was closed for 364 days a year, squandering these marvellous back-country or rural resources.

In Chapter 20 we discussed the disadvantages of traditional access. Kay Booth had argued that the group-friendly nature of one-off arranged access was discriminatory and unfair because it resulted in winners and losers, the losers being individuals lacking the confidence or connections to obtain permission. She wasn't really talking about commercial multi-sport events – she had in mind I think club-organised informal trips – but we can logically categorise commercial events as being a form of arranged access.

If you accept the premise that it is bad to have access winners and losers, then you must also ask yourself several questions about how those winners and losers arise. Do commercial events – either in central Otago or on the rough pastures of the Otago Peninsula or anywhere else – need permanent, year-round access exclusivity to be successful? To have a few hundred winners on one day each year, must we have thousands of losers spread over the other 364 days? Could we all be winners without severely diminishing the appeal of commercial events and without affecting farming?

Crown Pastoral Leases and Exclusive Possession

Another continuing issue, overlapping the publication of *Who Owns the High Country?* and not resolved until May 2009, concerned a runholder's right to exclude others. Since late 2007, John Page and Ann Brower had co-authored two potentially far-reaching papers questioning the official view that a South Island crown pastoral lease bestows on the tenant exclusive possession.[27] Brower summed up their conclusions:

> In summary, that a pastoral lease is a creature of statute and thus conveys no explicit right of exclusive possession, has received judicial support at the highest levels [in Australia]. So a runholder's right of exclusive possession is but a myth, albeit a long-standing and well-ensconced one. Furthermore, a primary goal of tenure review – to provide recreation access to the high country – was, and still is, superfluous. It appears that the Crown has held public access rights all along.[28]

Spare a thought for poor old nonlawyers. We access advocates and the sheep farmers now had to try to fathom law papers and terms like 'statutory quasi-usufruct'. Page and Brower's theoretical legal arguments centred on contentious interpretations of the rights of pastoral lease-

holders as prescribed in Part 1 of the Crown Pastoral Land Act 1998. Their arguments included supporting Australian precedents and were delightfully heretical when compared with the New Zealand popular and rhetorical orthodoxy, but they had not yet been tested in the New Zealand courts.

Application for a Declaratory Judgment

Rather than wait for a test case to arise, which might have never happened, in August 2008 Fish and Game New Zealand announced that it was planning to apply to the high court for a declaratory judgment that pastoral leases granted under the Land Act 1948 did not confer exclusive possession of the land. Bryce Johnson, speaking to the *Otago Daily Times*, converted Page and Brower's highbrow arguments into plain words. Fish and Game was challenging the right of pastoral leaseholders to restrict access to their properties.[29] Parliament, he implied, had never intended to grant farmers the right to keep members of the public off the crown land:

> A pastoral lease only gives a right to the grass – but nothing else. It doesn't attract the provisions of the Trespass Act, so it doesn't give exclusive occupancy. It's a statutory lease, not a common [law] lease, so if it only says you have exclusive right to the pasturage, then that's it … it doesn't say you have exclusive occupation. From a public access point of view, we're hugely interested in that. It could be a good outcome for the public.[30]

The New Zealand Fish and Game Council filed its application to the high court in September, a day or two before parliament passed the Walking Access Act. The council sought two declarations from the judge. Firstly, that a pastoral lease does not grant exclusive occupation to a leaseholder. And secondly, that as a consequence a lease allows public access to the land provided that it does not interfere with the leaseholder's rights.[31]

Donald Aubrey, the chairman of the high-country committee of Federated Farmers, responded predictably, arguing in support of the high-country status quo. He said that parliament, in passing the Walking Access Act, had recognised that new walking access to land would only be obtained by negotiation with landholders. He accused Fish and Game of 'trying to wreck the consensus behind … the Walking Access Act'.[32]

In November 2008, after the general election, Land Information New Zealand produced its *Briefing to the Minister for Land Information*. The crown still owned about 1.6 million hectares of environmentally sensitive land in the South Island high country that was leased or (in a few cases) licensed for pastoral farming. LINZ still managed 230 pastoral leases (as at 31 October 2008). On Fish and Game's high-court claim, the briefing said that

> if the Judge makes these declarations this would have potentially widespread implications for pastoral leases. It would reduce the property rights of the lessee, which [would erode] the value of the assets to the lessee and therefore the return on assets to the Crown from rent.[33]

This LINZ statement seemed to imply that increasing the availability of walking access to pastoral leasehold land would lessen the value of the affected properties. What a different place is New Zealand, I thought when I read this LINZ prediction. In the English Lake District, hill farms and country houses and villages are set among hills crawling with walkers all the year round. The presence of the walkers does not reduce the production of the hill farms and does not bring down the astronomical prices of rural homes. People still want passionately to live there, not *in spite of* the public footpaths but *because of* them.

*

The case was heard in the high court at Wellington on 26 March 2009. The New Zealand Fish and Game Council had brought the case against the pastoral lessees' landlord, Land Information New Zealand, as the first defendant, and against Glenmore Station owner Jim Murray as the second defendant.[34]

Partway through the hearing, Fraser Barton, the lawyer representing the Fish and Game Council, conceded that crown leases in the South Island high country do not allow public access to the leased land. This meant that he was no longer arguing for the second declaratory judgment. Instead, he was only seeking the first declaratory judgment: that pastoral leases granted under the Land Act 1948 'do not confer exclusive possession or exclusive occupation of the land in the leases'.[35] He said that because the crown had not specifically given farmers control over public access, such control still remained with the crown. The crown, he suggested, should regulate the access.[36]

Nick Davidson QC, representing the trustees of the High Country Accord, said that all the indications were that the land was alienated from the crown, and that farmers erected homes and improved them on the basis that they had undisturbed possession. 'The case was notable in that both the owner of the land, the Crown, and the occupier – the leaseholders – agreed that the farmers had a right to exclusive possession and that the challenge to that was coming from people who were not party to the contract.'[37]

High Court Decision

The high court in Wellington released its decision on 13 May 2009. Justice Simon France ruled that a pastoral lease, issued under the Land Act 1948, did provide for exclusive possession for the lessee.[38] These high-country farmers, therefore, had the right to control access. Justice France found important differences between the terms and circumstances of the Australian and New Zealand pastoral lease cases.[39]

The High Country Accord trotted out the superficial but seldom questioned New Zealand notion that access to the farmed countryside was a privilege and not a right.[40] Jonathan Wallis, the Accord's chairman, grasped the opportunity to attack Ann Brower personally. He said that 'questions now have to be asked about the validity of her other published works and her role in teaching the land management professionals of the future'. He also implicitly hit out at Bryce Johnson, suggesting that Fish and Game's taking court proceedings had misappropriated public funds and that

> many Fish & Game members will be now asking whether this costly exercise is the result of a personal crusade by a national executive that has become distanced from the views of its grassroots membership.[41]

In a press release titled 'Fish & Game's High Court Action a Disaster', Federated Farmers said that Fish and Game's challenge to the rights of South Island pastoral lease-holders had been 'a spiteful and damaging waste of the fishing and hunting license [*sic*] fee money'.[42]

David Carter, for the past six years an antagonistic voice against improved access, accused the Fish and Game Council of divisive behaviour in its decision to take legal action.[43]

In reply to these criticisms, Johnson said that the council had been justified in seeking a legal clarification of the issue and that a basic role of Fish and Game was to advocate for public access.[44]

In a statement commenting on Justice France's ruling, the New Zealand Walking Access Commission said that the judgment was consistent with what parliament had assumed to be the law when it had passed the Walking Access Act 2008. The judgment, therefore, would not affect the commission's work.[45]

Perhaps it was no surprise that a New Zealand judge had taken the opportunity to firmly reject an Australian precedent. In doing so, he upheld and clarified the status quo. His judgment meant that asking permission for access would remain a necessary ritual in many parts of the South Island high country.

Looking on the brighter side, for advocates of more-certain linear walking access across pastoral leases, the clarification was worthwhile. It cleared the air. They could now focus their minds on incremental progress. This was already happening. At its March board meeting, the Walking Access Commission had resolved to map existing walking access across crown pastoral leases. To achieve this, the board proposed to first engage Claire Mulcock 'to undertake a stock take of the access conditions attached to completed [tenure] reviews and those associated with … publicised preliminary proposals'.[46]

Conquered and Divided

Nevertheless the court's judgment must have disappointed Bryce Johnson. In the words of the song, 'The winner takes it all / The loser standing small'. On 22 October 2009 the Central South Island fish-and-game council passed a motion of no confidence in Johnson. Seven of the nine councillors at the meeting voted in favour of the motion, which the council's chairman, Gary Rooney, had proposed.[47]

According to the *Timaru Herald*, Rooney had earlier that month 'accused the national body of "not having the balls" to get the organisation on track'.[48] He had criticised the New Zealand Fish and Game Council for deciding to seek the high-court declaratory judgment on pastoral leases and exclusive possession. The newspaper described Rooney as 'a Waimate businessman with interests in earthmoving, farming and hunting', who had 'helped fund the High Country Accord's defence against Fish and Game'.[49]

Rob Roney, the chairman of the New Zealand Fish and Game Council, had responded to the criticism by suggesting that 'Mr Rooney could be perceived to have a conflict of interest'.[50]

The Otago fish-and-game council acted similarly to the Central South Island one. A letter signed by its chairman went to Rob Roney. The letter included the statement: 'Under the circumstances, the Otago council considered it necessary to strongly communicate its disillusionment with the New Zealand council's (NZC) chief executive's national advocacy by resolving: That this council has no confidence in the NZC's chief executive'.[51] The letter also said that among areas of concern had been the 'divisive and costly' judicial review of high country pastoral leases, which the national council had requested without consulting the regional councils.

On 6 November Rob Roney issued a statement saying that the New Zealand Fish and Game Council had full confidence in its chief executive. He wrote that 'in an organisation consisting of twelve regional and one national body there are bound to be issues where perspectives do not always perfectly align'.[52]

This might have understated the stresses within Fish and Game. It had lost an important legal argument – had been totally conquered – and had then suffered internal ructions and division. Its chief executive, who had grappled with access matters for many years, was being disparaged for having done exactly that. The year 2009, I imagined, was not the best of years for Johnson. Yet the darkest hour is just before the dawn. The Walking Access Commission was quietly becoming established and some long-standing access issues were waiting in line for some attention.

Dunedin Tracks and Trails, Antony Hamel

October 2008 saw the self-publishing by Antony Hamel of his trend-setting guidebook *Dunedin Tracks and Trails: An Illustrated Guide to Dunedin Walks, Tramps and Mountain Bike Routes*. Here in high-quality colour were the maps that Dunedinites had needed for decades, with accurate and up-to-date depiction of tracks. Hamel had achieved an attractive balance of graphic design and text that was far in advance of anything available from our commercial publishers. Two factors had combined by chance to make the book possible. There was the human side: Hamel's vision, local knowledge, software skills and commitment. And there were the new tools: GPS receivers and digital cameras, which had revolutionised the surveying of tracks and the taking of photographs.

Dunedin Tracks and Trails describes over a hundred tracks of greater Dunedin, all being less than an hour's drive from the city centre. The book includes about 350 photographs and about forty maps. A notable aspect of Hamel's maps is that many of them are at a larger scale than 1:50,000. Typically the maps of rural areas range in scale from 1:25,000 to 1:40,000. Many of the maps of urban and urban-fringe areas use a scale of around 1:10,000. The book's maps demonstrate some of the points about scale that we discussed in Chapter 26.

Dunedin Tracks and Trails looked likely to set the standards for New Zealand local walking guidebooks for many years to come. It would probably force the commercial publishers to lift their game.

There was even a slim possibility that this guidebook would coerce Land Information New Zealand into lifting *its* game. The book included many physically evident tracks, and quite a few tramping routes, that were not shown on the LINZ 1:50,000 Topographic Map 260 series maps. In some respects the availability of this new information did not so much resolve the problem of incomplete and inaccurate LINZ maps as accentuate it.

Dunedin Tracks and Trails also posed a challenge to the Walking Access Commission and to Dunedin city council. A few of Hamel's tracks or routes included sections of unformed public road that were not obvious on the ground. He was only able to follow some sections of the Long Beach to Heyward Point route (pages 6.11 and 6.12) by using cadastral printouts and a GPS receiver. That routes such as this one were publicised in a book that would remain an authoritative reference emphasised the need for the waymarking of these unformed public roads. The average Joe Public would not be able to locate and follow these roads until they were waymarked.

The word 'trails' in the book's title, viewed in its Dunedin context, is out of place, except for the Otago Central Rail Trail. Perhaps the word 'trails' was meant for the American visitor. The dominant New Zealand word is still 'track', as it was in 1958 when Ruth Mason discussed some words used by trampers:

> In the bush or in the open do you tramp on a *track*, a *trail*, or a *path*? Not on a path one may be sure, seldom if ever on a trail, almost always on a track, like a proper New Zealander … *Track* is undoubtedly the established word in New Zealand. It is the only one occurring on maps or applied to named routes, such as *Hongi's Track*, the *Milford Track*, the *Pahiatua Bush Track Road*.[53]

Since then, word usage may have changed marginally. Te Araroa (the Long Pathway) is often referred to as a national trail. In the newsletters of Te Araroa Trust, the words 'track' and 'trail' vie for supremacy, with occasional desultory mentions of 'walk', 'walkway', 'tramp' and 'route'. But the predominant word, nationally, remains 'track'.

Roads, Water Margins and Riverbeds, Brian Hayes

In 2003 Brian Hayes had written *The Law on Public Access Along Water Margins* (sometimes called the Hayes report), a companion report to the 2003 Acland report. This companion report described the historical development and complexities of the law relating to the Queen's Chain. It attracted wide interest. 'Many of the twists and turns in the law and how they fit together [had] not been previously explored in such detail.'[54]

Four years later, Hayes produced two more law papers relevant to walking access, which MAF published at the same time as the 2007 Acland report. They were *Roading Law as It Applies to Unformed Roads* (discussed in Chapter 30) and *Elements of the Law on Movable Water Boundaries*.

In 2008 Hayes combined much of the material from these three papers into one meticulous volume, *Roads, Water Margins and Riverbeds: The Law on Public Access*. In doing so he produced a large part of the New Zealand

access bible that had until then been absent. The book analyses in depth the heterogeneous mess that underlies our rights of walking access to land. It would be a positive step for me to be able to proclaim that every tramper and hunter and angler should buy this book. In reality, though, these areas of the law are so labyrinthine that Hayes's masterwork may become more important as a work of reference for members of the bar, lawmakers and NGO advocates than as an access manual for trampers and deerstalkers. So, despite the arrival of Hayes's scholarly work, walkers still awaited a comprehensive *Outdoor Access for Dummies*.

Regarding the book's general message, worthy of mention is a key passage in the Introduction, which stresses the recreational importance of unformed public roads:

> The author has formed the opinion that the roading pattern set out by the early surveyors along water and over land to be Crown granted is and continues to be the foundation of free, public and permanent access in New Zealand. The intention was that most of these roads would remain in a state of nature. Next to the rivers, mountains, lakes, and the sea, the unformed roading network originally held in trust by the Crown for the people and now administered by local councils, is one of the greatest recreational assets of the nation, for it is the one mechanism that provides an unqualified guarantee of access for everyone.
>
> Many other reservations for public access now serve as well and are noted in the text. However, the unformed roading network is the true anchor of rights of access to the outdoors.[55]

Hayes put the finishing touches to this book in August 2008, while the Walking Access Bill was cruising through the later stages of its parliamentary passage. If we turn to the Summation at the end of Hayes's book, we discover a brief reference to this bill. Hayes quotes from clause 11 of the bill, which lists the priorities that, had they all been passed into law, would have guided the New Zealand Walking Access Commission in its negotiating of walking access over private land. It was unfortunate that this book could not wait another month for the final version of clause 11 to emerge. As noted in Chapter 33, the wording that made it into section 11 of the Walking Access Act 2008 was more agile and less restrictive than what had been in the bill. The commission must take into account, among other things, 'the desirability of walking access … to areas of scenic or recreational value'.

Chapter 36

NZWAC, Frugal Start-up

The Walking Access Bill had wriggled through parliament's snares in the nick of time. The Walking Access Act 2008 came into effect five days later, on 30 September. Damien O'Connor, the minister for rural affairs, and the Ministry of Agriculture and Forestry were appointed as the minister and the department of state responsible for administering the act. But the government still had to appoint the board of the New Zealand Walking Access Commission and still had to adequately fund the commission to carry out its statutory functions. If we were to judge from the political opinion polls, the allocation of sufficient money would probably depend partly on the budgetary inclinations of an incoming National-led government – and the world was a year into the most serious financial crisis since the 1930s. On Monday 6 October, one of several meltdown Mondays, the Financial Times Stock Exchange 100 Index spiralled down 7.85 per cent, one of the bigger one-day falls ever. Four days later, on Black Friday, the same index dropped 8.9 per cent, the third-biggest one-day fall in its history.[1] Stock markets around the world recorded similar falls to those in London. *MoneyWeek* said: 'We really are facing a massive global slowdown, and even if our governments could do anything about it (which is debatable), they are in fact all running around like headless chickens panicking.'[2]

O'Connor Appoints Board

On 13 October Damien O'Connor announced the names of eight people he had appointed to the board of the Walking Access Commission. They were John Acland (chairman), Peter Brown, John Aspinall, Maggie Bayfield, John Forbes, Brian Stephenson, Kay Booth and Barbara Stuart.[3] The first five had served on the consultation panel of 2005–7.

During the third reading of the Walking Access Bill, O'Connor had paid tribute to John Acland's commitment to the principles of walking access and to his chairing of the Land Access Ministerial Reference Group, the Walking Access Consultation Panel and the Walking Access Advisory Board. Acland had been 'the vital glue that held the various strands together. His competent leadership [had given] the process cred-

ibility during the two extensive rounds of consultation, sometimes in the face of extreme provocation.'[4]

Brian Stephenson, a barrister and past president of Federated Mountain Clubs of New Zealand, had served on the Walking Access Advisory Board of 2007–8. Kay Booth had twenty years of experience in parks and recreation research and planning, and had held executive positions in nongovernmental conservation and recreation organisations. She was also a co-founder of MapWorld New Zealand, a retail and services business specialising in maps, navigational equipment and related services. Barbara Stuart had thirty-three years of farming experience and was the Nelson–Marlborough regional coordinator for the New Zealand Landcare Trust. She and her husband farmed at Cable Bay, where for twenty-four years they had managed public access across their farm. The *Nelson Mail* reported her commenting that 'many landowners are afraid of public access, but our experience has, on the whole, been only good, and we have enjoyed sharing our beautiful area'.[5]

Because a general election was close, and because of parliamentary conventions relating to appointments made in pre-election periods, O'Connor made all these appointments to the board for a relatively short term. The appointments would expire on 28 February 2009. (As things were to turn out, in April 2009 all these board members would be reappointed for terms ranging from one to three years.)

The board met officially for the first time on 20 October, about two weeks before the election.

The General Election, November 2008

At the General Election on 8 November, many voters went to the polls with the global financial crisis, and its likely effect on New Zealand, uppermost in their minds. This issue had dominated the election campaigning. It had sidelined the familiar perennials, such as health, roading, crime, housing, student allowances and climate change. Access issues, such as those surrounding the Queen's Chain and tenure review, did not feature as election issues nationally. Informed access-watchers, however, mulled over the possibility that David Carter, who for five years had consistently derided the government's work on walking access, would become the minister responsible for administering the Walking Access Act 2008.

Helen Clark had presided over Labour-led governments for an unprecedented nine years, but her time was up. The parliamentary pendulum lurched decisively rightwards. The National Party achieved fifty-eight seats, the Labour Party forty-three. This resulted in a National-led centre-right government, supported on confidence and supply by the Maori Party, ACT New Zealand and United Future.

Damien O'Connor lost his West Coast–Tasman electorate seat and was too low on the Labour Party's list to gain a list seat. This result deprived parliament of the man who had headed its walking-access affairs for four years. Six weeks earlier, Martin Gallagher, the Labour member of parliament for Hamilton West, had acknowledged the contributions of Jim Sutton and Damien O'Connor. Gallagher had suggested that 'history [would] record this bill as one of the more significant achievements of

this Parliament, and certainly of this Government'.[6] Gallagher had also acknowledged the work of the government officials, and in particular the enthusiasm and passion of Peter Coburn, O'Connor's personal assistant.[7]

David Carter, who was now legendary – among a handful of access-watchers, anyway – for his eulogising of the Great New Zealand Status Quo, became the minister of agriculture, a role that included administering the Walking Access Act. His responsibilities also included rural affairs, the new government having decided that a separate minister for rural affairs was not needed. (There had never been a Ministry of Rural Affairs.) Access advocates waited curiously to see if this visionless land-guard would metamorphose to embrace the aspirations of the Walking Access Commission. After his appointment as minister of agriculture, the National Party website announced that he had quickly identified goals to be achieved; one of these goals was 'to strengthen the relationship between urban and rural New Zealand by encouraging mutual understanding and appreciation'.[8]

Review of the Application of the Foreshore and Seabed Act 2004

In reaching the agreements with its confidence-and-supply partners, the National Party had given ground on some policies. One of these areas had potential implications involving walking access. While campaigning, the leader of the National Party John Key had said that a National government would not revisit the foreshore issue. But after the election, National's confidence-and-supply agreement with the Maori Party included a commitment 'to initiate as a priority a review of the application of the Foreshore and Seabed Act 2004 to ascertain whether it adequately maintains and enhances mana whenua [territorial rights]'.[9] This review would be completed by 31 December 2009. The agreement seemed to safeguard public access rights to beaches:

> In the event that repeal of the legislation is necessary, the National-led Government will ensure that there is appropriate protection in place to ensure that all New Zealanders enjoy access to the foreshore and seabed, through existing and potentially new legislation.[10]

The Foreshore and Seabed Act 2004 had defined public access rights at considerable length. These new, formal access rights, however, had not yet been tested in the courts.

In an editorial, the *Press* said:

> [The National-led government] will have … serious problems if it does not go along with the Maori Party's bottom-line demand for the repeal of the Foreshore and Seabed Act. Key's delay in dealing with that problem, by promising a review, does not lessen the fundamental difficulty of squaring the radical Maori position with the conservative Pakeha one.[11]

Anthony Hubbard, writing about Nick Smith in the *Sunday Star Times*, probed a shade further into this difficulty:

> Smith [the minister for the environment] will … be involved in tricky negotiations with the Maori Party over the foreshore and seabed issue. This … is full of thorns, and is not resolvable if either Pakeha or Maori seek ownership of the beaches … Shared management of the resource, with Maori getting a say and Pakeha [getting] continued access to the beaches is a possible way …
>
> But, [Smith] asks, 'Why do we have this idea that somebody has to own a thing? Does somebody own the air? The water? The sea? Does somebody have to own the beach? Well, I'm not so sure.'[12]

The stormy foreshore-and-seabed debate (summarised in Chapter 10), and particularly the matter of Maori customary property rights in the foreshore, had been the cardinal political issue of the 2002–5 parliamentary term. We appeared to be heading for an aftershock.

NZWAC: Year One, October 2008 – September 2009

The Walking Access Commission's to-do list was a long one that would take years to complete. While introducing the second reading of the Walking Access Bill in August 2008, Damien O'Connor had emphasised that the commission would have much to do and that evaluating the success of the legislation would not be possible until the commission had existed for a decade:

> The [Local Government and Environment] committee did not consider that there was a need to change the provision for a review of the [Act] to take place after a period of 10 years. Clearly, the commission will have its work cut out during its start-up phase in developing its statement of intent and in establishing relationships with relevant agencies and stakeholders to achieve its objectives, and complex issues will need to be worked through over a period of time.[13]

Russel Norman of the Green Party, however, had argued for a shorter review period:

> It is outrageous that the bill has a review period of 10 years. We think that 10 years is a long time to see whether this [legislation] will work and whether it will prove that it will give people access to their own resources – resources owned by the public that the public does not have access to. For that reason we support a shorter review period of 5-yearly reviews.[14]

According to these two politicians, then, the ideal time to assess the effectiveness of the Walking Access Act 2008 will be either 2018 or 2013. Meanwhile, writing this chapter in late 2010, I am remarking upon only the first two years in the life of the New Zealand Walking Access Commission.

Setting up the New Zealand Walking Access Commission

The board of the Walking Access Commission had met for the first time on 20 October 2008, a couple of weeks before the general election. The board had spent some time discussing and arranging the essential paraphernalia of a crown entity: interim administrative arrangements, an IRD number for the commission, a bank account, financial systems, a statement of intent, a website and so on. It also considered some matters directly relevant to walking access.

The board noted that the Walking Access Advisory Board, the temporary body that had advised the government on the implementation of the 2007 Acland report, had begun drafting a code of responsible conduct. Claire Mulcock had done much of this work.[15]

The board also discussed the need for a memorandum of understanding between MAF and DOC (later modified to be between the commission and DOC) on the administration of gazetted walkways. This memorandum would not be completed until DOC confirmed the list of gazetted walkways whose administration the commission was responsible for. The commission needed the details of the easements and leases connected with these gazetted walkways. It also needed to know the controlling authority of each walkway.[16]

Finally, the board considered the need for the Overseas Investment Office (OIO) to consult the commission on proposals for the acquisition of sensitive land. The commission would be well qualified to advise the OIO on any walking-access implications involved.

Subsequent monthly board meetings in November, December and February again dealt with a mixture of start-up organisational necessities and basic walking-access matters. Early in the commission's life, the board asked officials to draft a letter to Local Government New Zealand 'indicating the Commission's wish to develop a constructive relationship with local government, and advising of its interest in the use of unformed legal roads for walking access purposes'.[17]

The first minuted mention of the crucial matter of mapping occurred during the board's fourth monthly meeting. The board noted that 'the Commission has the function of compiling, holding, and publishing maps and information about land over which members of the public have walking access'. The board envisaged a mapping database with two levels of functionality: an easily accessed and used mapping function for use by the New Zealand public; and a more comprehensive level of functionality that would be used by the commission in its operations.[18]

Early on the morning of 24 February 2009, before the board's meeting of that day, John Acland, as chairman of the board, met David Carter, the minister responsible for the administration of the Walking Access Act 2008. On the face of it, to at least one observer on the outside, this forced marriage that loomed over the young walking-access family appeared unworkable. Acland, who had signed off two reports signalling an urgent need for change, had to dance with Carter, a rock-solid custodian of the status quo. The tête-à-tête had the potential, one envisioned, to leave one of them rocking on the floor in the Garbha Pindāsana posture, breathing quietly through the nostrils. Yet, who knows? Funny things can happen

when a politician moves joyfully from the opposition benches to the government side of the House.

The board meeting's minutes mentioned this earlier get-together but read like an exercise in diplomacy and left everything to the imagination :

> … the Minister had advised [Acland] that … he intends to reduce the appropriation for the New Zealand Walking Access Commission by $1.0 million from the 2009 Estimates. (This would have the effect of eliminating the $1.0 million carried forward from 2007) … The reduction means that the forecast size of the contestable fund [for creating new walking access] will be $1m instead of $2m.[19]

Was this cut an austere response to the recession, forced upon the minister? Or was it a vicious de-funding consistent with Carter's antipathy towards the need for entry that did not rely on asking for permission? I don't know. Carter had advised Acland that the board would need to show how it would use its money before he would be able to publicly support any further funding.[20]

NZWAC's First Statement of Intent

John Acland and John Forbes signed the commission's first statement of intent on 27 February 2009. After reproducing some basic sections of the Walking Access Act 2008, the Statement of Intent for 2008/11 listed the commission's priorities for its first year. It also listed nine objectives to be achieved, some sooner than others, by 30 June 2011:

- Undertake consultations with key walking access stakeholders on the Commission's plans and priorities by 30 June 2009.
- Establish a basis for developing ongoing coordination with local authorities on walking access issues.
- Set up appropriate administrative and executive arrangements and appoint a CEO.
- Complete and publish a Code of Responsible Conduct, in accordance with sections 15 to 22 of the [Walking Access] Act, by 30 June 2010.
- Put in place a process for dealing with enquiries about walking access and associated issues.
- Mapping: establish the key requirements for a walking access database; issue an RFP [request for proposal] to selected providers.
- Walkways – review the existing walkways and establish policies and priorities for establishing new walkways.
- Begin work on and advance a National Walking Access Strategy.
- Establish a contestable fund from the currently available walking access funding, and develop criteria and processes for the allocation of the funding.[21]

This first statement of intent also recorded some of the organisations with which the commission would need to establish working relationships. It identified five general groups: government departments with specific functions relevant to access; other statutory agencies; local government; Maori; and other stakeholder groups. The last category included Fed-

erated Farmers of New Zealand, Federated Mountain Clubs of New Zealand, Public Access New Zealand, the Council of Outdoor Recreation Associations of New Zealand, and Te Araroa Trust.[22]

The statement included the details of the financial resources available to the commission. But the figures predated David Carter's warning of a likely $1 million cut. Before Carter's intervention, the government had agreed on the following funds:

	2008/09	2009/10	2010/11	2011/12 and outyears
Output Funding	2,189,000	2,789,000	1,789,000	1,789,000
Capital	150,000	500,000	500,000	-

Table from the New Zealand Walking Access Commission's Statement of Intent for 2008/11.

The Walking Access Act 2008 had specified that one of the functions of the commission would be the administration of a fund for 'obtaining, developing, improving, maintaining, administering, and signposting walking access over any land'. But the government had made no separate provision for this fund. So the commission was intending to provide for the fund from budgeted surpluses in 2008-09 and 2009-10. 'The estimated contribution to the contestable fund from the 2008/09 financial year [was] $0.927 million.'[23]

The global recession was still dominating political and economic discussion. Reading between the lines of the commission's statement of intent, it seemed that the board was well aware that it would have to make an emaciated budget stretch a long way: 'As a small Crown entity the Commission will be very focused on achieving outcomes rather than organisational expansion.'[24]

Getting to Grips with Routine Business

The Walking Access Commission was now, at the end of February 2009, five months old. Even at this preliminary stage in the commission's life, while it was still heavily occupied setting itself up and before the appointment of a chief executive, it was also already considering several local access matters that had been brought to its attention. In connection with the Te Roroa Claims Settlement Act and the vesting of land at Maunganui Bluff, the commission agreed to sign a walking access easement provided for in the Deed of Settlement.[25] Waitakere city council had contacted the commission proposing a new walkway at Lake Wainamu; the commission resolved to respond positively to this proposal.[26] Brian Stephenson raised an issue about the Moonlight Track on Ben Lomond Station; the landowner was said to be charging $5 a person for access to this signposted track; the legal status of the track was unclear.[27] In dealing with such practical local matters, the commission was getting to grips with some of the basic tasks of access leadership. It was going to be interesting to see, though, whether the commission would have enough resources to give matters raised by individuals – small fry – as much consideration as matters raised by city councils, recreational NGOs, Federated Farmers, Fish and Game, and other identified big fish.

To discuss Waitakere city council's proposed walkway at Lake Wainamu, the commission met representatives of the council in April. Graeme Campbell, the council's director of strategic planning, took the opportunity to re-emphasise the needs of town-dwellers:

> Graeme reminded the [board] Members that:
> • The New Zealand population principally lives in urban places and there is a large demand from these dwellers for a variety of walking experiences as a respite from their urban life.
> • Urban dwellers are often looking at front country for short walks and day trips (as opposed to back country for longer tramps or remote experiences).
> • While the cost to purchase front country land can be high there is real value for money in providing these experiences. The cost per kilometre per walker on front country walks will usually be many times lower than for back country walkways (such as the Routeburn Track).[28]

The commission agreed to support in principle Waitakere city council's proposal to extend the Te Henga Walkway. The extension would form stage one of a three-phase development linking existing, stand-alone walkways.[29] Much of the extension would cross private land.

NZWAC's Second Statement of Intent

The commission's Statement of Intent for 2009/12 was signed off on 25 May 2009. It repeated or expanded the main intentions, challenges and goals listed in the 2008–11 statement. It also included some target dates for the commission to achieve the stated goals. Regarding the mapping of walking access across private and public land, a test version of the mapping product would undergo trials in 2009–10 and the final version would be progressively implemented nationally in 2010–11. A draft national walking access strategy would be circulated to the main stakeholders in 2009–10 and be published for general comment in 2010–11; the final national walking access strategy would be published in 2011–12. (In actuality, it would be published in September 2010.)

The Statement of Intent for 2009/12 also shed some light on the commission's aims for its regional presences. After the appointment of its Wellington-based chief executive, the commission planned to appoint three regional representatives (or the equivalent of three full-timers). Their prime function would be 'to liaise with territorial authorities, key stakeholders, user groups and users in their regions on walking access'.[30] The Wellington office, with a likely staff of six (or the equivalent of six full-timers), would 'concentrate on further developing and implementing the draft walking access strategy and the draft code of responsible conduct and on implementing a public access mapping system'.[31]

The financial section of the statement of intent showed that David Carter, true to his word, had lopped $1 million off the commission's estimated operational funding for 2009–10, reducing this money from $2,789,000 to $1,789,000.[32] On budget day, 28 May 2009, Vote Agriculture and Forestry affirmed this $1 million cut, categorising it as a 'value for money review saving and reprioritisation'.[33]

In addition to the $1,789,000 budgeted for the commission's 2009–10 running expenses, Vote Agriculture and Forestry allocated $500,000 for 2009–10 capital expenditure on information technology to provide mapping and other access information. The government officials expected that the public-access database would cost up to $500,000 to build and then less than $100,000 a year to operate and maintain.[34]

The net result of the budget amounted to a reduction of about $500,000 in the total monies available to the commission in 2009–10. Damien O'Connor, now the Labour Party's spokesperson on rural affairs, said that 'the Walking Access Commission has had $500,000 cut from its limited budget which will severely restrict their ability to work with landowners to develop a code of practice and identify agreed walkways throughout New Zealand'.[35]

O'Connor's concerns were valid. In Chapter 34 we saw that, during the parliamentary debates on the Walking Access Bill, Colin King had doubted whether the Walking Access Commission's budget of $2 million a year would be enough to fund the commission's activities. O'Connor was merely reinforcing this point.

His warning also possessed some historical foundation. In the same parliamentary debates as mentioned above, Nick Smith had spoken of the failure of the New Zealand Walkway Commission and he had blamed this alleged failure on underfunding. This claim, in turn, had some genuine historical support. In 1979, for example, Mrs H Capper of the Wellington district walkway committee reported that 'there were insufficient personnel with the expertise to carry out the proposals of the District Committee. The Committee felt that more priority should be given [by the New Zealand Walkway Commission] to the provision of such personnel for walkway development.'[36] In other words, the Department of Lands and Survey officials who serviced the Walkway Commission had of course been salaried employees, and because there had not been enough money, there had not been enough officials.

Mistakes show us what needs improving. Inadequately funding the New Zealand Walkway Commission had been a mistake. Our politicians needed to learn from that, even in a recession.

Bloggers Discuss the Commission's Mapping Plans

On the day that the commission released its second statement of intent, the *Dominion Post* carried an article titled 'Trampers to Get Online Maps Next Year'. The article mentioned that the commission was shopping for a system that would show maps and satellite images of public access areas as well as boundaries and some land-tenure information.[37] The news caused a flurry of blogging on tramper.co.nz, the posts being added to a pre-existing thread. The extracts reproduced below are unedited except that I have omitted the contributors' names and some of the posts. They suggest that many trampers were routinely navigating using GPS receivers but that some of the same people still appreciated the value of a paper map:

Posted: 16 May 2009, 6:47pm
Subject: Walking Access Commission

Not sure if many of you have come accross the Walking Access Commission. They've a small website with some interesting documents regarding the history of access, current access rights and liability. Reason they came to my attention is they're currently starting a tender process for a 'Public Access Mapping System'. Looks good from what I can see at this stage from the documents online: they hope make publically available (on the internet) geographic representations of areas of public access in NZ. They mention including legal roads (formed/unformed), marginal strips, esplanade reserves, the Queens Chain, public reserves, and other publicly owned land. They talk about 1:50,000 representation, on topo maps,m satellite imagary and air photos. Only at the RFP (requets for proposal) stage, but hopefully will all go ahead as planned.

Posted: 16 May 2009, 9:38pm
We are long over due for such a map in New Zealand.

Posted: 25 May 2009, 2:41pm
Interesting … they're planning to build a tramping and walking information site? I'm not convinced we need another one.

Posted: 25 May 2009, 5:13pm
I think the work of the commission should be worthy of all trampers support. Hopefully they will be able to sort out the tangle of issues involving access in New Zealand with some good information. Yes, one wonders if they are going to duplicate what is going on with this site, the DOC site, and others but I would think that they would have a slant to provide good information in places with doubious access situations. They will also be carrying the authority of the Commission which is the sort of weight that other sites might not be able to provide. By the way, I have been working on this DOC data that I have and now have a version that is loadable into a Garmin GPS. I am just trying to make it look nice. The data is of all DOC administered lands, not all of them with Public Access. But there are a lot of marginal strips in there which may be useful. If anyone out there is using a Garmin GPS that is map capable (60CSX or 76CSX or similar) and would like a copy, send me a private mail. It doesn't have a fancy installer but you can edit a .reg file which will get it into Mapsource so you can use it from there.

Posted: 25 May 2009, 10:21pm
Hi
I downloaded those files on Conservation land referred to in a previous post but I didn't know what to do next. It loaded onto my Freshmap file. Anyway, I'm sweet with my Freshmap, including cadastrals, plus what's available on the DoC website. It will be interesting to see what happens next. I can see why the topomap people want us to keep forking out $13.50 per topomap rather than making this info appear online in a form of usable quality. Certainly most of the keen people I tramp with have their own map data software

now in whatever form it takes e.g. Toaster, Freshmap whatever. On my 5 passes trip, one couple had a map that had had the ink run just where we were going, the other guy had failed to realize we were going to the Fohn Lakes so didn't have that covered and I only had 2 out of the 4 Topomaps but one guy had an inch to the mile with the Moir's route written on it so we managed!

Posted: 26 May 2009, 7:30am
The files you downloaded are ESRI shp files, that are used in GIS applications. You can view them in GPSMapEdit (free download from http://www.geopainting.com/en/)Use file/import. That will give you some idea what you are looking at and if they are useful to you. With maps, I always have the paper 1:50,000 topo in my pack. I still think they are good value. But I use Gary's topos, http://www.gtmaps.co.nz on my computer and GPS

Posted: 27 May 2009, 10:02pm
Gawd, I think this GPSmadpEdit is a bit too geeky for me. I'll ask Doug Forster (Freshmap)about it. Bought a cable today so the GPS can talk to the computer. Bivouac are now dealing in Garmin. I am a huge fan of the Topomaps. I laminate mine in Duraseal and they are then bombproof (as long as I don't lose them). My eTrex is about 3 years old so can't be updated.[38]

Other Mapping Developments, 2009

In the wider world beyond the NZWAC's own ambitious mapping aims, other mapping developments continued to occur. Chapter 27 covered mapping happenings up to late 2007. I will update the stories on a few of the issues it raised.

In a section on the digital maps available in 2006–7, I mentioned that in the future LINZ would probably be able to revise the foot-track data on the NZTopo database more frequently and inexpensively. Doug Forster, the designer of Freshmap, had notified LINZ of several track errors on the NZTopo database. Within six months LINZ had rectified some of these errors on NZTopo*Online*. The others had to wait longer but were finally incorporated into the NZTopo database in September 2009.[39] Would this encouraging response to feedback about tracks become usual? Time would tell. We were still, in 2009, in the early days of the public submitting digital foot-track data to LINZ. The process had hardly started.

One model worth considering was *The National Map* Corps of the United States Geological Survey (USGS). *The National Map* Corps consisted of private citizens who devoted some of their time to providing cartographic information to the USGS's *The National Map*. The volunteers, who were unpaid, participated in projects within mutually agreed work areas. The only requirements to join the Corps were having internet access, owning a GPS receiver, and being familiar with the area you were to map.[40]

*

A welcome development since 2007 was the falling prices of some digital maps and some GPS receivers. In January 2009, Freshmap's list price

for Freshmap Cadastrals (either North Island or South Island) was $95, having been $195 in October 2007.

Also in January 2009, MapWorld's list price for a GarminMap 60CX GPS receiver was $545, having been $895 in 2007. Similarly, Freshmap's all-of-New Zealand 1:50,000 topographic data card for the Garmin X series instruments was $195, down from $345 in 2007.

Doug Forster mentioned to me that he was selling a surprising number of these topographic data cards for GPS receivers.[41] Taking into account also the likely sales of similar products by other companies, this indicated that people were buying a large number of modern GPS receivers. Sales of Freshmap Cadastrals, however, had been disappointing, perhaps indicating a trend away from using digital cadastral maps on CDs and DVDs.

Meanwhile, there still seemed to be a place for paper or synthetic paper maps, which looked likely to remain available. Wellington-based Geoff Aitken of NewTopo (NZ), having produced *Wellington Walks* and *Tararua Tramps* in 2005, had added eight more topographic maps to his company's products: *Aotea (Great Barrier Island)*, *Auckland North*, *Auckland South*, *Rangitoto and Waiheke Islands*, *Tongariro Alpine Crossing*, *Abel Tasman Coast Track*, *Queen Charlotte Track*, and *Routeburn Track*. Aitken, in April 2009, was still planning several more maps, including an A3 Ruapehu round-the-mountain map, an A3 Dunedin walks map, and a large-format Banks Peninsula sheet.

Release of NZTopo50 Maps, September 2009

Chapters 27 and 32 included some discussion of the new paper 1:50,000 topographic map series, NZTopo50, which LINZ had been planning since 2005. It seemed to me, and to several other interested people, that the new maps would be the old maps rehashed. One concern was that the new maps would reuse dated and incomplete track data, albeit plonked onto a new projection compatible with GPS receivers. Yet these new maps would form the crucial topographic base layer for the Walking Access Commission's public access mapping.

The NZTopo50 maps became available on 23 September 2009. The 452 new maps resulted from a multi-stage exercise in number-crunching, starting off with the digital data in the NZTopo database. The art of cartography – human skill and judgment – had also played a part; one big task had been the manual shifting and placing of text so that it did not clash with adjacent features and was cartographically pleasing. The production process had taken three years. The results were paper maps printed by offset printing, tiff files for online viewing and map plotting, and geotiff files for use in GIS [geographic information system] applications.[42]

LINZ made the NZTopo50 image and data files freely downloadable. NZTopo*Online* was withdrawn, having been superseded by the new arrangements.

Regarding tracks, Graeme Blick, LINZ's national geodesist, said that the new maps included 'updated information on features such as Department of Conservation huts and tracks' and that they were 'designed to help New Zealanders find their way through remote areas with greater ease'.[43]

The responsibility for correcting data errors in the NZTopo database, such as missing foot-tracks, would rest with LINZ. The Walking Access Commission was aware of the likely occurrence of inaccuracies and omissions; the commission foresaw a role for itself advising LINZ of errors.[44] The NZTopo50 maps carried a note saying that LINZ valued feedback from users and that it welcomed advice of errors and omissions. The note included an email address and an 0800 phone number.

Appointment of Chief Executive

For eight months, since 30 September 2008, Hunter Donaldson of the Ministry of Agriculture and Forestry had managed the commission through a busy time that had seen progress on several key priorities.[45] On 8 June 2009 John Acland announced the appointment of Mark Neeson as the commission's chief executive. Neeson had qualifications in law and environmental management. He had followed an extensive public-sector career in the former Department of Lands and Survey, the Department of Conservation and the State Services Commission. He was currently a manager with the Ministry of Agriculture and Forestry policy group.[46]

Neeson's knowledge of walking access went back to at least the mid-1970s. He had been involved with the creation of walkways under the Walkways Act 1975. He had also been immersed in the government's long project to develop walking-access policy, from its outset in about 2001 to its conclusion, the enactment of the Walking Access Act 2008. John Acland 'was delighted to be able to appoint someone of Mark Neeson's experience and expertise'. More than a hundred people had applied for the position.[47]

Draft National Strategy on Walking Access, June 2009

A key function of the Walking Access Commission under section 10 of the Walking Access Act 2008 is to provide national leadership by preparing and administering a national strategy on walking access. In June 2009 the commission produced its Draft National Strategy on Walking Access for distribution to and comment from its identified stakeholder organisations and key agencies. The commission planned to further revise this draft by the end of December 2009, for public comment. The commission intended to publish the final strategy by December 2010.[48]

Draft New Zealand Outdoor Access Code, June 2009

The Walking Access Act 2008 required the Walking Access Commission to develop and issue 'a code of responsible conduct in relation to walking access'. In June 2009 the commission released its draft code, which at this stage consisted of just an eight-panel brochure. It also released a paper explaining the commission's approach to developing and implementing the code.[49]

The commission's suggested name for the code was an improvement that, if adopted, would more truly express the code's subject matter. Regarding this proposed name, John Acland wrote: 'The Act refers to a "Code of Responsible Conduct" in relation to walking access. We consider that a more generic title such as the "New Zealand Outdoor Access Code" better reflects the proposed contents.'[50]

The draft code included advice on obtaining permission, on knowing one's access rights and responsibilities, on considering others, on respecting private property and caring for the environment, on aspects

that land-managers should bear in mind, and on Maori relationships with land.

There is a limit to what can be fitted into an eight-panel brochure. In late May the commission had recognised the shortcomings of the draft code, commenting that the draft 'needs to be extended to cover such areas as private land, walkways, fires and other liabilities, and unformed legal roads, to provide the same educational value as the draft shows for Maori land'.[51]

Ara Hikoi Aotearoa

In August 2009 the board of the New Zealand Walking Access Commission decided that the commission's Maori name would be Ara Hikoi Aotearoa, which translates as 'walking pathways New Zealand'. This name would neatly emphasise the basic importance of walking tracks. The name could even serve as a permanent reminder that, regarding entry to private land, the commission is more concerned with linear access, keeping to the tracks, than with area access.

September arrived. Year One in the life of the Walking Access Commission was nearly over. The time had flown by in a procession of tasks: setting up the crown entity, establishing links with interested parties and with other government regional and national agencies, and drafting the code and strategy. Also, the commission had already become involved in several local access matters. But it had yet to appoint its planned three regional representatives (or the equivalent of three full-timers) who would 'work with local communities to help determine priorities for new access'.[52]

The commission was still in temporary accommodation at the Ministry of Agriculture and Forestry. (It would move to its own office in Mulgrave Street on 23 October 2009.) Mark Neeson, the chief executive, was the commission's only permanent staff member. It had borrowed two other staffers from MAF. The commission had also engaged one person, part-time and on contract, to provide administrative support. It had also employed specialist contractors and advisers to assist with the draft access code and the draft public access mapping system.[53]

Before we move on to Year Three, we need to update ourselves on some other track and access developments.

NZWAC: Year Two, October 2009 – September 2010

On 30 September 2009 the Walking Access Commission became one year old. Also on this day, at a function in Christchurch the commission released for public comment the second drafts of its national strategy and outdoor access code. David Carter delivered a wholly encouraging speech, worthy of a long-time supporter of improved access. 'I'm really pleased', he said, 'to see what's at the heart of your proposed National Strategy – a need to create practical and enduring access that respects the rights of everyone, and sustains the environment … When coupled with a Code of Conduct to promote a better understanding of the rights and responsibilities of access, your work is certainly on the right track.'[54] One imagined a muffled symphony of smiles.

Draft National Strategy for Walking Access, September 2009

The second draft of the National Strategy for Walking Access reflected seven years of consultations, analysis, research, rethinks, formulating and reformulating, and searching for agreement. I thought, wrongly, that this twenty-page document was nearly as polished as was humanly possible, within the constraints of consensus. (The final version would differ considerably from this second draft.)

The draft strategy set out a plan for how the commission would carry out its statutory role of leading and supporting the negotiation, establishment, maintenance and improvement of walking access over public and private land. It laid down five main goals:

1. Making reliable information on walking access opportunities readily available;
2. Enhancing people's knowledge, understanding and acceptance of appropriate standards of behaviour in the outdoors;
3. Achieving free, certain, enduring, and practical walking access to and along waterways and to public land where there is an identified need or to make provision for the future;
4. Assisting the resolution of walking access disputes; and
5. Working with partners to embed access as a priority.[55]

There were no surprises in these goals. You could trace them back directly to the proposed functions of the commission set out in the 2007 Acland report. With a little searching you could find all of them in the 2003 Acland report.

Long gone, though, was the latter report's explosive suggestion to legislate for the deeming of access along water margins. Absent too was any intention to impose walking tracks on Maori land; in 2004–5 the plan to apply the proposed footways to Maori land as well as to general land had exacerbated Jim Sutton's troubles. Left for historians to rediscover was the mild radicalism of the heady days of 2003, such as the reference group's suggestion: 'Signs could be used to indicate access along waterways and the coast. A presumption could be that public access is available unless signposted otherwise.'[56]

The consensus behind the Walking Access Act 2008 insisted that the commission would seek to achieve new access across private land through negotiation and agreement. The strategy had no choice but to put faith in the power of negotiation.

Scattered around the draft strategy were encouraging signs that the commission, while accepting the importance of access to water margins, had also recognised the need to achieve lasting public access to more places than just rivers, lake shores, coasts and public reserves. The strategy acknowledged that 'an increasing proportion of the New Zealand population who live in urban areas are looking for short walking access opportunities'.[57] It said that 'public access concerns can arise where … there is a lack of suitable walking access conveniently close to urban areas'.[58] It also pointed out that 'people may have different needs for walking access, depending upon their interests, age, gender, capabili-

ties, time availability and travel opportunities. Different walking access opportunities are required to meet these diverse needs.'[59]

Draft New Zealand Outdoor Access Code, September 2009

In his speech Carter adhered to the name 'Code of Conduct', apparently not adopting the commission's choice of name. The commission had considered at least five names for the code, including 'Code of Conduct'. It had then selected the title 'New Zealand Outdoor Access Code', it being 'an appropriate generic name for an over-arching code … '[60]

As we discussed in Chapter 9, the term 'outdoor access code' can be interpreted to encompass access rights as well as access responsibilities and restrictions. The term 'code of conduct', in contrast, explicitly implies an emphasis on behaviour, hence under-representing access rights and distorting the mental picture projected. The commission had recognised this (even if Carter had not), and favoured a departure from the term used in the Walking Access Act 2008, which was 'code of responsible conduct'.

The first draft of the code had consisted of merely an eight-panel brochure. Much had happened since then. The commission had radically enlarged the proposed code. The second draft was a thirty-two page document that amounted to an informative and balanced statement of access rights and responsibilities, in plain English. The commission proposed retaining the eight-panel brochure as a summary of the main points of the full code.

Rapid Progress on the Commission's Mapping

In May 2009 the Walking Access Commission had issued an RFP (request for proposal) for a public access mapping system. Developing and testing this mapping was a priority for the commission in 2009–10.[61] In July 2009 the board had agreed that the commission should enter into in-principle negotiations with Terralink International Ltd as the initial preferred supplier.[62] In September the commission had approved a combined business case and project management plan for its mapping system (conditional on a couple of clarifications). It had also approved the membership of the project steering committee and the work required to complete the project.[63] The commission expected that two user groups would trial a preliminary version of the database in 2010.

A few more details about the mapping system emerged on 30 September 2009 in the second draft of the National Strategy for Walking Access. Over time the commission planned to provide maps, freely available online, that would show the location of all free, certain, enduring and practical walking access.[64]

This prioritising of and rapid progress on mapping looked promising. The commission's adaptation of LINZ data, a process benefiting from the passion and belief of commission board members and staff, was looking likely to produce better access maps than LINZ alone would have come up with. There was, however, still no solution in sight to the problem of showing the geographical position of marginal strips established between April 1990 and June 2007. LINZ had trialled one possible way of depicting these ambulatory strips, but this pilot study had not produced a sufficiently accurate and affordable method.[65]

Commission's Honeymoon Over

During the Walking Access Commission's first year, mentions of it in the news media had been infrequent, short, mainly uncritical and almost always dull. An article in the *Nelson Mail* in October 2009 briefly interrupted this nonjudgmental honeymoon. The newspaper reported on a meeting in Richmond at which invited stakeholders had met members of the commission and had commented on the second drafts of the national strategy and outdoor access code. Heeding the adage that bad news sells newspapers, Laura Basham titled her report ' "Toothless" Walking Access Commission under Fire'.[66]

Neil Deans, the manager of the Nelson-Marlborough regional office of Fish and Game New Zealand, had asked what legal clout the commission had. John Acland had replied that 'it did not have any, but it could sit around the table on issues'. A member of the Nelson-Marlborough fish-and-game council had then said, 'It sounds like a huge toothless tiger'.[67] This allegation of toothlessness repeated a concern that the Green Party had expressed in July 2008 in the select committee's report on the Walking Access Bill.

Mark Neeson said that 'a decision had been taken at a political level that the commission would not have coercive powers'. Acland added: 'Let's get some runs on the board and see how it is in five to seven years. If it has ground to a halt, the Government of the day will have some legislation.'[68] In the meantime, dogged access pragmatism would have to suffice.

The commission's honeymoon with the news media then recommenced. The commission remained largely out of the newspapers for three months until a story about two protest walks on unformed public roads appeared in the *Dominion Post*. The story revealed the incidental fact that 'the commission was involved in six disputes between landowners and members of the public over paper roads'.[69] At the commission's new offices in Thorndon, business was probably anything but dull. The annual report for the year ending 30 June 2010 would show that, even before the commission was fully operational, it had received in that year about eighty public enquiries connected with access situations in specific locations.

Enhanced Access Fund

Many people on both sides of the access debate had recognised the need for a fund to help pay for new or improved public foot-tracks. In November 2003 Federated Farmers, although opposed to the creation of an access agency, had suggested that the government establish a contestable pool from which local communities could draw to develop and maintain access. The December 2004 cabinet paper on walking access had proposed forming a contestable fund that would pay for negotiated walking access over private land to reach the new, imposed footways. Although the footways plan died ignominiously, the fund idea survived. Section 10(h) of the Walking Access Act 2008 requires the commission to administer 'a fund to finance the activities of the Commission, or any other person, in obtaining, developing, improving, maintaining, administering, and signposting walking access over any land'.

In March 2010 the commission announced the establishment of a pool of money that was available for projects that would improve walking

access to land. Called the Enhanced Access Fund, it contained $200,000 for the 2009–10 financial year. A fund fact-sheet, guidelines for applicants, and application forms were available online. Applications were to be in by 14 May 2010. For this first round of proposals, the commission had identified three priorities: addressing existing access problems including the resolution of disputes; negotiating the retention of existing access, or obtaining new access; and supporting community access projects. On 30 April 2010 the balance (before costs) of the Enhanced Access Fund was about $1.76 million.[70]

On 19 July the commission announced that it had allocated more than $200,000 for the 2009–10 financial year. There were twelve successful applicants, from a spectrum of groups:

1. Progressive Paparoa Inc – $15,000.
   Pahi Peninsula Walking Track – Kaipara.
   To cover the cost of metal and spread it via helicopter on the pines loop walk. The 4.5 kilometre track is stage 1 of a 4 stage walking on Pahi Peninsula and is inaccessible by trucks.
2. Bay of Islands Walkways Trust – $50,000.
   Okiato to Russell Walking Track – Far North.
   To complete the fourth and final stage of the Okiato to Russell Walking Track from Orongo Bay to Russell township. The 2.4 kilometre footpath would follow road reserve alongside the busy Russell to Whakapara Road. With increasing numbers using the walkway there is a keenness to provide off road access.
3. Ngati Koroki Kahukura Trust – $50,000.
   Maungatautari Crossing – Waipa.
   To complete the last 4.5 kilometres, of a 12 kilometre walkway, across the Maungatautari Scenic Reserve. As mana whenua of the 'island' Ngati Koroki Kahukura are keen to see the walkway completed to the same standard as the first two thirds of the track which was completed by the Maungatautari Ecological Island Trust.
4. Gisborne Canoe Club and Tramping Club – $5,600.
   Restore access to Kopuawhara Monument within Wharerata Forest, between Gisborne and Napier.
   To restore a 'there and back' natural surface walking track to the Kopuawhara Monument in Wharerata Forest by following remnants of the old railway construction road and constructing some new track along and over Waiau Stream. The easy gradient makes it suitable for family groups and fit elderly, many of whom in the region have a family interest in the historic site.
5. Te Iwi o Rakaipaaka Inc – $9,281.
   Te Whaiora o Te Wai Repo Nuhaka (Nuhaka Village Wetland and Restoration Walking Project) – Wairoa.
   To develop a new walkway within the Nuhaka village that links access between local communities serving high elderly and young population, two rural schools and ten marae. There are no walkways in Nuhaka to enable residents to enjoy the rivers, swamp areas, natural and cultural resources. The only

walking access is along SH2 and the road into Mahia Peninsula. The development of the walkway is concurrently linked to the successful restoration of the Nuhaka village wetland.

6. Porirua City Council and Plimmerton Rotary Club – $15,000 over three years.
   Pauatahanui Inlet Pathway (Te Ara Piko) – Porirua.
   To complete stage 4 of the Pauatahanui Inlet pathway covering a distance of 1.1 kilometres. The access location is part of an area listed by Porirua Council's Inventory of Ecological sites and also connects to the nationally important Pauatahanui Wildlife Management Reserve.
7. New Zealand Fish and Game – $27,000 over three years.
   Upper South Island river and lagoon access – Marlborough/Nelson.
   To improve access tracks to Wairau, Buller, Motueka, Pelorus and Golden Bay rivers in response to wider public demand rather than supporting anglers and hunters only. The proposal also includes improving Wairau Lagoon access from four-wheel drive to two-drive during the summer months.
8. New Zealand Fish and Game – $15,000 over three years.
   Upper South Island river access information and signage – Marlborough/Nelson.
   To respond to wider public demand for information about Wairau, Buller, Motueka, Pelorus and Golden Bay river access by improving signage and incorporating other recreational information into access pamphlets.
9. Tasman Area Community Association – $7,500.
   Ruby Coast Walkway (Dicker Rd/Williams Rd) – Tasman Bay.
   To renew access to Dicker Rd (a legal unformed road) and connect it to Williams Rd (also a legal unformed road) and ultimately Hortons Rd to create a 7 Kilometre loop road. Both paper roads need upgrading to walkway quality. The loop will link to other planned (and existing) walkways that are now possible as the Ruby Bay bypass is near completion.
10. Te Araroa Trust – $5,000.
    Lake Hill Track – Selwyn, Canterbury.
    To develop a natural surface track alongside Lake Coleridge between Intake Road and Homestead road on unformed legal road to replace a 7 kilometre road walk on the Long Pathway. The track would provide new access to a pleasant beach close to the village.
11. Te Araroa Trust – $21,785.
    Dalton's Track – Marlborough.
    To develop a 6.4 kilometre natural surface track parallel to the Pelorus River between the Circle Track and Dalton's Bridge. It will emerge close to the Pelorus camping ground and café and connect with existing Department of Conservation tracks.
12. Makarora Valley Community Inc – $3,600 over two years.
    Makarora River Walk – Queenstown Lakes District.

> To formalise a continuous clearly marked, 10 kilometre track along the river, to enable residents and visitors, to enjoy the valley without walking along a busy road. It will provide off road access for local residents, day visitors and trampers accessing the Mt Aspiring national park.[71]

Richard Blanc, the chairman of the Makarora community association, said that news of the grant 'was just magic'. The association had been promoting its track idea for several years.[72]

Margaret Pasco, the secretary of the Bay of Islands Walkways Trust, said news of the grant was wonderful. The completion of the Okiato–Russell walkway would make possible a full circuit that would combine the Paihia–Opua coastal track, the car ferry, the Okiato–Russell walkway, and the passenger ferry back to Paihia.[73]

One of the newspaper reports emphasised that the upgrading of riverside tracks would render them accessible to the general public, having previously been difficult routes used only by hunters and anglers.[74]

The commission had taken steps to ensure that the new tracks would endure. It had learnt from the mistakes of the district walkway committees of 1975–90. There was no longer any nonsense about short-term flexibility. A clause in all twelve grant contracts required that 'any track being created by this grant is enduring in that its use by the public is secured by an easement or a covenant if over private land or an appropriate agreement with the administrator in the case of public land'.[75]

Recruiting on a Small Budget

Although a year and a half old, the commission was still setting itself up. It wasn't fully operational. Having used contractors during its establishing (apart from Mark Neeson and the two officers borrowed from the Ministry of Agriculture and Forestry), the commission now needed to appoint a second and a third permanent member of staff.

In March 2010 the commission advertised two positions for key staff members. It was seeking an operations manager to manage and support regional field staff. This job would be full time and based in the commission's offices in Wellington. The commission was also looking for a corporate services manager skilled in finance and accounting. This job would be part time, equivalent to four days a week.

Why four days and not five? Cost considerations might have influenced the decision to make this post part time. In May the commission described itself in its statement of intent as 'a small organisation with limited funding', which had to ensure that it ran efficiently and effectively.[76] The commission's spokeswoman, Cathie Bell, talking to *Farmers Weekly*, said the commission operated with just five staff and on a 'very small budget'.[77]

Also in May the commission advertised six positions for field advisors who would be based in regions throughout New Zealand. These jobs would be part time – about two or three days a week – and would be contract roles. The field advisors would:

- establish and maintain relationships with local and regional government, tangata whenua, government agencies, recreation groups, landholders, and the public generally;

- respond to enquiries on walking access opportunities within a region;
- assist the commission to investigate and negotiate new walking access and the retention of existing access;
- facilitate the resolving of regional and local issues relating to walking access; and
- represent the interests of the commission at a community level.[78]

In July the commission advertised one more Wellington vacancy. The operations advisor would develop advice and information on walking access issues and would manage access enquiries and investigations.[79] This person would report to the operations manager.

By September 2010 the commission had appointed its operations manager, Ric Cullinane, and its corporate services manager, Helen Barker. Ric Cullinane had been the communications and marketing manager for Fish and Game New Zealand. Helen Barker had a background in accountancy.[80] The commission had also appointed seven part-time field advisors.

In a press release announcing the seven regional appointments, Mark Neeson emphasised the importance of the roles: '[The field advisors] are the public face of the Commission in the regions, and will be the first point of contact for access issues in many cases. Their role includes promoting the objectives and functions of the Commission in their regions, and acting as conduits for independent advice and assistance.'[81]

The press release included a paragraph or two's background on each regional field advisor. Six had farming backgrounds; four of these were still farming, the other two had been raised on farms. Five had professional experience of establishing new walking tracks or of managing walking access. Four had professional knowledge of various aspects of land-management legislation. The full details in the press release were:

> John Gardiner, Whangarei
> John was raised on a farm in South Canterbury before commencing his 40-plus year career with the Department of Lands and Survey, and then the Department of Conservation. His earlier years were spent as a ranger in several national parks, a period at DoC Head Office, and management of two farm parks, before moving to Northland in 1978. He recently retired as the DoC Northland Area Manager. John has extensive experience working with land management legislation and negotiation with landowners to establish walkways, access easements and protection covenants over private land. He has worked closely with Northland's recreation groups, land owners, communities, local authorities and iwi on a broad range of projects and issues.
>
> John Wauchop, Gisborne
> John has been managing farms with his wife June for the past 38 years, and is now living in Gisborne. He has held positions of National Chairman of Meat and Wool NZ's Sheep and Beef Council and Chairman of Ruatoria Federated Farmers. John has worked closely with district and regional councils, and has successfully dealt

with a wide range of access issues across land he has managed. John maintains a lifelong enthusiasm for walking and outdoor activity.

John has maintained a high level of community interests and roles despite the commitments of managing a large farm partnership, and has a wide network across the rural and urban sectors.

Nicola Henderson, Waikpukurau

Nicola grew up on a Southland farm and now lives and works in Central Hawke's Bay on a sheep and beef farm where she and her husband Myles raised their four children. As a practising landscape architect, much of her professional work has been with farmers. Nicola's work also involves working closely with local and regional councils, and iwi. She has appeared as an expert witness at council and environment court hearings.

A keen walker and active in the outdoors, Nicola's professional work involved inclusion of walking tracks at every opportunity in rural, peri-urban and urban situations. Her community service brings Nicola into contact with a wide range of people.

Rod McGregor, Ahu Ahu Valley (Whanganui)

Rod was born and raised in rural Whanganui, and worked across the lower North Island on large sheep and beef stations before farming his own block of hill country near Whanganui. Rod has a young family who are home schooled. He brings over 20 years of varied stock and farm management experience to the role. He has an academic background in law and resource management. Rod has worked closely with local and regional councils on projects that have been contentious within the community, and continues to manage public access issues on his own property. He has a history of working with land use changes and competing land uses, and working with stakeholders with different objectives and resources.

Rod is a keen hunter and angler, and has worked overseas in hunting, diving and tourism sectors.

Chris Tonkin, Nelson

Chris's 30-year career with Acclimatisation Societies and recently the West Coast Fish & Game Council has built an extensive network throughout the South Island that includes landholders, recreation groups, Federated Farmers, DOC, local and regional councils, iwi and tourism operators. He has successfully negotiated a wide range of access opportunities across private land, and worked on behalf of hunters and fishers to develop recreation opportunities on public land. Through work and recreation, he has gained a deep knowledge of the Nelson/Marlborough and West Coast regions. Retired from the role of Manager, West Coast Fish & Game Council, Chris maintains a strong interest in outdoor recreation and will operate from Wakefield near Nelson.

Geoff Holgate, Christchurch

Geoff's career of some 36 years has been primarily associated with land and resource management in the South Island high country. He grew up on a sheep and beef farm in South Otago, and after completing his study at Lincoln College with a masterate in plant ecology, he joined the Department of Lands and Survey. He held a number of positions including Scientist Range Management and Chief Pastoral Lands Officer before joining Landcorp when Lands and Survey was disestablished. Following managerial positions with Landcorp in Dunedin and Christchurch Geoff worked in Knight Frank and then DTZ with responsibility for Crown contract work associated with pastoral leases. Currently Principal of his advisory partnership WardHolgate, he has completed pastoral lease administration projects for LINZ, and undertaken tenure reviews of pastoral leases, while maintaining his interest in strategic sustainable development. With his wife Mary-Ann, Geoff is an active tramper, and sometimes a cyclist.

Noel Beggs, Winton
Noel is a 4th generation Southlander and now farms an intensive small scale sheep operation near Winton with his wife Carolyn and two sons. After completing his study at Lincoln College, Noel worked as a field officer with Lands and Survey before his OE which included a research post at Agricultural College, University of London. His partnership in his current property began in 1989.

Noel's community involvement includes Farmer Chairman, 'Maximum Profit Discussion Group', Central Southland, Committee member Central Southland Monitor Farm Programme, member and chair of local school Board of Trustees, and other community groups. His wide range of interests includes walking, tramping and mountain biking.[82]

The seven regional advisors appeared to be an experienced team, well suited to the tasks ahead of them. Perhaps farmers would prove to be the ideal people to negotiate with farmers. The passage of the Walking Access Act 2008 had given the Ministry of Agriculture and Forestry its first crown entity, the New Zealand Walking Access Commission. During the debate that had preceded the legislation, some walkers and anglers had questioned whether MAF would be the best home for the access agency. They had foreseen an agency dominated by farming and forestry interests. If we were to judge from the backgrounds of the field advisors, farmers' perspectives would be well catered for. Time would tell whether farmers talking to farmers would succeed where previous attempts to negotiate certain and enduring linear access had failed.

'A Serious Injury to the Runholder'

While the commission's map-makers toiled at their object attributes and entity classes and planimetric accuracies, public discussion of the mapping issues erupted sporadically. In April 2010 a post on tramper.co.nz continued an exchange of views on mapping:

Posted: 4 April 2010, 1:52pm

> Hi all,
> just trying to understand the various links and ways various map data is available, one thing becomes blatantly obvious to me: What is really needed is a very simple way to look up where I can go legally and under which conditions, and where I can't. I don't think it's ok to force people to learn about GPS and all sorts of other software just to understand where they are legally allowed to go. The best and in my view only acceptable solution would be to simply print the areas that are free to access into the standard topomaps - and if any conditions for access apply, those too. That way, everyone would know exactly what the deal is, and if there should ever be arguments with anyone you meet on your trip, simply pulling out the map would clarify who is right and who is wrong. I and others have met people several times that claimed for various and sometimes very creative reasons that we weren't allowed to be where we were - they know that is not the case, but they try anyway. We always check about access rights with local DOC and other sources before we go on trips, and every time we re-checked after such an encounter, we were confirmed again that we had every right to be there. There seem to be quite a few 'locals' - often farmers, hunters, or commercial guides - that seem to feel they own the land. It would be good to be able to sort things like that out quickly on the spot. There is enough land that is actually in private ownership in this country, we should be able to use the free-to-access bits that are left without being hassled. It would be good to have one ultimate and easy to read source of information to know what's what. To that end, I think the work of the commission sounds great. Of course, all sorts of lobbies might be expected to try and put their spin on it, as per usual. Will be interesting to see the outcome.
> Cheers,
> [Name]
> PS: Disclaimer: I have no problem with farmers, hunters, commercial guides or private land owners - just with those who try to stop me from doing something that I am absolutely free to do, and in most cases that we have heard of, the person in question was from one of those groups. The vast majority of all those people we meet are friendly people, by our experience.

One of the points made by this contributor is worth repeating: many walkers expected to be able to follow public foot-tracks without having to own and use a GPS receiver. Bruce Lynch, a Ministry of Agriculture and Forestry officer seconded to the Walking Access Commission, had put it this way: 'For the average walker they want to know exactly where the walk is, where they can park, that it's going to be safe, and some idea of how long it is.'[83]

On 11 June 2010 Mark Neeson addressed farmers at the Federated Farmers high country committee annual conference. He described the commission's progress on its outdoor access code, on its national strategy for walking access, and on its online walking access mapping.

According to the journalist Neil Wallace, the presentation left many farmers aghast. 'Of most concern to farmers was the commission's public promotion of an estimated 56,000km of paper roads.'[84] The commission's intention to provide online maps showing approved walking tracks and public roads angered the farmers at the meeting. Some of them thought that publicising the locations of these unformed roads would cause problems. Jonathan Wallis, the chairman of the High Country Accord, 'said the commission was essentially going to go ahead with its access plans, leaving someone else to address problems as they arose'.[85]

Neeson said the access code and strategy aimed to create walking access based on trust, independence and being responsible. Most of the information on access, such as on public roads, was already available to land professionals who knew their way around the cadastral records; the commission was just collating it and making it more easily available to the public.[86]

A couple of weeks later Wallace reported the views of the Federated Farmers walking access spokesman, Donald Aubrey, on the planned online mapping. Aubrey had said that publicly advertising unformed paper roads was a new concept and that the Walking Access Commission needed to take more responsibility, instead of releasing information and letting landowners and district councils resolve any issues.[87] Farmers were concerned about the accuracy of the cadastral information and about the potential for disputes over the exact positions of unformed public roads. Aubrey had written to John Acland seeking assurances that the mapping would be accurate and that individual landowners would be notified before the maps were released.[88]

The last stipulation, if acted upon, would require the commission – a tiny, underfunded body – to contact the thousands of landowners whose land adjoined unformed public roads.

Wallace's two articles did not include any walkers' responses to the farmers' mixture of genuine concerns and delaying tactics. But Tony Orman, a co-chairman of the Council of Outdoor Recreation Associations of New Zealand, wrote to the newspaper to provide the missing balance:

> Federated Farmers vice-president Donald Aubrey speaking on the vexed question of public roads, not formed but rightfully shown on cadastral maps, does farmers a disservice. He said the commission assumed landowners knew the alignment of unformed public roads but he claimed this was not always the case. The likelihood of a farmer not [being] aware of a public road would be extremely remote as, on purchase of a property and a search of title, the existence of the paper road would be apparent. Besides, farmers are invariably intelligent people who would already be aware of details of title to their property.[89]

The situation was that of buyer beware: it was a landowner's responsibility to know about public roads and other reserves adjoining his or her land. The minority who did not know this had received sufficient warning and had had plenty of time to check their title details – seven years of

wrangling over access. Furthermore, providing maps was not an optional extra for the commission; the Walking Access Act 2008 required the commission to compile, hold and publish maps and information about land over which members of the public have walking access.

In the South Island high country, the climate and the muster had not changed greatly in 160 years, and neither had ideas. In *History and Politics*, published in Wellington in 1877, Richard Wakelin discussed the demands made in the late 1850s for a radical reform of the administration of public lands. The opposing sides comprised the large runholders (including 'absentees and land-monopolists') and the intending freeholders (described as 'men of small means'). The runholders wanted to change their licences into leases. They also argued 'that a public road through a run, instead of being an advantage, would be a serious injury to the runholder'.[90]

New Zealand Outdoor Access Code

On 30 June 2010 the commission published the final version of the New Zealand Outdoor Access Code. Officially releasing the thirty-six-page document at a function in Wellington, a grinning David Carter had completely lost the knack of negativity. A Radio New Zealand news item began: 'After seven years of wrangling it appears farmers and recreational users have agreed to a code on access to the countryside and coastline.'[91]

Apart from slightly changing the wording here and there, the commission had not changed the code much since the second draft. There was little press comment on the code. The years of wide and repeated consultation may have paid off, in producing a widely accepted document that would inform people of their rights and responsibilities.

Many people had joined in the years of debate that had fashioned the access code. Of the politicians, Jim Sutton and Damien O'Connor had been the strongest supporters of improved walking access, of which the code was a part. As required by the Walking Access Act 2008, the members of the Walking Access Commission had then buckled down to the drafting and had produced an educative code that filled an obvious gap. Colin King, the member of parliament for Kaikoura and perhaps a fan of politics as comedy, wrote: 'The Code sets out the rights and obligations that [are] applicable to all parties and presents a fine example of how the National government has worked through a difficult issue and found a positive solution that is fair and equitable.'[92]

Signage Project

Also on 30 June, as well as inaugurating the access code, David Carter announced the start of a new signage scheme for walking access across private land.[93] The commission had worked with Federated Farmers to design a sign for landholders to use to show where they allowed people to walk across their property. The commission intended to depict these access points on its walking access mapping system. The signs were to be used only to indicate approved routes across private land, not to show the location of public land to which the public had the right of access. The signs were A4 in size, with enough space for the landowner to include contact details for permission for anything other than walking access, such as entry with a dog or gun.[94]

The commission had led the project and had paid for the preliminary development work. In establishing and supporting this scheme, the commission and Federated Farmer were doing two things. Obviously, they were responding to the long-recognised need for accessways to be waymarked, especially where they leave public roads. Less obviously, they were promoting a change that replaced single-occasion entry arrangements with permitted tracks; ie they were recognising the limitations of the former.

There is a place for permitted access, but, as we will see with the privately owned sections of the Queen Charlotte Track (later this chapter), permitted tracks are potentially impermanent.

Walking Access to Commercial Forests

In Chapter 5 we looked at the slowly evolving attitudes towards and policies on recreational access to exotic forests. I mentioned some 1965 journal papers on the subject. But the situation surrounding walking access to commercial forests changed dramatically in the early 1990s when the cutting rights to most crown-owned pine forests were sold to private buyers. These sales caused some controversy at the time, yet the matter of recreational access to the privatised forests had seldom since then become a major public issue nationally. So it was interesting to read in some commission minutes (August 2010) that the board had discussed the effect on access of future changes in land use, and in particular of an increase in plantation forestry. The board 'noted that it would need to work more with the forestry industry on access matters'.[95]

National Strategy for Walking Access

On 21 September 2010 the commission released the completed National Strategy for Walking Access. The text of the final strategy little resembled that of the September 2009 draft. The vision statement was much enlarged. What had been five main goals were now scattered around a six-page section on objectives. What had been spread out in five tables of actions and performance measures were now plans and success indicators. The commission or its contracted editor, it seemed to me, had dismantled the draft into its constituent pieces, had discarded some detail and clutter, and had reassembled the remainder into a new configuration. The finished document, a twenty-four-page A5 booklet, set down the high-level principles of the commission's approach to walking access. Whereas the commission's statements of intent were five-year plans, its strategy looked twenty-five years ahead.

With the strategy in place and Year Three rapidly approaching, the commission was ready to go fully operational. It expected to review and update the strategy regularly.[96]

The New Zealand Cycleway Project, 2009–10

On 14 May 2009, a couple of months after David Carter had indicated his intention to slash a million dollars off the already-lean budget of the Walking Access Commission, John Key, the prime minister and minister of tourism, announced the allocation of $50 million over three years for the New Zealand Cycleway Project.[97] He proposed the creation of 'a

series of "Great Rides" of New Zealand, with a long term aim of creating a network throughout the country':

> Some promising routes have already been identified and I expect to have an announcement on them in the next couple of months. I am also establishing an Advisory Group that will look at other regional cycleway proposals and work with those regions on feasibility work and technical advice. This $50 million investment will create jobs through its design and construction, while also creating a high quality tourism asset that will complement our 100% Pure New Zealand brand.[98]

This ambitious and costly idea had been first mooted at a national jobs summit earlier in the year. The government was backing tourism as one of the big export earners needed to lift the country out of the recession. Earnings from tourism made up a sizeable lump of New Zealand's economy, but visitor numbers had been falling since reaching a record high of 2.47 million in the year March 2007 to March 2008.[99]

One or two instigators had apparently dreamt up the cycleway concept almost instantaneously; the government and ministry officials had adopted, modified and approved it with minimal public consultation; and the government was allocating a large fund for it virtually at the sole behest of the new and still popular prime minister. In acting with unilateral decisiveness, John Key had seriously gored the fashion of extensive public consultation, so prevalent and time-consuming in the walking-access consultations of the recent Labour-led governments.

Key's boyish enthusiasm for scenic off-road cycleways was infectious and a welcome contrast to Carter's former patriarchal cynicism on walking access. John Acland might well have been thinking, Could we swap ministers, please? As most off-road recreational cycleways were open to walkers as well as cyclists, it was likely that the Walking Access Commission would be consulted on the project and perhaps be involved quite closely in some aspects of it. The commission considered itself 'relatively well placed to take the coordinating role'. In April it had written to the prime minister to point this out.[100] Key had replied advising the commission that the cycleways project would be run by the Ministry of Tourism.[101]

On 27 July 2009 Key named seven potential cycleway routes on which construction could possibly start in the coming summer. The Department of Conservation had nominated three of these routes, and councils had nominated the other four. Some of the seven tracks require further feasibility work to be completed. The government had set aside $9 million from the $50 million New Zealand Cycleway Fund for these projects, which it had earmarked for a quick start.[102] The selected routes were: Waikato River Trail (100 km); Central North Island Rail Trail (60 km); Mount Ruapehu to Wanganui Trail (also called Mountain to the Sea Trail, 245 km, partly on minor roads); St James Great Trail (50 km); Hokianga to Opua/Russell (90 km); Hauraki Plains Trails (no length given); and Southland/Queenstown Lakes Around the Mountain Rail Trail (175 km).[103] The overall vision for the New Zealand Cycleway was

'to generate lasting economic, social, and environmental benefits for our communities through a network of world-class cycling experiences'.[104]

None of the cycleways would be sealed.[105] Some tracks would be moderately easy scenic rides accessible to the general public, while others might suit the intermediate rider. To achieve the government's objective of high economic impact, the Ministry of Tourism would give preference to tracks that would generate overnight or multi-night stays.[106]

Regarding the ownership and management of the tracks, they would be 'long term infrastructure that [would need] to be owned and operated by local communities'. Many of the proposed tracks, once completed, would span territorial boundaries; the management of these tracks would require working relationships among clusters of councils.[107]

The government press releases that accompanied John Key's July announcement avoided explaining that some of the half-planned cycleways would necessitate negotiating new access over private land. I found in them just one mention of access: 'There are a large number of engineering, business, land access and resource management issues to address and these can take several months and often years.'[108] Writing in the *New Zealand Herald*, John Armstrong pointed out the difference between routeing a cycleway mainly across DOC-managed land and building one across a mixture of privately owned and council-owned land:

> Three of the four projects which are deemed likely to start construction this summer are largely on DoC-run land where the Government can call the shots. The worry for the Prime Minister is that vital Ministry of Tourism liaison with local councils, whose boundaries encompass private or publicly owned land through which most of the national cycleway will pass, has not yet proved more fruitful in selecting potential routes. Whole expanses of the country are bereft of any route.[109]

In November 2009, as a result of a branding exercise, the Ministry of Tourism changed the name of the proposed cycleway to the New Zealand Cycle Trail.[110] The $50 million National Cycleway Fund became the National Cycle Trail Fund. On 10 November John Key officially set in motion the construction of the first project, two sections of the Waikato River Trail. The trail fund had allocated $3 to build these two sections, totalling forty-one kilometres. The rest of the 100-kilometre track was already in place.

Key also unveiled the New Zealand Cycle Trail logo. He expected this emblem to be used on track signage and also 'in offshore marketing in conjunction with 100% Pure New Zealand'.

The New Zealand Cycle Trail, Second Phase

After Key had named the seven cycleway routes that could be quick-start projects, a second phase of planning had begun, investigating other possible routes. By 18 December 2009 fifty-four organisations or individuals had applied for funds, sending in concept proposals in support of their requests. In February 2010 the Ministry of Tourism approved another thirteen routes for feasibility studies.[111]

On 2 July 2010 at Ohakune, Key officially opened the Ohakune coach-road section of the 245-kilometre Ruapehu to Whanganui Trail (whose Maori name is Nga Ara Tuhono and which was also being called the Mountain to the Sea Trail). Another section of the Ruapehu to Whanganui Trail – a route through the Mangapurua valley in the Whanganui National Park – was also opened that day. Key expected the Ruapehu to Whanganui Trail to be one of the first of the seven quick-start trails to have sizeable sections open to cyclists. It was one of the three quick-start trails that the Department of Conservation was developing in conjunction with the Ministry of Tourism. According to Key's press release, estimates had suggested that this trail would 'bring in up to $3 million per year for the local economy through tourism'.[112]

By now the government had approved the funding for five of the seven quick-start trails. On 6 July 2010 the Ministry of Tourism announced that the government had endorsed a further eight cycle trails for funding. So a total of thirteen trails had had their grants confirmed, which had committed 80 per cent of the $50 million national cycle trail fund. The ministry was still investigating the feasibility of four other proposed trails; these posed land-access issues or needed further engineering assessments.[113]

In September the ministry announced the approval of five more cycle trails. The total number of confirmed trails was now eighteen. They would provide over 2,000 kilometres of track at a cost to the government of $45.6 million. The ministry expected that additional funding from the developers would amount to about $30 million, demonstrating the commitment of the communities involved.[114]

The potential financial benefits from tourism were again propelling a major track development, as they had done at Milford in 1888 and for the Tararua's Southern Crossing from 1895 to 1912. The expected international visitors had duly arrived to walk the Milford Track and have never stopped coming for that walk, except in wartime. The Southern Crossing has probably seldom attracted more than a trickle of international tourists but it has remained, for Wellingtonians, one of the four classic tramps of the Tararua. Perhaps the completed New Zealand Cycle Trail series of cycleways would contain some routes with international appeal and others of local recreational importance.

South Island High Country Developments, 2009–10

In April 2009 parliament's independent environmental guardian released a report on tenure review that would rapidly influence the government's policies on the South Island high country.

Report of the Parliamentary Commissioner for the Environment

Dr Jan Wright, the parliamentary commissioner for the environment, titled her ninety-two-page report *Change in the High Country: Environmental Stewardship and Tenure Review*. In the report's conclusions she made nine recommendations. The first of these, an uncontroversial suggestion, was that 'the Commissioner of Crown Lands proceeds with individual tenure reviews of pastoral leases under the Crown Pastoral Land Act, provided that proposals and settlements are demonstrably in the wider public interest'.[115]

In the explanation attached to another, more contentious recommendation, she wrote that 'it is time to question how much grassland should be publicly owned conservation land'.[116] She favoured the adoption of 'a wider range of land ownership and management models within tenure review proposals', compared with the simple-split model that most of the completed tenure reviews had followed. For example, properties could be managed for multiple uses, not just pasture or park. Alternatively, she wrote debatably, 'for smaller areas of high natural value, private ownership under covenant with the QEII National Trust may be a good approach'.[117]

Wright's ninth recommendation directly attacked the existing government policy that supported the completion of the chain of high-country conservation parks (a policy inherited from the previous, Labour-led government). Eleven conservation parks (or equivalent) had already been established in the South Island high country. Four more conservation parks were situated elsewhere in the South Island. At least five further high-country conservation parks had been proposed. In Wright's opinion the conservation estate needed more lower-altitude land. 'At a national level, conservation parks are being oversupplied in one part of the country. Twenty parks in the rain shadow of the Southern Alps is simply not a good use of limited conservation resources.'[118]

Federated Farmers broadly supported the report's findings and recommendations. Forest and Bird's advocacy manager, Kevin Hackwell, called it 'the poorest report to come out of the commissioner's office that I can recall'.[119] He said the report was out of touch with recent developments, riddled with inaccuracies and poorly argued.

Back to the Bundle of Sticks

At about the same time as the release of Wright's report, another piece of writing on the South Island high country, from a different discipline and with a contrasting message, appeared in the *Natural Resources Journal*. John Page's paper examined the proposition that private rights in public resources tend to expand at the expense of public rights in those resources, 'unless the property rights framework clearly demarcates and vigilantly enforces the private/public divide'.[120] He looked at the legal history of the public lands in the western United States and at that of the high country of the South Island of New Zealand. For each country he compared the private rights, as seen in the natural resource of pasturage, with the public rights, as seen in the natural resource of recreation.

Two earlier high-country papers that Page had co-authored with Ann Brower had met mixed reactions. This 2009 one looked likely to be equally controversial. Even so, it formed an authoritative and deeply researched analysis that added to our growing understanding of the legal and political histories of the crown pastoral estate.

For a nonlawyer the paper is mostly accessible, if hard going in parts. The following extract from Page's conclusion is in plain English and is clear:

> A hiker at a trailhead on Bureau of Land Management (BLM) land may face a very different experience than a naive tramper embarking on a walk through the South Island's high country – particularly when the tramper has not sought the prior permission

> of the run-holder to enter the run. In the former case, the hiker is a legitimate user of 'your public lands,' while in the latter, the tramper risks committing a crime. To the unobservant recreationalist, this outcome is perverse given the apparent similarity of the countryside, the dispersed nature of grazing in the vicinity, and the low-impact, passive nature of the proposed hike. However, to the more attentive, the plethora of 'keep out' signs in New Zealand – as compared to the 'please close the gate' signs on the American public domain – is elemental.[121]

Unfortunately or fortunately, depending on your stance, New Zealand's lawmakers are probably seldom swayed by the writings of Australia-based academics in North American journals. There was no sign in 2009 that a tramper's bundle of sticks on crown pastoral land was about to change for the better.

Land Valuation Tribunal Releases Its Judgment

Chapter 35 discussed the progress of the Labour-led government's plans to increase the rent that the government charged for crown pastoral leases. Sixty-five leaseholders had appealed to the land-valuation tribunal, objecting to being charged for having nice views. In October 2008 and January 2009 the Otago district land-valuation tribunal had heard a test case involving Minaret Station. We need to summarise the outcome of that hearing.

In the case of the Commission of Crown Lands versus Minaret Station Ltd, the tribunal 'had been charged with determining the value of land exclusive of improvements to provide for the review of rent for Minaret [Station] as dictated by the Land Act 1948 and amendments and the CPLA 1998'.[122] On 31 July 2009 the tribunal released its judgment. The legal analysis and decision occupied sixty-eight pages that ranged over the competing contentions, the current legislative provisions and the methodologies of land valuation. In conclusion, the tribunal resolved that 'the LEI [value of the land exclusive of improvements] should be assessed by reference to, but excluding from otherwise comparable sales, the intrinsic amenity values'.[123] This meant that the crown should not have added the value of lake and mountain views into the formula used to calculate the rents for pastoral leases. The high-country leaseholders could breathe again. Regarding the method of rent-setting, the status quo would remain.

According to Jonathan Wallis, the chairman of the High Country Accord and co-owner of Minaret Station, 'the rental formula introduced by the previous government [had] been a huge threat to the successful pastoral operation of Minaret and most other high country leases. It [had] resulted in a period of great uncertainty and distress to the lessees.'[124]

In a press release titled 'Victory for Farmers in Long Rent Battle', Wallis said that

> the tribunal decision has been made in a very different political climate than when Minaret Station lodged their objection to the previous government's new rental valuation formula. 'We are heartened by the fact that the new government is restoring relationships in the

> high country … by looking for the most rational and sustainable approach, based on respect for property rights and in recognition that conservation and agriculture can co-exist.'[125]

In the weeks that followed the tribunal's judgment, a question arose over whether this ruling on the calculation of rent for pastoral leases would affect the valuations undertaken during tenure reviews. The two matters were not directly connected, but some access advocates forecast that the first would influence the second. Kevin Hackwell, the advocacy manager for the Royal Forest and Bird Protection Society, said that 'if the tribunal's decision is applied to tenure review deals, the Government will be forced to pay millions of dollars more for the conservation land'.[126] In response, Jonathan Wallis said that rent-review valuations were carried out on a different basis to tenure-review valuations, and that 'the assertion by Forest & Bird that the Government should appeal or "risk losing millions of dollars of taxpayers' money" is nonsense'.[127]

A Three-prong Plan for Crown Pastoral Land

Before the 2008 general election, the National Party's agriculture policy had stated that a National-led government would ensure that the rents for high-country pastoral leases would be tied to the earning capacity of the land. After the land-valuation tribunal's judgment on the Minaret case, such political intervention became less necessary. Even so, on 26 August 2009 the government reaffirmed its commitment to implementing pastoral-lease rents based on the earning capacity of a property. This confirmation was part of 'a three-prong plan for Crown Pastoral land – effective stewardship of the land, better economic use, and improved relationships with lessees and high country communities'.[128]

Out with the old, in with the new. The government rescinded the existing ten objectives for the South Island high country, which dated from August 2003 (see Chapter 8).[129] Noticeably, one of these discarded objectives was 'to secure public access to and enjoyment of high country land'. In place of the ten dusty old objectives, the government adopted three shiny new ones – the three prongs mentioned above – that 'attempt[ed] to address all of the major issues with Crown pastoral land'. *All* the issues? Walking access to pastoral leasehold land did not receive a mention in the cabinet minute on the strategic direction for crown pastoral land. You had to conclude that facilitating the public's recreational entry to this land was not a matter of any importance to the government or one that National Party MPs would lose any sleep over.

The new broom swept away more than just the 2003 objectives. Gone was any thought of completing the chain of high-country conservation parks; in its place was the intention to make greater use of conservation covenants, even though there was widespread recognition that covenants were most suited to 'areas where … the public interest in access [was] low'.[130]

Revoked too was David Parker's lakeside policy of 2007, which had prevented leasehold properties within five kilometres of lakes from entering into tenure review (unless the leaseholders agreed, in writing, to stringent lakeside conditions). Lakeside properties were now to

be considered on a case-by-case basis, 'with significant inherent values protected as necessary'.[131]

We discussed the words 'significant' and 'significance' in Chapter 11. They are indispensable items in the vocabulary of planning regulations and planning law. But they can cause mayhem, and had done for decades at local and central government hearing panels and at the environment court. To give the words some statistical clarity and to reduce subjectivity, in the context of rivers and lakes, in 2008 the land environment and people research centre at Lincoln University had started a project called 'Developing a Significance Classification Framework for Water Body Uses and Values'.[132] In August 2009 this project, funded by Envirolink, was nearing completion. Whether the tools that the project was developing would objectivise the assessment of lakeside properties during tenure reviews remained to be seen.

Interested NGOs greeted the new crown pastoral lands policy jubilantly or critically, in keeping with their normal allegiances and beliefs. The High Country Accord welcomed the new plan, saying that it would 'put to an end an unfortunate era in which farming families were under constant attack by their own government'.[133] Forest and Bird said that 'the Government [had] set back progress in protecting New Zealand's iconic high country by a decade'.[134] The policy change, according to Forest and Bird's general manager Mike Britton, would mean that leasehold properties with significant landscapes would come 'under threat from subdivision, intensive agriculture and other inappropriate development if they [were] privatised'.[135]

Even as the new policy was landing on Wellington desks, Labour Party thinkers were probably mulling over its likely eventual replacement. Tenure review would not be polished off any time soon. In July 2009 the commissioner of crown lands still administered about 1.6 million hectares of crown pastoral land in the South Island high country between Southland and Marlborough. (Comprising 1,079,500 hectares of crown pastoral-lease land; 46,845 hectares of crown pastoral occupation licence land; and 435,269 hectares of other crown land.[136]) Although sixty-three tenure reviews and five whole-property purchases had been completed, 103 tenure reviews remained in process, and 132 properties had not yet entered the process (as at 31 July 2009).[137] The crown was likely to remain an administrator of pastoral land for some time to come.

Early in 2010 an Ann Brower overview of a decade of tenure reviews appeared in *Architecture New Zealand*. The article ended: 'Thus, at the dawn of a new decade, we're back to where we started – with the quiet but steady privatisation of the New Zealand high country.'[138]

Easements Bought for Te Araroa (the Long Pathway)

In November 2008, LINZ's briefing to the incoming minister for land information had mentioned that Te Araroa Trust was establishing a national trail and that the main gaps that remained in the South Island were through crown pastoral-lease land.[139] The previous minister for land information, David Parker, had identified the filling of these gaps as a priority for new access through pastoral-lease land. LINZ was negotiating with a number of lessees to reach agreements on granting easements for the walking track. Entering into the negotiations was voluntary.

In September 2009 the newsletter of Te Araroa Trust said that over the past six years the trust had sought passage through thirteen pastoral leases. By various processes – tenure reviews, the government's whole-of-property purchases, LINZ's buying of easements, and informal agreement – the trust had found its way through ten of these high-country properties.[140]

This sounded like an ideal opportunity for a researcher to obtain an idea of the cost of a typical nonmotorised-track easement. I wrote to LINZ, asking for:

- the names of the stations where LINZ had bought easements across crown pastoral leasehold land for the national walking trail; and
- for each of these easements, the cost to buy it and the length of track resulting from it.

In October LINZ advised me that 'the only easement completed for Te Araroa was for Lake Hawea Station' and that this easement was achieved through tenure review.[141] The situation was slightly complicated. To create a through route for Te Araroa, during the tenure review an extra 1.5 kilometres (approximately) of track had been added to an already proposed 8.5 kilometres that happened to coincide with Te Araroa Trust's desired route. LINZ said that it was difficult to attribute the cost of the extra 1.5 kilometres of easement as it was part of about 23 kilometres of easement in the Lake Hawea Station back country lumped together for valuation. However, taking a proportionate approach, the 1.5 kilometres of easement cost about $6,000.

New Rent Policy for Pastoral Leases

On 3 August 2010 the minister of agriculture David Carter and the minister for land information Maurice Williamson announced that the cabinet had approved a new system for setting the rents for South Island high-country pastoral leases. The new approach would take into account several factors, including the productive capacity of the land and the economics of high-country pastoral farming. Officials were to begin drafting legislation to implement the policy. The government was hoping to introduce a bill into the House later in the year.[142]

Responding for the Labour Party, its agriculture spokesperson Damien O'Connor agreed that basing the rentals on the earning power of the properties, as a measure of affordability, was a sound principle.[143]

Seldom before had a pastoral-lease issue met such unanimity from the two main political parties. High-country rental assessments would exclude any consideration of the million-dollar views. Yet it still seemed possible that some leaseholders who entered into tenure review would profit handsomely, at the public's expense, from their lakeside and riverside panoramas.

Other Access Developments, 2009–10

The Stopping of Bushey Park Road

We saw in Chapter 7 that in 1991 Bruce Mason argued that walkways based on easements would be 'an inferior substitute to the common law right of passage without hindrance provided by public roads'. In the eighteen years since then, he had continued to push the merits of access

based on publicly owned strips of land, while also warning track-users against the snags of access based on easements or covenants. He had criticised what he saw as the legal and practical weaknesses of esplanade strips, which are a form of easement over privately owned water margins. We saw in Chapter 9 that a PANZ submission in 2003, compiled by Mason, had argued that esplanade strips were 'the antitheses of what the "Queen's Chain" is supposed to be about – reservation in public ownership and control of water margins for a variety of public purposes, including access'.

These matters reappeared in Chapter 31, in an account of a disagreement in 2007 between Bruce Mason and Brian Hayes over the possibility of dedicating new unformed public roads. We left this story at Hayes's critique of Mason's critique. For Hayes, this was the end of the discussion; among other things, he had said that 'there may be problems in giving s114 of the Public Works Act 1981 a broad interpretation which would authorise substantive new unformed roads over privately owned land'.[144] But for Mason, this question was far from settled.

On 19 December 2009 Mason posted on the video-sharing website YouTube a one-hour documentary, *The Stopping of Bushey Park Road: Public Policy Implications*. This may have been the first time that anyone in New Zealand had used YouTube to publicise a walking-access issue. Mason also made the video available on DVD.[145] The pleasantly scenic but underlyingly serious film comprised two parts.

Part 1 (forty minutes) was titled 'The Bushey Park Saga'. It covered the stopping of Bushey Park Road in eastern Otago and the negotiating of alternative access to and along the Shag River. The parties had agreed a solution, which the environment court had approved on 18 July 2005.[146]

Mason took the lead role in the video, as the guide and narrator, in a tour of an unformed public road along the cliffy coast and then of esplanade strips along the vegetated north bank of the river. Maps, textual material, and aerial views accompanied the on-site filming. The object of Part 1 was to compare the access characteristics of unformed public roads with those of esplanade strips and access strips.

The views of the north bank of the Shag River, mostly filmed from a canoe, showed that although some sections of the esplanade strip were usable on foot, trees or scrub were blocking other sections, making walking access impractical. Similar blockages happen of course on unformed public roads. The crucial difference, Mason said, was that the law prohibited members of the public from deliberately damaging any plants on an esplanade strip, and so – unless the landholder agreed – the public could not remove such obstructions. On public roads, in contrast, people had a common-law right of passage without hindrance and also had the right, according to Mason, to remove any appreciable interference with that passage. He restated his long-held view that easements over private land would provide inferior public walking access to that of unformed public roads.

In the video, at one place on the esplanade strip, Mason faced a wall of closely planted solid young pine trees. The law had created a right of way for walkers and had also, apparently, allowed the landowner to plant trees blocking that right of way.

The video also showed that seven small parcels of new unformed road, dedicated under section 114 of the Public Works Act 1981, formed part of a satisfactory resolution of the Bushey Park Road affair. Mason said that hundreds of new unformed public roads were dedicated under this act each year. For lawyers and local-authority officers, he said, these dedications were a standard tick-the-box procedure.

Part 2 (twenty minutes) was titled 'Public Policy Implications'. It drew, or attempted to draw, general lessons from the Bushey Park Road saga. The Bushey Park Road outcome, Mason said, disproved Hayes's view that it was 'not possible to lay out unformed roads in a state of nature over private land'. This part of Hayes's legal advice to MAF officials and the New Zealand Walking Access Commission had, in Mason's opinion, been wrong. But it had provided a platform from which to advocate alternative and far inferior access arrangements: esplanade strips and access strips.

Mason suggested that the New Zealand Outdoor Access Code, then still in draft, should contain more details on the public's rights to use public roads and easements. The video listed the pros and cons of public roads, esplanade strips and access strips. The list, which was in note form, is reproduced here unedited:

Public Roads

1. Government (national or local) ownership – vesting for no other purpose than as 'public highway'.
2. Incapable of anyone acquiring any right whatsoever which derogates from Government's title.
3. Full government control over land use.
4. Incapable of occupation or possession by anyone to the exclusion of passage by any member of the public.
5. Public rights vested in citizens – not at the behest of local authorities, etc.
6. 'The public has the absolute right at common law to pass and repass over the highway without hindrance'.
7. Limited statutory powers of temporary closure.
8. 'Stopping' or permanent closure usually subject to rights of public objection and appeal.
9. A large body of case law protective of public rights.

Esplanade Strips

1. Are easements for public purposes over private land, between territorial authority and land owner.
2. Only district plan controls on land use.
3. Move with changes to watercourses.
4. Can by solely for conservation purposes, with no provision for public access or recreation.
5. When for access, 'any person shall have the right, at any time, to pass and repass over and along the land over which the strip has been created, subject to any other provisions'.
6. May be closed to the public for specified times and periods or by the local authority during periods of emergency.

7. Land owner or authority can initiate variation or cancellation at any time. No public process.

Access Strips
1. A local authority may agree with an owner to acquire an easement over private land.
2. There are only district plan controls on land use.
3. No statutory right of access, as no purpose of 'access' is specified.
4. May agree upon the conditions upon which such an easement may be enjoyed.
5. An access strip may be closed to the public for specified time and periods or by the local authority during periods of emergency.
6. Land owner and local authority can agree to variation or cancellation at any time. No public process.[147]

On 15 February 2010, during a Walking Access Commission stakeholders' forum in Wanaka, Mason used a ten-minute video 'Achieving Certain Access' to present his views and proposals to the commission. He followed this up with a short paper arguing that pedestrian-only public roads would provide free, certain and enduring walking access to the countryside and could be dedicated under section 114 of the Public Works Act 1981.[148]

Queen Charlotte Track: Update, 2010

We last discussed the Queen Charlotte Track in Chapter 32. The concerns of some of the landowners may have originated in the 1990s. Several Queen Charlotte Track access-related issues had been gathering momentum since about 2004. In November 2007 the Queen Charlotte Track committee had been considering introducing a voluntary $5 access fee. This fee subsequently came into being as an optional contribution to the Queen Charlotte Track Tribute Fund. Queen Charlotte Track Inc, a body representing sixty tourism operators and accommodation providers, mentioned the fee on its website:

> Important steps have been taken to protect the future of the Queen Charlotte Track to ensure it will always be a place of rare beauty and freedom. From 1 October 2007 [?] all adult unguided track visitors will be asked to contribute $5 to the Queen Charlotte Track Tribute Fund. QCT Tribute tickets can be purchased from the dedicated ticket machine located at Picton Town Wharf … In the spirit of sustainability, the Queen Charlotte Track Tribute Fund is setting an example for the rest of the world.[149]

According to press reports, this voluntary fee was poorly supported.[150]

On 24 March 2010 the Department of Conservation confirmed that the owners of private land crossed by the Queen Charlotte Track were proposing a user access fee for the track over their land. DOC was discussing this proposal with the landowners and other interested parties. In total, just over fourteen kilometres of the seventy-one-kilometre trail (about 20 per cent) crossed private land. Ten private landowners were involved, on properties between Camp Bay and Anakiwa. The charge

would come into effect on 1 July 2010.[151] According to the *Marlborough Express*, the fee was likely to be $15. Walkers and cyclists made about 24,000 trips on the track each year, of which around 18,000 were only on parts of the track.[152]

A lightweight editorial in the *Marlborough Express* did not cover all the views on the principles and precedents involved in using sections of a nationally important track as a money-making commodity. The writer dealt solely with the perspective of the private landowners and with the needs of tourism:

> The landowners are bringing in the new charge as an acknowledgement of the commercial use their land is being put to [by tourism operators]. Other people are making money out of [the track] – why shouldn't they? The money will be used for track improvements and to cover the bills for public liability and fire insurance.
>
> The track is an essential part of Marlborough's tourism offerings and as a partnership between private and public landowners has worked reasonably well given the competing requirements. It brings in an estimated $10 million a year to Marlborough, an income stream that is well worth protecting.[153]

Commenting on the future size of the admission fee, the writer seemed to suggest that the track-managers ought to set the fee to be affordable for the more mature and affluent international tourist:

> What those who control the track need to remain mindful of is keeping charges as low as possible. Queen Charlotte is not a track that is used frequently by younger international tourists. Tramp the route and you will generally find older people and not so much the international contingent of younger people doing their OE in New Zealand. But there will be a limit to what even older, more affluent people can afford to pay out for the experience.[154]

It wouldn't matter too much, this writer seemed to be implying, if the access fee became a disincentive for young foreign visitors or grew beyond the means of some Kiwi walkers and cyclists.

I collected about six press reports on the proposed access fee, dated 23, 24 , 25 and 30 March. They all dressed up the situation as a reasonable outcome that illustrated the merits of negotiation and pragmatism. A few trampers spoken to by journalists opposed the fee, a few others supported it.[155] A glance at a mountain-biking blog suggested that cyclists were similarly divided on this issue. I didn't detect any immediate public response from the New Zealand Walking Access Commission. Recreational NGOs seemed to have taken a vow of silence. John Key, in his capacity as the minister of tourism, reportedly said that having to pay to use an internationally renowned walking track certainly wasn't ideal but was better than the track being closed altogether.[156]

There was another, different way to view this so-called solution. Although the recent negotiations over the track had apparently taken place in 'an atmosphere of co-operation' (between tourism representatives,

landowners and DOC officials),[157] it seemed to me that there would be nothing apart from kindness and virtue to stop a future landowner using his or her section of track as a tradeable artefact for the maximum profit. The ten private landowners involved were no longer willing to grant free access when asked, the entry mechanism lauded by Federated Farmers and long depended on by many recreators. In 2003, recreational submitters to the Land Access Ministerial Reference Group strongly believed that access to the New Zealand outdoors should be free. In 2008 an almost unanimous parliament had passed the Walking Access Bill. One of the purposes of the Walking Access Act 2008 was 'to provide the New Zealand public with free, certain, enduring, and practical walking access to the outdoors … so that the public can enjoy the outdoors'. From July 2010 part of the Queen Charlotte Track would not be free and could not necessarily be relied on to endure in the long term.

The negotiations on this track had taken place outside the machinery of the Walking Access Act 2008. The New Zealand Walking Access Commission had not been involved in or represented at any of the formal discussions on the Queen Charlotte Track that had taken place between the landowners, DOC, tourism representatives and other interested parties. The commission had heard about the proposed new arrangements informally, the day before DOC's announcement.[158]

Did this failure by the negotiating parties to take into account the provisions of the Walking Access Act 2008 constitute a failure of the act itself? In some senses, yes. The newish act had apparently been ignored in exactly the sort of situation parliament had intended it to influence. If an act does not affect that which it is supposed to affect, then it is a dud. Or, more probable in this case, a partial dud, likely to be successful in some aspects and defective in others. The negotiations, outside the act, had not led to solutions that met the act's basic goals. Even had the Walking Access Commission been a party to the negotiations, its presence might not have altered the outcome, as, apparently, the landowners had rejected the possibility of easements across their properties.[159] Although DOC had rerouted some parts of the track to avoid private land, in at least two places 'no feasible [alternative] track options remained'.[160] There were clear reasons for looking upon the proposed Queen Charlotte Track turnstiles as the first important failure of the Walking Access Act 2008. It was a setback that almost nobody noticed.

By June 2010 the landowners and commercial operators had settled on a $12 access fee for the privately owned parts of the track. Entry to these parts for schoolpupils would be free. The charge would not apply to any sections that were owned and administered by DOC and the Marlborough district council.[161] The representatives of various bodies or parties – Destination Marlborough, the landowners, the commercial operators, DOC and the Marlborough district council – were to form a trust to oversee the use of the money, part of which would go back into the track.[162] A press release from Queen Charlotte Track Inc said that the introduction of the fee would guarantee access to the private land for the next ten years.[163]

Track tickets would be sold by water-taxi operators and at tourist accommodation and information centres. Ticket-buyers would receive

a 10 per cent discount on Interislander ferry tickets and would also get free membership, worth $10, to Kathmandu's Summit Club.[164]

The Queen Charlotte Track, which in 1983 had started life as an officially approved walkway for New Zealanders, and which had been built or improved using taxpayers' money, had become an indispensable and exploitable asset of the tourist industry. In the language of that industry it was a 'visitor facility' or a 'visitor attraction' or a 'track experience'. For courting the marketplace, it had few rivals. One website, typical of many, advertised 'guided and independent walking packages for the Queen Charlotte Track, with boutique accommodation, daily luggage transfers and all meals included'. A news alert I placed on Google News picked up new posts every day, each one carrying the influence of a sales-and-marketing department. The testimonial approach seemed particularly apparent, such as: 'After our first day on the Queen Charlotte Track your Inn was a beautiful and welcome haven. Who thought such a place existed?'

The track fee started on 1 July 2010. Twelve dollars bought you a Queen Charlotte Track Land Co-op Pass, valid for up to four consecutive days and carrying the request 'Please display this Pass so that it is clearly visible'.

A new website, set up by the Queen Charlotte Track Land Cooperative, announced that 'the Queen Charlotte Track is a unique New Zealand partnership between the Department of Conservation, Marlborough District Council and private landowners.'[165] On 15 July a newspaper article said that the newly formed Queen Charlotte Track Sustainability Trust, a charitable trust, would decide how to spend money raised by the track fee. Tracy Johnston, the general manager of Destination Marlborough, said the trust 'would provide a platform for all parties to contribute to enhancing the track experience for visitors'.[166]

My Google news alert did not pick up a whimper of concern over these developments. But not everyone wanted the track enhanced. Mountain-biker bloggers were split on the enhancing and the fee:

> Posted: 24 March 2010, 9:10pm
> Subject: Fee To Ride Queen Charlotte Track from July
> The trail maintenance/enhancement on QCW is making the track a significantly less interesting ride. I'd rather pay DOC not to dumb down the trail. It's getting worse every year. Anyway, I guess the market will decide. I wont be paying it.
>
> Posted: 24 March 2010, 9:21pm
> I've made the trip from Tauranga twice to ride the QCT. Doing the ride over 2 days, its a $500 trip no matter which way you slice it. To me, another $15 is only 3% of the total anyway, so is a paltry sum and I'd happily pay it to do the ride again. Just my opinion.[167]

Critics of the track fee, as well as questioning the need for enhancement, could justifiably have questioned also the benefits of the 'unique partnership'. To some Kiwi recreators, this partnership looked like a conspiracy. The critics could have also drawn attention to the spin in the

name 'sustainability trust'. There was little doubt that the private section of the track would generate a sustainable income-stream; but for people like the first blogger quoted above, recreational access would become unsustainable.

The Queen Charlotte Track was part of Te Araroa (the Long Pathway). So, of Te Araroa's 3,000 kilometres, a few privately owned kilometres of Marlborough countryside became the only fragment with a track access fee. Opinions differed on whether this turnstiling deserved to become a precedent that failed or one that inspired other landowners to copy it.

Exclusive Capture

The imposition of an access fee for the privately owned section of the Queen Charlotte Track was a high-profile example of the exclusionary right of the New Zealand landholder, against which the state seemed to be powerless. Elsewhere throughout New Zealand, an unknown number of other landholders were commodifying the walking or vehicular access across their land. We discussed exclusive capture in Chapter 9, in connection with the access across Poronui Station in 1993. For anglers and hunters in 2009–10, exclusive capture remained a sore point.

The 2007 Acland report had not found a consensual solution to the problem of exclusive capture. Bryce Johnson, in expressing his alternative views, had argued that the consultation panel had overcomplicated this issue and in doing so had marginalised its relevance to the debate over public access.[168] He had suggested two measures that would reduce the exclusive use of the public sports fish and game resources. These solutions awaited the attention of a sympathetic minister of conservation.

In May 2009, *Fish & Game New Zealand* had carried a six-page lead article on access to rivers. Written by David Haynes, an angler, the article argued that 'fishing and the right to freely explore New Zealand's halcyon backcountry are being privatised – by stealth'. He concluded:

> If we continue our 155 year procrastination over the Queen's Chain, we will end up with a two speed fishing economy: overseas anglers who can, by and large, afford to fish prime private beats, and the rest of us, relegated to secondary fishing opportunities.[169]

In 2010, exclusive capture was still affecting many fishing sites. Haynes wrote:

> I, as many others do, have a list of rivers where payment is required in order to access the fishing. It currently includes 30 odd instances and not just the well known ones such as … the upper Whanganui. The trouble is [that] this list keeps growing and the rivers I can access shrink as each year passes as a result of pollution, abstraction, didymo and hydro schemes.[170]

When I contacted Haynes in August 2010, his list of pay-for-fishing-access places had grown to forty. At many of these, the landholders required payment irrespective of the mode of travel; whether on foot or in a vehicle, you had to pay. He said that although the charge was ostensibly for the access, it was really for the trout fishing.[171]

On 26 August Peter Dunne, wearing his United Future hat, issued a press release about public access to rivers. Since the commencement of the Walking Access Act 2008, politicians, including Dunne, had mostly kept quiet on public access. Dunne's statement reminded people that there had been instances 'up and down the country where the public have effectively been denied access to valuable fishing rivers and game areas due to unreasonable access restrictions and the selling of "exclusive" access to guides and fee-paying clients'.[172]

Dunne also described an access problem that had arisen along some stretches of the Rangitaiki River. Anglers needed access through the Kaingaroa Forest to reach the river. Timberlands, which managed the forest, had denied them this access, saying that the forest was too dangerous to pass through because of the presence of logging trucks and because of a perceived fire risk. Dunne said:

> We need a far more lasting solution [to access problems] that is immune from the ad-hoc attitudes of landowners and managers. I have long held the belief that the Walking Access Commission needs to have the formal power to actually resolve these issues. Presently all the Commission is mandated to do is merely facilitate and negotiate. What it specifically requires is the statutory authority to prevent the loss of public access through stealth, as is happening at the moment.[173]

It later transpired that the issue in the Kaingaroa Forest involved vehicular access rather than walking access.[174] Dunne's press release had not been clear on this point. Walking access to the forest was still allowed. Which just goes to show how complex is the subject of access and how careful you need to be when writing about it.

Chapter 37

NZWAC, Fully Operational

A favourable news item and a hesitant blog that both appeared on 5 October 2010 form a balanced introduction to this account of the commission's third year. The news story, on hawkesbaytoday.co.nz, centred on Nicola Henderson, the commission's recently appointed regional field advisor for the Hawke's Bay, Tararua and Wairarapa areas. She was looking forward to helping walkers access as much of the region as possible. 'She would be working with a range of people and organisations, including landowners, local authorities and the Government, to help walkers know where and how they could access particular areas … A major project the commission was working on … was a mapping system that would show public access that might not be visible on other maps'.[1]

A selected group of users was testing a trial version of the online mapping. A post on a hunting-and-fishing blog raised a seldom-mentioned downside of the provision of information, a possibility that may have reflected some realism born of experience:

> Posted: 5 October 2010, 7:56pm
> Subject: Walking Access Commission
> In case you've not tried the mapping system, have a look here: http://www.arahikoi.org.nz/. You'll need to register to have a play with the BETA version. It's quite good, except I reckon that lots of land owners who always thought some sort of right of way such as Queen's Chain existed on their property, may suddenly realise that it doesn't. Will attitudes towards recreational users change as a result? I guess we wait and see.[2]

Was this a jaundiced view of the goodwill of New Zealand landowners? Or a realistically cautious one? Some landowners had done more than enough to earn the pessimism.

A trickle of access problems continued to reach the newspapers. Compared to the news reports of 2003–5, however, the tone of most of the reports remained all sweetness and light.

NZWAC: Year Three, October 2010 – September 2011

By October 2010 the commission had established itself as an independent organisation that was leading the way in promoting access. It had laid the cornerstones necessary to achieve the objectives of the Walking Access Act 2008: the national strategy for walking access, the outdoor access code, the walking-access mapping system (which was in beta testing), and the enhanced access fund. Also the commission had appointed seven regional field advisors. It considered itself fully operational.[3] Its work for the period 2010–15 had been set out in its statement of intent.

Chief Executive's Overseas Fact-finding

In September–October 2010, Mark Neeson undertook a three-week trip to England, Scotland and Canada, visiting organisations with an interest in and responsibility for enabling access to the outdoors. The main aims of the visits were twofold: 'to ascertain and understand the legislative, policy and operational frameworks in respect of walking access' in these countries; and to consider possible applications of their approaches in New Zealand.[4]

Neeson drew up detailed objectives for each country. Those for England, for example, were:

- to understand the pressures that generated the 1997 legislation [CROW Act 2000?], options considered and why the preferred approach;
- to identify the expected and unexpected implications of the legislation and how are the latter addressed;
- to gain an insight into how the competing interests (farming and users) have adapted to these changes and how the responsible management agencies operate to bring these groups together;
- to learn about stakeholder consultation processes and structures and their effectiveness;
- to be aware of any plans to change the legislation and if so, how;
- to understand the process of mapping of rights of way and implementation issues;
- to learn whether England has a code of conduct (akin to the Scotland code) and if so what it covers;
- to understand who monitors and enforces compliance with the legislation; and
- to identify the respective roles of DEFRA and Natural England and [how] they work together.[5]

Neeson's report on the visits included an overview of six main aspects: engagement and stakeholders; performance measurement; law and policy; code of conduct and signs; funding; and public land. He listed possible operational changes for the commission, categorising them as immediate, near term, and intermediate term. One of his suggestions, for example, was to 'consider ways to create new access on a like for like basis with the previous access being extinguished. The new access need not be called "roads" but would retain the same legal characteristics.'[6]

One of Neeson's overall observations was that 'the English approach demonstrates the pitfalls accompanying a legalistic, rights based approach

compared to Scotland which emphasises responsible behaviour and dialogue'.[7] The difference between the two systems becomes apparent if you compare the access codes of the two countries. England's Countryside Code, downloaded from the Natural England website in 2010, amounted to one A4 leaflet, if printed on both sides. It didn't have a high profile in the access general scheme of things. The Scottish Outdoor Access Code, approved by the Scottish parliament in July 2004, occupied sixty-six A4 pages.

There is no doubt that an effective access code, paired with discussion and consultation, can sometimes achieve more popular and lasting access than controversial legislation. However, before New Zealanders put all their eggs into the dialogue basket, it is important for them to remember that Scottish walkers and mountain-bikers are now negotiating and collaborating with landowners from a position of strength: they are supported by radical land law of which New Zealand has no equivalent.

Walking Access Mapping System

The beta version of the online mapping included the three main components of what would be the finished system: topographic mapping, cadastral information, and aerial photographs. The topographic mapping was available at various scales up to a maximum scale of 1:15,000.[8] The cadastral information and aerial photographs were available at various scales up to a maximum of 1:500. Users could print any of the maps.

About 840 people registered themselves as testers.[9] This trialling investigated the system's ease of use, its ability to handle a high number of users, and the accuracy of its information. Many of the testers judged the system to be accurate and useful; these included some Federated Farmers provincial presidents who had found other mapping systems to be inaccurate.[10]

On the likely long-term accuracy of the mapping, the commission said that the cadastral information, which came from the LINZ cadastral database, would be updated monthly. The topographical information, from the LINZ topographic database, would be updated annually. The aerial photography was, in 2010, the most comprehensive and up to date available.[11]

Life would not have seemed normal, however, without some farmers' grumbles. The *New Zealand Farmers Weekly* duly obliged, reporting that the chairman of the high-country committee of Federated Farmers, Graham Reed, had expressed disappointment at the commission's forging ahead with the testing phase. Reed had said:

> The commission is aware of possible shortcomings within the [mapping] system but believed that in bringing these out into the open [the] discrepancies would be identified publicly rather than WAC working through the information before its release. This is simply asking for trouble. It's all very well to look at treating the public users in good faith. We accept the majority will act sensibly but the minority have the potential to make it very uncomfortable for land occupiers.[12]

On 8 November, at a meeting with interested groups in Nelson, the commission's operations manager Ric Cullinane said he expected the mapping to interest two groups. The first group would comprise people who were involved in or concerned about issues of public access and who were working to improve it. The second group would be the general recreating public, who would just be thinking, Where can we go today?[13]

From what I had seen of the beta version, the system would undoubtedly meet the information needs of enthusiasts seeking to improve access. These people would soon be able to access, at no cost, up-to-date maps showing unformed public roads.

Whether a three-layer system would suit the information needs of the general public was less certain. Having to juggle a combination of topographic mapping, cadastral mapping and aerial photographs was complicated compared to using a topographic map that showed public foot-tracks. A GIS professional said to me: 'I think they've done a good job, but when I use the map I'm not convinced it's an application particularly geared for the public … It really looks like an application developed by GIS people for GIS people – not for walkers.'

The reality, however, was that a mix of circumstances had dictated the basic structure of the mapping system – its three layers. Perhaps, in time, the system would evolve into something simpler.

Without any fanfare the trial version of the mapping became available to the public, accessible from the commission's website, in late December 2010. The commission expected this open testing phase to last for several months.

Access to the online mapping required the user to read a purpose statement and agree with the declarations of a disclaimer. In connection with the issue of blocked unformed public roads, part of the purpose statement read:

> Users of this system are warned that the legal access shown on the maps is not necessarily practical or safe. They must bear in mind that they are not entitled to damage or destroy private property in attempting to use public access. For example, if access along an unformed legal road is blocked by a fence or locked gate and the issue cannot readily be resolved with adjoining land holder, it is best to take up the issue with the relevant territorial authority, as the organisation responsible for such roads.[14]

The commission repeated this advice in one of its frequently-asked-questions documents: 'Ultimately it is the responsibility of the territorial authority to resolve these problems [of blocked or disputed unformed public roads]. The Commission may be in a position to mediate in some circumstances.'[15]

The powers and resources of the commission to help uphold one's right to walk along an unformed public road – even an accurately mapped one – were limited. The Walking Access Act 2008 enabled the commission to be little more than a go-between, albeit one equipped with a knowledge of arcane law and with the skills of facilitation: putting together a natural-sounding opening statement, presenting open body

language, maintaining good eye contact, looking for ways to neutralise strong language, finding hope in hopelessness, etc. In contrast, and clearly stated in one of the commission's frequently-asked-questions sheets, any landholder could issue a trespass notice to someone they alleged was walking on their property.[16] Rights of public access to land in New Zealand still had a long way to go.

Meanwhile, the mapping system was emerging as a powerful facility. It seemed likely that use of the system's enquiries feature would gradually increase as more people found out about it. This feature, however, was very basic; it needed improving to make it more useful to users and for the commission's management of enquiries. Further development of the system's capabilities would be technically possible but would depend on funding, and the commission had 'limited capital funding available for enhancements to the system'.[17]

Pedestrian Roads

At the November 2010 commission meeting, the board considered a paper on the concept of pedestrian roads, written by Bruce Mason. In this paper, Mason said that the Local Government Act 1974 provided and defined two types of pedestrian roads, called 'access way' and 'footpath'. Also, central government and local authorities could use the Public Works Act 1981 to declare land to be a road. Therefore, Mason argued, they could create roads of the 'access way' type, for use by pedestrians only.[18]

The board agreed that the commission would need to keep open a full range of options for the establishment of certain and enduring walking access. But it noted that the concept of pedestrian roads was unlikely to provide a practical choice. The commission's preferred form of legal access mechanism would be an easement in gross.[19]

Guidelines on the Administration of Unformed Public Roads

In 2008 the cabinet had resolved that the Walking Access Commission, once established, would 'lead a group of government agencies to work with Local Government NZ to develop and issue guidelines for local government on a) the administration of unformed legal roads with the aim of removing possible impediments for their use for walking access, and b) the legislation and administrative practices on the stopping of unformed legal roads'.[20]

At its second board meeting, in November 2008, the commission had asked officials to draft a letter to Local Government New Zealand (LGNZ) advising it of the commission's interest in the use of unformed public roads for walking access. Subsequently the commission had set about drawing up the required best-practice guidelines for local authorities, which it intended to produce before the mapping system went live.

After discussion with other government agencies, LGNZ, other organisations, and individuals, the commission completed these guidelines in about October 2010 and published them in February 2011.[21] The guidelines summarise the origins of unformed public roads and the laws that apply to them. They also describe the common issues associated with these roads; for each issue, the guidelines state what the law says and what action a council should take.

Although designed as advice and principles for city councils and district councils, the document was likely to reach beyond the town

halls and onto the bookshelves of access advocates and some road-users. John Acland said that the guidelines would be just the first edition; he expected the commission to produce revised editions that would reflect experience and feedback.[22]

On the use of unformed public roads by motor vehicles, the guidelines said that motor vehicles could in law use such roads, but that councils might possibly pass bylaws restricting motor vehicle access.[23] A Walking Access Commission frequently-asked-questions sheet touched upon the same issue: 'Many unformed legal roads are unsuitable for the use of motor vehicles. Note that it is an offence to damage the surface of a road – this can include the turf of a paddock.'[24]

Land Transport (Road Safety and Other Matters) Bill

Also in February, the commission's board became concerned about some clauses in the Land Transport (Road Safety and Other Matters) Bill. These clauses were associated with the powers to make bylaws that would apply to unformed public roads. One of the provisions would, if the bill was passed, allow the road-controlling authorities to make bylaws 'regulating any road-related matters not addressed by the other proposed provisions'.[25] The open-endedness of the wording potentially provided the road-controlling authorities with a means of restricting all kinds of access to unformed public roads.

In a rare use of strong language, the minutes of the February board meeting recorded the board's view that the changes represented a 'huge shift in power'. The board agreed that the commission should write urgently to the minister of transport expressing its concerns.[26]

Federated Mountain Clubs of New Zealand had similar concerns. It too wrote to the minister. In reply, Steven Joyce argued in favour of the wording's lack of definite limits. He said he was 'satisfied that the safeguards in the Act would prevent undue modification of public access rights'.[27] The only so-called safeguards were an obligation on a road-controlling authority to consult affected groups and a requirement for it to send a copy of the new bylaw to the minister.

Pahi Walkway Opens

The Pahi walkway in Northland had been one of the first projects to receive money from the commission's Enhanced Access Fund. It opened on 12 March 2011, becoming the first track completed with the help of funds from the commission. The walkway was the first of four proposed to link along the Pahi peninsula. Kaipara Harbour had few coastal walkways; there was plenty of potential for more, visiting features and linking together.[28]

Enhanced Access Fund, 2011 Round

The fund for the 2011 round stood at $230,000. Forty-four groups applied to the commission for grants. The applications came from all over New Zealand. Mark Neeson said this level of interest was outstanding and indicative of 'the increasing awareness and value New Zealanders are putting on public access to some of New Zealand's beautiful and historic spots'.[29]

John Acland Retires

In April 2011 John Acland – a quiet achiever and a supreme champion of restraint – retired from the chairmanship of the commission after nine years of leading the promotion of access to land. At a retirement function in parliament, Jim Sutton addressed Acland, summing up the magnitude of his achievements: 'Walking access is probably the toughest thing you've taken on … I don't know of anyone else who could have brought it to this successful conclusion.' David Carter declared that recreational access to the outdoors was 'a real birthright, a taonga, for all New Zealanders'. Mark Neeson said: 'John's mana and experience enabled him to manage and bring about a consensus about access. He faced sometimes fiery public meetings which he handled with skill and diplomacy. I never saw him lose his cool.'[30]

John Forbes, who was already a board member, now took on the job of chair. Kay Booth and Barbara Stuart reached the end of their stints on the board and were not replaced. John Aspinall, Peter Brown, Maggie Bayfield and Brian Stephenson remained on the board and were joined by Maurice (Mike) Barnett.[31]

Dry Acheron Track Established

On 2 May 2011 the commission announced that the Dry Acheron Track had been established in Canterbury to improve the access along parts of the Dry Acheron Stream to the Big Ben Range in the Korowai-Torlesse Tussocklands Park.[32] The Dry Acheron Track had already been gazetted (on 3 March) and was the first walkway to be created by the commission under the Walking Access Act 2008.[33] The Department of Conservation is the controlling authority, responsible for the track's day-to-day management.

Other Access Developments, 2011

Exclusive Capture: Déj*à *Vu

Access issues have a habit of smouldering and then flaring up again. As we saw at the end of Chapter 36, the subject of exclusive capture had remained a concern for anglers. In December 2010 the issue reignited when a sports shop appeared to be seeking to buy hunting and fishing rights from landowners. Freshwater anglers responded strongly, pointing out that section 26ZN of the Conservation Act 1987 prohibited the sale of sports fishing rights:

> 26ZN Fishing rights not to be sold or let
> (1) Every person commits an offence against this Act who sells or lets the right to fish in any freshwater.
> (2) For the purposes of subsection (1) of this section, the expression 'sells or lets the right to fish' does not include—
> (a) the selling or letting of fishing rights on any licensed fish farm to the general public; or
> (b) the grant of a concession by the Minister to a sports fishing guide; or
> (c) charges made for guiding services by any sports fishing guide.

Hunters reacted loudly too, saying that section 23 of the Wildlife Act 1953 prohibited the sale of game hunting rights. They emphasised section 23(2):

> 23 Sale of game and sale of shooting rights prohibited
> (1) …
> (2) No person shall sell or let for fee or reward any right to hunt or kill game on any land or on any water on or adjoining any land.

In response to the outcry, the people or company involved with the sports shop reportedly said that a serious mistake had been made in the proofreading of an advertising brochure. They did not sanction exclusive capture of any kind.[34]

Even so, the incident provoked the New Zealand Federation of Freshwater Anglers (NZFFA) into a state of high alert. On 4 January 2011 the federation issued a press release setting out its position on exclusive access. It also posted a webpage on the same subject. Its president, Jim Hale, wrote that the federation had 'decided to place a stick in the sand and fight the ever increasing cancer of this insidious capture of some of New Zealand's best trout fishing waters'.

The word 'cancer' was a risky metaphor for exclusive capture, being insensitive to cancer-sufferers. Anglers, however, could with some justification point out that 'cancer' has been used figuratively since the 16th century to mean an evil influence that spreads dangerously. Hale was angry about the increasing commercialising of something that once was free. He continued:

> One must realize that the majority of [commercial] guides do not practice exclusive capture and indeed are affected by it. Also many land occupiers treat anglers with respect, as we do them, and [they] allow us on their properties if we follow the Walking Access Commission Code of Conduct. But … many [landholders] try to take advantage to make profit out of what does not belong to them.
>
> The Federation appeals for the help of all anglers to let us monitor and record where-ever this is occurring within New Zealand. We need to know where any angler has been refused access, because of exclusive capture. If we fail to do this we are giving tacit approval to those who would have the fishery shut up for their own gain. We either protect the fishery or lose it.[35]

Anglers had been aware of this problem for twenty years. The anglers' federation could have started its monitoring and recording in January 2003, when Jim Sutton set up the Land Access Reference Group. Better late than never, though.

In the press release, Hale wrote with a determination that we hadn't seen from access advocates for several years: 'We realise that some [landholders] already think of our fisheries as commodities that they have some kind of right to, or which they can lock up for private gain. But we will fight this scourge wherever we find it, with whoever is involved, with all of the determination and resources at our disposal.'[36]

As regards legal remedies available to the federation, there were none, except for dealing with the blatant selling of fishing or hunting rights. A landowner could not openly sell fishing rights or hunting rights but could merrily charge people for access. The law was an ass, yet it was unlikely to change.

According to the *Dominion Post*, David Carter said he knew of fewer than a dozen places where exclusive capture was happening. Furthermore,

> he personally felt it was the legitimate property right of an owner to sell exclusive access for fishing. [He said]: ' … the owner of the property certainly has the ability to restrict access and therefore to maximise the economic potential of a fishing spot to the advantage of that property owner.'[37]

This reported response did not endear Carter to the bloggers on www.fishnhunt.co.nz. One wrote: 'Unfortunately there is absolutely nothing to stop a farmer charging someone to access their land. Its not the fishing they're selling, its the access which isn't illegal. As much as I hate it! Disappointing to see the minister condone it though.' A less restrained contributor wrote: 'The minister is a blind bllithering idiot condoning partially if not wholly [an] illegal act by profiteering individuals so much so they are pirates!'[38]

The writer of a story in the *Nelson Mail* agreed that 'the world [was] changing' and that there was 'a much bigger potential for conflict than before'.[39] Perhaps this writer wanted to stir up a local sample of that conflict because he or she then said that landowners had every right to commercialise access to fishing and that anglers would just have to put up with it:

> The fact remains … that there is no general right of public access across private land – and nor should there be. If landowners decide to sell access to the highest bidder, that's their business and no government ought to bow to pressure to remove their right. In areas where there's no unformed public road or other legal access, it ought to remain a matter for agreement between the landowner and the fishermen, whether or not money is involved.[40]

On exclusive capture, the temperature was rising. Writing on www.nzherald.co.nz on 16 January 2011, the former ACT member of parliament Deborah Coddington argued wholly in favour of landowners' property rights. She brought out one or two musty clichés for an airing. The anglers, she said misleadingly, had 'come out punching because they're losing the right to *wander all over* private property to reach their favourite fishing spot, without so much as a please or thank you'.[41] (My italics.)

In the week that followed, thirty readers added comments below Coddington's article. One of these responses said:

> Not particularly well reasoned Deborah. Since the dissolution of the commons in Europe, people have been wrestling with this rather 'modern' concept that all land must have an exclusive owner. This

> dichotomy is being addressed by organisations like the Ramblers who have helped spearhead the 'right to roam' movement which has gained increasing traction. Rather than fighting against this inevitable reversal, it would be better that land owners work together with government lawmakers and outdoorsmen to craft legislation and access that re-establishes the much sought continuity of man and Nature.

Another person wrote:

> Property rights are not, and never have been, absolute. All manner of official and unofficial pillocks can wander onto and into your property without as much as a bye-your-leave or a search warrant. You talk about people having access to fishing spots by crossing farm land as if it's a new thing. It's not. Every buyer of farm land knows, or should know, of this. If it was known at the time of farm purchase then it's hardly an 'imposition' now. The purchaser could have decided to buy somewhere else if the prospect of the great unwashed crossing their property for a fish was too much for them. That said, it doesn't hurt to ask and be polite, close gates after you, leave no rubbish behind, and all such reasonable things. But if I bowl up to a farmer, ask for permission, and he says 'sod off' what do I do? Surely, Deborah, you remember Spencer's blocking of a paper road, and access to Stony Batter, because he had a 'right' to privacy.

Another wrote:

> Typical of a politician. Weakens the argument by denigrating and insulting anyone opposed to their point of view. The argument could have stood on its own without letting Miss Nasty of the leash. Sorry Deborah you make it very hard to support your stance by just being nasty and insulting. As an intellectual exercise the article fails.

And another:

> What an extra-ordinary piece of confused thinking by Ms Coddington! If we are to grant landowners the right to keep people away from publically owned resources such as lakes, beaches, forests and rivers, how will that avoid becoming a nation of serfs? I would have thought that granting landowners absolute rights was the recipe for most Kiwis becoming a 'nation of serfs'.
>
> And why should landowners be able to stop people rightfully accessing publically owned resources? In my work with Jim Hale and others in the New Zealand Federation of Freshwater Anglers I understand the issues that they are pursuing and think that Ms Coddington should think very carefully as to what she is suggesting we as a nation give up.
>
> No-one in the nzffa has ever advocated the 'right to roam' over private proerty. Rather they have talked about the right to access rivers and lakes that are in the public domain. The fact that some

> greedy New Zealanders have 'bought access rights' so they can on-sell them to wealthy (and usually overseas) anglers does not make the practcie right.

A few of the responses supported Coddington's enthusiasm for absolute property rights. One person wrote:

> Property rights are one of the central tenets that the unprecedented prosperity of the passed [*sic*] two centuries is built on. If the owner of land is not entitled to the full use and disposal of his land, he is less likely to care for it and to use it to its full potential. Which is bad for everyone.
>
> Those countries that have poorly defined and defended property rights also have low prosperity. The rebuilding in Haiti, after the earthquake, has been slow as property rights are poorly defined there. Why bother if someone else can easily encroach on your hard work (namely govt officials)?
>
> I have to agree that Deborah's argument is poorly reasoned. Starting your premise with an ad hominem attack on your opponent is almost always folly. Fortunately a couple thousand years of philosophical thought on the matter more than back her conclusion.

In May 2011, exclusive capture became a major topic of discussion at the annual general meeting of the New Zealand Federation of Freshwater Anglers. Guests at the meeting included representative of Fish and Game New Zealand, the New Zealand Professional Fishing Guides Association, the New Zealand Salmon Anglers Association, the Council of Outdoor Recreation Associations of New Zealand, and the New Zealand Walking Access Commission. According to an NZFFA press release, the representatives agreed unanimously that 'this insidious practice of the exclusive capture of our freshwater fisheries has no place in the great kiwi outdoors'.[42] The representatives resolved to continue their efforts to eliminate the practice so that all licensed anglers would have equal opportunities to enjoy the sport.

Central North Island Forests

Chapter 36 mentioned a problem over access through Kaingaroa Forest to reach the Rangitaiki River. The main issue seemed to involve vehicular access. In February 2011 the board of the Walking Access Commission discussed this issue and agreed to 'explore further the potential role the Commission might take in respect of access in the Central North Island forests'.[43]

Marine and Coastal Area (Takutai Moana) Act

On 24 March 2011 the Marine and Coastal (Takutai Moana) Bill passed its third reading on a vote of sixty-three to fifty-six. The legislation repealed the Foreshore and Seabed Act 2004 and restored to Maori the right to seek customary title to parts of the coastline. For customary title to be awarded, iwi must meet the test of exclusive and uninterrupted use and occupation since 1840.

The act uses the term 'common marine and coastal area' in preference to 'foreshore and seabed'. It guarantees free public access for all New Zealanders to the common marine and coastal area.

A Civil Union

In Chapter 21 we discussed the powerful impact of Federated Farmers in New Zealand politics and we probed into the origins of this political clout. Politically active farmers with carefully cultivated connections to the government may not be unique to New Zealand. In the 1980s and 90s, 'much of the influence of Britain's formidable agricultural lobby [was] exercised through the extremely close relationship established by the National Farmers' Union between itself and the relevant department of government', typically the Ministry of Agriculture, Fisheries and Food or the Forestry Commission.[44]

By 2011 Federated Farmers, representing the views of over 26,000 farmers and farm workers[45], was ensconced as one of the principal stakeholders of the Walking Access Commission. The commission itself – its board and its staff – was with the best of intentions stacked with people from farming backgrounds. The minister of agriculture appointed the board. The commission was accountable for its performance to the minister. This inbred preponderance of farming interests was not without risks or beyond criticism, but it made sense as part of an access strategy that relied solely on talking nicely to landowners.

By September 2011 the commission had been fully operational for a year. It had made some headway in its seeking to be recognised as the leader on national and regional walking access.[46] Its mapping system had already advanced the provision of information on tracks and access. Although only a small agency, the commission was well designed to stretch its limited resources as far as possible. Collectively it possessed much knowledge of access issues and a growing experience of negotiating access. Perhaps all that it lacked was a large medieval siege engine.

Chapter 38

Where Public Rights and Private Rights Meet

In her introduction to the 1997 edition of *This Land is Our Land*, the English environmentalist Marion Shoard wrote that 'it is the endless contention over the land on which we all must live which is the most natural source of conflict in human life'.[1] She was referring to Britain in particular and the world in general. Writing in the *New Zealand Geographic* in 2003, David Round, a law lecturer and a past president of Federated Mountain Clubs, concisely outlined New Zealand's complex version of that conflict. He ended his article by warning of the powerful emotions at play: 'Access issues are where public rights and private rights meet, where desires and beliefs and moral philosophies may be supported or opposed by law, where very strong feelings lurk just below the surface.'[2]

For six years, from January 2003 to September 2008, New Zealand's Labour-led governments had examined those access issues. Much of the government's focus was on improving walking access to the Queen's Chain and public roads and on providing better information about existing access, matters which ought not to have caused much controversy. The related issue of pedestrian access across private rural lands, however, became fiercely disputed. At the core of this issue lay landholders' rights and attitudes, characterised by entrenched values and interests. The farmers especially, led by Federated Farmers of New Zealand, defended their existing absolute property rights, including the right to exclude. This re-raised several crucial questions that people in a number of countries had been asking for a decade and which in New Zealand have not yet been answered, despite our now having a national walking-access plan. Is the idea of impregnable property rights attached to land appropriate for the 21st century? In 1998, discussing recreational access to private rural lands in Australia, Canada and the United Kingdom, John Jenkins and Evi Prin asked:

> Are landholders merely stewards or custodians of 'their' property, holding and using it on trust for later generations? Who does 'own' the land? Who does have a right to access? These questions are

> being raised not just in limited circles with respect to recreational and tourist access to private lands, but very much more widely with respect to indigenous land rights, mining and other issues, such as heritage.[3]

Ten years later, academics were still asking the same question, and some were asking it of the landholders of New Zealand. In June 2008 Eric Pawson presented a conference paper on the environmental history of New Zealand agriculture. In discussing the ways to achieve sustainable agriculture, he identified an increase in the use of multifunctional approaches, which assume that land and water can be managed for several purposes simultaneously: 'within any one unit such things as pastoral production, catchment and nutrient management, tourism and carbon sequestration may all be of substantial significance.'[4] Pawson asked whether society should still view New Zealand farming land and landscape as a commodity or should see it more broadly as an asset that belonged to the whole community:

> So, in the light of these increasing uses of land, to whom does land and landscape belong? This is not a new question and was being raised as long ago as the 1960s … But in the twenty first century there are widespread expectations of increased public access to privately owned and managed farming land.[5]

Whether appropriate or not, landowners in 21st-century New Zealand indubitably do own their land and do luxuriate in their right to exclude others. In Chapter 11, I suggested that, regarding recreational access to land, there are two New Zealands. Publicly owned land – much of it being wilderness and remote conservation parks – is generously provided with many hundreds of walking and tramping tracks; privately owned rural land, etched with countless farmtracks, has few public foot-tracks. Subsequent to my writing that chapter, Kay Booth completed her thesis on rights of public access. Her findings confirmed that, in 2006, the institutional arrangements governing public access to privately owned land in New Zealand left much to be desired:

> The plethora of statutes and common law which constitute New Zealand's access laws presents a variety of hindrances to RPA [rights of public access]. Most statutory law protects landholders' rights rather than enhanc[ing] RPA. The provision for criminal offences against trespass infringement within the *Trespass Act 1980* illustrates this point … The Government access proposals [of December 2004] do not address deeper legal access issues, notably the denial of RPA in common law and the reliance on legal delineation of RPA by exclusion rather than [by] 'as of right'.[6]

Walking Opportunities Close to Where People Live

I have previously indicated that for many years researchers into recreational patterns in New Zealand have stressed that most outdoor recreation takes place near where people live. For some Dunedinites, the existence

of publicly owned land in Central Otago is less relevant, except on one or two occasions annually, than the existence of high-quality walking or mountain-biking close to Dunedin. New Zealand has an ageing population. In Dunedin the number of people aged sixty-five or over is forecast to rise from 16,100 in 2006 to 25,100 by the year 2026.[7] I am about to join their number, whether I want to or not. Some of us may still often head for Central Otago for our recreation, yet for many of us the Otago Peninsula will be a more-frequent destination.

In 2005 Mick Strack took this argument one stage further, gently questioning the recreational importance of the high-country conservation parks compared with that of more-local countryside:

> The Crown is buying huge areas of land to add to the conservation estate – for a continuous and extensive Conservation Park throughout the high country. The purchase of Birchwood Station (now known as Ahuriri Conservation Park) for what has been described as a premium price – $10m for 23,700ha – is illustrative of the value the government has chosen to put on inherent conservation values …
>
> This huge investment in high country land is undoubtedly focused on maintaining ecological values in remote valleys and mountain land, but it is also portrayed as satisfying the demands for more public access. These additions to public land are indeed significant contributions to protected lands, they serve to link the South Island's national parks, nature and scenic reserves, forest parks and conservation parks with an integrated and continuous ecological focus. But they provide little for the urban dweller needing to reconnect with nature, to get the quick physical, psychological or spiritual revival of a walk in the countryside.[8]

Strack further developed this line of reasoning, suggesting that the proposed access organisation could proactively implement the New Zealand Walkways Act (he wrote this in 2005, before the Walking Access Act 2008), to 'provide … possibilities for outdoor access that are more meaningful to the public than the purchase of large areas of remote high country land'.[9]

Location, Location, Location

One of New Zealand's most obvious examples of a highly used recreational area close to a city is Christchurch's Port Hills. By 1986, the Port Hills had 800,000 recreation visits a year, which was ten times that of Arthur's Pass National Park.[10] In 1996 Reuben Peterson suggested that the most important feature of the Port Hills for the people of Christchurch was its location:

> The Hills can be reached within ten minutes drive from the Square and bus lines run out to various locations, many people live within walking distance and many more within cycling distance … Everybody has the chance to reach this area, unlike many natural areas that require a car or other considerable travel cost.[11]

There is another aspect to the need for walking opportunities close to where people live: the importance of local outdoor recreation is likely to grow. Writing in 2005 about the post-oil age, James Kunstler predicted that

> the cost of transport will no longer be negligible in a post-cheap-oil age … The world will stop shrinking and become larger again. Virtually all of the economic relationships among persons, nations, institutions, and things that we have taken for granted as permanent will be radically altered during the Long Emergency. Life will become intensely and increasingly local.[12]

Oscar Wilde once said that 'it is only about things that do not interest one that one can give really unbiased opinions'. To achieve squeaky-clean objectivity and lack of bias, social-science academics strive to restrain their own opinions. Their dispassionate search for methodological rigour results in valuable factual analyses, if often necessarily somewhat dry and guarded. Kay Booth, in her thesis on rights of public access for outdoor recreation, does not often reveal any of the beliefs, hopes and prejudices that drove her research interest. In one place, however, she does disclose part of her motivation:

> The choice of research topic was influenced by the fact that I am a recreational professional and an active outdoor recreationist. My interest in RPA [rights of public access] arose from personal frustration at difficulties in identifying where I could go for walks close to my home. This caused me to reflect that my previous research interest in recreation on public conservation lands failed to adequately respond to people's recreational needs. This thesis, then, represents a personal departure from my earlier research interests. At a professional level, I argue that the focus of outdoor recreation research in New Zealand needs to broaden in order to recognise the growing need for peri-urban and rural recreation settings close to the increasingly urbanised New Zealand population.[13]

We saw in Chapters 4 and 5 that, until the 1970s, most of the track-building in New Zealand had taken place on publicly owned land, much of which was rugged backcountry, uneconomic for farming. Then, from about 1976 onwards, the focus of the New Zealand Walkway Commission had shifted, with limited success, onto the need for walks near population centres. In 2006 Kay Booth was still having to stress the importance of this long-neglected need. She used the term 'protected natural area' to refer to, and to lump together, all the lands managed by the Department of Conservation:

> The PNA [protected natural area] system does not fulfil the day-to-day needs of urban-based residents. In conjunction with increasing concern over user impacts upon nature conservation values within PNAs, increasingly the focus of attention is likely to turn to the potential of peri-urban private land for recreation provision.[14]

By 2008 even the New Zealand Conservation Authority (NZCA) was agreeing with this message. In July 2008 Sport and Recreation New Zealand released a discussion document on outdoor recreation. The NZCA made a submission, at the end of which it listed six 'priorities for action'. One of these prime concerns was the 'provision of outdoor recreation opportunities close to urban populations'.[15] (DOC's New Zealand Walkways Policy of 1995 had stated the number one priority to be 'the establishment of walkways readily accessible from or within urban population centres', but DOC itself had seldom acted on this principle.)

By early 2011 the New Zealand Walking Access Commission had nearly finished designing and testing its public access mapping database, which would provide authoritative, complete and readily available maps showing where people could go for a walk across the pastoral countryside near their homes. Such maps and the public foot-tracks shown on them are parts of the struggle to make our towns and their surrounds decent places to live.

Linear Access and Area Access

I want to discuss the relative importance of linear and area access, in the context of private land. In 2003-5 the opponents of the government's walking-access plans kicked up a rural kerfuffle at the heart of which lay allegations that the government was planning to implement area access to private land. Phrases such as 'roaming at large' and 'having free rein' circulated constantly in newspaper accounts of landholders' concerns. It was often clear from the context that the landholders were using these phrases contemptuously. Also often discernible were a landholder awareness that Britain had recently created statutory area access and an assumption that New Zealand's outdoor fraternity would want the same.

Looking back on that rural furore, it is hard to imagine a worse-informed public debate or one with greater ironies. We have already learnt that the ministerial reference group quickly rejected the idea of a right to roam and that the 2003 Acland report repeated this rejection. Few New Zealanders were asking seriously for statutory area access to private land. Many, though, were asking earnestly for certain and permanent linear access across private land.

We have also seen (Chapter 24) that the government's footways proposal of 2004, later dropped, would have created linear access, not area access. But the opponents of improved access successfully misrepresented the proposed footways as potentially providing right-to-roam access. This ignorance or deliberate inaccuracy was still evident in September 2008 when, during a committee stage of the Walking Access Bill, three National Party MPs – Eric Roy, Colin King and John Carter – referred cluelessly to the 2004 footways plan as either 'wander-at-will provision' or 'the right to roam'.[16] Even when compared with the demanding standards set by Federated Farmers, this was outstanding fallaciousness. The misrepresentation was particularly surprising coming from Eric Roy, who had served on the ministerial reference group in 2003 and who should therefore have been well informed on the access issues.

A further illuminating twist to this story appears if we look at the relative importance of Britain's linear and area access. The perhaps surprising truth is that many ordinary Britons most value the beaten track:

> Whilst the enduring battles for public access over the preceding 200 years in England may appear to have been won, even at the admission of the Countryside Agency (2000) such rights are unlikely to lead to any noticeable increases in the use of this land for public enjoyment. The right is won, but probably not wanted. In part, this is because public surveys indicate a preference for the statutory rights of way system.[17] This system [the network of public footpaths and bridleways] is understood by the public, they know where it is and, importantly, it goes somewhere specific and is clearly defined on a map. It is a system of certainty that can be used with confidence and knowledge for quiet enjoyment. Open country, on the other hand, is less well defined, less known about and people do express a nervousness about simply getting lost.[18] Importantly too, the right of access to open country is unlikely to be used widely because the leisure patterns of the public in respect of countryside recreation have been changing considerably over the past 20 years. There simply may be little demand for this kind of access within people's broader leisure portfolios in the 21st Century.[19]

What about New Zealand? Is there any demand for area access to private countryside in New Zealand? Does the devil deserve an advocate? In a submission on the 2003 Acland report, I said that regarding access across private land my concerns focused on linear access, as I doubted whether New Zealanders were ready for any widespread wander-at-will liberties.[20] We needed first to attend to some more-urgent priorities:

> The Report hints at a fairly wide consensus – if not a unanimity – against the Scandinavian access models: New Zealand is not ready to apply open-country access to uncultivated private land. I suspect that many walkers will accept this phlegmatically. The burning issue is not that walkers don't have area access to private land; it is that in many places they do not even have linear access to it. Recreators are not asking for a feast; they are just asking for a bowl of soup. About 140 million Europeans now enjoy both the soup and the feast, in Norway, Sweden, Finland, former West Germany, and Britain. It is time that New Zealanders demanded the soup.[21]

The focus in New Zealand, regarding private land, will remain on linear access. But there may be a place for area access to some farmland, when a landowner supports the idea. In 2003–5, walkers' reasons for not advocating area access to privately owned countryside were based on practical priorities and political pragmatism rather than on a belief that area access would not work. There are many pastoral properties where area access is desirable and would be manageable.

In March 2010 two fearless contributors to the *Australasian Journal of Environmental Management* exhumed the right to roam from our grave-

yard of ideas and resurrected it – in a restricted form – as a potentially efficient and flexible approach that could 'bring an optimal outcome for landowners, the public and the state'.[22] Its time may still come. Sweden's *allemansrätt*, for example, is a highly developed system of public access to private property in a country that shares several characteristics with New Zealand: a low population density, large tracts of natural forests, and plentiful open spaces.[23] The right to roam must remain a fixture in our continuing debate over walking access to farmland, even if walkers' attaining of area access seems to be an unrealistic expectation at present. Ideas may change. In England and Wales, the Countryside and Rights of Way Act 2000, which provides area access to designated open country, was preceded by more than a century of debate and various levels of conflict. During that long gestation, the supporters of the right to roam attracted much ridicule. 'The idea that land should be walked over freely where there is no footpath, by people who neither own it nor have permission of the owner, [was] frequently dismissed as ridiculous or subversive'.[24]

The importance we've given here to linear access leads conveniently to some related matters. How wide ought foot-track to be? Should all foot-tracks conform to Standards New Zealand specifications? Need they always involve costly building and maintenance?

Foot-tracks and Standards New Zealand

The design of foot-tracks in New Zealand is laid down in the Standards New Zealand handbook *Tracks and Outdoor Visitor Structures*, also known as SNZ HB 8630:2004. This handbook was published in 2004, but its origins stretch back to the 1970s, when the New Zealand Walkway Commission adopted a system of track classification that used the labels 'Walk', 'Track' and 'Route'.

The handbook incorporates the track standards that had been developed by the Department of Conservation, Auckland regional council and Auckland city council.[25] For local and regional authorities, compliance with these standards is voluntary. By 2008, according to Hutt city council, *Tracks and Outdoor Visitor Structures* was 'influencing the provision of tracks across New Zealand'.[26]

Hutt city council itself was proposing to comply with SNZ HB 8630:2004, which would necessitate the gradual upgrading of some of the council's tracks. One section in the faultless officialese of this council's draft track-management plan hinted at some issues connected with this proposal:

> If Council chooses to be guided by [SNZ HB 8630:2004], over time Council will narrow the gap between the quality of what is provided and the quality provided by the standard. Officers expect this concept to be challenged by fit and experienced walkers during the public consultation process.[27]

SNZ HB 8630:2004 did not compromise on quality for economy: it set the gold standard for tracks. Track-owners and track-managers who were contemplating conforming to it faced two issues. The obvious one was

the cost involved in upgrading tracks to meet the national specifications. Less obvious was the possibility of overmanaging some tracks.

Nominal Legal Width

The old English measure of a chain – being twenty-two yards or four rods (or poles or perches) or a tenth of a furlong or an eightieth of a mile – has dominated New Zealanders' thinking on what is an adequate legal strip for freedom of movement along roads and for recreational access to water margins. So most of our public roads and strips along water margins are twenty metres (21.87 yards) wide, which is more than the width of two ox carts:

> The royal road [*via regia*] should be wide enough for two ox carts to pass each other, and [wide enough for] the drivers to touch their goads at full length, and for sixteen armed knights to ride side-by-side. [From the post-Conquest *Leges Henrici Primi*, a collection of Anglo-Saxon laws with a few foreign influences thrown in, compiled around 1113–18.][28]

The water-margin footways proposed by the government in December 2004 were to have been five metres wide, still a corpulent width for pedestrians, provided that the strips moved with river movement. The PANZ submission to the ministerial reference group had suggested that, in the event of land being acquired for a walking track, a width of three metres would be sufficient.[29]

Twenty metres wide? Or five? Or three? If we need a legal width, such as for specifying in the details of an easement, what should it be?

In many situations, both alongside rivers and coasts and across farmland, a legal track width of three metres would be adequate for walkers. Provided, that is, that all such tracks along rivers and coasts were movable. This ties in with the PANZ view, mentioned in Chapter 9, that all marginal strips, esplanade reserves and public roads should be movable along water margins. The crucial quality for certain access along rivers and coasts is legal movability rather than the legal width of the track.

There is also a reasonable argument, made frequently by anglers, that where an obstruction prevents track-users from passing safely, they should be free to move a further distance from the river or lake than the legal track width.[30]

Actual Track-surface Width

In 1904–7 the Department of Tourist and Health Resorts assisted in upgrading the Routeburn Track, improving it into 'a good three foot track that made access easier to Lake Harris'.[31] Three foot (0.91 metres) was the width of this track's actual surface. A track of this width would conform to the official national standards of 2011. On the other hand, when in 1911 Willie Field and others inspected their new track up Mount Hector, they found 'a six foot track through the whole of the bush', part of an 'excellent job that had been made for the money [£50]'.[32] Not to be outdone, in the Copland Valley the Public Works Department was busy with the tape measures, felling the bush to create an eighteen-foot-wide preliminary strip, clearing this into a twelve-foot-wide finished strip, forming a seven-foot-wide track, and metalling this to a width of four

feet and a depth of ten inches.[33] The nice thing about standards, someone once said, is that there are so many of them to choose from.

A more modern example is that of Te Araroa Trust. In 2001 the trust had in mind a standard track width of 0.8 metres.[34] (The trust may have since changed or qualified this dimension.)

Tracks and Outdoor Visitor Structures specifies track widths in terms of the width of the track surface, rather than in terms of the legal width of the strip.[35] When you read the widths in the following table, taken from that handbook, bear in mind that the width of the earth surface or gravelled surface will often be less than the legal width of the public right of way or of the publicly owned strip of land.

Minimum track surface widths	
Track environment	**Minimum width**
Open forest	0.3 m
River flats	0.3 m
Tops	0.3 m
Flat terrain	0.3 m
Steep slopes	0.6 m
Where room for passing is required	0.6 m

The maximum width for these tracks is 1 m. Tracks with a surface width greater than 1 m shall be maintained to a reduced width of 1 m or less. (Reproduced with the permission of Standards New Zealand under Licence 000759.)

An international comparison suggests that British walkers might be slightly fatter than their New Zealand counterparts. Public footpaths in Britain vary in width, depending on whatever width was dedicated for public use or whatever width may have arisen through usage. Sometimes the statement that accompanies a definitive map specifies the width of a particular public right of way.[36] When landowners plough up public footpaths, the landowners must restore the paths to a minimum width of one metre (increased to 1.5 metres along field edges) within twenty-four hours. Similarly, for public bridleways the restored ways must be two metres wide (increased to three metres along field edges).[37]

Widely Different Construction or Establishment Costs

In 1888, with tourism in mind, the government paid Quintin Mackinnon £30 to blaze a track up the Clinton Valley from the head of Lake Te Anau. Later the government allocated seasonal contracts to improve and maintain the Milford Track. Foot-tracks were becoming essential infrastructure for the tourist industry, and the government was sometimes willing to pay for their construction.

In 1892, the Department of Lands and Survey paid Charles Douglas £50 to explore the Copland Valley to investigate the possibility of building a mule track for tourists. But the valley was an unwilling participant in the government's tourism scheme; constructing a seven-foot-wide horse track up to Welcome Flat and the foot-track from there to the snowline took from 1901 to 1913.[38] The finished Copland Track represented a considerable taxpayers' investment.

In 1910 a deputation from Greytown met the prime minister, Sir Joseph Ward, and asked for 'the allocation of the sum of £70' to build a tourist track from Woodside (near Greytown) to Mount Reeves.[39] The deputation also asked for 'the expenditure of a sum of £100 to form a track from Mount Reeves to Mount Hector'. The government responded favourably.

Forward now, through nearly a century of price inflation, to the present. In 2003–7, using money donated by several members of the public, the Otago Tramping and Mountaineering Club in cooperation with Dunedin city council constructed a new walking track up Mount Cargill. I will refer to this track as Cloud Forest Track, although its upper half, a tramping route, may become known as Escarpment Track. Starting at Sullivans Dam in the Leith Valley, Cloud Forest Track climbs through mixed broadleaved forest and scrub for about four kilometres to meet Cowan Road at the carpark near the summit of Mount Cargill. The cost of creating this track, which filled a missing link in the skyline walk around Dunedin, exceeded $100,000.[40] That was roughly $25,000 a kilometre.

This example shows that, in some terrain, building tracks can be expensive. Elsewhere, particularly in our national parks, we are used to the idea of boardwalked and foot-bridged tracks through native bush or across wetlands, conspicuously expensive to build and costly to maintain. Such sumptuous tracks will always be a part of our national network of tracks. In some situations, such as heritage management, boardwalks are part of site hardening, a process used to protect the resource from the impact of visitors. The costs involved and the aesthetic effect of the hardening can be controversial.[41]

What is seldom acknowledged is that many tracks can be relatively cheap to establish physically. Dunedin's Cleghorn Street Track, a 2.5-kilometre walk discussed in Chapter 32, required three or four stiles, two signposts, a few plastic waymarkers and little else. The Standards New Zealand track specifications say that a Walking Track for day visitors 'shall be well defined' and that 'the track surface shall be mostly well formed and even'. A part of Cleghorn Street Track, being just a waymarked route across paddocks, is not formed at all, and so it would not meet SNZ HB 8630:2004. Yet Cleghorn Street Track adequately serves its purpose without needing forming or surfacing. Aesthetically, it provides exactly what a track-gourmet would expect of a way across a hillside of rough grazing.

The existence of fences, streams and rivers will often make gates or stiles or footbridges essential. Beyond these necessary constructions, most foot-tracks will have natural surfaces. Some track-managers regularly apply gravel to selected heavily used foot-tracks near large populations. But these urban-fringe gravelled tracks, often used by people wearing ordinary shoes, are exceptions to the general rule. Te Araroa Trust, for example, when building a hiking trail, does not usually modify natural surfaces.[42]

Track-making by Volunteers

Chapter 4 mentioned some prodigious track-cutting in the Howden Hut–Milford Sound area, carried out by a handful of minimally paid students over six summers in 1919–24. It also mentioned volunteer track-

cutting and hut-building by Wellington trampers of the 1920s. For the rest of the 20th century, volunteers from tramping clubs remained an important element of the overall track-making picture. This continued into the 21st century. In Chapter 6 we saw that Geoff Chapple in 2001 expected that Te Araroa Trust would rely partly on the work of volunteers. Chapter 32 gave some examples of volunteers building tracks in 1998–2008.

Volunteerism can produce new tracks economically. In 2005 a Dunedin mountain-biker, Hamish Seaton, single-handedly embarked upon an ambitious project to build a multi-use track that would provide a much-needed rideable link from Swampy Ridge eastwards down to the Leith Valley. The link would be about eight kilometres long and would drop 500 vertical metres. The all-weather track would be constructed to recognised standards and with manageable gradients. Other mountain-bikers became involved. Dunedin city council contributed towards shingle costs and equipment hire, but most of the funding came from fund-raising, donations and community trusts. By April 2008 the volunteers had cut 3.5 kilometres of track and had spread sixty tons of gravel on the first kilometre; expenditure up to this point had been about $6,000. Seaton expected further costs of $30,000 for cutting and gravelling the rest of the eight kilometres. The volunteers would need to spread 300 more tons of gravel. He expected the final costs to be under $5,000 a kilometre.[43] Nicols Creek Switchback Track would provide a vital connection for Dunedin's mountain-bikers and would stand testament to what can be accomplished with volunteers, ardour and minimal funds.

On the Barnicoat Range near Nelson, a new multi-use five-kilometre track, opened in December 2010, resulted from the collaborating of five agencies. Named Involution (which means the state of being involved or complicated) the track provides a scenic bush walk or an intermediate-grade mountain-bike trail: far more interesting ways up or down the hill than the previously used four-wheel-drive route. Nelson City Council paid the $40,000 cost. Much of the labour was carried out for nothing by mountain-bikers, probationers and Kahurangi Employment Trust workers. Ruth Copeland, a city councillor, said the project was 'a great example of community groups working together'.[44]

The track-management policies of local authorities sometimes set out the role of volunteers in track-making on council-owned land. Hutt city council, for example, recognises that 'there is some scope for volunteers to participate in [the] planning, design and construction of upgrades and new tracks. The scope will vary for each project and [depending on] the capability of volunteers.' The council's *Reserves Volunteer Policy* fosters collaboration between the council and individual volunteers or community organisations. Aspiring track-builders negotiate with the council's asset-managers before starting any work. The council owns and manages all the tracks on its land and can assist with promotion, events, signage, upgrading and extension. This Hutt city council approach to track-making by volunteers allows and encourages council-approved projects rather than a disorganised freedom to slash and hack.

Foot-track Maintenance

The Need to Maintain Foot-tracks

Unlike in the remaining pine and broadleaved forests of western Europe, whose footpaths do not usually become quickly overgrown, in the New Zealand bush, nature can soon camouflage or obliterate an unmaintained and infrequently used foot-track. I happened across a descriptive 19th-century reference to track maintenance. On 1 May 1886 a concerned person wrote to the Grey River Argus to 'simply enlighten the public on the matter' of maintaining a local foot-track:

> CALLAGHANS AND AHAURA FOOT TRACK
> Sir,
> I wish to draw the attention through the columns of your paper of the powers that be to the above track … A good few years since a foot track was made from the main Grey Valley road (near to the Ahaura bridge) to Callaghans Creek. The bush was cut, and where ground was soft it was corduroyed. On the north side of the only hill on the track a cutting was made to the top. For some distance along the top of the hill the bush has been cut a good width. On the south side going down into Callaghans the track is cut in the sidling.
>
> All that was done many years ago, but tracks, like many other things, don't remain a 'thing of beauty and joy for ever' if not attended to. At present the track, although passable, is far from being in passable order. The wood that forms the corduroy furniture has through various causes got tilted here, there, and everywhere. The few culverts present the appearance of the remains of a wreck. Ferns and evergreen shrubs are following out Nature's plan by trying to fill up the space caused by man, and the lawyers are poking their noses in to increase the confusion.
>
> … the present appearance of the track would soon be altered with a small outlay of money. Bar the Government stroke, the labor of two men for two weeks would make all things ship shape, and rearrange the old corduroyed position (the old wood with additions would do), square up the culverts, tittivate the hill cuttings a little, and use the bill hook as if the striker were wading into a free fight on his own account. After that was all done the track would not require any attention for some years …
> I am &c.,
> TRAVELLER.[45]

A better-known example of a foot-track that requires periodic maintenance is the Copland Track. The geology of the Copland Valley and its high rainfall combine to produce hillsides prone to erosion.[46] Landslides are common. During the construction of the Copland Track, between 1901 and 1913, storms frequently washed out sections of new track.[47] Over the rest of the 20th century, the Copland Valley used a full range of weapons to defend its wilderness character: vegetation regrowth, slips, windfalls, floods and washouts. A frequent need for maintenance has been, and may remain, a recurring theme in the life of the Copland Track.[48]

For a more recent and slightly different example of the bush's ability to erase unmaintained tracks, we will go to Kapiti Island. In 1982 a small group of determined trappers began a campaign to eradicate possums from this island. At the peak of this work, a network of over 800 kilometres of tracks covered the island, cut by the hunters. Kapiti became free of possums in 1986. In 1999, according to Chris Maclean, only two tracks remained frequented by the public. The rest were seldom used and had become or were becoming overgrown.[49]

The self-evident moral of the above stories is that foot-tracks need looking after. What is less obvious and less recognised is that, although some tracks demand regular and labour-intensive upkeep, others do not. Cleghorn Street Track (mentioned above), which crossed regularly grazed pastures, required minimal maintenance. This permitted track might have been open for twenty years without requiring any physical servicing at all.

Some unformed public roads, sometimes called green roads, will require zero or minimal maintenance once waymarked, provided that livestock continues to graze them and provided that bylaws prevent motor vehicles from using them. Regarding gaining improved access to the working countryside, nonmotorised recreational use of existing farmtracks would often cause little or no extra maintenance costs.

Management Systems for Foot-tracks

In about 1997 researchers at Lincoln University, working with staff from the Department of Conservation, developed a track management system that used geographic information system (GIS) software to estimate the level of maintenance required for specific sections of track. They published a research report analysing the problems that DOC faced in maintaining about 8,600[50] kilometres of walking tracks. One of DOC's concerns was the environmental effect of an increased use of the tracks. Other factors that influenced the rate of deterioration of walking tracks included slope, aspect, soil type, rainfall, track surface and vegetation. The report also overviewed the GIS application that the team had created.[51]

For the Department of Conservation, track maintenance was an exacting challenge. The department had to balance the need to protect the environment and to look after the visitor facilities for which it was responsible against the desires of recreational visitors who wished to use those facilities. 'Due to the limited funding that DoC receive[d] and the large number of facilities, services and lands it ha[d] to manage and maintain, there [was] a need for DoC to efficiently allocate its limited financial resources.'[52] (This was before the government's large increase in DOC funding, announced in May 2002.)

After some testing of the system prototype, DOC field and management staff agreed that the software, with refinement, had the potential to assist their long-term planning of and day-to-day implementation of track maintenance.[53] A limitation in 1997 was the quality of the base data. The system required many different data sources, of which one of the most important was detailed terrain information (Digital Terrain Model, DTM or DEM). The DTM available in 1997 was no great shakes and this limited the results. But the exercise proved the concept.[54]

At present the Department of Conservation uses an integrated asset management information system (AMIS) to monitor, control, report on

and plan its management of assets, such as tracks and huts and bridges. This system began operating in 2008–9.[55]

In deciding what a foot-track should be like to meet the needs of its users, DOC staff follow the specifications laid down in *Tracks and Outdoor Visitor Structures*.[56] Further guidance and instruction to staff on the anatomy and physiology of foot-tracks is provided in *Track Construction and Maintenance Guidelines*.[57]

The Cost of Maintaining Foot-tracks

We haven't quite finished with the foot-track to Callaghans Creek. There's the 'small outlay of money' to consider. It seems reasonable to assume that in 1889 the cost of maintaining this foot-track was an issue. Leap forward to the present. Foot-tracks still need maintaining and the cost of this remains an issue. The cost of maintaining recreational foot-tracks is shared by numerous organisations and groups: the Department of Conservation, local and regional authorities, Fish and Game New Zealand, track trusts, recreational organisations and interested landowners. Some local authorities inventory their foot-tracks and run budgeted maintenance programmes, usually differentially targeted to service different tracks to different standards. Dunedin city council's Track Policy and Strategy, written in 1998 and still current in 2010, recognises that 'some Dunedin City Council tracks are not maintained or managed, while others are maintained under contract to a high standard'.[58]

The arrival of the New Zealand Walking Access Commission did not end the multi-agency approach to foot-track maintenance, but it did add an important new funder, instigator and coordinator. The commission has overall responsibility for walkways established under the repealed walkways acts and the Walking Access Act 2008. Such walkways are usually, though not invariably, formed tracks that require considerable expenditure on maintenance. If the Walking Access Commission itself takes on the management of a walkway (instead of appointing another body to manage it), the commission might sometimes contribute towards the maintenance costs.

Regarding the maintenance costs of the signposts and waymarkers on unformed public roads, the Walking Access Commission is already, through its Enhanced Access Fund, working with local councils, landholders, recreation organisations and track trusts to supply, install and maintain such signage on any appropriate land.

*

The cost of maintaining tracks varies greatly. I shall give some examples.

Firstly, track maintenance can cost a bundle. In April 2006 heavy rain damaged Bethunes Gully Walking Track (also known as the Mount Cargill Walk) and two other Dunedin gazetted walkways. Part of the work to repair these walkways involved using a helicopter to drop 180 cubic metres of gravel along five kilometres of track. Martin Thompson, the Dunedin city council parks and reserves team-leader, estimated that the repairs would cost about $27,000.[59]

In 2008–9 Dunedin's Leith Saddle Track underwent a space-age upgrade and a realignment. The contractors installed a base layer of geotextile cloth. On top of this they laid a plastic geogrid for strength. They then covered this grid with ten centimetres' depth of gravel, which

was delivered to the track by helicopter. The work, on just 3.2 kilometres of track, was reported to be costing between $300,000 and $400,000.[60]

Secondly, track maintenance is not invariably expensive and a drain on taxpayers' or ratepayers' purses. Volunteers have often contributed their labours. They continue to do so. In the Dunedin area the Green Hut Track Group has worked to clear tracks and routes in the Silver Peaks, keeping them open beneath the rapidly regenerating manuka and kanuka. The track group's home-made guidebook of 2004 caught the spirit of volunteerism:

> Many people wonder who looks after the tracks, keeping them open and free from gorse. The answer is that volunteers do. Along with some other groups who work perhaps once or twice a month, Green Hut Track Group members are out there every Wednesday throughout the year enhancing these tracks through the bush.
>
> We use saws, loppers, shears, a scrub-cutter, and grubbers to help Mother Nature provide enjoyable recreation facilities for trampers.
>
> We love our work; some of us, more than life itself.
>
> You are welcome to come out with us and see what we do … You need sturdy gloves, boots, waterproof parka, plenty of food and drink. We usually have a car returning to Dunedin by 3.00 for the older workers while others get back about 5.00. It can be hard work but it's entirely up to the individual worker how much effort is put in.[61]

Over the six years of 2005–10 the Green Hut Track Group spent hundreds of hours working on the eighteen-kilometre Careys Creek Track, near Waitati.[62]

One industrious stalwart of track maintenance in the Dunedin surrounds was retired schoolteacher Les Murcott. A member of a Workers' Education Association over-fifties tramping club, and eighty years old in 2008, he had voluntarily cleared and improved tracks for more than twenty years. He had spent countless hours looking after the tracks of the Silver Stream area and particularly the Steve Amies Track, where he had planted native trees and shrubs and had grubbed out exotics.[63]

The Overemphasis on Water Margins

In Chapter 22 we discussed the comment of a Raglan rambler, made during one of the public meetings that followed the 2003 Acland report: 'You emphasised riverside access, but there are also ridges – please comment.' I argued that this rambler's point had not yet received the attention it deserved. We returned to the same discussion in Chapter 31 when we looked critically at the consultation panel's proposed high-level aim-statement of April 2006, intended to guide future walking-access policy: 'New Zealanders have fair and reasonable access on foot to and along the coastline and rivers, around lakes and to public land'.

We need tracks across grazed hillsides and along pastoral ridges as well as beside rivers, lakes and coasts. Often it is nice to view water from a distance, as a blue tint far down below. An overriding emphasis on gaining access to portions of the Queen's Chain, which a literal interpretation of the panel's proposed top-level aim seemed to imply and which would

be relatively comfortable politically, would perpetuate a historical and illogical bias that could lead to imbalanced track networks, especially in areas that have no conveniently sited unformed public roads.

Balanced track networks visit all features of the topography. Walkers wish to reach high-points. They want to plod up spurs and to stride along ridges. They like to pause for a bite to eat on sunny knolls or in sheltered hollows. Many a logical foot-track contours elegantly around a hillside. Routes sometimes cross ridges diagonally or perpendicularly, often at saddles. When a line of cliffs defines one side of a valley, a walk along the clifftop will usually command better views than a walk along the cliff-bottom. Pastoral terrain, as well as DOC-managed mountain lands, can sometimes offer attractive craggy slopes or a glimpse of the ocean breaking gloriously on a distant beach. Rivers and lake shores and coastlines are just some of the many features on the earth's surface.

The New Zealand Walkways Act 1990 and its associated New Zealand Walkways Policy (1995) had projected a balanced and sensible view of the purpose of foot-tracks. We saw in Chapter 6 that the general purpose of the Walkways Act 1990, retained from the Walkways Act 1975, spoke of unimpeded foot access to the countryside in general. Walkways were to be for the enjoyment of 'the natural and pastoral beauty and historical and cultural qualities of the areas they passed through'. The act did not prioritise the provision of walkways merely as accessways across private land to reach water margins or publicly owned lands. We also noted that the Department of Conservation's New Zealand Walkways Policy firmly emphasised the need for walking tracks over private land, implicitly acknowledging the pastoral-beauty aspect and therefore the right of all New Zealanders to appreciate the farmed landscape.

The government has amended, rebranded and reinvigorated the Walkways Act 1990, incorporating it into the Walking Access Act 2008 and leaving its general purpose intact and broad. So there is a distinct difference in emphasis between the narrow overarching aim-statement proposed by the consultation panel in April 2006[64] and the general purpose of the Walking Access Act 2008, which includes the intention 'to provide the New Zealand public with … walking access to the outdoors'.

The National Strategy for Walking Access adheres closely to the general purpose of the act. It is a broad strategy whose top-level objective is couched in terms of 'walking access to the New Zealand outdoors'. Even the word 'farmland' sneaks in, and as a place to which walking access can benefit people's health.[65]

Riparian Strips Not Always the Most Appropriate Walking Routes

My arguments against an overemphasis on gaining access to water margins have centred on the needs of walkers, which are broader than those of river-users. But there is another aspect to this discussion, which I have not previously mentioned: the conservational and ecological needs of the riparian reserves themselves. Mick Strack, a lecturer at the School of Land Surveying of the University of Otago, has drawn attention to a possible conflict between the conservation management of riparian zones and the calls for open public access to rivers. To obtain the central theme of his message, I will prune it quite severely:

> We certainly want more and better access to our open countryside, but the focus doesn't need to be solely on our river banks. Perhaps that is not the type of access that we should be demanding … [The legislative means by which additional water-margin reserves may be set aside] are not a good recipe for attaining total and assured coverage of access to all our waterways. But does that really matter? To have open walking access along our riparian strips is destructive of the conservation values of such strips, and almost certainly not the most appropriate walking route … Best conservation management practices suggest that those [riparian zones] not well vegetated should be rehabilitated, dune grasses restored, native species planted, the wilderness replenished. Such sensible conservation management is clearly at odds with the calls for free and open access to such riparian margins. Open public access to this zone, even just walking access, will clearly compromise that conservation management …
>
> Tracks near the sea or rivers can provide pleasant outlooks, but they do not need to be right on the bank or within 5m or 20m or the bank. Some of the most successful tracks pass by rivers, climb hills or saddles, traverse the bush, and provide variety. The Millennium Track on the south bank of the lower Taieri Gorge is a great local example. It is generally focused on the river, but rarely traverses the close riparian zone. It follows an interesting and varied route up and down the slope, with wonderful views of the riverscape …
>
> We do need more access to our open countryside but it does not always need to be connected to our riparian zones, and does not need to be on our ecologically fragile high country. We should be focusing on more readily accessible rural tracks in close proximity to, but just beyond, our centres of population.[66]

In many places, you could reason, walkers and mountain-bikers should be focusing not on riverbanks but on farmtracks.

Drinking-water Catchments: a Wider Issue than Riparian Strips

Having questioned the desirability of walking access to riparian strips, I need to qualify what I've said by adding the rider that the issue of access to entire water catchments is a far wider one. In Chapter 5 we discussed access to tracks in drinking-water catchments in New Zealand, up to about 1970. One might be tempted to think that unrestricted walking access to catchments in New Zealand is now universal, a given. This assumption, though, would be mistaken. The policies of catchment-owners and managers vary. Tauranga City Council's policy on the council-owned Tautau and Waiorohi catchments, for example, is categorically – and some people would say unnecessarily – prohibitive:

> [The] council is committed to the ongoing management, maintenance and improvement of the drinking water supply catchments and processing facilities. This is to prevent contamination of the city's source waters and to maintain a high quality potable water supply … that meets the Drinking Water Standards for New Zealand and the Ministry of Health 'A' grade requirements.

> Tauranga City Council has a moral as well as a legal obligation to … minimise [the] risk of contamination to its drinking water supplies. Therefore only authorised people are allowed into the water catchment forests.[67]

This example shows that walkers and mountain-bikers cannot assume, complacently, that they will continue to enjoy unrestricted access to water catchments. Nationally and internationally, fashions change. Policies go full circle. We walkers can only pray that our water authorities never import the despotic Western Australia approach, which says that water treatment is not 100 per cent reliable and that it is therefore necessary 'to restrict access to drinking water catchment areas and to prohibit recreational activities on the water body'.[68]

The Access Potential of New Zealand's Farmtracks

I said earlier that nobody is arguing for the construction of costly walkways in places where they would be seldom used. Existing farmtracks that would require no additional maintenance are a completely different consideration. Some of them could provide valuable recreational routes, even if only used occasionally. Unlike many unformed public roads, they follow natural routes, along valley bottoms or contouring hillsides or zigzagging up steep slopes. New Zealand's farmtracks form its potentially most economical means of improving people's walking access to the outdoors.

Earlier in this chapter we learnt of the high cost of constructing a new track through the forest on the slopes of Mount Cargill. This track filled a gap in an important route, and so the expense was justified. But creating foot-tracks through dense bush may not always be a sensible way to use limited track-building funds. Regarding track-building and smart investments, there is nothing smarter than using existing farmtracks in beautiful pastoral countryside. Yet the recreational potential of farmtracks did not feature in the walking-access consultations and reports of 2003–8. Because of our deeply ingrained veneration of private property rights, making use of our farmtracks – as the public do unintrusively over some large parts of northern Europe – hardly gained a mention.

In Chapter 35 we discussed Ann Brower's disturbing book *Who Owns the High Country?*, which exposed – for those who agreed with her arguments – the runholders' near-invulnerable domination of South Island high-country land reform for fifteen years, until 2007. Brower had arrived in New Zealand in September 2004. While she was looking with a visitor's disbelief at the goings-on around Lake Wanaka, I was scrutinising with an immigrant's perspective the nationwide land-access debate that reached its crescendo in June 2005. My impression was that farmer omnipotence spread much further around New Zealand than just the 10 per cent of our land area that was the South Island's crown pastoral estate. I had started my research in 2003. Between then and June 2005, seldom a week had passed without some reminder of the impregnable place of private property rights in New Zealanders' socio-political attitudes.

The access debate then went into quiet, don't-rock-the-boat mode. Yet even during this festival of restraint, in June 2008 a *Southland Times*

article referred to walkers as 'would-be interlopers' and 'traipsers' intent on 'sneaky stickybeaking into legitimate private property'.[69]

We saw in Chapter 28 that on the marginal-strips issue of the Overseas Investment Bill, in 2005, the United Future party – ostensibly a middle-ground gang – had held to rigorously conservative principles. In August 2008 I happened across United Future's recreational-access policy, recently revised for the coming election. The policy's narrowly focused title aimed deliberately for the politically safe territory: 'Practical Access to Public Land'.[70] Even after nearly six years of debate, the need for entry to the working countryside, for its own sake, had apparently not registered strongly in the minds of those who drew up this statement. Or it had registered, but enjoying a walk across a farm, perhaps on an existing farmtrack, had been considered too politically sensitive to tackle.

Emotional Ties to the Pastoral Landscape

In Chapter 16, I reproduced parts of Dunedin city council's District Plan, which classifies much of the Otago Peninsula as either an outstanding landscape area or a landscape conservation area. Having read the District Plan's radiant account of the peninsula's pastoral landscape, one might be tempted to assume that New Zealanders in general view the working countryside as often being aesthetically attractive and worthy of a deep and immutable attachment. According to Federated Farmers, though, this assumption would be wrong. According to the federation, landholders are the only people capable of lasting emotional ties to farmland; in its submission to the select committee that was considering the Walking Access Bill, the federation wrote: 'It must be remembered that landholders have significant investment in and emotional ties to their properties. People seeking access rarely have anything more than passing ties.'[71]

Outdoor recreators need always to acknowledge that the farmed landscape is an artificial product of farmers' labours (one about which some environmentalists harbour concerns). But they do not have to swallow an argument that is like the desolate contention that only artists can appreciate art.

Is pastoral scenery a part of our 100% Pure New Zealand tourist brand? I think that many people would say yes. In doing so, they would be recognising the attraction of that countryside. Why, then, do walkers have no statutory access – not even statutory linear access – to the privately owned farmland? At the start of this book we saw that the Walking Access Act 2008 does not contain the word 'farmtrack' (or 'farm-track' or 'farm track'). Neither does the National Strategy for Walking Access. A greater focus on gaining nonmotorised access to the pastoral landscape, and especially to farmtracks, may have to await revisions of the act and of the strategy.

Evidence of the recreational potential of our farmtracks lies in the thirty-odd private walking tracks that appeared between 1989 and 2009. One of these toll tracks is the Outer Queen Charlotte Track, a two-day walk from Ship Cove to the northern tip of Cape Jackson. Part of this upmarket walk passes through a privately owned wilderness area, most of which is regenerating native forest. The income from visitors has enabled the proprietors to retire the property completely from pastoral farming. They describe the second day of the walk:

> The second section takes you from the Lodge to the lighthouse. While there are plenty of beautiful natural forest areas the emphasis here is on very special coastal scenery. We have yet to meet anyone who has not been inspired by this section of the track. The track standard is suitable for almost anyone, consisting in the main of easy grade grass covered original farm roads.[72]

Very nice if you've got $80 to spare for the track fee, or $329 for the track fee and two nights' accommodation.[73]

Private ownership and exclusivity has become an attraction, sought by some consumers, promoted by the landholders, valued by the Ministry of Tourism, and silently accepted by Sport and Recreation New Zealand.

Public nonmotorised access to farmtracks, which is normal in Scotland, is still dreamland in the 42 per cent of New Zealand that is green and zealously private farmland. Negotiating walking access to these impervious farmtracks is one of the most difficult challenges that the Walking Access Commission faces. The rewards of even slow and incremental progress would be considerable. Using farmtracks needs to become thinkable. Every metre of farmtrack that becomes available to walkers will help to bring about gradual attitudinal change, a difficult sort of change to precipitate and accelerate. Future generations of farmers may come to view public foot-tracks as a normal part of rural life. We walkers must hope optimistically that a sizeable proportion of landowners will eschew free-market exclusivity and opt for public access.

Farmtracks and Place Control

Without that landowners' initiative (or legislative intervention), the default choice will remain exclusivity, and farmtracks will remain the most obvious recipients of farmers' overprotection. Instinctive controlism is likely to stay endemic in our rural communities. Advocates for nonmotorised access to farmtracks should equip themselves with a full range of responses to health-and-safety objections, animal-welfare worries, biosecurity concerns, fears of crime, vague farm-management protestations, and assertions that city folk have no emotional bonds to rural land.

David Carter has featured several times in this book as being strongly in favour of farmers retaining control over walking access to their land. He was not alone, either nationally or internationally. In Chapter 14 we discussed our farmers' claims that they needed to control all access – linear and area – because walkers were ignorant of stock behaviour and of potential hazards and also because walkers would endanger farm equipment and buildings. In Chapter 17 we considered the farmers' assertions that they had to manage all access because walkers would intrude on privacy and would assault farmers and steal farm property. Another reason for retaining managerial control, sometimes given by the owners of native bush, was that unsupervised walkers would imperil the environment; there is a school of thought in Britain that says that landowners in this situation have constructed themselves as custodians of the countryside; another view is that underlying the altruism is a desire to sustain the power of private property and the managerial primacy of those who own it.[74]

New Zealand and Britain are not alone in possessing protective landowners; researchers have observed similar landowner responses in other countries, particularly in the US. Some academics call this behaviour 'place control' or 'privacy control'.[75]

The job of transforming landowners' thoughts into data is complicated. A body of research has indicated that 'landowner motivations are shaped by a complex blend of social, cultural and political influences and contain readily articulated objectives, such as the desire for personal financial gain, alongside less easily expressed desires for control over land and aesthetics'.[76] Researchers review previous research, select appropriate methodology, survey landowners' attitudes, analyse and report the findings, and usually suggest policy approaches based on these findings. In this way, the social scientists maximise objectivity and minimise subjectivity.

Outside academia, there's room occasionally for some gut feeling, and even for some emotion. They help us to decide what is right and fair. I will leave it to you to decide whether the place-controlism and privacy-controlism that you encounter in the outdoors is managerially imperative for farming or privacy or environmental reasons or is overrestrictive and anachronistic.

Private Walking Tracks and the National Strategy for Walking Access

In Chapter 19 we talked about the turnstile-at-the-gate developments that widen the access opportunities for those walkers who can afford to take advantage of them. I mentioned that by 2005 there were about fourteen private walking tracks (on farms) that were open to paying customers. I suggested that a turnstile at the gate strengthens a landowner's right to exclude and hampers efforts to invalidate it. Toll tracks consolidate the idea that it is normal to pay for linear access across privately owned countryside.

In Chapter 32 we discussed the parts of the Queen Charlotte Track that crossed private land; the access to these sections was based on inherently floppy goodwill agreements. A working group, said to represent all parties, had proposed a $5 entry fee (later confirmed and agreed to be voluntary, and later replaced by a $12 compulsory charge). In discussing this situation with me, Damien O'Connor had said that negotiated access should have, *if possible*, the characteristics described in the principles recommended by the consultation panel. In other words, achieving access that was free (and certain, practical and enduring) would be a desirable ideal rather than an absolute necessity.

The overarching objective of the National Strategy for Walking Access reflects this desirable ideal. Access that is manifestly not free (and which may not necessarily endure), such as paid entry to private walking tracks, is clearly far from what the strategy aims to achieve.

In the minds of some people, however, toll tracks are welcome and bold business ventures, praiseworthy and morally faultless. These tracks, they say, are personal possessions whose recreational exploitation should be limited only by market forces. Furthermore, nowadays some people want to spend their increased wealth on leisure, reducing the relative importance of the great (and free) outdoors:[77]

> Thus, people are attracted to things such as golf courses, sports facilities and holiday village resorts because of the status of these facilities as well as their individual enjoyment of them. This status is, in turn, associated with a degree of *exclusivity*, which leads people to *want to* pay for outdoor leisure goods from which others can be excluded. The more that certain social groups come to express their identity through leisure activities, the more pronounced this trend becomes and the more it encourages the market orientation of countryside goods and access, at the expense of universal access rights.[78]

There's a moral quandary here, for some of us, to which we will return shortly. Firstly, though, let's look at the extent to which some walking tracks in New Zealand have become countryside commodities.

Secrets Worth Sharing

The Banks Peninsula Track is commonly said to have been the first private walking track of its type in New Zealand. In September 1989 nine Banks Peninsula landowners agreed to set up the thirty-five-kilometre, four-day walking track using existing farm buildings for trampers' accommodation.

> The route they planned would climb as high as 699 metres and take in early colonial and farming history, pass ancient Maori pa and battle sites; follow volcanic coastline and weave through stands of kanuka, ngaio and regenerating red beech forest. Along the way walkers could sight New Zealand fur seals and Hector's dolphins, white-flippered and endangered yellow-eyed penguins, wood pigeons, Paradise ducks and a host of other native birds. The track would even follow (in reverse) the footsteps of Ngai Tahu chief Tutakakahikura, who'd walked the route 300 years earlier as part of a ritual encircling of land he wanted to claim for his tribe.[79]

The Banks Peninsula Track opened on 1 December 1989, a standard-bearer for New Right capitalism. It paved the way for a new type of tramping experience in New Zealand. In 1994 three Kaikoura farming families established the Kaikoura Coast Track, a three-day walk with the option of catered meals and dining with the landowners.[80] In 1995 the Tora Coastal Walk opened in southern Wairarapa. Other new toll tracks soon followed.

In 1999 Walter Hirsh self-published *Secrets Worth Sharing: Private Walking Tracks in New Zealand*, a fifty-six page booklet. A second edition in 2000 had grown to seventy-six pages. A third edition in 2001 needed ninety-two pages. In 2002 a commercial publisher published a new book by Hirsh, *Hidden Trails: Private Walking Tracks in New Zealand*, 144 pages. A fully revised edition was needed in 2004, listing twenty-one private walking tracks that each offered at least two days of tramping.

Also in about 2004, the compilers of *Best: A New Zealand Compendium* asked Hirsh to contribute a short article 'Best Private Walking Track'. Hirsh chose the Banks Peninsula Track. He wrote: 'The Banks Peninsula Track is still hard to beat. From the first night in a trampers'

hut high above Akaroa Harbour, to the last at Otanerito Bay, the scenery is exhilarating.'[81]

In January 2005 *North & South* featured 'Stepping Out: The Rise and Rise of the Private Walking Track', an eleven-page article written in a celebratory tone. Its title page told us:

> We're at it more and more. Latest SPARC figures confirm the rise of the walker. We're marching suburban streets, taking part in walking events and heading for the hills in increasing numbers. Tess Redgrave steps out and charts the rise of our unique private walking track network.[82]

Redgrave reported that there were fourteen private walking tracks on farms around New Zealand. Landowners in Gisborne and on Waiheke Island were contemplating more. 'For many farmers it's the first time they've actively opened their gates to the general public – and found the experience rewarding.' She said that the figures suggested that the Banks Peninsula Track was grossing over half a million dollars a season. *North & South* research indicated that in the 2003–4 season, possibly 10,000 people had walked the twenty-one private foot-tracks listed in *Hidden Trails*.

The *North & South* feature seemed to trigger a small eruption of newspaper articles in the eighteen months that followed. Tim Cronshaw walked the Hurunui High Country Track for the *Press*. He reported that this scenic walk through regenerating bush, open farmland and an exotic forest would eventually provide 50 per cent of the proprietors' farm income.[83] Anna McIntyre explored the Kaikoura Coast Track for the *Marlborough Express*. She declared that 'private tracks in New Zealand allow walkers access to some beautiful countryside without the hassle of rushing for a hut bed'.[84] Michael Griffin tramped the upmarket Kaikoura Wilderness Walkway for the New Zealand Press Association; the grade was moderate, the pace was relaxed, and the accommodation was luxurious, each guest room having its own bathroom and shower and private balcony.[85] Joanne O'Brien trekked the Cape Campbell Walkway for the *Marlborough Express*, discovering hilltop ridges, rolling tussock country and dramatic coastline. Her hiking party carried only light daypacks; their main packs, 'loaded with luxuries like wine and chocolate', were taken ahead to the comfortable accommodation.[86] The early European alpinists would have approved of this style of adventure.

A fourth edition of *Hidden Trails*, listing twenty-five private walking tracks, was published in August 2007.

In March 2008 Mary-Jane Angus of *Rural News* rounded the subject off joyously with a piece titled 'Farmers Cash in on Public's Desire to Enjoy the Great Outdoors'.[87] A sudden transformation! In 2003–5 the articles in *Rural News* had obediently relayed the Federated Farmers argument that, because more than a third of New Zealand was publicly owned land, the public could not expect – and indeed did not desire – access to more.

In June 2009 Hirsh's website www.privatewalkingtracks.co.nz was listing thirty-one private walking tracks.

The general context of these developments was one of farmers diversifying their income. All the above press reports welcomed the enterprises unreservedly. None of the journalists questioned the moral legitimacy of the proliferation of turnstiles. In sharp contrast, press stories about access to the privately owned Mount Tarawera, near Rotorua, took a neutral or critical line.

Mt Tarawera New Zealand Ltd

By 2006, the matter of walking access to Mount Tarawera had been controversial for at least four years. The following details rely heavily on a couple of news sources. In 2000 a company called Mt Tarawera New Zealand gained a contract from the mountain's owner, Ngati Rangitihi, to control the entry of tourists onto the privately owned land.

> After [the company's] taking over, the price to walk up the mountain rose from $2 to $23. In August 2002, walkers were banned from going up the mountain and could only access it through guided 4WD tours at a cost of $110.[88]

The 2002 restriction and its price hike caused a public outcry. In response, in August 2002 Mt Tarawera New Zealand put a notice in the *Daily Post* saying that Rotorua people would be able to access the mountain free of charge on 10 June every year as part of its annual open day to commemorate the mountain's eruption.

On the first open day, in 2003, 360 people went up the mountain free of charge, but only about 5 per cent of them were locals. Mt Tarawera New Zealand then changed its mind about the annual open day; it did not offer free access for locals on June 10 in 2004, 2005 or 2006.[89]

For 2006 the company offered a discounted rate for June of $39 for three-hour 4WD guided tours up the mountain. But Judy Collins, the company's owner, reportedly said: 'We can't run a business with freebies and discounted rates. During the whole month of June we will see how many locals actually come up.'

> Monica Quirke [a keen Rotorua walker] said the discount was not good enough. Mt Tarawera New Zealand Ltd should not have gone back on what they stated in the 2002 public notice, she said. 'You make a public commitment to the people, you honour that.' [She] said Mt Tarawera was an integral part of Rotorua history and this year [2006] marked 120 years since the eruption …
>
> Mrs Collins said they had stopped the public walking up the mountain on their own to protect the mountain. She said guided tours also ensured people left the mountain with the correct knowledge about its history and ownership. When reminded about the 2002 public notice, Mrs Collins said: 'I don't care, we're not doing it free … we can't afford to do free days any more.'[90]

The standard price in May 2006 was $121 for a half-day 4WD tour including pick-ups from hotels. This fare was expected to rise soon to $133 as a result of increasing fuel charges.

A news item on NewstalkZB said that Mount Tarawera was 'being labelled the nation's worst example of the arbitrary use of property rights'.[91] The item continued:

> Federated Mountain Clubs president Brian Stephenson says it shows how easily a national treasure can be ring-fenced for personal gain. He says the mountain is an important part of the nation's history and there is no good reason for denying all-year round walking access – never mind the anniversary.[92]

Doug Woolerton, a New Zealand First MP, said his party was disturbed that access to Mount Tarawera was becoming limited to those who could afford to pay. The New Zealand First Party was calling on the government to look into the exclusive nature of the Mount Tarawera tourism operation.[93] Woolerton said:

> Prices have continued to rise since a tourism company was granted the lease in 2000, to the point where an expensive, guided half-day tour is the only option for people wanting to climb the Rotorua mountain. The company owners have no interest in allowing access to ordinary New Zealanders, and are instead focusing on attracting international tourists. New Zealand First takes a very dim view of this attitude. The loss of free foot access is a sad development for New Zealanders because the price is too much for many people. It also sends the wrong signals in relation to other Maori trusts that are guardians of iconic parts of New Zealand.[94]

The 2007 Acland report mentioned Mount Tarawera in a section on the economic issues connected with Maori land.[95] Maori submitters had said that charging for access to Maori land could be one of the few economic uses of the land or sometimes the only economic use. The Mount Tarawera guided tours were an example. The lack of public walking access had aroused controversy but, for the iwi and hapu involved, the commercialising of the mountain provided a steady income. Owners of Maori land would strongly oppose any policy that would disrupt or constrain their future ability to benefit economically from the land.

The Walking Access Consultation Panel's consultations had revealed some concern about the current access arrangements to Mt Tarawera. The panel saw this as an issue about access to private land. The New Zealand Walking Access Commission could assess the situation at Mount Tarawera and ascertain whether there is scope to negotiate a more flexible arrangement for walking access.

In March 2008, the cheapest of Mt Tarawera New Zealand's tours was a 'guided half day volcano adventure', using 'Qualmark endorsed visitor transport'. The cost for an adult was $133.[96]

Sellable Products

The *Rural News* article that I earlier cited reported John Acland's 'being in favour of landholders charging for access but only when a service is provided'. The 2007 Acland report had acknowledged this landholders' right, while also stating that 'services do not include the granting of

access permission'. Landholders have a legal and moral right to charge for services; many people, myself included, had said this. But few commentators were expressing the corollary, which was that a member of the public who wished to use a foot-track but without using any of the services should be free to do so. In practical terms, this could mean taking a tent or bivvy-bag and making your own toilet arrangements according to the established environmental codes. In this way, all our countryside would remain financially accessible to all of us.

This ideal is a moral sentiment. It is wishful thinking. The legal reality in many circumstances is that a New Zealand landholder can charge for pedestrian or vehicular access – who they like, what they like, when they like – irrespective of whether the landholder is providing any service. Hunters and anglers who wish to walk or drive across private land to reach public land may be charged for entry, just as trampers and mountain-bikers may be. (But landowners cannot sell fishing and hunting rights.) Maybe twenty landowners or commercial groups in 2006 were operating private walks. What was to stop two hundred from doing the same? How would such a widespread pay-to-play philosophy fit in with the 2003 Acland report's finding that 'the public believes that access to New Zealand's outdoors should be free'?

If we took into account eco-tourism and farmstays, by 2008 there were probably hundreds of commercial, fee-related foot-tracks. In 2004 Mark Burton, the minister for tourism, had pointed out to me that there were over 3,000 rural tourism operators in New Zealand, ranging from farmstay activities to gardens, adventure activities and private walking tracks. He had argued that the proprietors' ability to ensure exclusive access to their properties was essential for the success of many of these enterprises.[97] In 2008, tourism was directly and indirectly contributing almost 10 per cent of New Zealand's Gross Domestic Product.[98] Tourism was an economic driver and it created jobs:

> Tourism is a vehicle for regional and community development. Many tourists look for unique, unspoilt or 'off the beaten track' locations, so are drawn to small towns and provincial regions that often most need economic development.[99]

There's a moral and social dilemma here. Private walking tracks have become sellable products; there are strong incentives to exclude non-clients. If you own a slice of scenic New Zealand farmland, you can hawk the walking access to it as aristocratically as you like. Kiss goodbye to traditional access, not that I personally have ever seen much future in knocking on the door to ask for permission. New Zealand's toll tracks collectively form telling evidence of the partial failure of the New Zealand Walkways Act 1975 and the New Zealand Walkways Act 1990. The toll tracks can exist only because of trespass laws that exclude New Zealanders from their own countryside. The Scots no longer tolerate this sort of exclusion anywhere in Scotland, whether highland or lowland. Why should Kiwis accept the PRIVATE WALKING TRACK signs in New Zealand? While the English, Welsh and Scots have been busily designating most uncultivated land to be open country, some New Zealanders have been

drooling over walking tracks that are available only to those who can afford to pay for entry to them.

Foot-tracks, NGOs and Advocacy Coalitions

There is a need in New Zealand for a national public foot-tracks society to promote and defend all public foot-tracks, whether on crown land or privately owned land or Maori land, and whether located on the urban fringe or in a remote wilderness. No single nongovernmental organisation spreads its interests widely enough to cover all aspects of this national role thoroughly and influentially.

Given the will and the resources, Public Access New Zealand could possibly adapt itself to do so. But at present PANZ's emphasis on public access through public ownership, often accompanied by an apparent uninterest in gaining access to the pastoral landscape, precludes it from fulfilling this wider role.

The Council of Outdoor Recreation Associations of New Zealand has sometimes claimed to represent the interests of a million outdoor-minded New Zealanders, but – as far as I am aware – it has seldom if ever promoted linear access across farmland for its own aesthetic sake. CORANZ's goals, like PANZ's, are heavily slanted towards protecting public land and public resources, maintaining and enhancing public access to public lands, and promoting backcountry recreation (see Chapter 7).

Federated Mountain Clubs was the main instigator of the walkways idea in the early 1970s, but its attention in recent years, in keeping with its name, has focused more on defending backcountry tracks and on establishing conservation parks than on creating walking tracks close to where most of us live.

The net result of the long-term influence of these three national NGOs, allied to the priorities of the Department of Conservation and Fish and Game New Zealand, has been to play down and devalue the importance of walking tracks across the working countryside.

Perhaps Te Araroa Trust, including its regional arms, comes closest to the sort of national foot-tracks advocacy NGO that New Zealand needs. It has accumulated a wide experience of establishing and managing walking tracks across all sorts of landscapes. It has also dealt with a broad variety of landowners, ranging from private individuals to public corporations. But its entire focus is on just one trail.

*

The alternative to a national public foot-tracks NGO would be a united and effective advocacy coalition to champion the promotion and preservation of all foot-tracks. During the impassioned walking-access debate of 2003–5, no such advocacy group emerged. Instead the main potential members of this missing coalition disagreed with each other on the issue of the moment: the proposed footways. This disunity among the public interest groups was no match for the farmers' professionally organised and well-funded policy domination. The influence of the public interest groups, acting individually, each with a narrow focus on a particular aspect of the outdoors, was miserably inadequate compared with that of the vested interests connected with agriculture and farm tourism.

Ann Brower has discussed the difference between interests and vested interests, in the context of high-country land reform. I will extract the essence of her beginners' lesson in political science:

> A vested interest is a measurable financial stake in the outcome of a policy decision … An interest is a person or group who cares about the policy outcome, but will not benefit financially … No amount of passion can turn an interest into a vested interest …
>
> A *public good* is one from which everyone benefits and for which everyone bears the cost. A *private good* is one from which only one person benefits but everyone else bears the cost … *Public interest groups* advocate for public goods while vested interests often advocate for private goods. Though the public often elects a government to deliver public goods, much research observes that governments rarely do …
>
> A public interest group, no matter how large, will usually be measurably weaker than a party with a vested interest, no matter how small. In short, the theory predicts that 'the few will defeat the many.'[100]

Regarding tenure review, this theoretical prediction was only partly right. Thanks in large part to Brower's own research, writing and seminar-giving, the many fought back against the few, which led to the considerable policy changes of June 2007 (later rescinded). But in the wider walking-access debate, and particularly for the public good of linear access across the farmed landscape, no advocacy coalition materialised. This other fight-back has yet to happen. Individual desires prevail over communal benefits.

The lack of a loose alliance of public interest groups ought not to have surprised us; political science recognised that 'these coalitions of countervailing power often fail to emerge for myriad reasons – principally intimidation and hegemony'.[101] Another reason was sectoral division. As cited in Chapter 24, discord within the outdoor-recreation NGOs had weakened their influence through much of the 1980s and 90s (except for the influential Queen's Chain protests, inspired first by the Public Lands Coalition and then by PANZ). Unfortunately for recreators, political science and history seem to militate against any likelihood of an access coalition surfacing.

Two things, though, are certain. One is that the New Zealand Walking Access Commission, a crown entity, although designed to fulfil some crucial aspects of access leadership, is not and cannot be the same thing as an NGO pressure group. A spokeswoman for the commission has reportedly emphasised this, stating that the commission could not act as a lobby or advocacy group to alter existing law.[102]

There are times when public outrage is justified and essential. But at such times, if we judge from the commission's careful public statements and rare press releases of 2008–11, the commission is unlikely to express itself in anything other than cautious, factual language, designed not to upset anyone. It is a small agency expected to achieve progress solely by perfecting the art of friendship.

The other certainty is that on some issues the Walking Access Commission will encounter competing views, of which some of the most conservative and most slickly presented will be those of Federated Farmers of New Zealand. Unless our outdoor-recreation NGOs jointly organise themselves more collaboratively than they did in 2003–5, they will be poorly kitted out to counter the hidebound traditionalism of the farmers.

On 28 October 2009 a media release announced that eight conservation and outdoor-recreation groups had combined to call for stronger protection for New Zealand's remaining wild rivers. The organisations represented over 100,000 New Zealanders. They were Fish and Game New Zealand, Federated Mountain Clubs of New Zealand, the Royal Forest and Bird Protection Society of New Zealand, Whitewater New Zealand, the Council of Outdoor Recreation Associations of New Zealand, the New Zealand Rafting Association, the New Zealand Federation of Freshwater Anglers, and the Environment and Conservation Organisations of New Zealand.[103]

This development showed that our conservation and outdoor-recreation bodies were capable of teamwork on some environmental issues. There seemed to me no reason why, if they talked to each other, they should not also see eye to eye on many of the walking-access issues that were by then well documented.

The Mix of Legal Statuses and the Scope for Unification

In my submission on the 2003 Acland report, I discussed the bewildering hotchpotch of legal statuses that underlies New Zealand's foot-tracks.[104] Is it a system from hell? I asked. Or is it a natural and sensible multi-status system, whose various parts complement each other in the emerging national track network?

Now, having had eight years to think about this, I can declare that our motley of legal track statuses is a scheme from some Greek tragedy. Also it is a scheme that walkers will be stuck with for the foreseeable future, in the absence of the political will for radical simplification. Yet even without any far-reaching unification of the legal statuses of our foot-tracks, there may still be opportunities for some clutter-removing tidying up, subject to successful negotiations.

Consider our walkways and the meaning of the word 'walkway'. In November 2010 there were about forty gazetted walkways.[105] These were the only walking tracks that qualified as legal walkways under the Walking Access Act 2008. Yet there were umpteen other foot-tracks, often called walkways, based on a heap of different statuses.

A number of agencies manage these foot-tracks. Some of the tracks follow public roads; their status is clear, we enjoy a common law right of passage, bestowed under the law of highways. Others cross land managed by the Department of Conservation. Some cross land owned by local authorities. Others are permitted foot-tracks across private land, with various levels of formality; many of these permitted tracks are vulnerable to changes in the attitude of the landowner.

If you like, you can view this mixture as a logical system that has evolved to suit New Zealand. You could argue that it provides flexibility and that managers and officials understand it well enough to make it

work. But I see it differently. I see it as a multifarious and fragmented track network that howls for rationalisation and simplification.

As well as bringing into use unformed public roads and negotiating and building new gazetted walkways, we should try to tidy the present situation by seeking to convert the permitted tracks into tracks based on legally enduring arrangements. The National Strategy for Walking Access expects that, if the commission achieves its objectives, 'an increased proportion of walking access [will be] formalised'.[106] This formalising of permitted tracks would help to consolidate networks of tracks, or at least the beginnings of networks.

Local authorities, the Walking Access Commission and other track-managers might start to formalise our permitted foot-tracks, by negotiation and as a long-term project, but might in some cases not gain the landowners' consents, despite trying to do so. If this happens, the commission will be able to raise the matter during the review of the Walking Access Act 2008 that must take place in late 2018. A future government may need to contemplate a toughened Walking Access Act.

Foot-tracks on Publicly Owned Land

Foot-tracks that cross publicly owned land are seldom gazetted walkways. Historically, all such tracks could have been doubly protected – or, some would argue, endangered – by making them into gazetted walkway. But this didn't happen.

The early planners of walkways touched on this possibility. During the 1979 New Zealand Walkways Seminar, 'there was quite a lot of discussion on whether existing walks over public land should be brought under the walkway umbrella.' The dominant feeling was that this would not be necessary. The consensus seemed to be that there was no need to worry about the multiplicity of statuses:

> The Role of Complementary Networks
> … [The] main object is to get people walking and [the] Commission's priorities should be steered to filling the gaps between existing Crown controlled track networks … One comment made was that the Commission should not be creating another tier of walking system where existing systems were functioning without problems.[107]

This acceptance of multiple statuses was repeated in the introduction to the New Zealand Walkway Commission 'Draft Policy Statement':

> Although the concept of walkways, as established by the Act, is new to New Zealand, track formation over areas such as National Parks and State Forests has been developing for many decades. The establishment of walkways over areas of both Crown and private land is therefore seen as being complementary to these existing track networks, and a means by which opportunities for public access to the countryside and enjoyment of it can be enhanced.[108]

I wonder now, looking back, whether this was a missed opportunity to merge a large proportion of the country's foot-tracks into one defini-

tive status. Was this the ideal time to invent an overall legal status of 'public foot-track'? This issue, though, is now of little more than academic interest. Walkers and administrators have many more desirable and demanding priorities than the mammoth legislative task of making all DOC-managed walking tracks into legally defined public foot-tracks. But in some special circumstances involving vulnerable foot-tracks crossing publicly owned areas, it may be advisable, for their long-term survival, to make such foot-tracks into gazetted walkways.

The Missing Concept of 'Public Foot-track'

Not all the opposition to the calls and initiatives for improved access, described throughout this book, came from farmers, foresters and other landowners. The following message came to me in 2007 from a person who tramps and mountain-bikes:

> I think you are barking up the wrong tree with trying to introduce the British footpath system or the Scandinavian 'everyman's right' here in NZ. Firstly in Britain 100% of their countryside is privately owned farmland, even their so-called 'National Parks' – here it is only 44%. I live in Central Otago. I'm surrounded by 100,000's of ha of some of the most wonderful countryside for outdoor recreation in the world , all in public ownership with access freely available. Why on earth would I want to walk across boring farm paddocks? People only want to do that in Britain because there is no alternative – here we have unlimited opportunity to walk and recreate on incredibly scenic and accessible public land and there are only 4 million people, not 60 million.

If you have read this book you will know that – contrary to the implication in the above message – I have not advocated the imposing of statutory area access to private land in New Zealand. Regarding foot-tracks, however, I'm guilty as accused. I have argued for plenty of certain and lasting linear access across pastoral countryside: across the scenes of *Country Calendar*. One person's mundane paddocks are another's Sunday walks.

Kevin Jones's stunning book of aerial photographs, *Nga Tohuwhenua Mai Te Rangi*, was designed to reveal and celebrate the archaeological sites of New Zealand's land surface, 'one of the least-recognised historical landscapes anywhere in the world'.[109] The book, probably little read by the general public, also forms an enticing and unique display of our pastoral landscape. These places are absolutely made for walking.

Jones mentions that 'with a few exceptions such as Taranaki and the northern regions, conservation lands have only a small proportion of the archaeological evidence of human settlement. In this book … there is not one photograph of a site in a national park'.[110] Some of the photographs are of sites in historic reserves or scenic reserves, but these reserves are often small islands of public land set in expanses of fine countryside to which there may be little or no walking access.

When I replied to the Central Otago correspondent quoted above, pointing out to him the need for linear access across private countryside, he responded:

> We already have linear access in NZ! – its called 'legal public roads'. The common law basis for the rights of citizens to pass & repass on our legal roads is the same as that in Britain for their footpath system – except that we don't have to wait 20–30 years for local bodies to 'map' them. Our 'linear accesses' have been precisely surveyed, monumented (pegged) on the ground and depicted on legal survey plans and land title records since the earliest days of European settlement (and indeed new public roads continue to be created and surveyed on a daily basis throughout NZ as land is further subdivided).

In a theoretical sense, if we look solely at their legal aspects, our public roads fully merit this staunch defence and faith. But unlike Britain's public footpaths, thousands of kilometres of New Zealand's public roads are not yet of any practical use: they are, as Bruce Mason pointed out, lost lands. An unformed public road that most walkers cannot use because it is not obvious or waymarked represents abysmal access. Similarly, one that walkers do not want to use because it takes an ugly deformed line across the landscape is of no use except for goats or possibly as a bargaining chip. To favourably compare such dysfunctional things to English or Welsh public footpaths is ridiculous.

New Zealand's linear access mechanisms could have been deliberately designed to confuse and frustrate the potential user. In the UK a large proportion of the population has heard of and understands the meaning of public footpaths and bridleways. The legal uniformity of the English and Welsh footpaths and bridleways is one of their strengths. In New Zealand the legal substructures of our foot-tracks, to most of us, are a sealed book. Only a few people – land professionals – understand the legal differences between gazetted walkways, ungazetted walkways, roads, road reserves, marginal strips, ambulatory marginal strips, public reserves, recreation reserves, esplanade reserves, esplanade strips, and Maori reservations.

The National Strategy for Walking Access says that 'the uncertainties created by this myriad of mechanisms should be reduced through the work of the Commission'.[111] The best way to reduce the confusion would be to reduce the number of mechanisms. This may be unlikely to happen. But the legal-jargon problem is surmountable. People need to know where our public foot-tracks are and, for any particular one, whether it carries any restrictions. Users should not always have to know and understand the legal status underlying each track. To contend otherwise is to argue for an elitist and exclusionary level of understanding.

Irrespective of the underlying legal status of each foot-track, there is no reason why our topographic maps could not use one multi-purpose symbol to signify a foot-track that is open to the public. In a map's legend, this symbol could be labelled 'public foot-track'. For this change to occur, our recreational NGOs and the Walking Access Commission would need to adopt the concept of 'public foot-track' and shepherd it through the inevitable minefield of objections and onto the commission's walking-access maps.

Two Approaches for Gaining Certain and Enduring Linear Access

The little-by-little growth of our networks of foot-tracks over farmland will continue to rely mainly on two different mechanisms. Firstly, public ownership: unformed public roads, marginal strips and esplanade reserves will often provide secure routes, based on public ownership of the track-bed. Secondly, easements: in the absence of conveniently sited public roads or reserves, the creation of foot-tracks by easements, either under the Walking Access Act 2008 or the Resource Management Act (esplanade strips and access strips) or during tenure review or by some other legally sound way, will sometimes be the chosen solution.

When there are no unformed public roads or Queen's Chain reserves, track-developers frequently negotiate foot-track easements. For example, on 4 December 2010, after six years' work, the Gibbston community association opened the 8.5-kilometre Gibbston River Trail along the Kawarau River.[112] The banks of this section of the river possessed no publicly owned strips of land. About 80 per cent of the track crossed private land. The community association had negotiated easements with nine landowners, who happened to be association members.[113] (For one section, the association had diverted the track to run alongside State Highway 6; negotiations with a landowner to obtain a more direct route were continuing.[114]) The legal arrangements used a standard Department of Conservation easement for public access and management, in favour of the crown in perpetuity and carrying no special restrictions.[115] The association's chairwoman, Susan Stevens, said that public use of the land along the Kawarau River had previously been limited because of the rugged terrain and the want of access, but with the generosity of the landowners the community had ensured that access to what was commonly thought of as the Queen's Chain would be preserved for public enjoyment.[116]

Foot-track easements are here to stay. Walkers need more such easements (but never in exchange for unformed public roads) and might need to lobby parliamentarians to reinforce the legal foundations of easements. Access-promoters and their lawyers will also need to beware of and minimise the restrictions written into easements. In June 2010 the board of the Walking Access Commission approved a format for easements, tailored for walkways that are to be established under the Walking Access Act 2008.[117] In November 2010 the board noted that it had 'agreed that if certain and enduring walking access is to be established in the name of the Commission over private land the preferred form is an easement in gross for the purposes of making a walkway'.

Old Habits

Nobody is advocating building lavishly engineered walkways in places where track use would be low and where just waymarks would suffice. Track-makers will, however, sometimes need to spend money on negotiating easements for foot-tracks used only occasionally, such as to gain access to a remote fishing spot. In 2003–5 the Federated Farmers's refrain that there were few access problems and that there was little need for improved access was a either a complacent misconstruction or a ploy to throttle the debate on access. The tradition of access by permission,

although dilapidated, still played a valued secondary role. But the farmers successfully raised it to a pre-eminence in the debate, beyond objective evaluation and criticism. The desire to retain grace-and-favour access, frequently expressed by both farmers and recreation advocates, arose partly from a nostalgia for an informality that in many places no longer existed.

Once upon a time the pubs closed at 6pm and Barry Crump trapped possums and many a good keen bloke asked permission for access across private rural land. This permission was invariably granted. Everyone understood that, legally, entry to or across the private land was a privilege, not a right. This is the type of access I have often referred to as arranged access.

The world is more complicated now, although some things haven't changed. All access to the countryside remains a privilege in the sense that we are all privileged to live on this Earth. Arranged, one-off access to private rural land remains a privilege in another sense: it is still a legal privilege, an exception, the result of a decision by the landowner to waive his or her right to exclude. Crumpie wouldn't obtain that permission so easily now, but I suppose he'd still be talking his way past landowners if he were around today.

Other things have changed. Arranged access still happens but is not so easy to come by as it once was. On the other hand, we have a growing number of tracks based on easements. These include most of our gazetted walkways, some sections of Te Araroa (the Long Pathway), many accessways across freeholded South Island high country, and some of the tracks negotiated by community groups, such as the Gibbston River Trail.

In plain English an easement, in this context, is a public *right* of way. So the public have a legal *right* to use a track that is based upon an easement. If that easement is in perpetuity, the landowner has permanently waived his or her right to exclude (dependent on any conditions written into the easement and on laws that apply to easements in general and, in the case of gazetted walkways, dependent on the provisions of the Walking Access Act 2008). A landowner can set a price for agreeing to the easement. If the landowner has consented to the easement without charge, this generous granting of access, albeit often with limitations, has privileged the public. The result, though, is a right. The owner of property that is subject to an easement is said to be burdened with the easement because he or she is not allowed to interfere with its use. For linear access without guns or dogs, gazetted walkways, despite their closures during lambing, provide more-certain access than grace-and-favour arrangements.

A foremost reliance on single-occasion arranged access would amount to a nationwide minimising of recreational opportunity. The custom of asking for permission has delayed the evolution of longer-term access arrangements. It has perpetuated a culture of deference towards rural landowners that does not always help recreators to achieve their goals of certain and lasting access. Track-users face a dilemma: by preserving a decaying convention that many walkers, hunters and fishers still see as a New Zealand virtue they may be hindering the development of more-reliable access.

Walkers do need more public walking tracks across farmland. They should be focusing on rural walks close to, but just beyond, our centres of population, and I mean the Dargavilles and Lumsdens as well as the main cities. They should also be aiming for interconnected networks rather than isolated fragments. Why shouldn't our small country towns have their continuous webs rather than unrelated erratic scraps?

Some New Zealand local authorities value local walks highly. The *Draft Upper Clutha Walking and Cycling Strategy* envisaged 'an extensive network of routes for walkers and bikers [ie cyclists]' and it aimed to provide 'easily accessible recreation close to people's "backdoors" '.[118] But Queenstown Lakes district council, which formulated this strategy, is hardly a typical district council. It may be decades before the Far North district council twigs that the people of Kaikohe might like a modest network of walking tracks.[119] These permanent public tracks will not evolve if the focus of the local people – the landowners and the would-be walkers – remains on requesting permission on each occasion that access is required. Old habits die hard; the sooner that walkers relegate this habit to the third division, the better.

The toughest barrier to changing people's thinking on this convention may be in the heads of walkers and trampers themselves. Go ahead and ask for permission if that's what you're used to. In some places, doing so will be necessary for many years to come. You will be benefiting from goodwill and perhaps helping to preserve it, subject always to changes of landowners. But every time you seek approval in this manner, ask yourself this: Am I helping to oil a useful access mechanism that is rusty and has begun to seize up? Or am I helping to perpetuate a status quo whose trespass laws allow our rural landowners to think and behave like unreconstructed Norman barons?

A Moral Right

Earlier in this book we examined Public Access New Zealand's unbending philosophy of public access through public ownership. Since 1992, PANZ has consistently held to the line that outdoor recreation is more than just access; you need a suitable environment to recreate in. Few people have disputed this. But the next stage in PANZ's argument was seldom explicitly stated. It sneaked under most people's radar, taken for granted. It said that the only way to be sure of preserving a suitable recreational environment was for the public to own the land. If the public wanted to enjoy the pastoral landscape, the state would have to own the farmland and perhaps the sheep and cattle too. If people wanted to walk or cycle along farmtracks, the state would have to own all such tracks.

In January 2003, even as the ministerial reference group began its work, a PANZ press release declared that 'PANZ does not want access onto private land'.[120] The release restated PANZ's long-held belief: 'Long and bitter experience has shown that only public lands provide a measure of certainty and security of access for the public.' Two years later, Bruce Mason was still repeating the same oversimplified and pervasive message: 'We want more access to public land, not a right to wander over private land'.[121] His farmer-like use of the word 'wander' was ambiguous and

unhelpful – as well as disparaging – failing to distinguish between linear access and area access.

In a direct answer to this Mason claim, John Wilson, the president of Federated Mountain Clubs, argued that buying land from farmers to create reserves was not a viable option. *Wilderness* reported his words:

> [PANZ] is very much of the opinion that you need to have legal designation on the land. That's right, but if you go that way it will be hundreds of years before you make any progress because somebody has to buy that land to make it a reserve and that's a stumbling block for communities that don't have the money to do that.[122]

Bruce Mason, helped by his personal orange-ribbon protest and a general disarray among outdoor recreators, won this round of the national debate over access. But in doing so he exposed the submissive underbelly of the PANZ approach. For the PANZ access thinking puts private land into the too-hard basket. It says, This is New Zealand. Private land is sacrosanct. Walkers can't hope to change that. Our landowners are too powerful, walkers cannot risk taking them on. Let's just concentrate, aggressively, on public land.

An alternative approach is available. We discussed part of it in Chapter 16. It says that linear access across New Zealand's farmed countryside is not a privilege; it is a moral right, one that ought to become a legal right, like a fair trial or freedom of religion. It recognises that our subservient national attitude towards private property rights is a blight on our recreational landscape. It points out, for example, that there is much private farmland on the Otago Peninsula and that Dunedin's walkers and mountain-bikers would dearly love to gain improved access along the peninsula's ridge-line and across some of its pastures. The Walking Access Commission is charged with leading the development of walking access that is free, certain, enduring and practical. It remains to be seen to what extent the commission's negotiatory approach to private landowners will succeed. If the commission's best leadership efforts and Dunedin city council's policies produce no progress on the Otago Peninsula, the government might need to strengthen the commission's powers.

Government policies are not static things. Our government policies on walking access to the countryside are a step in the right direction but are nowhere near maturity, especially for a country that prides itself on its outdoor ethos. The policies will continue to evolve. Politics is the art of the possible, some say. Yet what is presently impossible may in the future become possible. The radical can become the mainstream. If incremental change does not meet our needs, we should not assume that our land law must remain petrified.

E parvis maxima – Out of small things very great things.

Appendix 1

Recommendations of the 2007 Acland Report

These recommendations are reproduced from *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), © Crown copyright.

The name Te Ara o Papatuanuku appears throughout the recommendations, the panel having suggested that it be the Maori name for the access organisation. This name was not officially adopted. Instead the Maori name of the New Zealand Walking Access Commission became, in August 2009, Ara Hikoi Aotearoa.

Recommendations on leadership

The Panel recommends that:

1. an access organisation be established that combines the characteristics of a statutory organisation with those of a trust (the Panel considers that this option is most likely to involve local landowners, users and enthusiastic volunteers);
2. the organisation be called Te Ara o Papatuanuku (the New Zealand Access Commission), to reflect the importance of rural New Zealand for all New Zealanders;
3. Te Ara o Papatuanuku be accountable to a Minister and be required to report to Parliament in accordance with the Crown Entities Act 2004.

The Panel recommends that Te Ara o Papatuanuku:

4. has a governance board appointed by the Minister responsible for the organisation, after consultation with key access stakeholders, with appointees having skills and experience relevant to the organisation's functions;
5. has a structure that reflects the need to work with, co-ordinate and promote the recreational access activities of local government and voluntary organisations;

6. be empowered to carry out the following functions:
   - provision of national leadership, including a national strategy, and co-ordination of access among key stakeholders and relevant central and local government organisations;
   - the provision of impartial and robust advice on access;
   - local/regional leadership and co-ordination to help local groups with their access issues;
   - mediation of disputes over walking access issues, including the ability to initiate negotiations;
   - the reference of disputes about legal access to an appropriate authority;
   - the creation and administration of walkways made under the Walkways Act 1990, with planning and supervision focused at a local level;
   - the establishment and maintenance of a public access mapping database;
   - administration of a contestable fund for the purpose of negotiating walking access either under the provisions of the Walkways Act 1990 or new or other existing legislation;
   - creation of a trust structure able to hold land or interests in land for the purpose of providing walking access;
   - the receipt and management of private funding contributions (including sponsorships) for the promotion of walking access;
   - research, education and participation in external access-related topics and programmes;
   - the development, promotion and maintenance of a code of responsible conduct.

Recommendations on types of access

The Panel recommends that:

7. Te Ara o Papatuanuku works with territorial authorities to develop consistent and appropriate policies for managing unformed legal roads for access;
8. the mapping of unformed legal roads be a priority for Te Ara o Papatuanuku;
9. territorial authorities generally be required to retain unformed legal roads for possible future use by the public;
10. an effective legislative remedy be available to the public (and enforceable in the District Court) for the removal of unlawful obstructions on unformed legal roads;
11. territorial authorities be provided with more powers to manage the use of unformed legal roads, provided that this is associated with a duty to keep unformed legal roads open to appropriate uses;
12. Te Ara o Papatuanuku considers developing national guidelines on the administration of unformed legal roads;
13. consideration be given to assessing whether it may still be possible to stop some unformed legal roads in exchange for alternative access (this could involve more procedural flexibility and Te Ara o Papatuanuku's participation in the promotion of alternative access arrangements that are in the public interest);

14. consideration be given to the use of the Crown's power to resume ownership of the land comprising unformed legal roads to facilitate an exchange for alternative access.

Recommendations on information about existing access

The Panel recommends that:

15. Te Ara o Papatuanuku be responsible for facilitating and coordinating the provision of information about access. Maps should be available both through the internet and as printed copies, at a reasonable cost;
16. the provision of access maps be a priority for Te Ara o Papatuanuku;
17. Te Ara o Papatuanuku does a stocktake of existing mapping information and a preliminary analysis of the public's likely requirements before any further information is prepared;
18. Te Ara o Papatuanuku be made responsible for establishing and managing a single, publicly accessible and officially recognised database of access information, and that work on this task commences as soon as possible;
19. Te Ara o Papatuanuku works with territorial authorities, landholders and recreation organisations to supply, install and maintain signage;
20. Te Ara o Papatuanuku provides a non-binding mediation service to help resolve conflicts between parties on access matters;
21. Te Ara o Papatuanuku considers the opportunities and risks of making landholder contact details more readily available;
22. LINZ examines ways of depicting private roads on topographical maps in a way that makes them more readily distinguishable from public roads;
23. the Government sets a definitive timetable for LINZ to complete its assessment of the means to map marginal strips created since 1987;
24. the Government considers in more detail the implications of the proposal for minor changes to the Trespass Act 1980 for access along water boundaries where there is or has been public land.

Recommendations on restoring and realigning lost access

The Panel recommends that:

25. Te Ara o Papatuanuku facilitates negotiations among landholders, the Crown and, where relevant, territorial authorities, to restore access to water margins in appropriate cases where such a solution is feasible;
26. areas of the coast where public access on both the foreshore and the dry margin is unavailable be considered a priority for negotiated access;
27. access across private land to the coast be negotiated in the same way as other new access.

Recommendations on new access

The Panel recommends that:

28. any new access over private land for walking access be by negotiation and agreement;

29. Te Ara o Papatuanuku develops and implements a New Zealand Access Strategy, including new access and priorities for funding;
30. Te Ara o Papatuanuku works with central government to assist councils with funding to compensate landowners, where appropriate;
31. Te Ara o Papatuanuku supports community initiatives to ensure 'quality access' (Principle 1);
32. the administration of the New Zealand Walkways Act 1990 be transferred to Te Ara o Papatuanuku, subject to a Memorandum of Understanding between Te Ara o Papatuanuku and DOC on the operational management of walkways;
33. the acquisition of access over private land and the funding of the acquisition of such rights be a function of Te Ara o Papatuanuku;
34. Te Ara o Papatuanuku be funded to establish and administer a contestable fund for access (Te Ara o Papatuanuku Fund for Access) to which local authorities and other organisations (for example, hapu, trusts, landcare groups, tramping clubs) might apply. The purpose of the Fund would be to enhance public access over private land and other matters relevant to access;
35. Te Ara o Papatuanuku's board sets policies on compensation and the use of the Te Ara o Papatuanuku Fund for Access for access other than walking;
36. Te Ara o Papatuanuku be empowered to provide facilitation and mediation services if requested in the event of conflict, but not have powers of arbitration;
37. Te Ara o Papatuanuku works with local government on the use of district and regional plans to enhance public access;
38. Te Ara o Papatuanuku works with central and local government to investigate how the use of the RMA for access could be improved, including the merits or otherwise of the four-hectare requirement for esplanade reserves;
39. the Government investigate options for amending the RMA to ensure that landholders who voluntarily provide access on their land are not penalised as a consequence;
40. consideration be given to providing Te Ara o Papatuanuku with status similar to that of a heritage protection authority so that ultimately it could initiate the compulsory acquisition powers under the Public Works Act in respect of access (in exceptional circumstances only);
41. a review of the effectiveness of the Overseas Investment Act 2005 in improving public access takes place in five years.

Recommendations on Maori land and access

The Panel recommends that:

42. access over Maori land (other than may already be provided for in statute) be by a suitable process of negotiation and agreement with the owners (this is consistent with the Panel's view on the establishment of new access over all private land) – Te Ara o Papatuanuku would need to consult with Maori about a suitable negotiation approach;
43. Te Ara o Papatuanuku explores opportunities to improve access by Maori to taonga both through the use of existing access rights such

as unformed legal roads and through negotiation and agreement with private landowners.

Recommendations on a code of responsible conduct

The Panel recommends that:

44. Te Ara o Papatuanuku co-ordinates the development of a voluntary code of responsible conduct with other agencies and organisations involved in outdoor recreation and rural land management (including DOC, Federated Farmers, local authorities and recreational groups), with the objective of having an agreed core code;
45. Te Ara o Papatuanuku promotes and encourages the teaching of good behaviour in the outdoors, especially in primary schools. It should also investigate the scope for providing overseas tourists with information about good behaviour in the outdoors (such as the proposed code of responsible conduct) at the point of entry into New Zealand.

Recommendations on landholder liability

The Panel recommends that:

46. consideration be given to amending the Health and Safety in Employment Act 1992 to exclude from the "all practicable steps" category circumstances where there is a charge to recover costs incurred in facilitating access, but not extending to a charge for gain or reward;
47. the Department of Labour reviews the bulletin *If Visitors to My Farm are Injured, Am I Liable?* in consultation with landholders, recreation organisations and Te Ara o Papatuanuku to further clarify landholder liability and to explain the Department's relevant compliance policies;
48. an exemption to the Occupiers' Liability Act 1962 similar to the Walkways Act be considered for persons on rural land for recreation or leisure with the permission of the landholder.

Recommendation on fire risk

49. The Panel recommends that a code of responsible conduct contain provisions to help reduce fire risk.

Recommendations on rural crime and security

The following suggestions fall outside the scope of an access organisation, but **the Panel considers that it would be useful to:**

50. strengthen Neighbourhood Watch in rural areas (although this was commonly suggested by some recreational submitters, many landholders objected to the idea that they should take on yet more responsibility here – especially if necessitated by increased public access);
51. increase the amount of active engagement between the Police and rural communities;
52. improve links between recreation groups and rural communities;
53. build a case for having more Police in rural areas, and/or create a law enforcement position (for example, community/rural constables or residents warranted by councils) so that there are more people in rural areas with a law enforcement role.

Recommendation on biosecurity

54. The Panel recommends that measures to minimise biosecurity risks be included in the proposed code of responsible conduct, particularly the appropriate disposal of human waste.

Recommendations on "exclusive capture"

The Panel recommends that the Minister of Conservation:

55. considers the options in this report, with the aim of resolving the matter quickly as the concern has existed for many years;
56. makes a decision as quickly as possible on the need for and conditions of fishing guide licensing.

Recommendations on access with motor vehicles, horses and bicycles

The Panel recommends that:

57. Te Ara o Papatuanuku be empowered to consider all forms of access (there are efficiencies in an access organisation dealing with all forms of access) but with walking access as its priority area of concern;
58. Te Ara o Papatuanuku co-ordinates its activities with organisations concerned with other forms of access, such as mountain-biking clubs, four-wheel-drive clubs and Fish & Game Councils, but, in doing so, Te Ara o Papatuanuku should not compromise walking access outcomes;

Note: the Panel's recommendation on a policy on unformed legal roads is set out in section 8 of the report.

Recommendation on hunting

59. The Panel recommends that the carrying of firearms be a matter of negotiation among the parties involved in any negotiated access arrangement.

Recommendation on dogs

60. The Panel recommends that access with dogs be a matter of negotiation among the parties involved in any negotiated access arrangement.

Overall recommendations

The Panel recommends that:

61. the spirit of the consultation and the consensus be reflected by the Government willingly adopting this report;
62. the effectiveness of the proposals in the report (assuming they are adopted by the Government) be subject to an external review in 10 years;
63. an establishment board of Te Ara o Papatuanuku assess and report on required funding;
64. the Minister for Rural Affairs and the Government advance legislation similar to the Walkways Act in consultation with stakeholders.

Appendix 2

Vanished Tracks

The National Strategy for Walking Access stresses the need for walking access to the outdoors to be free, certain, enduring and practical.[1] This appendix probes, exploratively, the third of these ideals. We will look briefly at the issues surrounding the disappearance of tracks. My limited bunch of examples may or may not indicate the existence of widespread problems nationally. As New Zealand has no single national inventory of foot-tracks, authoritatively covering the whole country, there are no complete statistics indicating the periodic gains and losses of tracks. The few examples that I will describe come mainly from a miscellany of press reports. The issues surrounding track closures need deeper investigation; this appendix may galvanise someone into further, more complete contemplation and research.

While New Zealand incrementally builds its foot-track networks, it also incrementally loses tracks. Not all tracks do endure. On privately owned land, there may sometimes be a sound reason for the total legal and physical loss of a track. On publicly owned land the downgrading of a maintained track into an unmaintained tramping route may occasionally be unavoidable. On the other hand, there seems to be valid cause for disquiet about some of our unenduring tracks: our transient tracks that have been and gone, that we have built with sweat and commitment and expense, that we have opened with ceremony and excited confidence, and that a few years later we have abandoned and closed, sometimes with no more protest than a few letters to a newspaper.

Seldom do three months pass without our reading either about the creation of a new track or about the closure or the liability to closure of an existing one. In rugby, preventing a try can have as much influence on the result as scoring a try. The National Strategy for Walking Access aims not only to establish new walking tracks across our countryside and wilderness but also to defend the existing tracks.

What We Mean by 'Enduring'

The word 'enduring' has been bandied about in the debate on access without much analysis of what it might mean in different contexts or of

why track perpetuity ought or ought not to be desirable. When people argue that a track should endure, they mean that it should have legal permanence and physical permanence. A track that has just one of these qualities, without the other, might not still be available next year. This dual requirement applies to tracks over public land, such as in national parks, and to tracks over private land. But achieving both of these permanences poses different difficulties on public land than on private land. We lose some tracks in national parks not because our legal access rights end but because the sum of money available for track maintenance is finite. In contrast to this, the loss of a track over privately owned farmland or production forest might involve either the ending of access rights (formal or informal) or a lack of track maintenance – or both of these circumstances. In practice, however, the main impediment to attaining track permanence in the context of privately owned land has probably been the difficulty of negotiating lasting legal access.

The Desirability or Undesirability of Permanence

Most track advocates have accepted that there is a need for tracks to endure. Few of them have dissented from this view. The arguments for permanence have seemed obvious. This book has already mentioned the main ones. At an emotional level, there's deep satisfaction in knowing that we can enjoy tracks that our grandparents followed and that our grandchildren will explore. At a practical level, negotiating the access for a new track and then building it costs money; there is a limited amount of money available, and the most thrifty way to use it is to ensure that the resulting tracks last, legally. Many tracks form parts of networks that are still developing; for planners to design improvements to these networks, they need to rely on the constituent parts being permanent.

The main case against permanence has been put by some landowners and it involves their right to change the way they use their land. For example, a conversion from forestry to dairying could result in the physical extirpation of a track. (Although waymarking across the new pastures could quickly reinstate such a track.) In its submission on the 2003 Acland report, the New Zealand Forest Owners Association implied that the permanent existence of public linear access across rural land could stymie the moneymaking use of that land:

> The Land Access Ministerial Reference Group (LAMRG) report comprehensively reviews the issues arising in submissions. In particular, the conflict between land owners expectations with respect to control of their property including the ability to change the existing land uses … and recreational and other interests wishing to maintain and increase rights of access, is a recurring theme within the report …
>
> The profitability of land uses (including forestry) compatible with public rights of access is not guaranteed. Conversion of unprofitable forest to an alternative land use, including lifestyle subdivision, may lead to changed [landowner] expectations with respect to access. Public recreation in a commercial forest mid-rotation poses little

> or no concern to the owner. The same land utilised as someone's residential dwelling is a different situation.[2]

So there is a common human predicament, here, involving two competing requirements. From the walkers and other track-users, there are the aesthetic and practical arguments for permanence. For the landowners, there may be economic imperatives for dispassionate change. What has so far received little attention is the scope for restoration of tracks after changes of land use. That possibility requires more investigation and discussion.

Loss of Tracks on DOC-managed Lands

When we speak of the loss of a foot-track on land managed by the Department of Conservation, the situation usually involves the ending of the maintenance of that track. The cessation of upkeep might be deliberate, such as a track closure that follows a review of usage and need, or it might be accidental, such as when a voluntary group loses interest in looking after a track for which it is responsible. In both of these situations, trampers and mountaineers usually retain the legal right to follow the unmaintained routes.

Occasionally DOC closes a foot-track primarily for safety reasons, which may or may not contain a cost-of-maintenance aspect. In the winter of 1992 a combination of wet weather and unstable papa terrain played havoc along the Whanganui River valley. A series of slips obliterated the then main entrance to the Atene Nature Walk; this southern entrance to the nature walk had to be closed permanently.[3] Massive slips destroyed a hundred metres of the river section of Te Maire Track, southwest of Taumarunui; this river-bank portion of Te Maire Track was closed indefinitely.[4]

In October 1992 a huge slip wiped out a large section of another Whanganui River valleyside track, the Aramoana Track. DOC staff repaired and rerouted the track.[5] Subsequently, the Aramoana Walkway was legally established by two *New Zealand Gazette* notices, in 1994 and 1997. Then the whole of it was closed by a *Gazette* revocation notice in 2001. I have a scribbled note, taken from DOC's website, saying that the closure was because of land-stability issues, loss of views and access problems.

In a country like New Zealand, where some areas and their tracks go in and out of fashion as time passes, and where landslips are quite common, a few track losses of this sort are inevitable. But the question of which tracks DOC should continue to maintain and which it should abandon has been and remains contentious. How much money should DOC spend on building and maintaining gravelled and laundered lakeside paths with accompanying carparks, close to main tourist routes? How much should it allocate for the maintenance of backcountry tracks used mainly by Kiwi hunters and trampers?

I will not overcomplicate this appendix by delving into what we mean by 'tourist' and 'recreator'. Suffice to say that the controversy over which DOC-managed tracks should be maintained, and to what standard, is more complicated than a mere disagreement between tourism interests

and recreational interests. South Island trampers may disagree with North Island trampers. Aucklanders may disagree with Wellingtonians. Bryan Dudley has pointed out that economic downturns can threaten tracks. He has argued that when this happens, the resulting cuts in recreational facilities should be spread fairly around the whole country in a way that takes into account populations. Specifically, he pleaded for DOC to 'give the wilderness north of Taupo a little more attention'.[6]

The accounts of DOC's closing of tracks that appear in this appendix are based on press reports. I include them to illustrate general situations rather than as factually perfect records.

Closure of Mytton Walk Opposed

This report appeared in the *Nelson Mail* in February 1999. The circumstances typify the dilemmas that DOC faces – year in, year out – in trying to weigh up objectively the arguments for and against the retention of low-use tracks.

The Mytton nature walk was situated in the Cobb valley in Golden Bay. Projected maintenance costs and low use had seen the track score poorly in a DOC review of huts and tracks. The department scheduled the track for closure. Bridges on the track were soon to be demolished.

At a meeting of the Nelson-Marlborough conservation board, a member of Golden Bay Tramping Club, Derry Kingston, argued that the pending track closure conflicted with the area's conservation management strategy. This strategy called for a loop track in the same area as the Mytton walk. Kingston suggested that the new loop track should include half of the existing nature walk.

Another submitter, Joe Bell of Keep Golden Bay Beautiful, told the board that the planned closure of the Mytton walk concerned his committee, which considered the walk to be 'the only one of its kind in Golden Bay which allows the average person to have a higher-altitude walk without being a tramper'.[7]

The board recommended that the Department of Conservation reconsider the closure of the Mytton walk. (But almost all of the track was closed. A new track used a very short section of the original nature walk.[8])

DOC's West Coast Track Closures, 1999–2000

One day in June 1999, the *Press* included a short piece titled 'Lawyer Complains to DOC about Track'. A Greymouth lawyer, Anthony Whitcombe, had written to DOC complaining about the non-notified closure of walking tracks at Fox Glacier. Signs had been removed and boardwalks raised at the Ngai Tahu, Lake Gault and Cone Rock tracks. Until then, Whitcombe had visited the area regularly and had enjoyed taking his family on the walks. He argued that the tracks had 'a marked intrinsic value that, once lost to this country, [would not] easily be regained'.[9]

A West Coast Conservancy spokesman, Steve Addison, said that the conservancy had reviewed its recreational facilities to ensure that funds were spent where they were most needed.

In May 2000 the news website Scoop ran a more detailed account of DOC's closure of various West Coast tracks and huts. One example was a walkway alongside Lake Kaniere, near Hokitika. In the 1980s, DOC and Project Employment Programme workers had 'built a magnificent 14 kilometre high-quality walkway on the western shore which traversed

native trees, ferns, bush, creeks and streams. People could even walk underneath a waterfall.'[10] But in about 1998 DOC had downgraded this walkway from a Walking Track to a Tramping Track, thus reducing the cost of maintaining it. Now, in 2000, twelve kilometres of it was to be downgraded further to a backcountry route. Contractors had already removed bridges and boardwalks, replacing them with culverts. Just one kilometre at each end of the fourteen kilometres would be upgraded again to Walking Track.

Lake Kaniere Walkway was just one sample of many West Coast tracks that had been left to become overgrown. One coaster said 'you would need a roll of toilet paper to write down the number of walkways, tracks and huts that have been closed by DOC on the West Coast in the last few years'.[11]

Steve Addison had summarised DOC's perspective on the closures. The Department of Conservation had been downgrading walkways and tracks and closing huts 'simply because not enough people [were] using them and maintenance costs [were] high'. He said

> it is not a question of a lack of money, but simply because we've found that most people who come to the West Coast mostly visit our icons at the Cape Foulwind seal colony, Pancake Rocks at Punakaiki and the Fox and Franz Josef Glaciers. We have found that those who [visit] the high-quality walkways usually only walk in for around 300 metres and then turn around and come back.[12]

DOC's Recreation Opportunities Review, 2002–4

In May 2002 Sandra Lee, the minister of conservation, announced 'the largest increase in funding for outdoor recreation on public conservation land ever agreed to by any government'.[13] The $349 million increase over ten years would double the Department of Conservation's funding for the maintenance of huts, tracks and other facilities. Lee invited 'key stakeholders to work in partnership with DOC in a review of all outdoor facilities, particularly tracks'.

The Department of Conservation managed an extensive network of recreational facilities. This large web of amenities had evolved over a century, without any overall plan, through successive waves of development that had involved assorted government agencies and numerous recreational groups. The department had compiled a complete inventory of these facilities, which in 2002 included:

- over 300 campsites
- 12,500 km of tracks
- 1,030 back-country huts
- 2,130 km of road
- 1,570 toilets
- 570 car parks
- 14,000 bridges, boardwalks and other structures
- 390 amenity areas[14]

It was the department's view that some new facilities, such as additional tracks, were required. It was also evident, to DOC if not to the tramping

fraternity, that some facilities were underused (whatever that meant) and costly to maintain. DOC and the community needed to decide on the long-term future of facilities that were underutilised or were unnecessarily duplicated or were in the wrong place.

After Sandra Lee's announcement, discussions on track and hut service standards took place at a national level. There was some flexibility to change these standards; the decisions in this respect would influence the cost of maintenance and hence the number of facilities that could be maintained.

By September 2003, DOC had prepared draft management proposals for all DOC's visitor facilities in New Zealand. It published fourteen documents titled *Towards a Better Network of Visitor Facilities*, the first being a general description of the issues and the consultation process, and the other thirteen being the proposal summaries for each of the conservancies.

On the plus side, DOC proposed to build 250 kilometres of new walking tracks across New Zealand over ten years. It also proposed to upgrade or replace another 499 tracks spanning over 1,900 kilometres, and to upgrade, build or replace over ninety huts.[15] On the minus side, some tracks and huts that received little use or were duplicated by other nearby facilities would have to close.

The proposal summary for each conservancy defined and made use of a number of standard proposals, such as 'Maintain', 'Proposed (new)', 'Replace', 'Upgrade (significant)', 'Maintain to a lower standard', 'Remove', 'Minimal maintenance', 'Cease maintenance' and 'Maintain by community'. In the Otago Conservancy document, for example, 'Remove' meant: 'Remove the facility (if a structure, sign, hut or building). If a track, remove markers, plant out track entrances and leave the track to revert to a natural state, or assist this process if necessary.'[16]

Public consultations in each conservancy began immediately. The objectives of these extensive consultations were:

- To confirm with the public what mix of visitor facilities is needed to provide the recreational opportunities most desired on public conservation land.
- To raise public awareness of DOC visitor services planning tools and objectives.[17]

The Department of Conservation aimed to be able to provide the public with a network of visitor facilities that were:

- Appropriate – tailored to suit the visitors most commonly using them.
- Consistent – managed to the same standards nationwide.
- Sustainable – managed into the future within the available resources.
- Legal – maintained in a way that complies with all relevant legislation.[18]

Submissions closed on 31 January 2004. Nine months later the government released the final ten-year plan for recreational facilities, such as huts, tracks and campsites, managed by the Department of Conservation. DOC had substantially changed some of its earlier proposals. About 625 kilometres of new track would be gradually built around the country, and 435 kilometres of track would be phased out. Numerous local groups were likely to take on the management of up to 390 kilometres of track themselves (much of this probably being track that might otherwise have been closed).

An example of a track about which DOC changed its mind was the Orari Gorge Track. The Canterbury Conservancy's summary of proposals had suggested ceasing the maintenance of the Orari Gorge Track because better forest walking was available at nearby Mt Peel, which offered more variety than Orari. The summary also proposed the closure of the Orari Gorge Reserve camping ground because there were campsites at Peel Forest and Waihi Gorge. The Geraldine Community Board strongly opposed the two proposals, arguing that the end of maintenance would mean the end of 'a significant walking track'.[19] Glenburn Camp used this track, as also did outdoor-education programmes run by Geraldine High School and Peel Forest Outdoor Pursuits Centre. The Canterbury Conservancy received sixty submissions requesting that the track be retained (ie continue to be maintained). Twenty-one submitters asked for the retention of the campsite. Swayed by the strength of this local support, DOC decided to keep the track and the campsite.[20]

Chris Carter, the minister of conservation, said: 'In all cases, DOC has sought to balance the needs of traditional tramping and mountaineering groups with the need to control and respond to skyrocketing demand from tourists and new, predominantly urban users of conservation land.'[21]

A snag with the plethora of consulting that nowadays seems to be continually under way on one subject or another is that not all community groups are well-informed and well-organised submitters. In May 2006, long after the completion of the Recreation Opportunities Review, the *Taranaki Daily News* ran a story titled 'Track Closures on Kaitakes Upset Residents'. Oakura residents were 'horrified that they had no input before the Department of Conservation closed two popular walking tracks leading to the Kaitake Ranges'.[22]

As a result of decisions made during the Recreation Opportunities Review, the department had closed 2.5 kilometres of the Sefton Ridge Track from Lucy's Gully and most of the western section of Davies Track. An Oakura farmer, Matt Redshaw, said

> the community was shocked and annoyed it was left out of the process. His family [had] farmed at the end of Weld Rd for 56 years. He said pioneers Jimmy Sefton, who once owned the farm, and Bob Davies worked hard to cut walking tracks on the leading ridges each side of the farm ending up at the Patuha Peak. That was 80 years ago and Mr Redshaw [was] angry the department [had] now closed the tracks that … thousands of people [had] enjoyed. Of 43 submissions, 37 wanted the tracks maintained as they were,

> he said. 'Hardly a mandate for closure.' He said DOC had refused his offer to maintain the Sefton Ridge track.[23]

In response to the criticisms, DOC's programme manager, Dave Rogers, said people had genuine concerns and that DOC was happy to look into the matter but that 9 per cent of assets nationwide had to be cut. He said it was possible the two Oakura tracks could reopen but that this would require the closing of others somewhere else. He did not believe the two tracks were used a great deal.[24]

*

They say you can't buy happiness. DOC's efforts to achieve the elusive balance between the needs of tourism and recreation, and its intention to spend an extra $349 million on facilities that would cater for those needs, did not silence all the department's critics. The proper relationship between recreation and tourism remained disputable. At the heart of this controversy lay a couple of lines in section 6 of the Conservation Act 1987, which say that, subject to the overriding duty of conservation, one of the Department of Conservation's duties is 'to *foster* the use of natural and historic resources for recreation, and to *allow* their use for tourism' (my italics).

In September 2006 a two-day conference on outdoor recreation on public conservation land took place in Wellington. Sponsored by DOC and Sport and Recreation New Zealand, the New Zealand Recreation Summit was 'part of the Labour-led government's commitment to focus on the legal duty the Department of Conservation has to foster recreation'.[25]

During one of the preliminary sessions at this conference, the delegates affirmed this legal duty. They also 'clarified and extended it by declaring that the outdoors are part of New Zealanders' rights of citizenship, whereas overseas visitors to it are merely valued guests'.[26] Both of these ideas were opposed by some tourism interests in later sessions. The same matters came up again for approval and adoption at the end of the conference. David Round, a member of the Federated Mountain Clubs executive, described what happened:

> After much vigorous discussion (including arguments about the exact nature of tourism) the final plenary session adopted both principles: recreation ahead of tourism, and a New Zealand[er] priority where clashes of interests occur. There would have been the deuce to pay if these had not been accepted. It was alarming, though, to see some DOC staff voting against them. I am not sure why staff should have been allowed to vote at all at a recreationists' conference, but to vote this way was appalling. This may not be the Department's official attitude, but it is not an attitude that should exist within its ranks. It is now impossible to believe that these DOC people take their duty under section 6(e) seriously.[27]

Commenting on the repercussions of DOC's Recreation Opportunities Review, Round wrote:

> Sadly … we are being short-changed. The upgrading of the Knights Point car-park will cost $185,000; the Cape Foulwind car-park $250,000. Every little tourist walk seems to cost a quarter of a million dollars to upgrade. And so it goes on, while the tracks and huts in the Waitaha Valley, for example, are abandoned. The bulk of DOC's new recreation money is being dissipated on short walks, car-parks, roads, lavatories, and a few very expensive flash lodges thinly disguised as huts; while the back-country receives a disproportionately tiny share. The entire exercise is a massive subsidy for tourism.
>
> Which perhaps should not surprise us, but which is not good enough.[28]

One could also add that Round's interpretation of the situation, although probably convincing for many readers of the *FMC Bulletin*, was not quite detailed enough. Some New Zealanders, as well as visitors from overseas, liked short walks. The backcountry v. frontcountry controversy was more complicated than simply a difference between the needs of traditional trampers and the needs of tourists. And there was also the near country to think about, the countryside twenty minutes' drive from our homes.

In November 2008 the National Party gained power. Tucked away among the mass of party policies overshadowed by the financial crisis was a National Party outdoor-recreation statement that promised to improve access to the outdoors and to 'change the focus of Conservation Boards and rename them Conservation & Recreation Boards (or similar)'.[29] Membership of these boards would 'reflect the diversity of recreation pursuits'.

Assorted Press Reports on the Loss of Tracks on Private Land

The following notes rely mostly on news reports. I have not further researched each situation to check the facts. Some of the track losses happened ten or more years ago; subsequent developments may have saved or reinstated some of these tracks. But despite the potential incompleteness and unreliability of the news reports, it seems to me to be worth gathering the examples into this appendix, as an illustration of the attrition of our tracks that goes on constantly and often stealthily and that walkers need to understand and combat.

Mt Karioi

In March 2003 the Federated Mountain Clubs submission to the Land Access Ministerial Reference Group included eighteen instances of places where areas or tracks had been closed to the public or where areas or tracks had sprouted access fees. I will reproduce just one of these eighteen examples, an ideal illustration of how not to develop a walkway:

> Mt Karioi near Raglan had a walkway established from the Upper Wainui Road across farmland to public land in 1980. A few months later the landowner withdrew from the arrangement and the walkway was closed. Much labour, money and publicity were wasted. Walkways over private land should certainly be voluntary arrange-

> ments and certainly need not be in perpetuity, but a landowner's voluntary commitment should at least be for a reasonable period of time.[30]

With the benefit of six years of debate behind us, we walkers can partly disagree with the last sentence. We have moved on from the willingness to tolerate temporary arrangements, except for exceptional circumstances. Section 3(a) of the Walking Access Act states that the purpose of the act is 'to provide the New Zealand public with free, certain, enduring, and practical walking access to the outdoors …' The New Zealand Walking Access Commission is therefore obliged to try to negotiate permanent linear access.

Berwick Forest

Berwick Forest is a production forest about forty kilometres southwest of Dunedin, near Waihola. It is about a forty-minute drive from the city and is therefore reachable for day walks. In the early 1980s the New Zealand Forest Service developed a fine network of recreational tracks in this forest. It designed and developed the Berwick Forest Walkway, an eighteen-kilometre trail from the Forest Headquarters to the Waipori Gorge and then on up the Government Track and finally around part of Lake Mahinerangi.

The main recreation area in Berwick Forest was 471 hectares of grassy valley flats – once farmed – and an interesting patchwork of trees. This area included picnic places, barbecues, a lookout, forest walks, a wheelchair track, and toilets accessible to disabled people. Walkers did not need a permit to visit the forest, nor did they have to request permission.

A 1983 pamphlet, jointly produced by the Forest Service and Dunedin City Council, remarked on the shift in management thinking:

> In recent years management for recreation has played a more important role, as the potential of the forest has been recognised by the Dunedin community, and recreation use has thus increased. A biennial feature has been special open days to inform people about the forest – in 1980 this was timber production, in 1982 recreation.[31]

In March 1983 a national walk week was held throughout New Zealand.[32] The *Otago Daily Times* ran a promotional article describing a number of popular walks accessible from Dunedin. It mentioned that the Berwick Forest Walkway held possibilities for walkers of a wide range of abilities: 'The Berwick Forest Walkway can be entered at seven different points along the route so walkers can choose their walk according to their capability. The entire distance can be completed by fit and experienced trampers in eight hours.'[33]

In 1985 halfway along this walkway, the Allan Rekowski Shelter was opened as a base for day trips or as an overnight shelter.

Much of the Berwick Forest system of tracks was destined to have a depressingly short life. As a result of the sweeping public policy reforms that began in the mid-1980s, and in particular the environmental legislation of that time, after 1989 the forestry cutting rights for 94 per cent of New Zealand's crown-owned planted production forest were sold.[34]

(The crown retained ownership of the land.) The ownership of Berwick Forest passed to Wenita Forest Products Limited, a private New Zealand-registered company owned by two shareholders, one being a large Chinese enterprise and the other being a United States investment fund.

In 1993 Penny Knock, a visiting head ranger (recreation) from Kielder Forest in the UK, examined the effects on access of the privatisation of New Zealand's forestry. Her report included some notes on Wenita's Berwick and Otago forests. The outlook seemed to be one of increased access bureaucracy:

> The forest closure … forces users to communicate with Wenita if they want to use the forest. The permit system avoids conflict between users. Many tracks will be affected by felling in the next 10 years and will have to be re-routed. The easements into DOC areas are also locked, forcing foot only access. Recreation is allowed not promoted.[35]

Commenting more generally about production forestry in New Zealand, and comparing it with production forestry in the US, she wrote:

> It is evident that New Zealand and the United States of America are travelling in opposite directions as regards forest management. The USA recognises the truly multipurpose nature of its forests and is currently giving priority to the non timber values. However, New Zealand rejected the concept of multipurpose resource management in 1987 by dividing the country into commercial exotic forests and non-commercial native forest.[36]

By the mid-1990s, the southern end of the Berwick Forest Walkway had become overgrown and was in a state of disrepair.

Hamel and Bishop's 1997 guidebook included the Berwick Forest tracks, while pointing out their state of decrepitude.[37] This guidebook's successor, Hamel's *Dunedin Tracks and Trails* (2008), omits Berwick Forest completely. All recreational access to Wenita Forest Products land in 2008 was by permit only.

Rob Roy Track, Wanaka

In Chapter 32, as an example of the closure of a permitted track, we discussed the Mt Maude Walking Track, near Wanaka. The circumstances behind this closure involved an environment court decision to decline consent for developing some land for houses. One of the grounds for rejecting the application was that the proposed subdivision would adversely affect walkers' views from the Mt Maude Walking Track. In a neat but drastic move to ensure that walkers' views from the track would no longer be an issue, the landowner closed the track.

Another Wanaka track similarly affected, for a while, was the Rob Roy Track on Glendhu Station, a sheep and cattle station farmed for three generations by the McRae family. In July 2001 the *Southland Times* reported that the owners of the station, Bob and Pam McRae, had closed the Rob Roy Track to the public, pending a decision on a related matter

that was before the environment court. The newspaper gave Pam McRae's perspective:

> Our generosity in allowing free public access for recreationalists [*sic*] has led to a lot of people assuming they are in a public place and that they have a right to lodge objections against farming practices and developments, if viewed from these places. After all these years of sharing with the public this beautiful place, we have been legally advised that it would be in our best interests to close off recreational spaces being presently accessed on Glendhu Station if a different interpretation is adopted in the new [district] plan.[38]

The *Southland Times* article did not include any walker's viewpoint on this closure. Glendhu Station subsequently underwent tenure review, with partly controversial – and some would say incomprehensible – results.[39] Rob Roy Track became open to the public.

Port Robinson Walkway, Canterbury

The Port Robinson Walkway follows a coastal strip situated southeast of Cheviot. The track is a DOC-approved walkway but apparently it has never been gazetted.[40] Originally it started at Gore Bay and ran southwards for 4.5 kilometres to the Hurunui River mouth.

The northern section, from Gore Bay to Manuka Bay, was permanently closed in 2001 owing to land slips. This closure lopped 1.5 kilometres off the walkway. A blogger questioned DOC's abandonment of this section:

> Prior to the Cave Creek tragedy (1995), the Department of Conservation used to maintain a walking track stretching from Gore Bay to the Hurunui River mouth. Signs, marker posts and rudimentary maintenance was done to keep the track in reasonable condition. Since that time, DOC appears only interested in projects that involve 4 lane wooden boardwalks and structures which support Centurion tanks and for fear of being sued or out of sheer bloody mindedness have abandoned many tracks which include our walkway [Port Robinson Walkway]. This may be a two edged sword the minus being that only the keenest and hardiest can tackle the northern section, but their reward is a natural setting and beauty unspoiled by the crowds.[41]

In about October 2004 it became the turn of the southern end of the walkway to suffer indignity. According to a report in the *Press*, a farmer Ted Phipps owned land at the Hurunui River mouth and had aspired to sell it to a property developer for $1 million.[42] The developer was contemplating a substantial project involving a village and shops. During informal discussions with the developer, DOC had expressed reservations about the scale of the development and its adverse effect on the natural character of the coastline. Phipps had reacted by cutting off public access to the Port Robinson Walkway, which began with a short section across his land before entering the Manuka Bay Scenic Reserve.

Local residents and fishers were angry that they could no longer walk from the Manuka Bay end all the way to the Hurunui River mouth. A

Manuka Bay resident said the walkway had been the 'jewel in the crown' of the area. Joan Murray, who had lived at the Hurunui River mouth for fifty years, said she was 'saddened to not be able to take her grandchildren for walks on the track'.[43]

DOC's community relations programmer, Gnome Hannah-Brown, said that DOC had 'no powers under the Walkways Act, which operated on a "grace and favours" basis, to compel Phipps to allow public access'.[44] DOC was investigating ways of restoring the access. Four years later, in November 2008, DOC's website indicated that the southern end of the walkway was still closed. Some reports said that the still-open parts of the walkway were overgrown and in poor condition.[45]

Mataihuka Track, Kapiti Coast

The Mataihuka Track is a popular walking track on the Raumati escarpment near Paraparaumu. Access to the northern end of this track used to be available to the public by crossing some private land. In April 2005 the *Kapiti Observer* and the *Dominion Post* reported that the landowner at the northern end of the track, Tony Christie, had withdrawn his permission for the public to cross his land. Someone had abandoned a burning car on his property and he had suffered several incidents of vandalism and wilful damage. He said: 'We now find it necessary to view any person on our land as trespassing and will be taking all available steps to prosecute any unauthorised person found on our property.'[46]

Mike Cardiff, the parks and reserves manager for Kapiti Coast district council, believed that Mr Christie had run out of choices. 'We have been working together to try and sort out some solution to the problems but have been unable to identify any that would be really effective.'

The northern end of the track would be permanently closed. Walkers would still be able to access the track from its southern end, but when they reached the northern boundary they would have to retrace their steps.

In April 2008 a group walked the Mataihuka Track as one of thirty walks being carried out nationwide in honour of the late Sir Edmund Hillary. The northern end of the track remained closed.

Venture Cove Walkway, Kaiteriteri

Towers Bay lies just north of Kaiteriteri, which is north of Motueka. Until late 2006, there was public walking access to Towers Bay by way of the Venture Cove Walkway, which dropped steeply down through beeches and kanuka to the beach. This popular track, a part of an overland route from Split Apple Rock Beach to Towers Bay, had existed for about fifteen years. It had been developed by a subdivider specifically for public use, and it provided the only twenty-four-hour access to the bay (apart from by boat).[47] Alternative pedestrian access, along the rocky foreshore from the neighbouring Split Apple Rock Beach, was only usable at low tide; this low-level route could create problems and danger if people got caught by the incoming tide. Venture Cove Walkway featured in a Tasman district council guidebook, *Walk Tasman*, which said that 'right of ways, established with the new Tokongawa subdivision, give public pedestrian access to this wonderful coast'.[48]

Part of the walkway passed close to a holiday home owned by an American millionaire, Alan Trent. In about December 2006, he taped off a piece of the walkway where, unknown to most users and to Tasman

district council, it illegally crossed a corner of his land, having deviated from its legally correct route (an easement).[49] On 16 December the *Nelson Mail* published the following letter and district-council response:

> Sir, On behalf of the many walkers who regularly use the Venture Cove Walkway at Split Apple Rock would the Tasman District Council [TDC] please clarify the situation as regards public access? Alan Trent … is claiming that the walkway is not public. The TDC Walk Tasman brochure (walk 20) states that this is a private road but has pedestrian access for the public. I am sure that the walkway from the road end to the beach is public but would appreciate TDC clarification of this.
> Barry Jenkins, Riwaka, December 6.
>
> Tasman District Council chief executive Bob Dickinson replies: Tasman District Council has the benefit of a right-of-way on foot over Lot 47 DP16820 and other land in Venture Cove that provides public access from the end of Venture Cove Rd to the strip of Crown land adjoining the coast. The rights-of-way are registered on the title of Mr Trent's land. We have not been notified by the property owner of any issues or problems with the walkway or the legal right-of-way.[50]

But there were, in fact, serious problems with the public right of way. Three months later the *Press* reported a considerably modified district council response. The council's community services manager, Lloyd Kennedy, had confirmed that Trent was 'well within his rights to block off the walkway, which passed over his land'.[51] The legally correct route, an easement, descended a steep cliff face and was impractical. The council was investigating ways of realigning the track. It was contracting a surveyor to check Trent's survey points. But the corpse of the Venture Cove Walkway would probably not be resurrectable.

In January 2008, Lloyd Kennedy reported that, with the assistance of two landowners, council staff had been investigating alternative access to Towers Bay. It was too early to judge the likelihood of success.[52]

Waiheke's Walkways: a Survival Story

This is a happier story than most of the preceding ones. In March 1998 the Waiheke Island newspaper *Gulf News* carried an article titled 'Waiheke's Walkways Are Disappearing'. According to Faye Storer, the deputy chairperson of the Waiheke community board of Auckland city council, some of the island's walkways were 'being lost because they [were] not properly marked'.[53] Unmarked walkways were not used, and they quickly disappeared. When these neglected walkways crossed private land, some landowners actively discouraged people from using them. Something needed to be done about Waiheke's walkways before it was too late.

The cost of signage usually came out of the community board's Small Local Improvements Projects fund, but as this fund of about $180,000 was needed for many other projects around the island, the walkways were at risk of remaining unsignposted. Auckland city council allocated

$30,000 a year for the maintenance of existing walkways and street gardens, but this would not cover the signposting of existing walkways or the development of new ones. Patrick Thorp, the city council's parks officer for the Hauraki Gulf islands, had requested $80,000 for walkway development from the council's capital expenditure, but no decision had been made.

Faye Storer was sick of waiting for something to be done. 'We just cannot wait, we want something to be done now.'[54] She believed walkway signs were just as important as road signs and that the city council should pay for them as a service-level item. Walkway signage deserved a higher priority than what it had. It is relevant to note, here, that in England and Wales public footpaths must by law be signposted where they leave roads:

> Highway authorities have a duty to put up signposts at all junctions of footpaths, bridleways and byways with metalled roads. The signs must show whether the path is a footpath, bridleway or byway and may also show other information such as destination and distance. Highway authorities also have a duty to waymark paths along the route so far as they consider it appropriate.[55]

Storer and a few other residents were concerned about the likely fate of five public walkways on some Church Bay land that was being subdivided. Reportedly the promotional papers being used to sell the sections did not show the walkways. (The article did not describe the legal basis of these walkways.) A small group of apprehensive walkway-protectors went to the Church Bay subdivision and marked out, in a preliminary way, the routes of the five walkways. One Waiheke resident, Peter Green, said: 'Visitors to the island should be able to see where each path is and be able to use them without having to climb an electric fence or face a Rottweiler.'[56] Walking was part of the attraction of Waiheke and it was to be encouraged, not made difficult.

That was 1998. We can fast forward to the success story. Ten years made a welcome difference to the security and promotion of the walkways on Waiheke. In December 2008 the Auckland city council website portrayed Waiheke as an island begging to be explored, and it described twelve waymarked walks for that exploration. Graded as 'Walking Track', 'Tramping Track', or 'Route', these mainly circular walks took in forest reserves, scenic reserves, foreshore, clifftops, farmland, archaeological sites and even vineyards.[57]

Faye Storer served as the councillor for the Hauraki Gulf Islands ward of Auckland city council from 1998 to 2007. I am indebted to her for the following detailed update on how some Waiheke residents managed to secure, improve and expand the island's network of walking tracks:

> 19 December 2008
> Waiheke Walkways
> The Waiheke Walkway network has grown steadily over the past ten years. The original and on-going (through a financial contributions policy) subdivision of Waiheke has provided much of the basic

structure with additional walkways being constructed on existing reserves, coastal reserves and newly purchased or donated land.

During the days of the Waiheke County Council (pre-1989) many of the existing reserves and walkways were not maintained because of budget restrictions. This meant that a large percentage of later work on the walkways by the Waiheke Community Board was 'catch-up' and 'discovery' work – identifying, clearing and constructing walkways on existing Council land. The last of these in western Waiheke – the Makora/Kiwi track, Logans Track and Newton Rd to Goodwin Ave – are only now being completed. One of the biggest, and most disappointing, difficulties with these retrospective projects is the resistance of some neighbours to what constitutes the opening up (or re-opening) of public land. Neighbours cite safety and fire risk as reasons why the land should remain undeveloped. However, private encroachment on public land and illegal rubbish dumping are usually related to the non-use of the land. With regard to budgets, the question is to whether these projects should be regarded as maintenance or upgrades with maintenance coming from Council's parks budget and upgrades from the Community Boards' annual SLIP's (small local improvement projects) allocation.

As you state, the recovery of the walkways is largely due to the efforts of locals. Over a period of fifteen years, I worked closely with a former Chairman of the local branch of Forest and Bird and with successive Community Boards. It quickly became evident to me that neither existing nor new works were being undertaken because of the lack of a dedicated budget. While Auckland City has assisted greatly by appointing a parks officer for the Hauraki Gulf and, in later years, with marketing the walkways, the bulk of the funding has come through the Waiheke Community Boards SLIPs budget. Initially, this fund was primarily spent on footpaths, bus shelters and small roading projects. However, from 1998, as councillor for the Hauraki Gulf, I concentrated on accessing money for these projects from other city-wide budgets. This left the majority of the SLIP's budget for parks related projects – creating and upgrading walkways, weed control and tree planting. Weed control often doubled as walkway creation – as the weeds were removed, tracks were made. Successive Community Boards have enthusiastically supported the walkway network for over ten years now. While Council's citywide budgets now cover parks maintenance and asset replacement, 'upgrades' have come from the local fund.

As parks spokesperson for the Community Board, I helped ensure that the majority of financial contributions (FC) from Waiheke subdivisions were taken as land (both areas of reserve and walkways). Auckland City then ring-fenced any cash taken as FC for local parks purchase and the Community Board has initiated the purchase of several properties over the past few years. These are all assessed for their contribution to the open space network.

The walkways have become steadily more popular over the years with some visitors coming to Waiheke specifically for this purpose. Sculpture on the Gulf (Waiheke's bi-annual outdoor sculpture exhi-

bition) has helped popularize the Church Bay coastal walkways. The Waiheke Walkways brochure is now designed and funded by the marketing department of Auckland City but follows the same basic layout that we created locally many years ago. The walkways are presented by area but they also relate to different experiences with the network made up of both off-road and on-road stretches passing through residential, rural and coastal areas.

Some years ago the Forest and Bird representative and I helped create a classification system which categorized walks as walkways, walking tracks, tramping tracks and routes. While this gave people an indication of the infrastructure they could expect on a particular walk and was designed to be user-friendly, it also assisted with the allocation of budgets. At one stage Auckland City had a policy requiring a very high standard of walkway and the Community Board was faced with concentrating on a very small portion of the network to bring it up to standard and closing the rest of it. In addition, we were interested in acquiring some rougher areas of land for development as rural and coastal walkways which clearly did not meet the standards and would require a large capital investment to construct. This classification system helped us avoid the potential suburbanization of the walkway network. It also ensured both the continued expansion of the network and the provision of a variety of experiences. Later, we worked with local and City planning staff to implement conditions of consent for developments and subdivisions which included the owner funding the initial construction of any walkways over their land as part of their FC. This also assisted with the expansion of the network by overcoming any Council resistance to construction costs, although on-going maintenance still needs to be taken into consideration and factored into Council's parks budgets.

After a concentrated period of reclaiming the walkways and continuing to expand the network, the Community Board finally funded a SLIPs project for signage and an audit was done of all outstanding signs for reserves and walkways. Installation has recently been completed and is complemented by a large number of wooden benches, seats and picnic tables donated by a local benefactor. It has always been my philosophy that if the walkways are, at the very least, signposted at each end and an initial route roughly cleared and marked, then the public will take ownership of the area and ensure that public access is protected and enjoyed. An upgrade can always be made later if necessary.

There have been some incidences of private land owners moving the boundary pegs which mark public access adjacent to their land and others where private landowners have actively discouraged the public from using public land by planting or fencing. Accurate surveying is then required and has created a pressure on funding. Where surveys have been completed there has been both private encroachment onto public land and public encroachment onto private. This requires either re-construction of existing tracks or consideration of boundary changes. As private encroachment onto

> public land can represent millionaires of dollars (in real estate terms) of lost land area and opportunity, I approached the Property Department of Auckland City to explain the implications for the Council's property portfolio. As a consequence, Council later acknowledged that there is a city-wide problem with private encroachment and allocated some resources for future surveying. Another difficulty with not identifying, maintaining and encouraging the use of public walkways has been the tendency of some adjoining landowners to take over the maintenance of council land. While this can be well intentioned, it generally creates the impression of an extension of private land. On occasion, subsequent property owners have later attempted to purchase the public area from Council because of the perceived negative effect of public access on their amenity value.
>
> While the walkway network in western Waiheke is now substantially completed (other than any financial contributions from further subdivision), there are 'paper roads' in the more rural, eastern part of Waiheke that could still be developed for public use. This will be something to look forward to.[58]

Mainly gradual and welcome progress, then, marred by the curse of the 21st century: safety alarm out of all proportion to reality. I have unearthed an example of the resistance that Waiheke's walkway promoters were still facing. At a meeting of the Waiheke Community Board in January 2008, a retired couple from Makora Avenue, Oneroa, submitted that a proposed walkway near the back of their property would expose them to possible intruders and burglars. Here in one short submission was Chapter 17 of this book – the rural-crime and walking-access debate – all over again:

> Makora Ave has a lot of single women, disabled and elderly couples living alone. Our privacy and safety will be compromised if the back[s] of our properties are opened up to the rest of New Zealand. [Waiheke is no longer] the safe little island that it once was and concern for the safety of local residents should be a priority. Opening this area to the public (just because it is there) is thoughtless and shows absolute contempt for affected residents.[59]

Faye Storer's comprehensive update is what she called 'a brief explanation (the short story!)'. The long story – the ups and downs of Waiheke's walking tracks since the 1970s – would fill a small book. It would need to include a look at conflicts of interest between individuals and the public at large, and an examination of the Stony Batter access road saga, a nineteen-year legal contest over the status of a public road giving access to a historic reserve.[60]

Vanished Tracks – Conclusion

Except for one mention, this appendix has not been about unformed public roads that have never been used. Nor has it discussed other 'undiscovered' Queen's Chain strips that await signposting and waymarking. Nor has it dwelt on the enormous potential of New Zealand's farmtracks. It has focused sharply on walking tracks that have physically existed

and been open to the public, but which have then been closed, either temporarily or permanently.

In politics, knowledge is power. To achieve public foot-tracks that are permanent, track advocates must understand the causes of impermanence. The more that we walkers know about why we lose tracks, the better able we will be to lobby for policy changes that will prevent track losses. The examples in this appendix, together with numerous references earlier in this book, have illustrated some of the circumstances behind the closures.

When we look at the loss of foot-tracks on DOC-managed crown land, there is some reliable data available, such as in the documentation of the Recreation Opportunities Review. DOC has a finite budget for track maintenance, and it closes or ceases to maintain some tracks when they are infrequently used and their projected maintenance costs are considerable. The decision-making behind these closures or downgradings involves both objective and subjective criteria. DOC's closures and downgradings are sometimes controversial. Also, as well as notified closures, there may be other, more insidious processes at work, causing track losses that do not show up in the statistics. One such process is map censorship, which was discussed in Chapter 27 and which may or may not occur.

In looking at the disappearance of publicly open foot-tracks on private land, this appendix has described seven instances. My choice of examples was unsystematic, dictated by whatever news reports I had chanced upon. Out of the seven cases, four involved landowners who changed their minds and decided to close permitted tracks. In the case of Venture Cove Walkway, it seems that the landowner had never given permission for the walkway to cross his land. In the case of Berwick Forest, a new landowner allowed the track network to fall into disrepair; this landowner also restricted access to by permit only.

*

The loss of foot-tracks is not a problem unique to New Zealand. Nor is it confined to recent times. Some other countries have had more practice in protecting public foot-tracks than New Zealand has had; our walkers and access leaders could maybe learn from them. Reproduced below are two letters written to *The Times* of London in the 1890s. They show that public footpaths were matters of considerable concern.

Regarding the legal protection of footpaths, the letters provide two different perspectives. The first letter shows that, even as late as 1892, the laws that had evolved to protect public footpaths were still skewed, feudally, towards the landowners. It also demonstrates that these public rights of way across fields were important for aesthetic reasons as well as utilitarian ones:

> FOOTPATH PRESERVATION.
>
> TO THE EDITOR OF THE TIMES.
>
> Sir,—An important point of law bearing on the preservation of footpaths has recently come to my notice, which it would be well to bring to the knowledge of the public with a view to its undergoing alteration in the next Session of Parliament.
>
> In a country parish with which I am well acquainted the largest landowner desired to close one footpath and divert another. They

were of small moment to many of the resident gentry, who, as a rule, drive to their houses, and have parks, large gardens, or wood-paths in their own possession. But they formed pleasant walks for the poorer people, and as they lay between the village and the station they were much frequented. The feeling, therefore, among the poor was strongly in favour of keeping the paths. A vestry meeting was called to consider the matter, and on a show of hands the proposition to close and divert the paths was lost. A poll was thereupon demanded on behalf of the landowner, and a day appointed on which it was to be taken. Residents in the neighbourhood consulted authorities in London, as they could hardly believe it possible that the votes on such a subject would be reckoned according to the property of the voter. That is to say, that every ratepayer assessed under £50 would have one vote only, and that every £25 additional assessment gave an additional vote up to six votes. It seemed hardly possible that in a matter involving no expenditure of rates a preponderance of weight should be given to the richer voters, who are precisely those who are least interested. But this proved to be the case, and the statute, which was doubtless intended to preserve ratepayers from unreasonable burdens, is available to enable them to vote away the birthright of their poorer neighbours. Surely it is important that the law should be altered.

In the case above referred to, an enthusiastic open-air meeting was held by the villagers as a protest against the scheme, and at the poll 75 of them recorded their votes against it; but 39 richer people, whose votes counted as 103, overweighted them, and the highway board has decided that its function is purely ministerial, and that it is bound to consider that the 'wish of the inhabitants' is in favour of the proposed alteration. What the justices and the Court of quarter sessions will do remains to be seen. But the method of measuring local opinion seems to need alteration.

These field-paths are, so to speak, the inheritance of the landless people, and it would seem an anomaly to give to the larger owners a preponderance of weight in deciding about these thin lines of path, which afford pleasant ways, and open a sight of wood, and field, and stream, [and which are] highways of the Queen, and therefore of the least of her subjects, growing every year of greater value to them, yet the number of which is yearly being diminished. Surely the care of them should commend itself to the attention of our legislators, for [these footpaths] are among England's best possessions, and should be kept for her people now and in the years to come.

I am, Sir, your obedient servant,

OCTAVIA HILL.[61]

The second letter concerned the diversion of a public footpath beside the Thames, alleged by a previous correspondent to have been undertaken with insufficient public consultation. The writer argued that the procedures that protected public footpaths were adequate:

THE THAMES-SIDE FOOTPATH.
TO THE EDITOR OF THE TIMES.

Sir,—It would be interesting to know on what grounds Mr. Cook bases his assertion, with reference to the diversion, &c., of a footpath, that 'the certificate of two justices and the enrolment of that certificate at quarter sessions have grown to be mere formalities.' If he will make inquiries your correspondent will find that this is very far from being the case, and that, if any public interest is taken in the matter, it is practically impossible nowadays to divert or close a footpath against the wishes of the public. May I state what is the necessary procedure, illustrated by an example which occurred three months ago in Mr. Cook's neighbouring county of Berks? A certain bridle-path ran for some two and a half miles through three parishes. It was proposed to close this, and to substitute for it a path which was indisputably shorter and more convenient to the public. The matter was brought before the three parish councils, by each of which it was approved of. It was then the subject of a petition to the rural district council by which the question was thoroughly discussed, and after due consideration the surveyor was instructed to apply at petty sessions for the necessary certificate. At the sessions two justices, of whom I was one, were appointed to view the road. A full report of the proceedings having appeared in the local papers, we on an appointed day went over every yard of the old path and of that which was proposed to be substituted for it, attended by the district surveyor and others. Having come to the conclusion that the diversion would be to the advantage of the public, we made our report and certified accordingly. After a certain interval regulated by statute, every detail of the proposed diversion was advertised in the local papers on three occasions, at intervals of a week; and after publication of other notices required by statute, the application was made at quarter sessions, and, in the absence of opposition, the diversion was allowed.

Now at any one of these stages objections might have been raised, and there can be no doubt that if the 'Thames path' case had been allowed to go to quarter sessions, the closing of the path would not have been permitted had it been shown that the proposal was to the disadvantage of the public …

I remain, Sir, your obedient servant,

CHARLES G. EDWARDS.[62]

Hold on tight now, to return to 21st-century New Zealand. Setbacks such as the closures described in this appendix are not entirely a bad thing – so long as walkers and access leaders learn from them.

Regarding DOC-managed foot-tracks on crown lands, one of the aims of DOC's Recreation Opportunities Review of 2002–4 was for DOC 'to be able to provide the public with a network of visitor facilities [such as tracks] that are … *sustainable* – managed into the future within the available resources'.[63] So, once DOC has acted upon all the decisions reached by the Recreation Opportunities Review, there should be no need again for another selective scrapping of a considerable number

of existing tracks. Any new DOC proposals to close tracks, which will be rare, should be open to public scrutiny. Reasons for closures may be disputable. (In England, seven prescribed bodies, such as the Ramblers' Association, automatically receive copies of modification and public path orders.[64]) Tracks that DOC has already disowned should not be deleted from the maps; they can be shown as unmaintained routes.

Regarding the loss of foot-tracks on private land, the main devil has clearly been informal access arrangements. The 2007 Acland report alluded to this:

> The Panel is aware of many access initiatives by councils and community or recreational groups throughout the country. The Panel commends and encourages these initiatives. The Panel is concerned, however, that because community initiatives often emphasise action they do not consider the cost of 'back office' needs such as the legal paper work. A result is that some new voluntary access arrangements may lack endurance and legal certainty (Principle 1). The access organisation could help strengthen those arrangements.[65]

In doing so, the New Zealand Walking Access Commission will need to stress that 'enduring' means permanent, and that 'permanent' means for ever, or at least as close to for ever as New Zealand law can get. Walkers and officials should not consider twenty years to be a long life for a public foot-track. But at present, twenty years sometimes seems to be viewed as a pensionable old age for a New Zealand walkway.

Consider, for example, the award-winning New Plymouth Coastal Walkway, which might have been better called a path as it is a concreted strip. In about February 2005 a central section of it was officially handed to Ngati Te Whiti hapu.[66] The Maori land court had ruled that this land should be returned to the hapu. Only a small area, just 6516 square metres, it nevertheless holds special cultural importance for Ngati Te Whiti as it formed part of the Puke Ariki pa, built in the 1600s.

Although this change of ownership occurred, the land remained leased to New Plymouth district council. When asked about the long-term future of this popular piece of publicly used land, Shaun Keenan, an interim trustee on the Puke Ariki Land Trust, said that this was an issue for the permanent trustees to address. He said:

> The termination date of the lease with council is 2035, so there's security for both Ngati Te Whiti and the wider New Plymouth community. I hope things don't change. Its current use is very important to New Plymouth residents and [it is] a drawcard for visitors.[67]

It would appear, therefore, that the continued use of this section of walkway after 2035 will depend on the renewal of a lease, which will require the mutual agreement of the lessor and lessee. This agreement might hinge upon the willingness and ability of New Plymouth district council to pay whatever rent is set for the extension of the lease. History is full of occasions when such accord has not been reached. Local authorities have plenty to do without having to renegotiate walkway leases. Fix-term leases do not constitute high-quality access.

Appendix 3

A Gazetted Walkways Timeline

This chronology of gazetted walkways collects dates and events from throughout this book. The sources were given at the earlier occurrences.

May 1967
At the annual general meeting of Federated Mountain Clubs, the Alpine Sports Club of Auckland proposes a 1,200-mile national trail. Federated Mountain Clubs appoints a subcommittee 'to investigate the feasibility of a scenic walking route'. Initially the idea is to plan one long-distance trail from Cape Reinga to Bluff.

October 1971
Duncan MacIntyre, the minister of lands in the Holyoake government of 1966–72, who has been a farm-owner and a provincial Federated Farmers delegate, proposes a national network of walkways.

7 December 1973
The first two walkways are opened, anticipating the New Zealand Walkways Act of 1975. One of them is Mount Auckland Walkway, which would still exist in 2010. Although later approved by the Walkway Commission it would never be gazetted and therefore would not acquire the legal status of walkway under the New Zealand Walkways Act 1975 or subsequent similar acts.

The other of these first two walkways is Colonial Knob Walkway in Porirua. According to one source, it would not be gazetted until 1991. It would still exist in 2010.

11 April 1975
Matiu Rata, the minister of lands, introduces the New Zealand Walkways Bill to the House. It is clear from this first parliamentary debate on the bill that the government's emphasis has shifted from building a national trail to developing local walks.

10 September 1975
The New Zealand Walkways Act 1975 comes into force. It recognises the importance of rural walkways for recreational access to the outdoors.

The act sets up the New Zealand Walkway Commission as the national administering body, serviced by the Department of Lands and Survey. The seven-member commission comprises three representatives of government departments, two representatives of local authorities, and two of farming and recreational interests. The act leads to the formation of twelve district walkway committees that will plan, transact the access for, and arrange the building of the walkways. The act does not provide for any payment to a landowner who agrees to an easement or lease.

10–12 May 1979

The New Zealand Walkways Seminar, the first national walkways conference, is held at Lincoln College. The New Zealand Walkway Commission, which has been established for three years, has opened sixteen walkways. Delegates report mixed success in negotiating with landowners. Many landowners are reluctant to agree to easements.

Several delegates disagree with each other on the need for gazettal of a walkway on privately owned land. There is general agreement that it ought not to be necessary to gazette walkways that are on publicly owned land.

In response to these influences, informal access arrangements and non-gazettal are rapidly becoming part of the Walkway Commission's approach to gaining access over private land. In accepting or tolerating this informality, the commission is not administering the New Zealand Walkways Act 1975 in the way that parliament intended.

1982

The *AA Book of New Zealand Walkways* is published. It describes the sixty-four walkways that the commission has 'officially opened'. Only about nine of these have been gazetted; some of the ungazetted ones would be gazetted later.

Forty-eight of the sixty-four walkways are walks of ten kilometres or less, typically taking three or four hours. Each walkway receives a classification of Walk or Track or Route (or a combination of two of these).

1987

Lansdowne Press publishes a revised edition of its guide, splitting it into two volumes, *AA Guide to Walkways, South Island, New Zealand* and *AA Guide to Walkways, North Island, New Zealand*. They contain a total of 116 commission-approved walkways, nearly twice as many as when the original edition of the book was published in 1982.

1 April 1987

The Department of Lands and Survey is disestablished. The New Zealand Walkway Commission remains precariously in existence but is absorbed into the Department of Conservation.

February 1989

Doubts about DOC's likely dedication to walkways precipitate the First New Zealand Walkways Conference. Delegates express concern about the government's plan to disband the New Zealand Walkway Commission and to add walkways to the numerous responsibilities of the yet-to-be-constituted New Zealand Conservation Authority (NZCA) and regional conservation boards.

Hugh Barr reviews the achievements of the New Zealand Walkway Commission, which has been negotiating access for fourteen years. Up

to mid-February 1989 about 132 walkways covering more than 1350 kilometres have been established. But many of these walkways remain ungazetted and some of the ungazetted ones are based on informal access agreements.

1990

The New Zealand Walkways Act 1990 abolishes the New Zealand Walkway Commission and every district walkway committee. The New Zealand Conservation Authority becomes the central coordinating body responsible for controlling the administration and promotion of walkways. From being the responsibility of a customised, single-purpose organisation, the furtherance and management of walkways becomes merely one responsibility of many for the NZCA.

The new act retains the general purpose of the 1975 act, being to establish 'walking tracks over public and private land so that the people of New Zealand shall have safe, unimpeded foot access to the countryside …'

25 September 1991

In response to a heated access controversy over the Otago Peninsula, the Otago Peninsula Public Access Working Party recommends to Dunedin city council a plan for the development of walking routes. The plan proposes the short-to-medium-term development, such as signposting, of legal roads for recreational access. It also foresees a longer-term need for a more comprehensive network 'involving a coastal route around the Peninsula with links to roads, high spots, and other places of public interest'. For this longer-term need, the plan recommends 'that there be ongoing negotiations with landowners to extend the network through provision of walkways under the … Walkways Act 1990'. But no gazetted walkways would be established, to this day (2010).

1995

The Department of Conservation publishes its New Zealand Walkways Policy. The policy sets priorities for the development of new walkways. The two highest priorities are the establishment of walkways close to urban population centres and the establishment of walkways over private land.

February 1998

Forest & Bird reports that some members of the New Zealand Conservation Authority consider that the national walkways system needs a shake-up. They say that the Department of Conservation is insufficiently resourced for and committed to walkways and that the walkways legislation is falling into disuse.

2000

In an interview, Hugh Logan, the director-general of conservation, confirms that DOC is creating few if any new walkways. He says that the department is 'very reluctant now to be drawn into new walkway developments'. After 2000, no further gazettals of walkways would occur until 2007.

April 2001

Geoff Chapple concludes that the New Zealand Walkways Act 1990 'was probably moribund even as it reached the statute books'.

January 2003
Jim Sutton, the minister for rural affairs, sets up the Land Access Ministerial Reference Group.

August 2003
The Acland report says that there are over 150 walkways in New Zealand. A large number of these walkways have been approved by the former New Zealand Walkway Commission or by DOC, but many have not been formally surveyed or gazetted. For example, Canterbury Conservancy has twenty-five approved walkways but only one has been formalised under the New Zealand Walkways Act 1990.

The report says that the Department of Conservation's implementation of the New Zealand Walkways Act has been heavily deficient. The ministerial reference group considers that the Walkways Act and its administration need a fundamental review.

September 2003
The New Zealand Conservation Authority publishes a revised edition of a 1984 booklet, *New Zealand's Walkways*. The new edition gives a figure of 'over 125 walkways totalling about 1200 kilometres'. If these numbers are correct, then since the 1989 walkways conference the total length of approved walkways has fallen by about 150 kilometres.

Regarding the umpteen foot-tracks that are not DOC-approved walkways but which are often called walkways, there are no national statistics with which to measure nationwide developments.

March 2007
The 2007 Acland report says that there are 126 walkways throughout New Zealand (a figure taken from *New Zealand's Walkways*, 2003). It says that thirty-one are gazetted and that only these can be considered legal walkways under the Walkways Act. (The figure thirty-one would prove to have been slightly low. Information provided by DOC to MAF in 2008 would indicate, still with some uncertainty, that thirty-six walkways had been formally established by notice in the *New Zealand Gazette*.)

The report recommends that the administration of the New Zealand Walkways Act 1990 be transferred to the proposed New Zealand Access Commission.

The consultation panel advocates a wholly negotiatory approach for new access over private land, accompanied by the compensating of landowners who agree the necessary easements. The panel proposes that the money for the compensation should come from a contestable fund for access. If the government adopts this idea, paying for the public rights of way will depart radically from the approach taken under the New Zealand Walkways Act 1975 and the New Zealand Walkways Act 1990.

5 April 2007
Bruce Mason calls the panel's walkways vision 'a waste of time and effort'.

8 April 2008
The government tables the Walking Access Bill. A large part of the bill merely re-enacts and modifies the provisions of the 1990 act. But the bill also seeks to create the New Zealand Walking Access Commission, a crown entity with a far wider job description than the New Zealand Walkway Commission had. The creation and administration of walkways,

which occupies the bulk of the bill when measured in words, will be only two of the Walking Access Commission's thirteen functions.

2 July 2008

In response to a request for information, the Ministry of Agriculture and Forestry informs the author that its 'current best information from DOC is that there have been 36 walkways formally established by gazette notice'. Until now the number has been uncertain because DOC's public information, on its website and in its 2003 booklet *New Zealand's Walkways*, did not distinguish between gazetted walkways and those that were treated as walkways even though they had not been gazetted.

30 September 2008

The Walking Access Act 2008 comes into effect.

13 October 2008

Damien O'Connor announces the names of eight people he has appointed to the board of the Walking Access Commission. The chairman is John Acland, who chaired the Land Access Ministerial Reference Group, the Walking Access Consultation Panel and the Walking Access Advisory Board. Acland has been 'the vital glue that held the various strands together'.

20 October 2008

The board meets officially for the first time, about two weeks before the general election. It discusses the need for a memorandum of understanding between MAF and DOC (later modified to be between the Walking Access Commission and DOC) on the administration of gazetted walkways. This memorandum will not be completed until DOC confirms the list of gazetted walkways whose administration the commission is responsible for. The commission needs the details of the easements and leases connected with these gazetted walkways. It also needs to know the controlling authority of each walkway.

Ungazetted walkways that have been managed by DOC will remain the responsibility of DOC.

7 May 2009

In response to a request for information, the Walking Access Commission provides the author with a draft spreadsheet that contains brief details of a possible thirty-nine gazetted walkways: their names, whether on private land or public conservation estate or a mix of these, lengths, and year of gazettal. The data includes a number of queries and comments, such as 'Needs easement or lease' (five occurrences), 'No easement or lease invalid?', 'Gazetted?', 'Check location – unformed road/private land?' and 'Nelson City council controlling authority?'.

25–26 May 2009

After a site visit in April to Waitakere city council's proposed extension to Te Henga Walkway, the board of the Walking Access Commission agrees that the commission would be willing to register the walkway extension in accordance with the Walking Access Act 2008. This walkway extension looks likely to be the first new gazetted walkway under the act. (This wasn't to be. A change of mind by a landowner would stall this development for several years.)

30–31 July 2009
The minutes of a Walking Access Commission meeting record that 'it has been a challenge to obtain a stocktake showing what walkways have been gazetted, what other walkways DOC has, the location of the legal documents and walkway standards and processes'.

October 2009
The commission's annual report mentions that it has been 'working with DOC to gain further information on gazetted walkways and other walkways. This is a time-consuming process as records are incomplete yet it is needed for the NZWAC to understand the extent of existing walkways and possible issues associated with them.'

19 December 2009
Bruce Mason of Recreation Access New Zealand posts on YouTube a one-hour video about the stopping of Bushey Park Road in Otago and the negotiation of alternative access to and along the Shag River. The videos compare the access characteristics of unformed public roads with those of esplanade strips and access strips. Mason argues that easements over private land provide inferior public walking access to that of unformed public roads. The video shows that seven small pieces of new unformed road, dedicated under section 114 of the Public Works Act 1981, formed part of a satisfactory resolution of the Bushey Park Road affair.

13 April 2010
In response to an information request from Hugh Barr of CORANZ, the Walking Access Commission provides him with its latest list of gazetted walkways that existed immediately before the commencement of the Walking Access Act 2008. The list contains thirty-six walkways. There are some remaining uncertainties that the commission is trying to resolve.

14 June 2010
The board of the Walking Access Commission approves a format for walkway easements for walkways that are to be gazetted.

1 July 2010
Bing Lucas, the chairman of the New Zealand Walkway Commission, had opened the Queen Charlotte Walkway in 1983. Taxpayers' money had been spent on building and improving it. For twenty-five years, until 2008, access to this track had been free, as for all other walkways approved by the Walkway Commission or by DOC. But 20 per cent of the route is on privately owned land, access to which had never been formalised. Since 2008 the owners of the privately owned sections had asked users to pay a $5 voluntary access fee. These owners now start charging an entry fee of $12. Tickets are sold by water-taxi operators and at tourist accommodation and information centres.

2 August 2010
The Walking Access Commission notes that it has no responsibility for the day-to-day administration, construction and physical maintenance of walkways unless it decides to take on the role of controlling authority.

22 November 2010
Mark Neeson, the chief executive of the Walking Access Commission, advises the board that the commission has no liability for ungazetted

walkways. Such walkways are not legal entities under the Walking Access Act. They are simply tracks for which the landowners are responsible.

4 December 2010

The Gibbston community association opens the 8.5-kilometre Gibbston River Trail along the Kawarau River. The community association has negotiated easements with nine landowners. The legal arrangements have used a standard Department of Conservation easement for public access. This legal formalising may provide enduring access without the association taking steps to make the track a gazetted walkway.

Appendix 4

Mountain-biking Access to the NZ Outdoors

You might think that I am shoving this subject into an appendix as an inconsequential afterthought. You would be mistaken. The question of cycling access to the countryside, and especially on unformed public roads, was on many bikers' minds throughout the Acland consultations of 2003 and 2006. Also, concurrently with the Acland enquiries, mountain-bikers and their advocates were tirelessly campaigning for cycling access to a few selected walking tracks in the national parks: a special challenge, not faced by walkers. This appendix will deal with these two matters separately.

A third matter of interest for cyclists, not looked at by the Acland panels, was the policies governing mountain-biking on DOC-managed lands other than national parks. These policies were contained in Guidelines for Use of Bicycles on Tracks Managed by the Department, a 1994 document that in 2008 was still current.

A fourth issue was the question of paying to take part in recreational cross-country cycling trips over farmland. To illustrate and query this practice, I will discuss the access aspects of some recent events on the Otago Peninsula. Some notes about mountain-biking access in Scotland conclude this appendix.

Cycling and Acland One

In January 2003 Jim Sutton's terms of reference for the Land Access Ministerial Reference Group explicitly excluded mountain-biking from most of the group's investigations:

> In [carrying out its enquiries], the following constraints apply for any consideration of access to private land:
> - recreation means by foot only – it excludes vehicles, mountain bikes or horses.[1]

This restriction set the pattern for the first stage of the government's look at access to the outdoors. In view of the immense complexities that the reference group's subsequent enquiries into recreation on foot revealed, perhaps the exclusion of vehicles, bicycles and horses was wise. Even so, criticism of these exclusions became an ever-present complaint on the edge of the access debate. It was obvious, for example, that sooner or later the government would have to examine the use of unformed public roads by motor vehicles, bicycles and horses. It was equally obvious that the mapping and waymarking of unformed public roads could carry considerable spin-off for recreational cross-country mountain-biking.

Bicycles, Unformed Public Roads, and Maps

Many of the issues surrounding walking access applied equally to cycling access. This was especially true of the issues surrounding unformed public roads. It was also true of the need for access maps that covered the whole of New Zealand. Cyclists' need for access maps is illustrated by the following account of a bike ride in Dunedin, which was part of a submission to the ministerial reference group in May 2003:

> Each day's ride is a little drama, with its ups and downs both of geography and of mood. So I come hammering down the last, easier section of Halfway Bush Road, full of the joys of gravity – and I overshoot a crucial left turn by one kilometre. The 1:50,000 topographic map shows a junction, about 300 metres northeast of the water tank; from this junction the map shows a road heading southeast, an obvious connection between Halfway Bush Road and Abbotsford. The map symbol indicates a 'Narrow road'. The orange dashes indicate 'Road Surface – metalled'.
>
> Having realised my mistake, I turn round and grind back up the hill to where the turn-off should be. Zilch. Sweet fanny adams. Except for a locked gate with a grassy, ancient-looking farmtrack beyond it. No notice on the gate. No track-marker. I recheck the map. Is the farmtrack private or public? Shit knows. The presence of a road on the topo map does not imply that it is a legal road. Why, then, is there no notice on the gate, indicating private land? You need to become a road-status researcher to complete the simplest bike ride. This uncertainty does not support and stimulate outdoor recreation. These thoughts churn dishearteningly. I am annoyed. It is ten past one. Either I risk trespassing – and, according to one critical observer, New Zealand has some of the harshest trespass laws in the world – or I miss today's AOK ride. For a country that places importance on outdoor recreation and which promotes outdoor tourism, this access situation forms an acute inconsistency.
>
> Arrgh … bugger it. I lift the bike over the gate and head off down the well-defined grass track. The smooth surface provides effortless cycling. Flocklets of sheep scatter to each side, although I'm trying not to startle them. At one point the gated track becomes faint, and the way ahead is not obvious. I meander down to the right, a gamble, and reach a hard-surfaced farmtrack that takes me past farm buildings. A kennel of dogs are performing Tchaikovsky's Canine Concerto, specially for me. I press on, listening for the inevitable

> 'Oi, you!' or gunshot. My luck holds and I clamber over a last gate. The back of the gate displays a notice: ABBOTSROYD FARM. PRIVATE PROPERTY. NO TRESPASSING.
>
> Pheeew. Made it.[2]

Subsequent enquiries confirmed that the pleasant and useful route that this rider followed was not a public road. Touring mountain-bikers needed access maps just as urgently as walkers and anglers needed them. But, as explained above, the ministerial reference group's remit had specifically excluded any consideration of the needs of cyclists. As a result of this, cyclists' needs received just one sentence in the 2003 Acland report: 'Bicycle access could be considered alongside pedestrian access.'[3]

A Rare Blunder in the 2003 Acland Report

The 2003 Acland report was commendable for its clear and accurate English, but the word 'could' (in the above sentence) stood out as a rare blunder. An access master plan that did not contain a definite thread of cycling would fail a large recreational group. Such a strategy would be dated from the start, because for some years planners had been attaching importance to multi-use tracks. Cyclists' needs had been recognised in 1989 at the New Zealand Walkways Conference: 'Additional policies that appear desirable in future are: … greater experimentation, eg wander at will, pony ways, cycle ways.'[4]

In 1995 the Minister of Conservation had approved the New Zealand Walkways Policy. Section 8.3 covered nonpedestrian use. It allowed for cycling provided that conditions were met, such as 'not unduly interfering with walkers' and 'not causing unacceptable damage to the track'.[5] The wording did not actively encourage provision for cycling, and one wondered in 2003 whether this accorded with more-recent Government policy statements on cycling. Nevertheless, the wording did provide a loophole for cycling.

An increasing number of track managers appeared to be designating walkways (either gazetted or ungazetted) as being suitable for bicycles. The Upper Hutt City website, for example, stated that 'Upper Hutt boasts a fine selection of walkways, many of which also allow mountain bikers.'[6] The Wakatipu Trails Trust phrased its objectives to include 'walking, hiking, cycling, mountain biking, horse riding, roller skating and any similar nonmotorised recreational leisure activities'. Dunedin city council's Track Policy and Strategy said that 'priority will be given to multi-use tracks, such as those which allow for a range of users including mountain bikes and walkers'.[7] Dunedin's Woodhaugh Gardens, a shrine of pedestrianism, now had a multi-use track running diagonally across its centre.

Attitudes to cycling, however, differed sharply from place to place. This was definitely true of different landowners and may have been true of different Department of Conservation regional staff members. In some parts of the country, mountain-bikers and DOC staff enjoyed excellent relations, resulting from or resulting in liberal cycling access to land managed by DOC (excluding national parks). In contrast, there was anecdotal evidence that in some places mountain-bikers viewed DOC as the enemy. There was no need for this ill feeling, as the DOC guidelines governing

the use of bicycles provided plenty of scope for mountain-biking on land outside national parks.[8] As with all environmental guidelines, though, interpretations of the Guidelines for Use of Bicycles on Tracks Managed by the Department could vary widely. DOC regional staff members might have been applying DOC's cycling guidelines differently and inconsistently. The access agency proposed by the 2003 Acland report could help cyclists negotiate with DOC regional officers.

Some submitters on the 2003 Acland report argued that the group's terms of reference ought to have included mountain-biking and other nonmotorised activities. One submitter wrote:

> [C]onsider the larger picture and adopt an access strategy for all forms of access including walking, horse riding, biking and 4WDing. I consider that it is not appropriate to just consider walking access and put these other legitimate recreational people in the 'Too Hard Basket'. You must look at access in its entirety once and for all.[9]

A few submitters contended that bicycle access could or should be considered alongside pedestrian access. These submitters felt that much of the group's report was relevant to cyclists also. But when the government's deliberations dragged on and eventually morphed into a second round of nationwide consultations, the access needs of mountain-bikers remained, at most, optional extras, perhaps to be squeezed into the Walking Access Consultation Panel's work under the provision 'other matters related to access policy that appear to require the Minister's consideration'.[10]

Bicycles and National Parks

In 2003 the New Zealand Conservation Authority was reviewing the General Policy for National Parks. This review included a public-submission process, which presented recreational mountain-bikers with a rare opportunity to influence and modernise the Conservation Authority's policies on and attitude towards cyclists. The rule governing the use of bicycles in national parks was twenty years old, having been laid down in the General Policy for National Parks (1983), itself arising from the National Parks Act 1980. In effect bicycles were banned from national parks (except on formed roads). This prohibition had remote origins; the general policy prohibited 'the off-road use of vehicles', and the word 'vehicle' included bicycles, an interpretation stemming from the Transport Act 1962.[11]

MTBNZ's Submission on the Draft General Policy

The three-member land-access committee of Mountain Bike New Zealand (MTBNZ) assembled a well-researched, moderately phrased and refreshingly articulate case for allowing bicycles on just a few of the hundreds of national-park walking tracks. Mountain-bikers were not asking for carte blanche access to national parks. Perhaps only six or seven tracks would be suitable for shared use by walkers and cyclists. The twenty-year-old total prohibition prevented any consideration of this modest possibility, and so MTBNZ argued for a relaxation of the absolute ban.

MTBNZ's comprehensive submission also asked the Conservation Authority to treat the Heaphy Track as a special case, it being widely regarded as an exceptionally fine recreational ride and having been ridden on for about sixty years until the creation of Kahurangi National Park in 1996. Broad, with mostly easy gradients and good visibility, the Heaphy Track was eminently suitable for shared use, especially at off-peak times.

MTBNZ summed up its proposals:

> The recommendations of this submission are essentially twofold:
> - We seek an amendment to the General Policy on National Parks to allow for mountain bike access to tracks in National Parks to be considered on a rational, track by track basis in the context of National Park Management Plans, against an agreed set of criteria.
> - We also seek to have the Kahurangi National Park Management Plan altered immediately by the Authority to provide for the seasonal resumption of mountain bike access to the Heaphy Track.[12]

The submission supported these two proposals with fifty pages of careful argument and evidence that amounted to a persuasive and ultimately winning case for allowing bicycles on selected tracks. MTBNZ contended that permitting limited mountain-bike access to selected tracks in national parks would increase public access without compromising conservation purposes. MTBNZ believed that cycling could be a means of introducing some young New Zealanders to our national parks:

> Mountain biking is a legitimate backcountry recreation. Although historically viewed as a 'problem to be dealt with', Mountain Bike New Zealand (MTBNZ), maintains that mountain biking is in fact a special opportunity to attract new (mainly younger) users into our National Parks and to experience our backcountry in a wholesome and self-reliant manner.[13]

The submission reserved its strongest language for the crux of the problem, which was the walkers' long-established exclusive possession of all the tracks in national parks:

> A consequence of the current policy is that National Parks, set aside because of their unique natural features, and thus qualitatively different from other parts of the conservation estate, are only accessible by one mode of access. Mountain biking is another mode of access that meets the threshold criteria set out in the [National Parks] Act. The systematic exclusion of mountain biking from tracks in National Parks fails to meet the standard set in the Act and is deeply elitist, effectively prioritising the benefits gained by trampers from National Parks ahead of (and to the total exclusion of) those that could be gained by mountain bikers.

An Ill-founded Monopoly

In a submission titled 'An Ill-founded Monopoly', I supported the MTBNZ case by arguing that:

- mountain-biking was a healthy, unintrusive, and nonpolluting outdoor recreation, compatible with the fundamental principles of the National Parks Act 1980, especially Section 4, which stated that parks should 'be maintained in natural state, and public to have right of entry';
- the last twenty years had seen the development of multi-use tracks; we now understood better the necessary track qualities for successful shared use;
- the same period had seen changes in walkers' attitudes to mountain-bikers, when the bikers were on tracks suited to dual use; the period had also featured changes in cyclists' riding behaviour on dual-use tracks;
- mountain-biking on certain tracks and surfaces, especially on steep earthy tracks not consolidated and compacted, could cause appreciable wear and tear; conversely, cycling on designated tracks, with moderate gradients and adequately durable surfaces, could cause minimal wear, very manageable by maintenance programmes little different from those used for walking-only tracks;
- a continuation of the ban on bicycles would conflict with national policies on recreation and in particular would contradict the essence of the Graham Report, *Getting Set for an Active Nation*;
- a continuation of the ban on bicycles, denying cyclists their access to the most scenic and celebrated parts of New Zealand, would withhold from them a central part of New Zealand's culture: our outdoor ethos;
- a continuation of the ban on bicycles would run contrary to the spirit of the Department of Conservation's recreation opportunities review; and
- even if some walkers did object to the presence of bicycles, the walkers' monopoly on tracks in the national parks was unreasonable and unjust.[14]

There were other, sharply different points of view. Ever since the invention of mountain-bikes, people had debated the contentious issue of the possible effects of bikes and riders upon the natural and social environment in national parks.[15] The hooning bogans of the mountain-biking community had compromised mountain-bikers' image, complicating their public relations. And some walkers wouldn't contemplate sharing any tracks whatsoever with people on mechanical contraptions. Cycling advocates were under no illusions: it would take great patience and perseverance to gradually demolish the walking-only shibboleth that kept cyclists outside the exclusive national-parks club.

The popular image of mountain-biking was of downhill racing or free-riding, with the emphasis on great technical skill and extreme risk. Allied to this, in the minds of some people, mountain-bikers carried a stigma of youthful irresponsibility and even vulgarity. In fact, the large majority of mountain-bikers were recreational cross-country trail-riders whose trips involved endurance and self-reliance rather than risk and speed. MTBNZ worked patiently to carry this message to the decision-makers.

Overwhelming Support for MTBNZ's Proposals

Submissions on the Draft General Policy National Parks Act (of August 2003) ended on 19 December 2003. Of the 1,305 submissions received, 1,106 supported in general terms the position taken by MTBNZ. Just twenty-two opposed it. Mountain-biking access was the predominant issue of the whole submission process; fewer than 200 submissions addressed issues other than mountain-biking in national parks.[16] Notable was 'the wide support for MTBNZ's position from other recreational users (including the peak national bodies for tramping and alpine sports), local Government, SPARC and a number of Conservation Boards'.[17]

In April 2004 the New Zealand Conservation Authority made a preliminary decision to change the Draft General Policy National Parks Act to allow park management plans to permit seasonal access for mountain-bikes on selected tracks in national parks. All the signs looked good for cyclists. A further preliminary decision on 14 October 2004 repeated the first decision and sent the revised policy to the minister of conservation for his approval and signature.

MTBNZ expressed delight with the decision, something it had been campaigning on for eight years. But not everyone was happy. The Nelson publisher Craig Potton strongly opposed the use of any type of vehicle in national parks:

> 'It is anathema to me,' said the keen tramper, climber and mountain-biker. 'I think it is very sad and dangerous to open up walking tracks to machines in such sacrosanct places. It is inappropriate.'[18]

About a week later the *New Zealand Herald* ran an anonymous and biased editorial objecting to the proposed change. According to the writer,

> the Athens Olympics [had] showcased mountain-biking's [only?] attraction – the buzz associated with negotiating steep and tortuous terrain at speed. For many, entry to a national park would not be about the leisurely appreciation of scenic splendour. Conflict with walkers would be inevitable … In fact, this is not an issue requiring balance. Quite simply, national parks should be maintained as intended by the 1980 act. They are a superb asset for those ready to take the time to enjoy them.[19]

The *Herald*, inevitably, felt obliged to publish a detailed reply to this warped editorial. Guy Wynn-Williams, a member of MTBNZ's land-access committee, provided the required response.[20] He pointed out that the Conservation Authority's decision had not been a hasty one. The Authority had spent a year reviewing its general policy and had undertaken lengthy consultations before reaching its conclusions.

In November 2004 Federated Mountain Clubs and Mountain Bike New Zealand signed an accord agreeing to support each other on a number of matters, including access for mountain-bikes on the Heaphy Track. The agreement set out areas of common interest and it recognised mountain-biking as a legitimate backcountry recreation while noting that many areas were not suitable for cycling.

General Policy for National Parks, April 2005

In May 2005 the New Zealand Conservation Authority released the final version of its new General Policy for National Parks. Gone was the blanket ban on bicycles. In print at last were the new bicycle rules, constructed to allow mountain-biking on a few selected tracks, dependent on provisions for it in individual national park management plans:

> **Non-powered vehicles** (including, but not limited to, all non-motorised cycles and mountain bikes):
>
> 8.6(g) Non-powered vehicles should not be ridden or otherwise used in national parks except on roads formed and maintained for vehicle use, and on routes specifically approved for use by specified types of non-powered vehicle in a national park management plan.
>
> 8.6(h) Roads and routes may be approved for the use of a specified type of nonpowered vehicle only where:
>
> i) adverse effects on national park values can be minimised;
> ii) the track standard is suitable; and
> iii) the benefit, use and enjoyment of other people can be protected.
>
> 8.6(i) A national park management plan will identify measures to manage the approved use of specified types of non-powered vehicles that should be taken to:
>
> i) minimise any adverse effects (including cumulative effects) on national park values; and
> ii) protect the experiences of, and avoid creating hazards for, others.
>
> 8.6(j) Measures to manage the use of a specified type of non-powered vehicle approved for use in a national park may include, but are not limited to:
>
> i) trial periods;
> ii) restricted seasons;
> iii) limits on numbers;
> iv) one-way flow; and
> v) adherence to a nationally recognised user code.
>
> 8.6(k) A national park management plan should identify monitoring requirements for the use of specified types of non-powered vehicles and specify what actions should be taken if adverse effects arise, including the possibility of use no longer being allowed.

Heaphy Campaign, Stage Two

Although the revised general policy caused cyclists to celebrate, there was still much persuading and submitting to be done before any practical changes would happen. For the Heaphy Track, for example, the next stage in the process of regaining cycling access would be a review or partial review of the Kahurangi National Park Management Plan. The Department of Conservation and MTBNZ issued statements urging bikers to be responsible by staying off the Heaphy.[21] In February 2006 a DOC spokeswoman, Trish Grant, expected that it would take at least two more years to decide whether to allow mountain-bikers on the Heaphy Track.[22]

In November 2007 MTBNZ produced a document promoting the case for mountain-biking on four named tracks in the Kahurangi National Park. As well as describing these tracks, the document suggested possible ways of managing their shared use.

The main emphasis of this document lay on regaining access to the Heaphy Track, seventy-four kilometres of benched singletrack traversing from Golden Bay to the West Coast and 'a world-class mountain bike ride'. MTBNZ argued that the Heaphy Track was notably suitable for shared use:

> The track surface is robust, making it ideal for shared-use by mountain bikers and walkers, and it receives few visitors over the winter period. The track has a solid substrate (largely rock and gravel with good drainage) reducing potential trail damage by bikes. There are good sight-distances and the trail is sufficiently technical to ensure low speeds on most sections, thus minimising the possibility of user conflicts.[23]

The debate over bicycles on the Heaphy Track continued at a glacial pace. In February 2009 an editorial in the *Nelson Mail* suggested that

> the conservation authorities should be ashamed of the time they have taken in dealing with an issue which has been demanding a firm ruling for the best part of a decade … Nelson is rich with shorter bike trails but nothing comes close to the appeal of the Heaphy. It is more than bloody-mindedness that has kept the mountain bike lobby hammering away at the access issue since bikes were officially banned from the Heaphy back in the mid-1990s.[24]

In July 2009 the Department of Conservation released its Draft Partial Review of the Kahurangi National Park Management Plan. The draft proposed a trial of seasonal access for mountain-bikes on the Heaphy Track from 1 May to 1 October. It also proposed year-round mountain-biking on the Kill Devil Track and the Flora Saddle–Barron Flat Track.

On 8 December 2010, seven years after MTBNZ's Heaphy-campaign submission on the General Policy for National Parks, the New Zealand Conservation Authority announced that it had approved a revised Kahurangi National Park Management Plan that would allow mountain-biking trials over three years on three tracks. The trials on the Heaphy Track would take place during the five-month winter season, 1 May to 30 September, starting in 2011. Year-round trials would be run on the Flora Saddle to Barron Flat Track and the Kill Devil Track; mountain-bikers could begin using these two tracks immediately. The three trials would run until the end of 2013.[25]

A patient Guy Wynn-Williams expressed delight. He had first become involved in land access, representing the then New Zealand Mountain Bike Association, in 1995.

Neil Clifton, DOC's Nelson-Marlborough conservator, said mountain-bikers and walkers would need to show consideration for each other on the three tracks. The department would be monitoring the

mountain-biking trials to evaluate the social and environmental effects of the mountain-biking. This observing would include assessing the impacts on other people's use and enjoyment of the tracks. DOC would also appraise mountain-bikers' adherence to the Mountain Bikers' Code.[26]

Cycling and Acland Two

The terms of reference given to the Walking Access Consultation Panel (see Chapter 26) made few concessions to the needs of cyclists, horse-riders, and hunters with dogs and guns. The panel was to focus solely on walking. Just one sentence raised a faint possibility of the panel acknowledging the requirements of users other than walkers: 'The Panel may report on any other matters related to access policy that appear to require the Minister's consideration.'[27]

Many submitters to the consultation panel felt that the proposed aim of the access strategy should be broadened to include a greater range of physical features, user groups and modes of access.[28] On the other hand, some other people approved of the proposed aim's narrow, walking-only focus. Although on the wane, a prejudice against mountain-bikers still hung around in the blacker recesses of a few people's skulls, as illustrated by the following extract from a newspaper article titled 'Pedal Power Not Welcome in High Country':

> In noting that the country's population is aging, is more urbanised and multicultural, Mr Carter [the minister of conservation] also notes that new sports are evolving …
>
> At the moment, and indeed traditionally, there is a comfortable fit between the passive and non-passive users of the DOC estate, particularly in the true wilderness areas. Basically I'm talking about trampers and deerstalkers. Lower down, there's that fit between anglers and gamebird hunters.
>
> 'New' sports have to include events like the Coast to Coast run, paddle and bike, and especially, I fear, mountain biking. Mountain bikers need somewhere to be challenged but perhaps reflective of my paranoia about protecting the current interface between passive and non-passive recreation, I cannot envisage this particular form of recreation being part of the current high country 'fit'.
>
> The common denominator with current passive/non-passive recreation in the high country is the tracks. As with any access ways to come out of the Walking Access Consultation Panel's deliberations, the high country tracks too need to be restricted to foot traffic only.[29]

MAF's analysis of the written submissions included some constructive proposals on access with bicycles and motor vehicles. Despite these suggestions, the 2007 Acland report allotted just two pages to a mention of access with motor vehicles, horses, bicycles, firearms and dogs. Two of the panel's recommendations recognised, just about, the existence of mountain-bikers:

The Panel recommends that:

57. Te Ara o Papatuanuku be empowered to consider all forms of access (there are efficiencies in an access organisation dealing with all forms of access) but with walking access as its priority area of concern;
58. Te Ara o Papatuanuku co-ordinates its activities with organisations concerned with other forms of access, such as mountain-biking clubs, four-wheel-drive clubs and Fish & Game Councils, but, in doing so, Te Ara o Papatuanuku should not compromise walking access outcomes.

A year later the Walking Access Bill arrived, containing its surprising provision for superimposing gazetted walkways upon unformed public roads. Mountain-bikers added their voices to the clamorous criticism of this unexpected provision. (Although, surprisingly, MTBNZ did not submit on the bill.)

Bloggers on the Walking Access Bill

A few mountain-bikers discussed the Walking Access Bill internally on the cycling blogosphere, one conversation going something like the following extract from www.vorb.org.nz (which I have adapted but whose body-text I have left unedited). As with the issue of bicycles in national parks, mountain-biking's public image was a part of the equation, hindering biking's case for access:

> Posted: Wednesday 7 May 2008, 7.21am
> Subject: Paper Roads Closed And Loss Of Access
> Been off the grid for a while so slap me if this has already been covered, but has the Walking Access Bill been raised on the Forum? My understanding is that this will allow the easy closure of paper roads by turning them into walking tracks with no bike access to be policed by Fish and Game with assistance from 'any available person' ie landowner.
>
> Posted: Wednesday 7 May 2008, 10.15am
> seems to me we need to address the view that mtb be treated in the same way as 4wds carrying hunters with guns and dogs. as usual, cycling is caught in a no-mans-land between walkers and vehicles rather than being considered in our own right. without necessarily working against them, i think mtb should not associate too closely with the 4wds … i can understand a farmer not wanting a 4wd chewing up what is essentially a part of their paddock and then releasing dogs in the area and shooting … mtb on these areas tends to be of the adventure/touring style, not the downhill hooning that a lot of people view as what mtb is about. this adventure style mtb is much the same as walking/tramping both in its intent/attitude and its impact on the land and land-owner/occupier. we can climb stiles rather than opening (and leaving open) gates and have similar noise levels and general behaviour to walkers … so the key point i would stress is that any walkway provisions should include access for mtb unless specifically inappropriate in a particular instance. afterall,

even doc has agreed that in principle at least mtb can be allowed on tracks in national parks. this approach actually goes further than just protecting the rights we theoretically have on paper roads by including mtb rights in any non-road walkways that may be created.

Posted: Wednesday 7 May 2008, 10.46am
I am with you. I think there is a large problem with many people not understanding what back country mountain bikers actually like. I dont enjoy riding 4wd tracks. I will use them as a means to get somewhere nice, but if there is the option of riding on a 4wd track and riding a nice piece of singletrack … I will be on the singletrack every time! An example of this thinking is the Poulter Valley that has been opened as a trial for mountain bikers in National Parks. It is basically a 4wd track from Mt White into Casey hut. Between the Casey hut and the Trust Poulter hut there is a nice singletrack, or a riverbed 4wd track. The people who have opened this track for access have stipulated that the bikers must use the rocky riverbed track and not the singletrack. I really cannot see why. The singletrack is almost flat and quite straight so there is unlikely to be much in the way of erosion from bikers braking, and the amount of users on the trail is also low, so there would not be much in the way of user conflict between walkers and bikers. I think many people in management of these decisions do not understand that we bikers love the same singletracks that amble through beautiful forests that walkers do, and that many of us do not at all want to be on 4wd track!!

Posted: Wednesday 7 May 2008, 11.20am
The problem being that if someone sees the state of the tracks in Vic park for example, and thinks that's what happens if you let mountainbikers loose, then it's understandable that they don't want to open access to bikers. For people that know nothing about biking, it's pretty hard to differentiate one group from another and will therefore assume the worst and say no.

Posted: Wednesday 7 May 2008, 12.48am
Not just the tracks, but the attitude of a lot of the riders towards walkers in Vic park is terrible too … Yes, when the only thing people have seen of mountain biking is the occasional 'extreme' downhill race viewed on telly, or Bender jumping off stupid things, or almost being run over in Vic park by Downhillers it is no wonder they have a different opinion of what mountain biking actually is.

Posted: Wednesday 7 May 2008, 1.31pm
Some aspects of mountain biking are like this. Some aren't. There is always going to be that stigma towards cyclists. I think to the everyday joe, you are either a walker who has little noticeable effect on the environment or you are something else which is bad. It is good to see DOC experimenting and actually testing whether sustained use of bikes are suitable in certain areas.

Posted: Wednesday 7 May 2008, 1.48pm
Yes, I think it is good for DOC to use test cases too. Queen Charlotte Walkway is a good example of somewhere they have a good history of bikes and walkers sharing a track. Over all it seems to work well and gets large numbers of both walkers and cyclists. It would be nice to be able to point to examples like this and other legal tracks like Wakamarina and to get the decision makers to consider giving us singletracks and not just 4wd tracks. I know that DOC are going through a whole review process at the moment and considering where is and is not suitable for bikers in National Parks like Kahurangi... but I am just worried that there may not be enough people who actually know that we like singletrack involved in the decision processes.

Posted: Wednesday 7 May 2008, 2.03pm
that attitude [hostile to all cyclists] really ssipes me off – anyone who tramps much will have SEEN first hand the evidence of just how much track damage 'mere' walkers can cause (sometimes it's hard to believe a section of track can get so wrecked from humans - almost looks like someone's driven a herd of cattle thru) … maybe we need to start posting 'walking in the wet wrecks the tracks' signs same as for mtb.

Posted: Wednesday 7 May 2008, 2.34pm
The problem is that there are responsible bikers and those that are less so, just like there are responsible 4wd owners like me and some that are not. It's a bit hard to allow access on a 'only if you're not a dickhead' basis. An example of something that does work is 4wd access into Lake Sumner, it's on a key issue basis, with registration numbers recorded and numbers limited. That way there is less likelyhood of stupid behavior because the idiots are more likely to be identified, and limiting numbers reduces the overall impact.

Posted: Wednesday 7 May 2008, 3.21pm
the key is that the dickheads are generally not the sort of bikers that like adventure backcountry type rides, they want shorter downhill/jump tracks with a handy carpark or preferably shuttle road - gross generalisation i know but i think the basic principle applies, dickheads don't appreciate getting out into the countryside, scenery, epic adventures etc. this sort of trail tends to naturally weed out the dickheads.

Posted: Thu 8 May 2008, 6.35am
So is anyone interested in getting the walking rights bill changed to be the walking and non-dickhead mountain biking bill?

Posted: Thu 8 May 2008, 8.36am
definately, although i'd look to restrict walking access to non-dickheads only since walkers can be as much trouble as any muppet.[30]

July 2008: Select Committee Report on the Walking Access Bill

The local government and environment committee reported on the Walking Access Bill on 29 July 2008. Few mountain-bikers will have read the committee's report, yet it contained recommendations explicitly relevant to mountain-biking. The report listed three main concerns raised by submitters. One of these concerns was 'the focus [of the bill] on walking access to the exclusion of other types (such as access with firearms, and for dogs, bicycles, or motor vehicles)'.[31] In sympathetic response to this concern, the committee recommended a change to the purpose of the act: it proposed the insertion of a new clause 3(c)(ii) to oblige the Commission to consider types of access that may be associated with walking access, such as access with firearms, dogs, bicycles, or motor vehicles. The government accepted this recommendation.

With just a few words, institutional acknowledgment of the existence and needs of mountain-bikers had changed from the negative to the positive. In 2003 Jim Sutton's terms of reference to the Land Access Ministerial Reference Group had specifically ruled out mountain-biking from most of the group's investigations. Now, the Walking Access Act, if passed, would explicitly require the Walking Access Commission – despite its name – to think about the needs of cyclists.

As discussed in Chapter 34, the committee also recommended the deletion of the controversial clause 25. This change was adopted. It meant that gazetted walkways would not be superimposed upon unformed public roads. Mountain-bikers, therefore, would continue to enjoy legal access to all such roads.

The Walking Access Act 2008, establishing the New Zealand Walking Access Commission, came into force on 30 September 2008. In September 2010, the commission completed the National Strategy for Walking Access. Reflecting section 3(b)(ii) and section 10(g) of the act, the strategy says that

> the Commission recognises many people are concerned with non-walking access and, when negotiating for walking access, [it] will also negotiate associated access rights where appropriate.[32]

Mountain-biking Access to the Countryside – on One Day Each Year

Chapter 35 included a mention of three multi-sport or mountain-biking events held annually in central Otago. By emphasising that the routes were open only on one day each year, the promoters of these commercial events were making a virtue of exclusivity. The scandalous downside to these arrangements was that entry to some magnificent tracks was closed for 364 days a year. As with all forms of arranged access, there were access winners and losers. I suggested that these tracks could be permanently open to nonmotorised recreators without eroding the attraction of the annual organised events. We could all be winners.

It is important to understand that this argument is not against the paying for entry to organised events, which can cost a great deal to stage. Pay to play if you want to. What is deplorable is that the routes are closed for the other 364 days. The examples in Chapter 35 were in central Otago.

But when the event route lies on the doorstep of a sizeable town, the waste of recreational opportunity is intensified a hundredfold. Consider the Otago Peninsula.

The Otago Peninsula – on One Day a Year

Some of the most scenic recreational cross-country mountain-biking in the Dunedin area, reachable on your bike from town, takes place on the unformed or partly formed public roads of the Otago Peninsula. Many of these outings suit riders of modest technical ability.

Buskin Track is typical. It follows an unformed public road that slants across a hillside. Grass predominates. A few muddy sections add character. On a bicycle you can judder down from the elevated spine of the peninsula to reach the Pacific Ocean in one long enjoyable or harrowing downwards plunge – slowed somewhat by the gate-opening and stile-crossing. By using the brakes, you can regulate the exhilaration and consternation to suit your skill level and age bracket. The track is one of Dunedin's recognised mountain-bike routes. It is also of course open to walkers.

Make no bones about it: the Otago Peninsula is a great place for recreational mountain-biking. Unfortunately, though, much of its finest riding does not take place at all: it follows, in one's dreams, the exquisite zigzag tracks and the sloping turfy pastures of privately owned farmlands. Cyclists have seldom been allowed entry to any of these private places. Cycling (and walking) access is especially limited on the easternmost third of the peninsula. Dunedin cyclists have long recognised that combining the existing public tracks and private tracks would produce some lengthy off-road routes of stunning quality.

In about November 2006 a website was launched called First Flight: Span the Peninsula. This advertised a new annual event consisting of either a 45-kilometre mountain-bike ride spanning the length of the peninsula or a 21.1-kilometre run. The bikers' course would start at Harrington Point and would use a mixture of public and private tracks to head southwestwards to finish at Smaills Beach. The initiative behind the event appeared to come from the Otago Peninsula Lions Club, who had engaged Iconic Adventures Ltd to run it. All profits were to go to the community.

The promoters left us in no doubt how fortunate the public were to gain cycling access to our finest local countryside, on one day a year, for a price:

> Situated tantalizing[ly] close to the metropolitan area of Dunedin and sitting in full view of the city, the ability to span the peninsula from end to end has remained off-limits to visitors, locals and student residents alike for over a generation. Unlocked for the first time in over 40 years! … In an historic move the Otago Peninsula Lions Club has gained permission from ten private land owners from Taiaroa Head to Smaills Beach for the event, opening up rugged wilderness areas that have never before been fully accessible to the public …
>
> We would like to thank the landowners for permitting once a year access to their land and in return there is absolutely no access permitted on any of the privately owned property prior to, or after

> the event. This is a once a year opportunity to take in the full expanse of the peninsula, make the most of it.[33]

Everyone agreed on one thing: the proposed route of this event would combine a physical challenge with an outstanding blend of rural and coastal scenery. Peter Notman, a representative of the Otago Peninsula Lions Club, said: 'It encompasses all of the landscape features of the peninsula. On one descent, you go from rocky high outcrop to green pastures and into the sand dunes below.[34]' For a recreational mountain-biker, this is as good as it gets. The event director, Geoff Matthews, said: 'It's brilliant. I reckon it would be up with the very best races in the world in terms of scenery. It's just beautiful.'[35]

The inaugural event took place on the morning of 3 February 2007. Later that day I went for a bike ride with about twenty Dunedin locals who had skipped the morning's once-a-year opportunity. The conversation turned to that lost chance. Some people had been reluctant and in some cases unable to pay the $80 First Flight fee for a couple of hours of access to private land. There was also some suspicion over to what extent the First Flight event was a commercial venture and to what extent it was a service to mountain-bikers and walkers and a potential donor to charities.

The next year the event ran again but with a new name (R&R Sport Otago Peninsula Challenge), a revised course that included more off-road riding, and a trimmed price ($50 for mountain-bikers). All profits were returned to the Otago Peninsula community. The beneficiaries were the Otago Coastguard, the Yellow-eyed Penguin Trust and the Portobello Kindergarten.

The Otago Peninsula Challenge ran for a third time in February 2009. Two weeks earlier, the *Star* carried a short article previewing the event. The writer clearly identified the event's main selling point, titling the story 'Challenge Offers Athletes Access to Private Propert[ies] on Peninsula'.

One of those private properties was in the vicinity of the remote wind-swept cliffs of Cape Saunders: 'A treat for entrants … will be the chance to get to experience Cape Saunders – considered to be one of the most scenic parts of the peninsula – up close.'[36] Here, I want to digress briefly into some detail. From Belmont on Allans Beach Road, the route of the Otago Peninsula Challenge heads eastwards across private farmland for about three kilometres to a point on Cape Saunders Road. It makes clever use of private farmtracks. This route is the obvious way to cross the gap between the two roads. If it became open to the public it would form a crucial link for walkers and mountain-bikers all the year round (in dry conditions). But unless that happens, this coastal section will remain the exclusive preserve of paying customers on just one day a year.

There is an unformed public road spanning about two kilometres of the three-kilometre gap. Some of this road appears to be impractically sited. Also, its dead end makes the road virtually useless.

The event's website used capital letters to stress the occasion's exclusivity and it paid cloying homage to the landowners: 'MUCH OF THE LAND IS PRIVATELY OWNED. ANYONE FOUND USING THE LAND OUTSIDE THE

EVENT ARE [*sic*] LIKELY TO BE PROSECUTED. Please respect the generosity of the landowners.'[37]

This wonky version of generosity creates winners on one day a year and losers on the other 364 days. Organised events do not need permanent access exclusivity to be successful. The whole forty-three kilometres of the Otago Peninsula Challenge could be always open to walkers and mountain-bikers without seriously affecting the popularity or viability of the annual event. The route is a great, great recreational ride. It is far too important for crucial sections of it to remain privately owned and locked up. Recreational organisations, such as Mountain Bike New Zealand, need to stand up and say this. To my knowledge none have yet done so. Their silences only abet and legitimise the 364 days of closure.

Pragmatists will enjoy the ride while knowing well that the once-a-year big-heartedness is a sop to forestall any demand for regular public access. It is also a ruse to silence potential critics. The tactic barely modifies the landowners' doctrine of absolute privacy, replacing it with the doctrine of minimal concession.

The number of competitors in 2009 increased dramatically. The entries in all categories – mountain-bike, run and walk – were 725, up from about 500 in 2008.[38] After the race, Kashi Leuchs, a professional mountain-biker familiar with riding in Europe, said: 'I think we saw some of the most amazing coastal landscapes you could imagine.'[39]

The fourth Otago Peninsula Challenge, in January 2010, attracted 640 entries. The event's co-organiser, Peter Notman, said the event organisers were planning 'a marketing campaign utilising *Lonely Planet*'s endorsement of the Otago Peninsula as one of the world's best mountain-biking locations'.[40]

The fifth event, organised by the Otago Peninsula Lions Club in conjunction with Mountain Biking Otago and Athletics Otago, took place on 6 February 2011. The fee for the long-course mountain-biking was $60.

The Otago Peninsula Challenge has demonstrated a popular demand for cycling and walking access to a long finger of beautiful countryside where you're never far from water. Any similar jewel of country in Scotland would be freely open to mountain-bikers and walkers every day of the year, without the need for any permission-seeking, form-filling, fee-paying, event rules, registration packs or race numbers. New Zealanders need to wake up and understand that gaining recreational access to such terrain on only one day a year, and paying for it, is a mug's game.

Cycling Access in Scotland

Kiwi opponents of improved access tend to deride comparisons of access rights in New Zealand with those in other countries, when the New Zealand rights are clearly inferior. And well they might – to avoid informed debate. The comparisons can be stark. In 2007 and 2008, at the same time as a sizeable number of Dunedin mountain-bikers were acquiescing to the pay-to-play philosophy applied to the Otago Peninsula and were gaining the access on only one day a year, Scottish mountain-bikers were enjoying radical new de jure liberties that were available to them every day of the year.

The Land Reform (Scotland) Act 2003 had modernised Scottish access arrangements so that they became relevant to contemporary needs. It had established a right of responsible access across most land and inland water in Scotland. The final version of the resulting Scottish Outdoor Access Code had come into effect on 9 February 2005. The code makes it clear that the Scottish recreational access rights apply not just to walkers but also to other nonmotorised users of the countryside:

> 3. You can exercise access rights for recreational purposes (such as pastimes, family and social activities, and more active pursuits like horse riding, cycling, wild camping and taking part in events), educational purposes (concerned with furthering a person's understanding of the natural and cultural heritage), some commercial purposes (where the activities are the same as those done by the general public) and for crossing over land or water.
>
> 7. Access rights do not extend to:
> - being on or crossing land for the purpose of doing anything which is an offence, such as theft, breach of the peace, nuisance, poaching, allowing a dog to worry livestock, dropping litter, polluting water or disturbing certain wild birds, animals and plants;
> - hunting, shooting or fishing;
> - any form of motorised recreation or passage (except by people with a disability using a vehicle or vessel adapted for their use);
> - anyone responsible for a dog which is not under proper control; or to
> - anyone taking away anything from the land for a commercial purpose.[41]

Appendix 5

Walking Access in Britain and Compensation

These notes discuss the compensation of UK landowners with respect to the Countryside and Rights of Way Act 2000 (which applies to England and Wales) and the Land Reform (Scotland) Act 2003. Here and there I will add a New Zealand perspective from my viewpoint as a walker.

The CROW Act was a major reform, creating about 1.6 million hectares of 'access land' in England and Wales: about a tenth of the total land area, all of it being uncultivated and much of it being upland. There were, however, moral and historical arguments that the 'new' access rights would merely re-establish ancient entitlements. Moreover, some access campaigners asserted that these entitlements (Maori will appreciate this twist to the story) had been progressively stolen, first by the laws of trespass that evolved after the Norman Conquest (1066), and then by the enclosures that occurred from the mid-15th century onwards. The Blair government pushed through the legislation without offering general compensation to landowners.

The Scottish legislation was more radical than the English-Welsh forerunner. Whereas the solution south of the border was a partial one, necessitating the largest landscape mapping exercise for a century, the answer north of the border was a universal approach that avoided the need to select access areas and to show them on maps. The Scottish lawmakers created a general and wide-ranging right of access to uncultivated land and to most farmtracks, of the sort that works well in Scandinavia. The Ramblers' Association said: 'The legislative framework provided by the Land Reform (Scotland) Act 2003, along with the Scottish Outdoor Access Code, should provide Scotland with outdoor access arrangements which are better than any other European country.'[1] The Scots decided against compensating landowners affected by the new access rights.[2]

Most readers of these notes will be New Zealanders; they should be careful about lessons to be learnt. The reasoning for and against compensating the landowner in the British context may have little relevance to the New Zealand circumstances. Comparing Britain's open-countryside

developments with New Zealand's walking-access issues could be unhelpful, inconclusive and contradictory. And plain confusing. There are stark differences, such as in population densities and hence in recreational pressures and the political ramifications of those pressures. Another obvious difference is in subsidies: the British taxpayer subsidises British farming, to a lessening degree for production yet increasingly for agri-environmental schemes tied to public access.

Another basic difference, if we allow ourselves some savage simplification, is that the United Kingdom's reforms were mainly concerned with the freedom to roam across *private* countryside, whereas the walking-access issues in New Zealand in 2003–8 centred on improving the access to *public* countryside, such as Queen's Chain reserves and other public lands. (Although a few New Zealanders, including me, argued that there was a need in New Zealand for more foot-tracks across private pasture-lands, as ends in themselves.)

Yet another sharp dissimilarity involved hunting and fishing. Many British deerstalkers, anglers, and shooters of grouse, wildfowl and pheasants were hostile to the idea of wider public access to uncultivated private land; they had nothing to gain from such a change because they already benefited from special access rights connected with their private hunting, fishing or shooting. In New Zealand our hunters, anglers and shooters have entirely different concerns; they have campaigned for improved access to public land and public waters.

Perhaps the most telling difference of all is one that is politically crucial but which may not be obvious unless you have lived in both New Zealand and Britain. It is that the term 'land grab', whether used justifiably or not, still enjoys in New Zealand a political punch that it long ago lost in Britain (where it enjoyed some currency in the late 19th century, in reference to Irish agrarian agitation).

It is also worth bearing in mind that the new access rights created by the CROW Act are additional to, and do not affect, the pre-existing English and Welsh public rights of way, which total over 225,000 kilometres of footpaths and bridleways.[3] Similarly, the statutory freedom to roam in Scotland created by the Land Reform (Scotland) Act 2003 is supplementary to Scotland's pre-existing public rights of way, which are not as clear-cut as those in England and Wales but which are likely to be clarified and extended.

England and Wales: Compensation and the Countryside and Rights of Way Act 2000

References to Compensation During the Build-up to the Legislation

In 1993 the Ramblers' Association published *Harmony in the Hills*, a consultation document relating to the right to roam. It contained, in the Association's view, 'reasonable and well-considered proposals'. In a 1996 essay on the right to roam, Deborah and Jeremy Pearlman called this document 'a calculated compromise'. They précised its six 'Steps to Harmony', step number 5 being on compensation:

> 5. Compensation
> Although the RA [Ramblers' Association] feel that any land covered by access would not be significantly reduced in value, they do state that if the owner or other person who has an interest in the land can show that they had suffered a material loss, then they should be paid compensation (the cost to be met by the Exchequer) representing good value.[4]

The same essay, however, identified compensation as being potentially the most prickly issue:

> Finally, the most vexed question will be that of compensation. One complaint made by landowners, when they believed that the Common Land Forum report [of 1986] was imminently to be given statutory authority, was that they were being deprived of their full rights as landowners (because they would be obliged to allow people to have access) and yet they were not to be compensated for it … In due course a basis for a compensation provision in any proposed Bill is likely to be promulgated.[5]

In its manifesto for the 1997 general election, the Labour Party signalled its intention to create a right of access to uncultivated countryside:

> Our policies include greater freedom for people to explore our open countryside. We will not, however, permit any abuse of a right to greater access.

The results of the election, held on 1 May 1997, were beyond the Labour Party's wildest dreams. Labour won 418 seats, 65 per cent of the total seats. The Conservative Party won 165 seats, 26 per cent of the total seats, the Tories' worst showing since 1906. These results set the stage for the long-awaited re-establishment of the freedom to roam – and for a splendid dent in the view of absolute property rights articulated by John Locke.

Noel Russell's Analysis of the Potential Costs to Landowners

Restoring people's right of access to the open countryside would not be achieved without erudite legal and agro-economic argument. Some landowners in England and Wales disagreed with the Ramblers' Association's hazy feeling that the land affected by new access rights would not suffer a reduction in value. The Country Landowners' Association (CLA) commissioned Noel Russell of the School of Economic Studies, the University of Manchester, to analyse the potential costs to landowners of a statutory right of open access to mountains, moorland and common land. (The CLA and Russell used the term 'open access' to mean the same as 'area access'.) He completed an evidently rigorous evaluation in December 1997.

The following extract from his report's executive summary, although specific to area access and the developments in the United Kingdom in the late 1990s, could equally have been written of linear access and the proposed footways in New Zealand in 2005:

> The use of available economic resources, including land, is invariably governed by a system of property rights. A 'right to roam' on privately owned land is one example of a range of property rights associated with land. It has value for those to whom it is granted, and creating such a right on a tract of land takes economic value away from the landowner who consequently has to meet any additional landowning/operating costs and loses the exclusivity and privacy previously enjoyed. If the creation of a new public 'right to roam' is being considered it is logically essential to assess both the costs and the benefits of this change to inform the policy decision making process.[6]

The executive summary also pointed out that this study was a pioneering one:

> This report does not provide the extensive formal analysis that, in ideal circumstances, should be available to underpin a decision to alter significant property in the manner being contemplated. In fact few studies have investigated the economic dimensions of land access and there is no established methodology for assigning financial values to the property right of access and no previous empirical estimates to serve as comparators.[7]

Important features of Russell's study were that it:

- specified the ways in which economic interests of owners might be affected by the creation of new public rights of access;
- highlighted the weaknesses of the available data sources; and
- provided, as a standard, an initial assessment of the aggregate costs involved.

His approach followed two strands if enquiry. Firstly he sought to estimate the annual costs to landowners of providing area access to mountains, moorland and common land. Secondly he estimated the likely effect on land values, using information on estate sales over recent years. From these two separate strands, he then estimated the total costs to landowners of statutory open access.

Russell presented his results in considerable detail in tables that included all the main cost components for different types of land. Each result took the form of a low, a central and a high estimate. So it could be misleading to select just one example, but nevertheless I will do so to provide a concrete illustration.

For mountains, moorland and common land (supporting both livestock farming and shooting enterprises) the study reckoned that the annual explicit cost to the landowner of open access would be £24.64 per hectare (1995 price levels).[8] In addition, the annual implicit costs – those difficult-to-quantify intangible costs associated with 'the inevitable reduction in privacy and security' – would be £12.00 per hectare.[9]

Russell's study was not a cost-benefit study. It merely estimated the likely costs to landowners affected by statutory area access; it did not try to estimate the value of this right to the general public.

To sum up. The hunch of the Ramblers' Association was that landowners affected by area access would suffer only minimal loss. Russell's scholarly predictions indicated otherwise. Two months after Russell completed his paper, a government consultation paper adopted the Ramblers' thinking almost verbatim.

Proposal 28 of the 1998 Consultation Paper

In February 1998 the government circulated a consultation paper, *Access to the Open Countryside in England and Wales* (which was updated in December 1998). Section 3d of this paper covered the costs and benefits of the access proposals. The paper suggested that the financial implications for the owners and occupiers of the proposed access land would be minimal:

> Financial implications.
> The owners and occupiers of land.
> 3.50 Some of the land in question is already subject to considerable de facto access and has been so in the past as a matter of custom and tradition. A statutory right would be limited in character, as described in paragraphs 3.30 to 3.33. It would not prevent agricultural activities or development of the land. In addition, it would be possible to close land for part of each year. The limited interference with landowners' rights has to be set against the important public benefit arising from increased opportunities for recreation. Access to the open countryside will make a significant contribution to improving public health and reducing social divisions (paragraphs 3.66 to 3.67). The Government does not believe that general provision for compensation, beyond – possibly – the reimbursement of some specific costs, would be justified in these circumstances.[10]

Reflecting this belief, the consultation paper's formal proposal on compensation suggested that general compensation would not be paid:

> PROPOSAL 28. Owners and occupiers should not be eligible for general compensation for access to their land.
> 3.51 We do not expect there to be many costs for the owners and occupiers of land. For example, these proposals are not expected to result immediately in a sizeable increase in walking in the countryside but rather in an expansion of the area over which people walk. As discussed earlier (see paragraphs 3.15 to 3.17), the proposals for greater access exclude developed land and agricultural land, other than that used for extensive grazing. In relation to liability, owners and occupiers already need to protect their families, employees and trespassers from known dangers. Experience suggests that there will not usually be any significant damage to walls, fences and the land itself. Some owners and occupiers will, however, need to put up signs to warn of temporary closures.
> 3.52 [This section covered the future of various existing publicly funded access agreements, in the event of new legislation.][11]

With these new ingredients added to it, the pot – which had been simmering for years – came rapidly to the boil. The lobbies for re-opening the countryside were powerful and long-standing, especially from the Ramblers' Association and the British Mountaineering Council. The membership of the Ramblers' Association, all paying individuals, had risen from 38,000 in 1980 to 111,500 in 1995 (and was to continue rising to 140,000 in 2004).[12] The popularity of recreational walking, always considerable in Britain, was growing steadily.

The pro-access bodies, which ranged from large national associations to small local groups, were well organised and energetic. They had generated much publicity. Many members of the public had become informed on the issues – a contrast to the citizens of New Zealand during its walking-access debate in 2003–5, when the argument in the media only occasionally rose above the rhetoric of 'Mugabe-like', 'a grave danger to this agricultural economy', and 'a threat to biosecurity'. Public opinion in Britain, as measured by the pollsters and by those who responded to the consultation, overwhelmingly favoured a statutory right to roam.[13] About 140 Labour members of parliament intended to vote for a private member's right-to-roam bill.

Yet the opposition in the UK, too, was substantial. Landowners and many other people in farming communities had campaigned vigorously against the right to roam. Some anglers, hunters and shooters had taken the landowners' side. This anti-access campaign had coincided with other rural-issue protests, such as that against the plans to abolish fox-hunting. Many country-dwellers perceived a cluster of policies that threatened the rural way of life.

Their outcries climaxed in the Countryside March on Sunday 1 March 1998, when more than 250,000 country-dwellers poured into London for what newspapers described as the UK's biggest political march for over twenty years. The headline-writers had a field day, with 'Rally Tally-ho', 'The Toffs That Time Forgot', 'Where the Riled Things Are' and 'Tweed Brigade Tells Tales of Green Unpleasant Land'.

One of the main legal challenges to Proposal 28 would come from the Country Landowners' Association (CLA). The CLA had taken legal advice and believed that the issue was covered by the Human Rights Act 1998 and that landowners were entitled to compensation. It also thought that the National Parks and Access to the Countryside Act 1949 provided a precedent for compensation. The CLA felt that:

> The compensation provisions in that [1949] Act seem to strike a fair and proportionate balance between the interests of owners and the public. Owners have to prove their loss, in the light of experience of the actual effects of access, thus allowing for genuine claims only.[14]

The Countryside March did force some conciliation on fox-hunting, but it did not knock the Blair government off course on walking access. The government remained determined to unlock millions of acres of uncultivated land: mountain, moorland, heath, downland and registered common land. Walking access to the countryside was one of the few big issues to unite old Labour and New Labour. Also New Labour enjoyed a

huge parliamentary majority; it could achieve its access objectives without offering general compensation in order to silence political opposition.

In any case, many adherents of the freedom to roam, which in England and Wales would apply only to designated areas, argued that the proposed access rights would merely re-establish long-lost historical entitlements. The landscapes that would be opened up, they claimed, were as much a part of Britons' national heritage as Stonehenge. One of the pro-access campaigns chose a name that exemplified this case: The Land is Ours (www.tlio.org.uk), a name adapted from Marion Shoard's 1987 book, *This Land is Our Land*. In reply, some opponents of the access proposals argued, mainly in vain, that even if the public interest justified interference in principle, the costs should not be imposed without compensation.

8 March 1999

8 March 1999 was a big day for walkers' access to the countryside of England and Wales. In a speech in the House of Commons, the environment minister Michael Meacher announced that new laws would be introduced to create a general statutory right of area access to open countryside. The new right would apply to about 1.6 million hectares of mountains, moors, heaths, downs and registered common land. 'Glorious parts of our heritage are still the preserve of the few, not the delight of the many. As soon as parliamentary time permits, we will introduce legislation to remedy that.'

The government was planning a comprehensive package that would include new local access forums and improvements to the existing public rights of way. There would also be codes of practice for walkers and land-managers, setting out their rights and responsibilities. The new laws would ensure that land-managers would be able to continue with the normal operations of management.[15]

After the minister had announced the changes, Gillian Shepherd replied for the Conservative opposition. Part of her reply took the form of sixteen questions on how the new laws would work in practice, including a question about compensation:

> Mrs. Gillian Shephard: … If compulsion becomes necessary, what compensation will there be for landowners and farmers to meet the costs of access and the loss of land values?
>
> Mr. Meacher: … On compensation, let me make it clear that the access provisions were devised to have regard to the needs of landowners as well as walkers, and independent research shows that landowners generally will not suffer costs significant enough to warrant compensation. The statutory right [of access] will allow agricultural activities, the development of land and the closure of land for good land management reasons to continue.[16]

Meacher's mention of 'independent research' referred to a consultancy's study commissioned by the government. The consultants' weighty evaluation, *Appraisal of Options on Access to the Open Countryside of England and Wales*, had been released that day and was available in the Vote Office for any members acquainted with agricultural economics and cost-benefit analysis.

A more detailed question on compensation came from Edward Garnier, a Queen's Counsel and shadow minister, Lord Chancellor's Department:

> By granting a statutory right of access, the Minister's statement will necessarily produce damaging effects on the rights of property. Under the European convention on human rights, and under the Government's Human Rights Act 1998, that cannot happen without compensation. What assessment have the Government made of the levels of compensation that will be required under the convention and under the Act, and what further assessment have the Government made of the levels of additional insurance that landowners will have to take out to cover visitors on to their land?

After some intervening exchanges, Meacher replied unequivocally:

> … I have already made it clear that a statutory right is entirely consistent with other activities, such as agriculture and development, continuing. Our view is that a fair balance has been drawn between the interests of landowners and the general interest. In our view, there is no right to general compensation under the Human Rights Act 1998.[17]

The decision to create a statutory right of access came as something of a surprise to many walkers and landowners. 'The advance word had been that New Labour was retreating from the idea of compulsion, but it soon turned out that this had been canny backspin. Squaring up to excoriate the Government for not keeping a manifesto promise, the Tories discovered, to their obvious dismay, that they were going to have to excoriate them for keeping it.'[18]

Regarding this crucial choice of a statutory approach over a voluntary one, *The Economist* said:

> Mr Meacher was evidently untroubled by any liberal squeamishness about private property rights. Given that his goal was to ensure access to land, he was probably right to conclude that voluntarism would not work. Only about 20,000 hectares of hill and moorland are covered by access agreements, although there has been a legal framework for such agreements since 1949. By contrast, the environment department reckons that ramblers are barred from about half a million hectares of scenic countryside.
>
> The clinching argument, as far as the government was concerned, was probably an estimate that a statutory right to roam will cost the taxpayer only about £3m a year (in grants for stiles, upkeep of paths, etc), whereas the incentive payments for voluntary access agreements would cost about £16m a year.[19]

The Ramblers' Association was blunt about the past failures to achieve access agreements voluntarily: 'This is an historic moment. This is the first time any government has recognised that landowners cannot be trusted to open uncultivated land voluntarily.'[20]

On the same day as Meacher's announcement to the House, the Department of the Environment, Transport and the Regions published a broadside of documents on access, including two detailed reports. *Analysis of Responses to the Access to the Open Countryside Consultation Paper* examined the responses to each of the consultation paper's thirty-five proposals. *Appraisal of Options on Access to the Open Countryside of England and Wales* scrutinised exhaustively all the choices available to the government.

Responses to Proposal 28

Predictably, many landowners had taken issue with Proposal 28, whereas almost all recreational users had supported it:

> Chapter 6
> Costs and Benefits
> Proposal 28:
> Owners and occupiers should not be eligible for general compensation for access to their land.
> This proposal was addressed by 15% of respondents, of whom 54% agreed, 23% disagreed and a further 22% commented without expressing a clear preference. In broad terms, many – but not all – landowners considered that the costs to them of access could be significant and that they should be eligible for compensation to reflect the loss of capital value of land, increased cost of third party liability insurance, disruption to their business, increased bureaucracy, enforcement and legal proceedings, greater need for supervision of stock and repair of damage, and for grants for the provision of stiles etc. to facilitate access. Other views expressed by landowners were that all costs should be funded from the public purse, that landowners should be able to offset some of their costs by charging for access, and that compensation could be provided in kind, for example through the provision of a wardening service. Most local authorities were opposed to general compensation for landowners although they agreed that grants should be available to reimburse expenditure on facilitating access. Almost all recreational users opposed a general entitlement to compensation, although a few thought it might be justified in some cases.
>
> There were very different views on whether the European Convention on Human Rights required compensation where owners and occupiers were obliged to allow public access to their land. The Ramblers' Association had received counsel's opinion that this was not the case, while the Farmers' Union of Wales had received advice that it was.[21]

Barristers' contradictory opinions were only one part of the government's considerations. The political reality was that the Ramblers' Association had over 100,000 members. Other pro-access bodies, such as the British Mountaineering Council, represented many tens of thousands of other walkers. Hundreds of thousands of other Britons enjoyed rural walking without belonging to clubs or other organisations. The public demand for change influenced the government more than legal theory.

In response to a parliamentary question on 17 March 1999, the government spelt out its position on compensation:

> Mr. Gordon Prentice: To ask the Secretary of State for the Environment, Transport and the Regions what assessment he has made of the compatibility between his proposals to extend the right of access on foot to open countryside without compensation and the Government's obligations under the European Convention on Human Rights
>
> Mr. Meacher: The Government's view is that their plans for creating a new statutory right on foot to open countryside are compatible with their obligations under the European Convention on human rights. In deciding that there will be no general right to compensation, the Government have taken into account the limited nature of the new right of access; its application only to land which is undeveloped and not used for intensive agricultural purposes; the continued ability of landowners to develop and use their land after the introduction of the right; and the extensive provision made for closure of land for land management and other reasons. A cost-benefit study for the Government, undertaken by independent consultants, supports the view that landowners will not suffer significant losses or costs as a result of a new right of access such as would warrant the provision of compensation.[22]

It was not surprising that Meacher was repeatedly mentioning the consultants' report. For more than a year the government had possessed no academic response to Noel Russell's pioneering paper of December 1997. Now it had one, one that threw doubt on some of Russell's predictions.

Appraisal of Options

Appraisal of Options on Access to the Open Countryside of England and Wales was a 228-page report by Entec UK Ltd, an environmental and engineering consultancy. The government had appointed Entec to undertake an appraisal of the different options for securing extensive public access to open countryside. This appraisal aimed to:

- identify the economic, environmental and social benefits and costs of different approaches;
- identify by whom the costs will be borne and the benefits enjoyed; and
- quantify these effects as much as possible.[23]

The Entec study tackled a far wider range of matters than Noel Russell's study. Entec examined costs and benefits, whereas Russell had examined just costs. In analysing the possible effects of creating new access, Entec looked at four areas: the effects on landowners, on access-users, on the environment, and on public-sector bodies. Russell's study, in contrast, had concerned itself only with the effects on landowners. In considering the different ways to secure area access to open countryside, Entec identified and examined four options, based on voluntary and statutory approaches

and variants of these. Russell's work had confined itself to examining the effects of statutory area access.

The sections of the Entec report that most directly matched the aims of Russell's study were Chapter 7, 'Assessment of Effects on Landowners and Occupiers', and Appendix 6, 'Effects on Landowners and Occupiers'.

Appendix 6 estimated the costs of area access to landowners. It separated these costs into two sections: recurring (ie annual) costs in £ per hectare; and capital (ie one-off) costs due to loss of capital value of the land.

The Entec economists thought it likely that on the land affected by area access the main agricultural enterprises would be sheep and beef production. The report discussed the possible effects on these enterprises, under the subheadings:

- Effect on Sheep of the Presence of People;
- Effect on Sheep of People with Dogs on a Leash;
- Effect on Sheep of Dogs not under Control;
- Types of Cattle Enterprises Potentially Affected;
- Effect of the Presence of People on Cattle;
- Effect on Cattle of People with Dogs (under control);
- Effect on Cattle of Dogs out of Control;
- Effect of Inappropriate Waste Left by Access Users; and
- Effect of Inappropriate Action by Access Users.

Making assumptions concerning expected usage, and taking into account evidence from responses to the Consultation Paper, the Entec economists thought that the recurring costs on low-pressure sites (without shooting) would be minimal, typically £0.29 per hectare each year.[24]

They thought that the costs were likely to be significantly higher on high-pressure sites, particularly from uncontrolled dogs and an accumulation of small effects (or risks against which a landowner might decide to insure). For this type of site (without shooting) the recurring costs could be £3.00 per hectare each year.

Comparing these figures with Russell's figures would probably be somewhat erroneous because of the large number of variables involved in the different analyses. Even so, the difference between the predictions of the two studies was huge.

The Entec discussion of the factors affecting the capital value of access land filled ten pages of mathematical and methodological discourse.[25] While agreeing with some of the arguments put forward by Russell, the Entec people questioned some of his methodology and the reliability of his numerical results. The Entec report suggested that:

- there could be a loss of amenity value as a result of granting access to currently private land, although in many cases this will be negligible;
- the value which a prospective buyer of land places on non-access status varies widely with the individual;
- there is some evidence to suggest that the values might change over time, especially if all open countryside is made available for access users; and

- the values are very difficult (but not impossible) to quantify in monetary terms.[26]

It remains to be seen which of the two studies was most correct. According to a message I received in October 2005 from the Ramblers' Association, 'as yet there [was] no evidence that land values [had] altered in any way since the implementation of the Countryside and Rights of Way Act 2000'.[27] But conclusive evidence one way or the other could take another five or ten years to appear.

In the meantime, back in March 1999, the environment minister Michael Meacher now possessed an authoritative reply to the Country Landowners' Association's Russell report. The stage was set for the battle of the two studies.

The Publication of the CROW Bill

The government published the CROW Bill on 3 March 2000. Michael Meacher emphasised that the bill would minimise landowners' liability as occupiers. Also, landowners would be able to close access land or restrict access for up to twenty-eight days each year. The bill also provided for further closures or restrictions to take account of the needs of conservation, land management and safety. (None of these closures or restrictions would apply to any public rights of way crossing access land.) The new right of access would be for walkers; it would not extend to cycling, horse-riding, motorcycling or vehicles. Ramblers would not be able to walk on cultivated land or through farm gardens. People would have to control their dogs in the vicinity of farm animals.

Meacher confirmed that landowners would not receive compensation as the new access rights, in the government's opinion, would not affect the value of the land or cause any financial loss to the landowners.

The CLA responded to the bill:

> We are of course disappointed that the Government has ignored the established precedent of compensating landowners for proven losses caused by the imposition of a right of access over private land … That agenda item will remain a subject for lobbying during the Bill's progress and may, ultimately, have to be decided by the Courts under the terms of the Human Rights Act.[28]

Of the hundreds of amendments that members were to propose to this bill, some to be adopted and others rejected, perhaps the most fundamental was new clause 16: Compensation.

The CROW Bill and New Clause 16: Compensation

New clause 16, submitted by the Conservative member of parliament Edward Garnier, directly confronted the government's thinking:

> New Clause 16
> Compensation
> (1) Any person with an interest in land who shows that he has suffered a loss in consequence of the exercise of the right of access conferred by section 2(1) of this Act, shall be entitled to compensation to make good such loss.

(2) A claim for compensation under this section shall be made within such time and in such manner as may be prescribed in regulations made by the Secretary of State.
(3) In this section 'interest', in relation to land, includes any estate in land and any right over land, whether the right is exercisable by virtue of the ownership of an interest in land or by virtue of a licence or agreement, and in particular includes sporting rights.

The report stages of the CROW Bill occupied fifteen hours of parliamentary debate on 13 and 14 June 2000.[29] The members reached new clause 16 at 10.30pm on 13 June. Nobody expected this amendment to be carried, but that did not prevent the occurrence of an hour's principled debate on property rights, compensation, the European Convention on Human Rights and the Human Rights Act 1998.

The hon. and learned Gentleman Mr Edward Garnier began his promotion of new clause 16 by citing as a precedent the National Parks and Access to the Countryside Act 1949. A Labour government had passed this act. It contained provisions permitting access over land but also providing compensation to cover any depreciation in the land value caused by the public access. Garnier then argued that without new clause 16 the CROW Bill would breach the European Convention on Human Rights:

> … What about landowners' rights under the European convention on human rights? First, the Government have publicly stated – in the White Paper 'Rights Brought Home', and in the provisions of the Human Rights Act itself – their commitment to comply with the ECHR. Secondly, property rights are protected under the European convention. Thirdly, the right to respect for one's home and privacy is also respected in the European convention. Fourthly, to be compatible with the ECHR, any open countryside enactment would have to strike a fair balance – which means, inter alia, that access to the open countryside must not place a disproportionate burden on landowners, and that it must not cause any unjustified discrimination. Fifthly, the Bill – albeit through silence – makes it clear that no compensation will be payable to landowners whose land becomes subject to the new rights of access. It appears that that refusal of compensation rests on an unexplored factual premise that no financial loss would be caused. We have yet to hear the reasons for that, although it is contradicted by a detailed and authoritative study presented by Dr. Noel Russell of Manchester university.
>
> In those circumstances, we suggest that, without new clause 16, the Bill would be open to serious challenge under the European convention. As no compensation whatsoever is proposed for the losses that will occur, it is hard to see how the Government can begin to justify the fair balance requirement for interference with property rights.[30]

Russell's study, of course, was no longer the only authoritative examination of the financial implications on landowners of statutory access. A Labour

member, Anne McIntosh, quoted a previous parliamentary answer that had pointed out that 'a cost benefit study for the Government [the Entec study], undertaken by independent consultants, supports the view that landowners will not suffer significant losses or costs as a result of the new right of access such as would warrant the provision of compensation'.

With the clock having passed 11.15pm, and the only members still awake being probably the lawyers, Michael Meacher summed up the government's view:

> In the past hour, we have listened to a rather lengthy, slightly legalistic and perhaps esoteric, but certainly one-sided, presentation of the costs and benefits of the Bill. I want to offer a more balanced presentation of the measure's impact. New clause 16 would provide general compensation for landowners and others who have an interest in the land. The Government's position is clear: general compensation is not warranted. I went to considerable lengths in Committee to explain the reasons for that. In drawing up the Bill, we have borne in mind the needs and interests of landowners and others who own and use the affected land. The Bill contains numerous safeguards designed to minimise the impact on landowners and managers. The right is limited to access on foot and is subject to comprehensive restrictions. Even swimming or organised games are not allowed under the new right. The affected land is uncultivated, and often in the most wild areas of the country. Walking through fields of crops, even where livestock are likely to be intensively grazed, is not permitted. Dogs must be on leads where there are livestock. Buildings and their curtilages, including gardens, will be specifically excluded, although we do not expect to find many houses in open countryside.[31]

In answer to a further question, Meacher made it clear that although general compensation for the new right of area access would not be paid, landowners would be able to recoup the costs incurred in facilitating and maintaining access, such as the costs of providing stiles, waymarks or carparks. Towards the end of the debate, he summed up in plain English the nub of the matter:

> … I entirely accept that there is a balance to be struck between the public interest and private rights. We accept that there may be a minimal interference with the private property rights of some landowners, but that very limited interference has to be weighed in the balance with the right of millions of people to enjoy – without doing any harm or damage – extensive areas of open countryside. We believe that a fair balance has been struck, in accordance with our obligations under the European convention on human rights, without any requirement for compensation.

With the clock heading for midnight, Edward Garnier withdrew the motion. New clause 16 perished, a casualty of the battle of two studies and of a whopping Labour parliamentary majority.

What the UK Government Decided to Do about Compensation

The Labour government held resolutely to its intention not to compensate the landowners whose land became subject to the right of access. The CROW Act, a complex piece of legislation, marked the climax of one of the longest-running campaigns in British social history, being traceable back to James Bryce's private member's bill of 1884, which had unsuccessfully tried to overturn the law of trespass on uncultivated upland in Scotland. The CROW Act received royal assent on 30 November 2000.

The 'Frequently Asked Questions' page of the Countryside Agency's website made it clear that the English and Welsh public would be reclaiming their outdoor heritage without paying for it in taxes:

> 7.2 Are farmers going to be paid compensation for access to their land?
> No, the government has decided that access will become a statutory right and that no compensation will be payable. Restrictions and limitations on the new rights have been included to ensure that landowners will not suffer significant losses or costs as a result.[32]

Compensation, however, could be payable for other reasons. If it is necessary to create a new public right of way (usually a public footpath) to reach an area of open access, the landowner of the land containing the new public right of way may be entitled to some compensation. Eh? That's weird, you might think. Compensation may be possible for imposed linear access but not for imposed area access? Yes. But the context here is one of building a new public footpath not across uncultivated countryside but across so-called excepted land, typically arable land, parkland, gardens, woodland, or land covered by buildings.

Interestingly from a New Zealand viewpoint, the CROW Act emphasises the absolute necessity of providing walking access across private land to reach access land. There will be no inaccessible islands of access land. A Ramblers' Association webpage makes this clear and urges walkers to report any problems:

> What if there is no way onto the access land?
> Access authorities [local authorities or national park authorities] must provide means of access to access land, ideally in consultation with the landowner but by order if necessary. If you find there is no way of getting to the access land, then please contact your Local Authority and then inform the Ramblers' Association on 0207 339 8500, though remember that not all access points will be available immediately.[33]

The emphasis is on certainty: accurate, authoritative maps; definite access points; and, if necessary, definite accessways to reach those access points. The CROW Act includes a number of safeguards for farmers and other landowners, such as tight limitations on landowners' liability for accidents to walkers. It also includes sensible restrictions to protect wildlife. But it does not brook any nonsense about asking for permission. For over fifty years, since the 1949 National Parks and Access to the Countryside Act,

deference to landowners had produced few access agreements (except in the Peak District)[34]. The landowners would no longer be able to say no.

After the CROW Act: Continuing Issues

In the summer of 2000, a few months before the CROW Act passed into law, Marion Shoard wrote a cautionary essay outlining some limitations and difficulties of the new English-Welsh access arrangements, compared with the broader right of access being planned for Scotland. Discussing whether the English-Welsh access-land laws would survive in the long term, she wrote:

> So will the new system [the access land created by the CROW Act 2000] peter out and eventually be forgotten? Well, downbeat though you may feel I've been up till now, I don't actually think it will. There may be disadvantages in placing the system in the hands of the national agencies [the Countryside Agency and the Countryside Council for Wales], but their energy and commitment will, I believe, ensure that access maps really will have been drawn up and pushed through the consultation and appeal process before a Conservative government is likely to be elected. Once access land is on the maps, a future government will find it hard to abolish it, however much it waters down the meaning of the idea.[35]

In making this prediction, Shoard was assuming that Labour would win the 2001 general election and so stay in power. Which it did, easily. On 7 June 2001 Labour won 412 seats, the Conservatives won 166, and the Liberal Democrats won 52. Not that a second Labour term would end the rural opposition to the new land-access laws. It did not. Four years after the Countryside March, another country-dwellers' London protest, the Liberty and Livelihood March on 22 September 2002, reportedly involved about 400,000 people. But this enormous demonstration might have strengthened the government's resolve to put in place something effective and enduring.

Shoard's prophesy has so far proved correct. Over 2004 and 2005, the Ordnance Survey updated its Explorer maps of England and Wales to show the new access land. These 1:25,000 maps indicate this by a light yellow wash surrounded by a narrow pale orange border. The right to roam arrived progressively across nine regions. Previously-closed land re-opened in the first two regions on Sunday 19 September 2004. By July 2005, according to the former rural-affairs minister Alun Michael, 'the right to roam … [was] already operating smoothly enough to have dispelled many of the worries of the doomsayers'.[36] The new law reached the last two regions on 31 October 2005. (Almost immediately after this, some walkers began discussing the possibility of improving their access to woodlands and coast that were excluded from the CROW Act. The Marine and Coastal Access Act received Royal Assent on 12 November 2009; secondary legislation – the Access to the Countryside (Coastal Margin, England) Order 2010 – came into force on 6 April 2010 and set out changes to the CROW Act to include coastal margin in the definition of access land.)

Westminster has probably not heard the last of CROW and compensation. It remains to be seen whether any of the access land falls in capital or market value. Rumblings about compensation may continue for some time yet. One of the aims of the Countryside Rights Association, which represents landowners, tenants, farmers and garden-owners, is 'to encourage group action for compensation by people whose land is affected by the CROW Act'.[37]

Summary

This appendix has dug superficially and selectively into the CROW Act 2000 and the Land Reform (Scotland) Act 2003, looking at mentions of human rights and compensation. From this great distance away, in 2006 Britain's new countryside access laws appeared to be a remarkable old-Labour achievement, all accomplished thriftily by not paying any general compensation. Yet there's no gain without pain, and to achieve the radical reforms the government had to ignore an influx of 250,000 Barbour jackets into the capital.

Here in New Zealand on 23 June 2005 what *Rural News* called an 'apathetic turnout' of about two hundred farmers demonstrated outside the Beehive, and six days later the government shelved its walking-access bill, on which it had spent much effort.[38] Jim Sutton, the associate minister for rural affairs and the prime mover behind the government's walking-access plans – which in any case stopped far short of a right to roam – indicated that a watered-down bill would be introduced after the general election if Labour stayed in power. Eleven weeks later Sutton lost his largely rural Aoraki electorate seat by 7,000 votes (although he returned to parliament as a list MP). Our land law looked likely to remain more British than Britain's.

Appendix 6

Misinformation and the Right to Roam

In July 2002, when the Labour-led government began its second term, most New Zealand landowners were reluctant to grant permanent linear access, through easements, let alone area access. Behind the scenes, though, a cabinet committee in 2001 had invited Jim Sutton to report on the right to roam that existed in some countries in Europe. No New Zealand government had ever dared to even cautiously float this idea. The right to roam over privately owned countryside, if proposed rather than just investigated, would have been highly radical and a grave political risk.

From 23 January 2003 to 29 June 2005, landholders and walkers in New Zealand debated the issue of walking access to private land. Many farmers, often reported as having connections with Federated Farmers of New Zealand, claimed persistently that the government was planning to legislate a right to roam over farmland. They also said that the results of giving the public this liberty would be unmanageable or undesirable, for a number of reasons.

The first of these beliefs was untrue; the government never decided to create area access. The second belief was consequently irrelevant. But, thanks to the farmers' influential campaigning, much of the access debate of 2003–5 was predicated on these two beliefs. Public attitudes – especially in rural areas – were shaped not by a careful examination of what the government was proposing but by a near-hysterical reaction to what the farmers said that the government was proposing.

Behind the farmers' successful manipulation of public opinion lay, in some cases, farmers' cluelessness: the ignorant leading the ignorant. Yet farmers in general are intelligent and informed people and it seemed to me, observing the debate, that some of them were knowingly misinforming the public on the government's declared policies. The following timeline shows that in August 2003 the first Acland report slammed the door on the right to roam and that subsequent government documents, available printed and online, confirmed this rejection. Also, comments from two members of the 2003 reference group emphasise that the group never envisaged recommending anything but linear access.

Government Policy on the Right to Roam, 2001–8

29 Aug 2001
The cabinet finance, infrastructure and environment committee invites Jim Sutton, the minister for rural affairs, 'to report on public access to rural land provisions applying in Europe ("right to roam" provisions) and the possibility of adopting this approach in New Zealand'.[1]

23 Jan 2003
Sutton announces the setting up of the Land Access Ministerial Reference Group. Its terms of reference do not mention the right to roam but do include the requirement to review 'access onto private rural land to better facilitate public access to and enjoyment of New Zealand's natural environment'.[2]

Aug 2003
The 2003 Acland report says: '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.'[3]

June 2004
MAF's analysis of written submissions says: 'Support for the right to roam by users is small'.[4]

Aug 2004
Sutton's update brochure says: 'The right to roam anywhere at all over open country, which is the tradition of some countries, is not appropriate in New Zealand.'[5]

About 15 Sept 2004
John Acland remarks to *New Zealand Farmers Weekly* that despite adverse perception the right to roam, or 'wander at will', had never been contemplated. 'That was off the table from day one. I don't know why people are going on about it. It simply is not an issue.'[6]

5 Nov 2004
In an article in *The Press*, Tim Cronshaw writes: 'The Government is preparing proposals for walking access on private property, making farmers nervous. Up until now, the office of the Rural Affairs and Biosecurity Minister Jim Sutton [has] made little comment apart from ruling out a right-to-roam policy.'[7]

15 Nov 2004
An editorial in *The Press* says: 'So far, the only solid information released has been that any law will not include a right to roam but people should be allowed to walk along the coast, lakes and rivers with reasonable access across private land to waterways.'

22 Dec 2004
The government releases the land-access cabinet paper that proposes establishing footways along selected water margins. A questions-and-answers document says: 'The "right to roam" found little support in consultation and is not supported by Government.' It also says: 'The Government has decided, based on the outcome of consultation, not

to pursue a policy option for general "as of right" access or the "right to roam" any further."[8]

10 Mar 2005

A Federated Farmers media release refers to 'government plans to allow the public, including overseas tourists, a right to roam over private land'.[9]

22 Mar 2005

The government posts a webpage that reiterates the government's access proposals, as in the December cabinet paper, which do not include establishing area access to private land.[10]

29 June 2005

Sutton announces that he has failed to achieve a public consensus on the proposed legislation and that the government would not proceed with it before the election, due later in the year.[11] His press release says that the government would be 'embarking on a further round of consultation among major stakeholders in search of greater consensus'.[12]

21 Apr 2006

The Walking Access Consultation Panel releases its consultation document. On an associated webpage, Acland says: 'It [the consultation] is certainly not about an unconstrained right for the public to wander at will over private farmland or through private forests. This was never advocated by the former Reference Group, and was never promoted as a possible Government policy."[13]

July 2006

Acland tells *Rural News* that the walking-access consultation panel had found it extremely difficult to get the message across that its proposals were not about the right to roam.[14] He says: 'We are talking about walkways and keeping access defined to certain areas.'

Mar 2007

The 2007 Acland report says: 'The Walking Access Consultation Panel seeks to build on the traditional goodwill of the past. We believe this report reflects a consensus that common-sense solutions based on voluntary negotiation are needed. This report is not about a right to roam or about taking rights over private land."[15]

27 Feb 2008

Gottlieb Braun-Elwert, a member of the 2003 land access ministerial reference group, says: 'We didn't want to push for "free roaming" or similar, just for [linear] access through farm land to public land'.[16] This confirms Acland's 15 Sept 2004 statement.

*

Despite the physical restrictions inherent in a five-metre-wide track (or even in a twenty-metre-wide diversion around an obstacle), from 22 December 2004 onwards the opponents of improved access successfully misrepresented the proposed footways as potentially providing right-to-roam access. This ignorance or deliberate inaccuracy was still evident in September 2008 when, during a committee stage of the Walking Access Bill, three National Party MPs – Eric Roy, Colin King and John Carter – referred to the 2004 footways plan as either 'wander-at-will provision' or 'the right to roam'.[17] Even after three terms of Labour-led government,

the necessary public debate on the pros and cons of linear access had not taken place. There was still a widespread lack of appreciation of the huge practical difference between linear access and area access.

Most discussion of the right to roam had comprised knee-jerk reactions and wild assumptions. People had not founded their ideas on an accurate and level-headed understanding of Sweden's *allemansrätt*.[18] This conversation looked likely to continue, in academic journals and among walkers, as there was no sound reason why area access to private land would not work well on many properties in New Zealand, given the landowners' support.

Abbreviations and Terminology

Abbreviations

CORANZ	Council of Outdoor Recreation Associations of New Zealand
CPLA	Crown Pastoral Land Act 1998
CROW Act	Countryside and Rights of Way Act 2000 (England and Wales)
DOC	Department of Conservation
F&GNZ	Fish and Game New Zealand
FFNZ	Federated Farmers of New Zealand
FMC	Federated Mountain Clubs of New Zealand
GPS	Global Positioning System
HSE Act	Health and Safety in Employment Act 1992
LINZ	Land Information New Zealand
MAF	Ministry of Agriculture and Forestry
MTBNZ	Mountain Bike New Zealand
NZCA	New Zealand Conservation Authority
NZFFA	New Zealand Federation of Freshwater Anglers
NZFOA	New Zealand Forest Owners Association
NZWAC	New Zealand Walking Access Commission
OIO	Overseas Investment Office
OSH	Occupational Safety and Health Service
PANZ	Public Access New Zealand
RANZ	Recreation Access New Zealand
RMA	Resource Management Act 1991
RWNZ	Rural Women New Zealand
SPARC	Sport and Recreation New Zealand
WAMS	Walking Access Mapping System

Terms

Crown Land, General Title Land and Maori Land
In regard to ownership, land in New Zealand is usually divided into three sorts: crown land (often referred to as public land), general land (often referred to as private land), and Maori land.

You can find a precise definition of 'crown land' in the Land Act 1948, but I have used the terms 'crown land' and 'public land' interchangeably to mean land belonging to the crown; such land can be thought of as belonging to all New Zealanders collectively.

General land – sometimes called general title land – is all land that is not crown land or Maori land; it is all the privately owned land in New Zealand.[1] The Land Act 1948 defines private land as any land that is for the time being held in fee simple by any person other than Her Majesty.

Chapter 9 includes an explanation of the meaning of the term 'Maori land'.

Track Terms

This book covers a period of about a hundred and eighty years, during which the meaning of some words changed. Chapter 1 includes quotations from 19th-century New Zealand writing in English. The phrases 'native trail', 'native track', 'native path', 'Maori trail', 'Maori track' and 'Maori path' occurred frequently in this writing. They could signify a range of things, from an obvious, well-trodden path to the faintest of signs of human passage.

The Old Country word 'footpath', which in Britain meant (and still means) an unsurfaced track across fields, through woods or over hills, occurred quite often in the accounts of settlers and travellers. On 9 July 1864 the *Timaru Herald* reproduced an extract from the *Melbourne Argus*, which began:

> Any one who has been forced to travel through the mountainous and forest parts of the country by means of a Maori foot-path, will recognise the perfect accuracy of the following description:

What followed was a quote from George French Angas's *Savage Life and Scenes in Australia and New Zealand*. As well as 'road' and 'path' and 'track', Angas used the word 'foot-way', a term that would reappear briefly 157 years later. In 1847 Angas wrote:

> From Wellington I started on foot, through the mountainous forests, for Porirua harbour … For three or four miles from Wellington, a road [probably a bridle track or dray road] has been formed through the forest, but the path afterwards becomes a narrow track, little better than a Maori foot-way; in some places knee-deep with mud, and in others so overgrown with tangled liands [lianas] and supple-jacks, as to be scarcely passable: fallen trees constantly obstructed the way; and owing to the late heavy rains, we were frequently compelled to wade for a considerable distance.[2]

Many 19th-century writers used the word 'road' indiscriminately to mean a bush trail or a bridle track or a formed vehicular road such as a cart track. Over the 20th century, 'track' became the standard word in New Zealand for a narrow path for walkers, with 'trail' always in the wings.[3]

The word 'walkway' landed permanently in New Zealand in the 1970s, with the New Zealand Walkways Act 1975. Some early users of this word gave it a capital W in an attempt to make the word specific, limited

to walking tracks established under the Act. But the usage of 'walkway' soon became more general (and potentially confusing), and the word lost its capital letter.

As we entered the 21st century, 'track' remained the chief word, but 'trail' too was in quite frequent use, as in the title of Geoff Chapple's book *Te Araroa: The New Zealand Trail* and in the title of the guidebook *Dunedin Tracks and Trails*. In November 2009 the proposed New Zealand Cycleway gained a logo and became the New Zealand Cycle Trail, branded, one presumes, for the North American market.

There is no clear distinction in meaning between 'track' and 'trail' in New Zealand English. Both can mean the marks left by something that has passed. And both can mean a formed or well-defined walking path. In 1925, however, the Otago Expansion League published the first edition of the now celebrated *Moir's Guide*, in which Moir seems to have reserved the word 'trail' to mean a way used by animals or a blazed route. For example, he wrote: 'There is easy walking up through the open bush where the track follows an old cattle trail.'[4] Some subsequent editions of *Moir's Guide* have carried a note explaining the usage of 'track', 'trail' and 'route'. For example, from *Moir's Guide South*, 1995: 'A "trail" is a less distinct, unformed pathway, sometimes blazed or marked with fluorescent spray paint and usually formed by deer or wapiti.'[5]

I have used 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 have used 'accessway' casually, for example to denote a track that crosses private land to reach public land.

Since the early 1950s, the legends of New Zealand's topographic maps have used the term 'foot track'.[6] Many map-users here are familiar with it. But the more specific expression 'public foot-track' does not occur much in New Zealand writing. I have employed it frequently to refer loosely to any New Zealand foot-track recognised as open to the public, all or most of the time, without their asking for permission. Our public foot-tracks have a wide variety of legal statuses and may carry restrictions, such as no dogs. Some of them are closed at lambing-time. The equivalent expression in Britain, 'public footpath', has a far tighter legal meaning, always signifying a public right of way for walkers, open all the year round. (Note that 'footpath' in New Zealand English and 'footpath' in British English may nowadays be two very different things. What New Zealanders call a footpath is usually in a town and would often be called a pavement in Britain or a sidewalk in North America.)

In this book the term 'permitted track' means a foot-track or multi-use track that crosses private land and is open to the public without asking for permission but which rests on an informal, goodwill arrangement. Permitted tracks may be based on oral agreements or casual written ones. They are a type of de facto access. All permitted tracks are potentially impermanent.

The term 'multi-use track' refers to a track that is open to walkers and cyclists and sometimes also to horse-riders.

The word 'footway' revisited our vocabulary in December 2004, like Halley's Comet. It denoted the five-metre walking strip that the government was then planning to establish along some water margins.

When I talk about a 'physically evident foot-track', I mean a foot-track that is visible on the surface of the ground or is adequately waymarked.

Once upon a time, in 19th-century New Zealand, there were Maori tracks, native tracks, pakeha tracks, saddle tracks, horse tracks, mule tracks, swag tracks, pack tracks, mail tracks, bush tracks, corduroyed tracks, barefoot tracks and hobnail tracks. It's a pity that 'hobnail track' didn't catch on. It would have saved us from much present-day ambiguity if we had developed public hobnail tracks.

Water Margins and the Queen's Chain

The term 'water margin' means the point where the water in the sea or in a river or lake meets dry land.[7] For legal purposes more-specific terms are sometimes used, such as mean high water mark or mean high water springs mark. In everyday English, people sometimes use the term 'water margins' to mean water-margin reserves; when this is the case, the terms 'water margins' and 'Queen's Chain' become interchangeable.

Some over-careful authors talk about 'the so-called Queen's Chain'. Or they shield the two words with quotation marks, the 'Queen's Chain'. There's no need for either the 'so-called' or the quotation marks. It is true that the term 'Queen's Chain' is not at the time of writing a legal term; there are no strips of land legally called the Queen's Chain. But it is equally true that the term is an established part of New Zealand English, even if many New Zealanders have only a folklore idea of what it refers to. The earliest example known to me of a New Zealand reserve along a water margin being called the Queen's Chain is dated 1865.[8] In the hundred years that followed, the term does not seem to have remained in widespread public use. The New Zealand Dictionary Centre holds citations for early and modern uses of many words in New Zealand writing. In 2005 the centre's earliest 20th-century example of the term 'Queen's Chain' or 'Queen's chain' being used to refer to water-margin reserves was dated 1977.[9]

The *New Zealand Oxford Dictionary* (2004) gives the Queen's Chain initial capitals, thus making the term a proper name, and defines it as 'a strip of public-access land (orig. one chain wide, now 10 to 20 metres) along coasts, lake-shores, and river-banks'. These coastal and riparian strips include public roads, marginal strips, esplanade reserves, esplanade strips, access strips and various kinds of public reserves.

The preposition 'to' can be ambiguous when we are discussing access to water margins. Sometimes a double meaning is intended. In June 2005 the New Zealand First Party promised anglers and river-lovers that, if it achieved a position of influence in the government, it would 'ensure public access to the Queen's Chain'. Did New Zealand First mean access across private land to reach rivers, lakes and coasts? Or did it just mean access along the rivers, lake shores and coasts themselves? Both aspects are important. To avoid ambiguity, the writers of official documents sometimes write 'access to and along water margins'.

Cadastral Information, Cadastral Maps, and Landonline

Cadastral information (or cadastral data) is information about property boundaries and legal rights over land. Cadastral maps are maps representing cadastral data in graphical form. Land*online* is a database containing cadastral information held by Land Information New Zealand. It is

designed for use by lawyers, surveyors and estate agents, who pay for the information they obtain. Land*online* is unsuitable for use by the public.

Public Roads, Legal Roads and Paper Roads

A public road is a road that is shown on the cadastral records held by Land Information New Zealand and to which the public has free, unhindered passage at all times. In most contexts, the terms 'public road' and 'legal road' are synonymous. A search of Papers Past found both of these terms but with the occurrences of the first vastly outnumbering those of the second. A search of the New Zealand Legal Information Institute databases found 848 documents containing 'public road' and 74 containing 'legal road'. This book uses 'public road'. Some people prefer 'legal road' because, they say, it conjures up an image of establishment by express legal dedication (which was how New Zealand's public roads came into being) rather than by long and uninterrupted usage, sometimes called deemed dedication (which was the way that many of Britain's older roads, public footpaths and bridleways evolved).

A formed road is one that has been constructed. Typically formed roads are founded on crushed rock and surfaced with gravel or tarseal. An unformed public road is a public road that neither the crown nor the district or city authority has formed. Public money has not been spent on its construction nor on its maintenance. Unformed public roads are sometimes referred to as paper roads. Lawyers sometimes refer to them as being 'in a state of nature'.

Two verbs are frequently used in connection with the formal shutting of public roads: 'to stop' and 'to close'. Stopping a public road means ending its existence permanently; the Public Works Act 1981 and the Local Government Act 1974 lay down the procedures for stopping public roads.[10] Closing a public road usually means shutting it temporarily.[11]

Stripland

Although many unformed public roads follow water margins, many others do not. The informal word 'stripland' usefully bundles up water-margin reserves and all unformed public roads.

Landowner and Landholder

Some writers use 'landowner' and 'landholder' to signify two different things. The first owns the land (and may or may not occupy it). The second occupies it (and may or may not own it). In the case of a landholder who has a common law lease, he or she enjoys exclusive possession and can exclude others, including the landlord, from the land. This distinction in meaning can be important when considering who is legally entitled to control the access to land.

In everyday English, however, people often use the word 'landholder' to mean landowner. Many dictionaries support this usage, simply defining 'landholder' as 'one who owns land'. Some other dictionaries define 'landholder' as 'the owner or occupant of a piece of land'. In this book, I have interchanged 'landowner' and 'landholder' loosely.

Exclusive Capture

The term 'exclusive capture' refers to the use of the Trespass Act by a landholder to obtain de facto private ownership of a publicly owned natural resource such as sports fish or game animals. Fish, wildlife and

natural water do not attach to land title in New Zealand. Landowners do not own them. But in some situations landholders can use the Trespass Act to limit and control the access to them and effectively obtain the sole use, including for business, of these public resources.

Linear Access and Area Access

Two useful terms that deserve a wider currency in New Zealand are 'linear access' and 'area access'. These terms are general descriptions. They are not yet legal language in New Zealand, though they could be functional as such.

Linear (or lineal) access is entry that is confined to a line, such as when users must keep to a foot-track or to a waymarked route along a narrow corridor.

Area (or areal) access is entry that is allowed to a defined space, with users being entitled to walk anywhere in that space. In New Zealand we associate area access with public land such as national parks and recreation reserves and the foreshore. Area access to private countryside, when granted, usually involves uncultivated land, woodland or bush. The term 'area access' is synonymous with the expression 'the right to roam', which may carry either disdainful or desirable overtones, depending on who uses it. For England and Wales, the right to roam was officially defined in 1999 as 'a legal entitlement for walkers to enter areas of open countryside and be at liberty to wander over it, and not be restricted to paths or other linear routes'.[12] 'Open countryside' in this definition meant mountain, moor, heath, down and common land. A later definition, for England and Wales, reads as follows:

> right to roam
> The right provided by the Countryside and Rights of Way Act 2000 . If land is designated as access land , the public has the right of access to it for the purposes of open-air recreation. There are statutory powers to extend the rights of access to foreshore and other coastal land. The right of access is limited to access on foot, and there are strong restrictions on activities that may be pursued. For example, there is no right to play organized games, hang-glide, para-glide, hunt, shoot or fish, or swim in nontidal waters.[13]

In the UK and New Zealand, area access is often referred to as 'open access'. In New Zealand, area access is sometimes referred to as 'general access' or 'as-of-right access'. But the term 'area access' is intuitively clearer than all these alternatives.

A specific instance of linear access or area access might be subject to restrictions, such as closure for lambing, contingent on the legal basis of the access. Linear access is a less intrusive and more manageable form of access than area access.

A right of passage restricted to narrow strips along water margins is linear access. In referring to such riverside, lakeside and coastal access, some New Zealand landholders and politicians have used the terms 'right to roam' and 'wander at will'. Employing such expressions to describe what is very clearly linear access is inaccurate and confusing, if not downright disingenuous in its feigned ignorance.

Landlocked

In general use, whether applied to a country (such as Chad) or to an area of water (such as the Caspian Sea), the word 'landlocked' means entirely enclosed by land, ie cut off from the sea. Modern usage, in New Zealand at least, has extended its meaning to contexts that do not involve the sea. Landlocked publicly owned land is land completely surrounded by privately owned land that acts as a barrier to public access. Landlocked privately owned land is land to which its owners have no legal access; parcels of Maori land are quite often landlocked.

Other Terms

I have used the term 'outdoor recreators' to mean all the groups who have a need for and an interest in walking tracks: walkers, trampers, hunters, anglers, beach-goers, kayakers, etc.

For brevity I have referred to the report *Walking Access in the New Zealand Outdoors* as the 2003 Acland report. Likewise I have called *Outdoor Walking Access: Report to the Minister for Rural Affairs* the 2007 Acland report.

Capital Offence

In 1693 the playwright William Congreve wrote, as part of some dialogue: 'I thought a Contemplative Lover could no more have parted with his Bed in a Morning, than he could have flept in't.' It was normal to capitalise the first letters of nearly all nouns, not just those of proper names. Congreve even capitalised the adjective 'contemplative'. The trend ever since has been away from initial caps. The internet has accelerated that movement.

Does the word 'parliament' need a capital P? It can probably do its job with a small p. The capitalising of the first letters of words in the body text of this book leans towards that of *Guardian Style* (2007), which avoids the use of upper case when the meaning is clear with lower case. Eg, in parliament, the prime minister, the bill, the high court, Otago district walkway committee, the high-country committee of Federated Farmers, and the parks and gardens division of Hutt city council.

The quotations remain adorned with all their original capitals.

Macrons

At one point during the writing, I started to macronise the long vowels in Maori words. This job proved to be more complicated than I had expected. It remains to be seen whether 'Otāgo' will replace 'Otago' in New Zealand English. Or should it be 'Ōtāgo', following Ōtākou ? It is hard to know whether an English that is losing some of its capital letters (long overdue) and is only with difficulty hanging on to its apostrophes (sadly) can at the same time gain macrons. I admitted defeat rather than make a mess of things.

Sources and Acknowledgments

Finding out about New Zealand's foot-tracks led me into a wide range of subjects, although probably not far enough into their disciplines. The work ranged from reading about the king's highway in the *Haskins Society Journal* to learning about a dog's mind from the *Handbook of Behaviour Problems of the Cat and Dog*. The endnotes reflect an exercise in eclecticism. The sources named below represent a fraction of those available.

Sources for Part One

Part One, the historical overview of foot-track existence and development up to 2003, sifts fragments of track information from the writings that have accumulated in New Zealand over two centuries. Its eight chapters draw on material from early New Zealand books, 19th- and 20th-century newspapers, local and regional histories, the histories of specific subjects or organisations, biographies, guidebooks, general books, journals and newsletters, conference reports, parliamentary papers, local-authority records, published and unpublished maps, and unpublished manuscripts. I have tried, especially in Chapters 1, 2 and 3, to blend historical background with first-hand descriptions of tracks.

Indispensable for Chapter 1 was Barry Brailsford's *Greenstone Trails* (1996), which covers the pre-contact trading routes of the South Island and their oral traditions. There seems to be no equivalent single volume covering the main old Maori trails of the North Island. Alister Matheson's extensively researched *The Wairere Track: Ancient Highway of Maori and Missionary* (1975) packs in a mass of information about this 'hard walk of fourteen hours'. Matheson's account of the 19th-century phase of this track is more than a local history: you can safely read it as representing the 19th-century stage of many, but not all, old Maori tracks. Harold Williams's self-published typescript *Te Kowhai Track* (1992) was a pleasure to discover for its enthusiasm, even if written by an amateur, dabbling in history (I share this status with Williams). A welcome find was Jan Kelly's paper *Maori Maps* (1999), an illustrated discussion about Maori oral and written maps.

In *Links: A History of Transport and New Zealand Society* (1996), James Watson presents walking as a significant – although secondary – aspect of

the Age of the Waka and the Age of Sail. Books written by early European travellers, missionaries, administrators and soldiers in New Zealand are chock-full of first-hand tales of unctuous narrow tracks and tiresome swamps and of stories of battles won that may have been drawn or lost. A D McKinlay called these writings 'that vast, voluminous and clamorous literature of colonisation'.[1] The website Early New Zealand Books, http://www.enzb.auckland.ac.nz/, provides the keyword-searchable text of over a hundred books about New Zealand, mainly published in the 19th century. For busy people, Nancy Taylor's *Early Travellers in New Zealand* (1959) contains selected extracts. Other secondary sources that contain extracts from primary material about long walks include *The Turanga Journals* (1974), edited by Frances Porter, and Arthur Mead's methodical biography *Richard Taylor: Missionary Tramper* (1966).

Nineteenth-century newspapers contain many references to tracks. Also in them you can find remarks and discussions about public roads. One newspaper yielded an important and apparently unique mention of the Queen's Chain. The website Papers Past, http://paperspast.natlib.govt.nz/cgi-bin/paperspast, lets you search through over a million digitised pages of New Zealand newspapers from 1839 to 1932. Be ready to be distracted.

Our dominant general histories do not go to town on foot-tracks. In these books you will not find much about the demise of the Maori tracks or on the Walkways Act 1975 or on the recreational use of unformed public roads. Local histories and organisations' histories can supply relevant material, but they vary. A sumptuous 1929 volume on early Wellington, for example, devotes many diligent pages to immigration data and the deeds of 'prominent men' and 'eminent men', but you have to scrutinise minutely its 544 pages to find the briefest mentions of the indigenous inhabitants of New Zealand or their trails.

More commonly, the local and regional histories do mention the past existence of Maori tracks, but only briefly and in a way that mixes intriguing titbits with familiar generalities. So, for example, Ian Church's *The Stratford Inheritance* (1990) squeezes in a page of writing about and a sketch map of the main Maori tracks of Taranaki. Part 3 of Kay Mooney's *History of the County of Hawke's Bay* has a chapter titled 'The Changing Pattern – From Foot-tracks to Roads'.

You're lucky if you own a copy of W H Guthrie-Smith's *Tutira: The Story of a New Zealand Sheep Station* (1921), which devotes three chapters to Maori trails. The 1969 edition has a double-spread endpapers map of the trails that led from the Hawke Bay coast, via Tutira Lake, to the Maungaharuru Range. Another source that contains more information about Maori tracks than its title might lead you to expect is Leslie Adkin's *Horowhenua: Its Maori Place-names and Their Topographic and Historical Background* (1948). Judith Binney's *Encircled Lands: Te Urewera, 1820–1921* (2009) is packed with intricate detail and includes twenty-nine maps, several of which show 19th-century kainga and tracks of the Urewera.

For a description of the changing land use that contributed, with other factors, towards the loss of the old Maori tracks, there is the absorbing *Environmental Histories of New Zealand* (2002), edited by Eric Pawson

and Tom Brooking and accessible to the nonexpert. Also authoritative on land use, and particularly on the geography of colonisation[2], is *The New Zealand Historical Atlas: Ko Papatuanuku e Takoto Nei* (1997). The early chapters of *A History of the Post Office in New Zealand* (1964), by Howard Robinson, touch upon several of the routes taken by the overland mail-carriers. For the legal side of the story of public roads from 1840 onwards, there is Brian Hayes's *Roads, Water Margins and Riverbeds: The Law on Public Access* (2008). For background on the Land Act 1892, which put into law the idea behind the Queen's chain, there is Tom Brooking's fine biography of John McKenzie, *Lands for the People?* (1996).

Late 20th-century scholars have demolished some of the once widely accepted theories of the ethnologists Stephenson Percy Smith and Elsdon Best. Thanks to this debunking, I have been spared the embarrassment of reproducing, in ignorance, the Great New Zealand Myth. There has also been a debate in New Zealand society about the writing of Maori history and in particular a concern 'to ensure that Maori understandings and values be given their full weight'.[3] I have reason to agree unreservedly with this concern: writing about Maori trails and about their disastrous loss pushed a monolingual nonhistorian author beyond his suitability. Yet the story of foot-tracks needed this background; it could not start in the 1870s, as if a trackless and untrodden land had preceded McKerrow's attempts to build a bridle track up Route Burn. So Chapters 1, 2 and 3 have been born but remain in trial form. Further research and a stronger Maori perspective could change them considerably.

The essential book on the Tararua, from which I extracted some of the information that appears in Chapter 4, is Chris Maclean's history, *Tararua: The Story of a Mountain Range* (1994). Kirstie Ross's *Going Bush: New Zealanders and Nature in the Twentieth Century* (2008) examines recreational walking from a cultural and social perspective. Jack Ede's *Mountain Men of Milford* (1988) includes an account of some track-building by medical students in 1919–24. A useful history of Federated Mountain Clubs, drawn on for a section of Chapter 5, is Ray Burrell's *Fifty Years of Mountain Federation, 1931-1981* (1983). Tracks in forest parks receive a brief mention in Halkett, Berg and Mackrell's *Tree People: Forest Service Memoirs* (1991). Some of today's walking tracks follow old logging roads or logging tramways; the history of the tramways is documented in Paul Mahoney's *The Era of the Bush Tram in New Zealand* (1998). Ross Galbreath's *Working for Wildlife: A History of the New Zealand Wildlife Service* (1993) includes information about the deer-hunters of the Department of Internal Affairs, who cut many tracks between 1930 and 1956. New Zealand's oscillating deer population has produced a varied herd of deer books; David Yerex's *Deer: The New Zealand Story* (2001) is a balanced twelve-pointer.

David Thom's *Heritage: The Parks of the People* (1987) covers over a hundred years of national parks in New Zealand but provides only a few snippets of information on track developments. For mentions of early track-making in Fiordland, on Mount Egmont (Mount Taranaki), and in Tongariro National Park some elderly histories are available; Chapter 4 risks repeating a few unverified details taken from John Hall-Jones's *Early Fiordland* (1968), from A B Scanlon's *Egmont: The Story of a Moun-*

tain (1961) and from James Cowan's *The Tongariro National Park, New Zealand: Its Topography, Geology, Alpine and Volcanic Features, History and Maori Folk-lore* (1927). More mentions of the building of new tracks in national parks and other reserves lie in the annual reports of the Department of Lands and Survey and the Department of Tourist and Health Resorts; these reports are available in the *Appendix to the Journals of the House of Representatives of New Zealand* (*AJHR*).

Some details about the centennial-atlas project and its abortive attempt to map comprehensively the old Maori tracks are available in *Creating a National Spirit: Celebrating New Zealand's Centennial* (2004), edited by William L Renwick. Another useful source on this subject is *A Life of J.C. Beaglehole: New Zealand Scholar* (2006) by Tim Beaglehole.

Professional historians, working for the Department of Conservation, have probed deeply into the histories of some of New Zealand's most well-known tracks. Jackie Breen's *Copland Track Heritage Assessment and Baseline Inspection Report* (2007) follows the ups and downs in the life of the Copland Track from 1892 to 2007. It is a must-read. So too is her *Croesus Track Heritage Assessment and Baseline Inspection Report* (2006). Both of these inspiring papers benefit from details discovered in archives. Each shows what can be learnt when a researcher concentrates on tracing the life of one track.

The first part of Chapter 6, on the efforts and achievements of the New Zealand Walkway Commission, relies considerably on two conference reports, *Proceedings of the New Zealand Walkways Seminar, Lincoln College, Canterbury, 10–12 May 1979* and *The Future of Walkways: Proceedings of the First New Zealand Walkways Conference, Carey Park, Auckland, February 1989*. The latter part of Chapter 6 is based on information in Jeff Chapple's *Te Araroa: The New Zealand Trail* (2002), a stimulating account of the growth of Te Araroa between 1993 and 2002.

Chapter 7 discusses, among other things, the Otago Peninsula access controversy of 1989–92. A visit to the basement that houses the Dunedin city council archives produced some information on this disagreement. City- and district-council records – such as minutes, letters and reports – can yield reliable information on local track issues.

Public Access New Zealand came into being in 1992, not long after the dawn of the internet, and by 1997 was using that medium most effectively. Chapter 7 quotes extensively from documents on the PANZ website.

Sources for Parts Two, Three, Four and Five

Whereas Part One is a historical sketch, albeit of a period that ended only nine years ago, the rest of the book, recording the walking-access developments of 2003–11, is a commentary. It gathers plenty of information from published material, as did Part One, but it also includes much unpublished stuff, the product of observing and writing about events as they happened.

Many matters of access to land are highly charged politically. It was inevitable, therefore, that a piece of writing about the issues surrounding foot-tracks would become in large part a political commentary. As a part of that record of events, almost every page of Parts Two, Three, Four and Five contains some evidence or hint of people's attitudes towards

particular issues. The many sources of this evidence, when sorted into types, boil down to just a handful of approaches to researching people's views.

Sociologists and political scientists sometimes undertake meticulous case studies, with defined aims, carefully designed questions, pilot studies, extensive mail-outs to random samples, and statistical analysis of the responses. Although *Foot-tracks* does mention the results of two New Zealand surveys into landholders' attitudes to recreational access to private land, I have not conducted any studies myself. Readers who are looking for accounts of rigorous investigations into landholder perspectives may find them in the literature of rural studies, geography, planning, tourism and recreation. (A handy place to start would be Kay Booth's thesis.[4])

Another means of investigating people's viewpoints is by government-led consultation. In 2003 the Land Access Ministerial Reference Group consulted about fifty organisations with a long-standing interest in walking access to the outdoors. After the publication of the group's report, the Ministry of Agriculture and Forestry consulted the public and all interested parties, receiving 1,050 submissions and producing an analysis of those submissions. In 2006 the Walking Access Consultation Panel consulted widely on the access issues, asking the public thirty-eight questions. The submissions that organisations made to the consultations and the MAF-published documents resulting from those consultations are important sources.

A third source of information on what people are thinking is the political opinion poll, such as those undertaken by DigiPoll for the *New Zealand Herald* and by ACNielsen for Fairfax New Zealand. I describe two such opinion polls related to walking access, not because they accurately reflected public opinion but, on the contrary, because of their poorly designed questions that led to meaningless – but possibly influential – results.

A fourth origin of views on land access, yet this time of the collective views of groups in our society, is political manifestoes. I occasionally quote from political parties' policy statements going back some years. I also look at the policy statements produced before the 2005 general election.

Most often, though, and particularly for Parts Two, Three and Four, I draw on a fifth source of information on attitudes: newspaper reports, news websites, press releases, newsletters and magazines. I quote copiously from these sorts of sources. They have enabled me to record the opinions that were detonating around in 2003–8. The quotations often include people's own words (or their reported words) or include parts of organisations' written statements. These quotations may sometimes contain bias and inaccuracies, or even inanities; readers will have to be the judge of this. My using these factually unreliable sources is deliberate, to convey the prejudices, the provincialisms, the raw emotion and the misinformation of the national debate on land access, which often resembled psychological warfare rather than measured and informed argument.

When I needed practical examples to illustrate my descriptions and arguments, I often gathered them from the Dunedin area. So the reader will find me mentioning the foot-tracks of the Otago Peninsula, scrutinising the maps of the Dunedin surrounds, quoting from Dunedin city

council's Track Policy and Strategy (1998), and glancing through Otago regional council's plans and policies. My use of specimens from the deep south reflects where I happen to live rather than any intentional focus on one area; the lessons drawn from them may or may not apply to other places in New Zealand.

References to Internet Sources and Other Electronic Sources

Many of the web sources that I have cited will pose a problem for anyone who tries to access them: webpages disappear or change; whole websites close down or shift to new addresses. Similarly, emails and email attachments – such as press releases and newsletters – may not be archived anywhere. In such a situation the reference, which ideally would take a reader directly to the source, will fail to do its job. A researcher, needing to obtain the original material, will meet a dead end.

No method of citation can lead a reader to an item that does not exist any more. On the other hand, sometimes the sought item may be available in a different location from that cited. This raises a question for writers and researchers: is an inoperative internet reference better than no reference at all? I do not know whether a consensus on this has yet emerged. I have cited all my internet and email sources.

Further Research

My looking into foot-tracks in New Zealand revealed plenty of aspects that seem to need further research; if the research has already been done, I didn't find it. On the history of foot-tracks, nationally there may be scope to piece together a more complete picture of the lost network of Maori trails. Locally, the stories of some younger, Pakeha routes may stretch back a century and a half.

In researching for Part One, I entered only a selection of the many rooms in the chateau. There are whole floors that I have not visited (although others may have done). Plenty of other doors await opening. Tribal histories, for example. And sources written in Maori. What track secrets lie in the records held by the Maori land court? And there are old maps, a resource that I only pecked at; we'll return to maps in a moment. Archives are another resource that I drew on occasionally but less than I would have liked. Photographs and paintings are a potentially fruitful source that I haven't used at all. Walkways remain ripe for the picking. Go to the Archives New Zealand website and search for 'walkway'. You will discover over 400 records, many of them connected with the New Zealand Walkway Commission and mainly dating from the period 1972 to 1990. Among those records, held in regional offices, will lie evidence substantiating or contradicting some of the points raised in Chapter 6.

Maps as Sources

The principal record of the past existence and decline or growth of New Zealand's physically evident foot-tracks lies in a large assortment of 19th-century maps and in over a century of official topographic maps and 170 years of cadastral plans. If a researcher were to ignore the tens of thousands of cadastral plans and just look at all the 20th-century

topographic maps, a crude estimate of the total number of maps would be 1,800 (based on 300 maps to cover New Zealand and a new series or full revision every twenty years). If the researcher were to look at the miscellaneous 19th-century maps as well, that would add many hundreds more. The 19th-century hoard includes numerous special-purpose maps that happen to show some tracks as well as information that was once of greater importance. For example, an 1881 map that was probably produced to promote the Matemateaonga Block to settlers emphasises main roads and railways, but it also shows 'tracks' (meaning bridle tracks or foot-tracks) leading to Hawera, Te Roti, Waitara, Taupo and the Whanganui River.[5]

The Wellington repository of Archives New Zealand holds 300,000 maps, plans and other cartographic items. A few years of map-scrutiny await anyone who wants to look exhaustively at the history of foot-tracks in general. What is far more likely to happen is that people will examine old maps and cadastral plans during research into just one or two tracks, as Harold Williams did when he investigated the history of Te Kowhai Track.

Brian Marshall has produced a couple of useful papers. They are 'From Sextants to Satellites: A Cartographic Time Line for New Zealand' (2005)[6] and 'A Guide to Finding New Zealand Historical Maps' (2006).[7] Also useful is Brian Hooker's list of published items, 'Early Cartography in New Zealand – A Guide'.[8]

Current Issues

One obvious area for enquiry and consideration is the differing legal statuses of our foot-tracks. Another three areas could be rolled into one: the recreational potential of farmtracks, the access aspects of commercial events that use private land, and the place of the private walking track. If anyone is interested in drilling as deeply as possible into one facet of linear access, some case studies into the negotiating of access would be useful.

Acknowledgments

During the research for this book, I frequently used the printed material and electronic resources of the University of Otago libraries. Invaluable too was borrow-direct access to the books of the other Library Consortium of New Zealand partners: the libraries of Auckland University of Technology, Victoria University of Wellington and the University of Waikato. A tremendous joint resource.

Also, information obtained from other libraries slotted into place. I am grateful for the help of Dunedin public library, the Puke Ariki library, the Alexander Turnbull library and the Waitangi Tribunal information services.

As well as library staff, many other individuals responded promptly to my requests for information. I would like to thank the following people who supplied factual details but who have absolutely no connection to any views that I have expressed: Jacinda Baker, Dunedin city council; Dianne Bardsley, New Zealand Dictionary Centre; Hugh Barr, Council of Outdoor Recreation Associations of New Zealand and New Zealand Deerstalkers' Association; Cathie Bell, New Zealand Walking Access Commission; Sandi Black, Whanganui Regional Museum; Kay Booth,

Recreation and Tourism Associates; Geoff Chapple, Te Araroa Trust; Ryan Clements, Queenstown Lakes district council; Kate Conto, Ramblers' Association; Kelly Crandle, Hutt city council; Hunter Donaldson, Ministry of Agriculture and Forestry; Peter Dymock; Doug Forster, Freshmap; Adrian Griffiths, DOC's Nelson-Marlborough conservancy office; Roy Grose, DOC's Marlborough Sounds area office; Antony Hamel, Silver Peaks Press; David Haynes; Kay Holder, Christchurch city council; Kevin Kelly, Land Information New Zealand; Gavin Knight, New Zealand Police; Bruce Mason, Public Access New Zealand and latterly Recreation Access New Zealand; Alan McMillan, Public Access New Zealand; Greg Napp, DOC's Golden Bay area office; Christine Nana, Puke Ariki; Mark Neeson, Ministry of Agriculture and Forestry and latterly New Zealand Walking Access Commission; Robyn Nicholl, Land Information New Zealand; Diana Reid; Hamish Seaton; Susan Stevens, Gibbston Community Association; Faye Storer; Catherine Tudhope, DOC's Wellington head office; John Wheeler, Federated Mountain Clubs of New Zealand; Guy Wynn-Williams, Mountain Bike New Zealand.

Permissions

Where I have quoted a substantial part of a piece of copyright material, I have endeavoured to obtain the writer's or publisher's permission. I thank the following for their granting of permission: Kay Booth for the extracts from 'Rights of Public Access for Outdoor Recreation in New Zealand'; Geoff Chapple for the extract from 'Rebirth of a New Zealand-long Foot Trail'; Alan Creak for the letter in Chapter 20; Peter Dymock for extracts from emails; Doug Forster for extracts from emails; Brian Stephenson for extracts from emails; Bryce Johnson for the extract from an email; Mick Strack for the extracts from 'Back to the Land: Walking Access to the Outdoors' and 'Time to Put Public Access Issues on Right Track'; Ann Brower for the extracts from *Who Owns the High Country?*; Bruce Mason for the extracts from writings on the RANZ website and from the DVD *Bushey Park Saga*; Standards New Zealand for the table in Chapter 38; Faye Storer for the 2008 update on the Waiheke Island walkways in Appendix 2.

Notes

Introduction

1 Chris Morris, 'High Hopes for Peninsula Trail', Otago Daily Times Online (12 June 2010) <http://www.odt.co.nz/print/110398> [accessed 3 Dec 2010].

2 Ian Smith, 'OK, as Far as It Goes', Otago Daily Times Online (14 June 2010) <http://www.odt.co.nz/news/dunedin/110398/high-hopes-peninsula-trail> [accessed 3 Dec 2010].

3 A H Carrington, *Ngai Tahu: A Migration History: The Carrington Text,* ed. by Te Maire Tau and Atholl Anderson (Wellington, NZ: Bridget Williams Books by association with Te Runanga o Ngai Tahu, 2008), pp. 154–156.

4 New Zealand Walking Access Commission, *National Strategy for Walking Access* (Wellington, NZ: NZWAC, Sept 2010), p. 16.

5 *The Oxford History of New Zealand Literature in English,* ed. by Terry Sturm (Auckland, NZ: Oxford University Press, 1991), p. 34.

6 Sarah Cowell, GeoStatistical Analyst, Statistics New Zealand, to P McDonald, subject 'Total Land Area of NZ', 2 Sept 2008 [Email].

7 Statistics New Zealand, *New Zealand Official Yearbook 2010 – Te Pukapuka Houanga Whaimana o Aotearoa 2010*, 107th edn (Rosedale, Auckland, NZ: David Bateman, 2010), p. 322.

8 Walking Access Consultation Panel, *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 9.

9 Kevin Kelly, General Manager Policy, LINZ, to Hon John Tamihere, Minister for Land Information, on the subject 'Foreshore Project Final Report', 12 Dec 2003 [Memorandum].

10 Land Transport New Zealand, 'Network Statistics 2004/05' (20 Dec 2005) <http://www.ltsa.govt.nz/about/docs/network-stats-2004-05.pdf> [accessed 24 Feb 2006].

11 Walking Access Consultation Panel, *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 135.

12 New Zealand Government, '625 km of New Track for Conservation Land' (21 Oct 2004) <http://www.beehive.govt.nz/ViewDocument.aspx?DocumentID=21273> [accessed 7 Jan 2006].

13 Norman McIntyre, John Jenkins and Kay L Booth, 'Global Influences on Access: The Changing Face of Access to Public Conservation Lands in New Zealand', *Journal of Sustainable Tourism,* 9, no. 5 (2001), pp. 434–450.

14 David Round, 'Not Good Enough! David Round Sounds Off about Tourism and Recreation', *FMC Bulletin*, no. 166 (Nov 2006), pp. 14–15.

15 Quoted in Norman McIntyre, John Jenkins and Kay L Booth, 'Global Influences on Access: The Changing Face of Access to Public Conservation Lands in New Zealand', *Journal of Sustainable Tourism,* 9, no. 5 (2001), pp. 434–450 (p. 439).

16 Nigel Curry, 'Rights of Access to Land for Outdoor Recreation in New Zealand: Dilemmas Concerning Justice and Equity', *Journal of Rural Studies,* 17 (2001), pp. 409–419.

17 Kay L Booth, 'Rights of Public Access for Outdoor Recreation in New Zealand' (PhD thesis, University of Otago, 2006), pp. 124–139.

18 Walking Access Consultation Panel, *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 40.

19 New Zealand Labour Party, 'Press Release: NBR Columnist Has Got His Facts Wrong on DOC' (1 Sept 2005) <http://www.scoop.co.nz/stories/PA0509/S00020.htm> [accessed 21 Feb 2006].

20 Alan Mark, William Lee and Brian Patrick, 'Tussock Grasslands and Associated Mountain Lands', in *The Natural History of Southern New Zealand,* ed. by John Darby (Dunedin, NZ: University of Otago Press in association with Otago Museum, 2003), pp. 191–235 (pp. 193–194).

21 Outdoor Recreation Planning Task Force and Colin Abbott, *Policy for Outdoor Recreation in New Zealand 1985* (Wellington, NZ: New Zealand Council for Recreation and Sport, 1985), pp. 18, 29, 35.

22 James Howard Kunstler, *The Long Emergency: Surviving the Converging Catastrophes of the Twenty-first Century* (London: Atlantic Books, 2006), pp. 59–60, 131–139.

23 Ibid., p. 270.

24 Statistics New Zealand, 'A.2: Land Used for Agriculture and Forestry in New Zealand', Ministry of Agriculture and Forestry (Aug 2008) <http://www.maf.govt.nz/mafnet/rural-nz/statistics-and-forecasts/sonzaf/2008/tables/A-2.xls> [accessed 21 June 2009].

25 Maurice Williamson, Minister for Land Information, David Carter, Minister of Agriculture and Tim Groser, Minister of Conservation, 'Cabinet Paper: Crown Pastoral Land – 2009 and Beyond' (13 July 2009) <http://www.linz.govt.nz/docs/crownproperty/highcountry/crown-pastoral-land-2009-and-beyond.pdf> [accessed 5 Sept 2009], pp. 3, 24.

26 Chris Carter, Minister of Conservation, 'Press Release: Molesworth Protected So National Can't Sell It' (30 June 2005) <http://www.beehive.govt.nz/Print/PrintDocument.aspx?DocumentID=23542> [accessed 21 Feb 2006].

27 R Campion and J Stephenson, 'The "Right to Roam": Lessons for New Zealand from Sweden's *Allemansrätt*', *Australasian Journal of Environmental Management,* 17, no. 1 (Mar 2010), pp. 18–26 (p. 19).

28 Pete McDonald, 'Maps for the People: The Mapping Issues of Walking Access in the New Zealand Outdoors' (Nov 2005) <http://homepages.paradise.net.nz/petemcd/lap/lap.htm> [accessed 2 Dec 2005], pp. 10, 17–18.

29 Ibid., pp. 21–23.

30 Statistics New Zealand, *New Zealand Official Yearbook 2010 – Te Pukapuka Houanga Whaimana o Aotearoa 2010*, 107th edn (Rosedale, Auckland, NZ: David Bateman, 2010), p. 355.

31 Ministry of Agriculture and Forestry, 'Statement of Intent 2009/12' (21 Apr 2009) <http://www.maf.govt.nz/mafnet/publications/statement-of-intent/2009-2012/2009-maf-soi.pdf> [accessed 21 June 2009], p. 8.

32 Robert Bremer and Tom Brooking, 'Federated Farmers and the State', in *State and Economy in New Zealand,* ed. by Brian Roper and Chris Rudd (Auckland, NZ: Oxford University Press, 1993), pp. 108–127 (p. 126).

33 Kay L Booth, 'Rights of Public Access for Outdoor Recreation in New Zealand' (PhD thesis, University of Otago, 2006), pp. 118–157, 359–360.

Chapter 1: Too Narrow for a Horse

1 Michael King, *The Penguin History of New Zealand* (Auckland, NZ: Penguin Books, 2003), pp. 50–51.

2 Ibid., p. 53.

3 Ibid., pp. 90–91. But note that James Belich, in *Making Peoples* (1996), cautioned readers that 'most estimates of the population in 1769 are wild guesses'.

4 *New Zealand Historical Atlas: Ko Papatuanuku e Takoto Nei,* ed. by Malcolm McKinnon, Barry Bradley and Russell Kirkpatrick (Auckland, NZ: David Bateman in association with Historical Branch, Dept. of Internal Affairs, 1997), plate 11.

5 James Cook and J C Beaglehole, *The Journals of Captain James Cook on His Voyages of Discovery,* ed. by J C Beaglehole, Hakluyt Society. Extra Series; no. 34-37, 4 vols (Cambridge: Published for the Hakluyt Society at the University Press, 1955-1974), vol. 1, p. 250.

6 Michael King, *The Penguin History of New Zealand* (Auckland, NZ: Penguin Books, 2003), 168, 239.

7 John Liddiard Nicholas, *Narrative of a Voyage to New Zealand Performed in the Years 1814 and 1815 in Company with the Rev. Samuel Marsden*, Facsimile of 1817 edn, 2 vols (Auckland: Wilson and Horton, 1971), vol. 1, p. 224.

8 Richard A Cruise, *Journal of a Ten Months' Residence in New Zealand*, 2nd edn (London: Longman, Hurst, Rees, Orme, Brown and Green, 1824), pp. 288–289.

9 James Watson, *Links: A History of Transport and New Zealand Society* (Wellington, NZ: Ministry of Transport, 1996), pp. 10–12.

10 Ibid., p. 5.

11 Ibid., p. 5.

12 Steven Oliver, 'Te Rauparaha ? - 1849', in *Dictionary of New Zealand Biography* (22 June 2007) <http://www.dnzb.govt.nz/> [accessed 11 Feb 2010].

13 Patricia Burns, *Te Rauparaha: A New Perspective*, Reprint of 1980 edn (Auckland, NZ: Penguin, 1983), p. 30n.

14 Kenneth B Cumberland, 'Aotearoa Maori: New Zealand about 1780', *Geographical Review,* 39, no. 3 (July 1949), pp. 401–424 (p. 411).

15 Ibid. (p. 412).

16 John Savage, *Some Account of New Zealand: Particularly the Bay of Islands, and Surrounding Country, with a Description of the Religion and Government, Language, Arts, Manufactures, Manners and Customs of the Natives, etc.*, Facsimile of 1807 edn (London: J Murray and A Constable, 1973), p. 20.

17 Hocken Library (Dunedin, NZ), Typescript volume containing … 'The Life and Times of Te Rauparaha' by his son Tamihana Te Rauparaha … MS-0874., f. 6

18 Patricia Burns, *Te Rauparaha: A New Perspective*, Reprint of 1980 edn (Auckland, NZ: Penguin, 1983), p. 60.

19 Ibid., p. 83.

20 Kenneth B Cumberland, 'Aotearoa Maori: New Zealand about 1780', *Geographical Review,* 39, no. 3 (July 1949), pp. 401–424 (p. 412).

21 Patricia Burns, *Te Rauparaha: A New Perspective*, Reprint of 1980 edn (Auckland, NZ: Penguin, 1983), p. 87.

22 Elsdon Best, 'Notes and Queries', *Journal of the Polynesian Society,* 3, no. 1 (Mar 1894), p. 52. A discussion of to which track the name Kaihinu belonged appears in G Leslie Adkin, *Horowhenua: Its Maori Place-names and Their Topographic and Historical Background* (Wellington, NZ: Department of Internal Affairs, 1948), pp. 6–7.

23 James Belich, *Making Peoples: A History of the New Zealanders: From Polynesian Settlement to the End of the Nineteenth Century* (North Shore, NZ: Penguin Books, 2007), p. 24.

24 Bruce McFadgen, *Archaeology of the Wellington Conservancy: Wairarapa: A Study in Tectonic Archaeology* (Wellington, NZ: Department of Conservation, 2003), p. 43.

25 G Leslie Adkin, *Horowhenua: Its Maori Place-names and Their Topographic and Historical Background* (Wellington, NZ: Department of Internal Affairs, 1948), pp. 6–8.

26 Phil L Barton, 'Maori Trails in the Tararuas', *Tramping and Mountaineering: Journal of the Wellington Tramping and Mountaineering Club,* 9, no. 2 (July 1959), pp. 13–15.

27 Bruce McFadgen, *Archaeology of the Wellington Conservancy: Wairarapa: A Study in Tectonic Archaeology* (Wellington, NZ: Department of Conservation, 2003), p. 5.

28 Auckland City Libraries, Papers (notes, letters etc.) relating to the Preece family, in Special Collections, NZMS 105. An extract from Preece's map is reproduced in Judith Binney, *Encircled Lands: Te Urewera, 1820–1921* (Wellington, NZ: Bridget Williams Books, 2009), p. 131.

29 Janet Davidson, *The Prehistory of New Zealand*, New edn (Auckland, NZ: Longman Paul, 1987), p. 195. Davidson gives the 12th century, which I have revised to the end of the 13th to reflect the current consensus on the date of the initial settlement.

30 *New Zealand Historical Atlas: Ko Papatuanuku e Takoto Nei,* ed. by Malcolm McKinnon, Barry Bradley and Russell Kirkpatrick (Auckland, NZ: David Bateman in association with Historical Branch, Dept. of Internal Affairs, 1997), plate 14.

31 James Belich, *Making Peoples: A History of the New Zealanders: From Polynesian Settlement to the End of the Nineteenth Century* (North Shore, NZ: Penguin Books, 2007), p. 42.

32 Barry Brailsford, *Greenstone Trails: The Maori and Pounamu*, 2nd edn (Hamilton, NZ: Stoneprint Press, 1996), endpapers.

33 Ibid., p. 121.

34 *New Zealand Historical Atlas: Ko Papatuanuku e Takoto Nei,* ed. by Malcolm McKinnon, Barry Bradley and Russell Kirkpatrick (Auckland, NZ: David Bateman in association with Historical Branch, Dept. of Internal Affairs, 1997), plate 34.

35 A G Bagnall and G C Petersen, *William Colenso, Printer, Missionary, Botanist, Explorer, Politician: His Life and Journeys* (Wellington, NZ: A H & A W Reed, 1948), p. 208.

36 H D Skinner, 'Maori Life on the Poutini Coast, together with Some Traditions of the Natives', *Journal of the Polynesian Society,* 21, no. 4 (1912), pp. 141–151 (pp. 143–144).

37 Edward Shortland, *The Southern Districts of New Zealand: A Journal, with Passing Notices of the Customs of the Aborigines* (London: Longman, Brown, Green, & Longmans, 1851), pp. 209–210.

38 James Belich, *Making Peoples: A History of the New Zealanders: From Polynesian Settlement to the End of the Nineteenth Century* (North Shore, NZ: Penguin Books, 2007), pp. 71–72.

39 Edward Shortland, *The Southern Districts of New Zealand: A Journal, with Passing Notices of the Customs of the Aborigines* (London: Longman, Brown, Green, & Longmans, 1851), pp. 235–236.

40 Joanna Wylie, 'Negotiating the Landscape: A Comparative Investigation of Wayfinding, Mapmaking and Territoriality in Selected Hunter-gatherer Societies' (MA thesis, University of Otago, 2004), pp. 9–22, 49–55.

41 Brian Marshall, 'From Sextants to Satellites: A Cartographic Time Line for New Zealand', *New Zealand Map Society Journal*, no. 18 (2005), pp. 1–136 (p. iii).

42 Barry Brailsford, *Greenstone Trails: The Maori and Pounamu*, 2nd edn (Hamilton, NZ: Stoneprint Press, 1996), pp. 36–38.

43 Peter Clough, 'Walkways: Will Walkways Win Out?', *New Zealand Parks & Recreation: Journal of the New Zealand Institute of Parks and Recreation Administration,* 4, no. 2 (May 1989), pp. 17–18.

44 Joanna Wylie, 'Negotiating the Landscape: A Comparative Investigation of Wayfinding, Mapmaking and Territoriality in Selected Hunter-gatherer Societies' (MA thesis, University of Otago, 2004), p. 190.

45 Jan Kelly, 'Maori Maps', *Cartographica,* 36, no. 2 (Summer 1999), pp. 1–30 (p. 1).

46 Ibid. (p. 16).

47 Tom Brooking, *The History of New Zealand,* ed. by Frank W Thackeray and John E Findling, Greenwood Histories of the Modern Nations (Westport, Conn: Greenwood Press, 2004), p. 29.

48 James Belich, *I Shall Not Die: Titokowaru's War, New Zealand, 1868–9* (Wellington, NZ: Allen & Unwin in association with the Port Nicholson Press, 1989), p. 8.

49 James Cook and J C Beaglehole, *The Journals of Captain James Cook on His Voyages of Discovery,* ed. by J C Beaglehole, Hakluyt Society. Extra Series; no. 34-37, 4 vols (Cambridge: Published for the Hakluyt Society at the University Press, 1955-1974), vol. 3, pp. 60–61.

50 Richard Taylor, *Te Ika a Maui, or, New Zealand and Its Inhabitants: Illustrating the Origin, Manners, Customs, Mythology, Religion, Rites, Songs, Proverbs, Fables, and Language of the Natives*, Facsimile of 1st (1855) edn (Wellington, NZ: A H & A W Reed, 1974), p. 5.

51 Gordon Ell and Sarah Ell, *Great Journeys in Old New Zealand: Travel and Exploration in a New Land* (Auckland, NZ: Bush Press Communications, 1995), p. 8.

52 Peter Webster, *Rua and the Maori Millennium* (Wellington, NZ: Price Milburn for Victoria University Press, 1979), pp. 80, 292.

53 William Swainson, *New Zealand and Its Colonization* (London: Smith, Elder and Co., 1859), p. 244.

54 Elsdon Best and Johannes Andersen, *Forest Lore of the Maori: With Methods of Snaring, Trapping, and Preserving Birds and Rats, Uses of Berries, Roots, Fern-root, and Forest Products, with Mythological Notes on Origins, Karakia Used, etc.*, Dominion Museum Bulletin; no. 14 & Polynesian Society Memoir; no. 18 (Wellington, NZ: 1942; repr. Wellington, NZ: E C Keating, Govt. Printer, 1977), p. 28.

55 J S Polack, *New Zealand: Being a Narrative of Travels and Adventures During a Residence in That Country between the Years 1831 and 1837*, Facsimile of 1838 edn, 2 vols (Christchurch, NZ: Capper Press, 1974), vol. 1, p. 64.

56 Ibid., p. 74.

57 Ibid., pp. 97–98.

58 James Bodell, 'Reminiscences', *Bay of Plenty Times,* 31 Mar 1888, p. 2.

59 C W Vennell, 'The Te Puna – Wairere Track', *Journal of the Tauranga Historical Society*, no. 12 (Mar 1960), pp. 3–14 (p. 12).

60 John C Bidwill, *Rambles in New Zealand*, Facsimile of 1st (1841) edn (Christchurch, NZ: Capper Press, 1974), p. 78.

61 Roberta McIntyre, *Whose High Country?: A History of the South Island High Country of New Zealand* (North Shore, NZ: Penguin Books, 2008), p. 24.

62 George French Angas, *Savage Life and Scenes in Australia and New Zealand: Being an Artist's Impressions of Countries and People at the Antipodes*, 2 vols (London: Smith, Elder, 1847), vol. 2, p. 9.

63 Arthur Dudley Dobson, *Reminiscences of Arthur Dudley Dobson, Engineer, 1841–1930*, Facsimile of 2nd (1930) edn (Christchurch, NZ: Capper Press, 1984), p. 157.

64 A D Mead, *Richard Taylor, Missionary Tramper* (Wellington, NZ: A H & A W Reed, 1966), p. 48.

65 Gwen Moffat, *Space below My Feet* (London: Hodder and Stoughton, 1961), p. 68.

66 George Butler Earp, *New Zealand: Its Emigration and Gold Fields* (London: George Routledge, 1853), pp. 149–150.

67 Charles Heaphy, 'Notes of an Expedition to Kawatiri and Araura, on the Western Coast of Middle Island: Performed by Messrs. Heaphy and Brunner', *Nelson Examiner and New Zealand Chronicle,* 10 Oct 1846, p. 127.

68 Jeffrey Sissons, 'Best, Elsdon 1856 - 1931', in *Dictionary of New Zealand Biography* (22 June 2007) <http://www.dnzb.govt.nz/> [accessed 20 Dec 2009].

69 Angela Ballara, *Iwi: The Dynamics of Maori Tribal Organisation from c.1769 to c.1945* (Wellington, NZ: Victoria University Press, 1998), p. 103.

70 Elsdon Best and Johannes Andersen, *Forest Lore of the Maori: With Methods of Snaring, Trapping, and Preserving Birds and Rats, Uses of Berries, Roots, Fern-root, and Forest Products, with Mythological Notes*

on Origins, Karakia Used, etc., Dominion Museum Bulletin; no. 14 & Polynesian Society Memoir; no. 18 (Wellington, NZ: 1942; repr. Wellington, NZ: E C Keating, Govt. Printer, 1977), pp. 28–33.

71 Ibid., pp. 220, 224.

72 Ibid., p. 30.

73 Augustus Earle, *A Narrative of a Nine Months' Residence in New Zealand, in 1827: Together with a Journal of a Residence in Tristan D'Acunha, an Island Situated between South America and the Cape of Good Hope* (London: Longman, Rees, Orme, Brown, Green, & Longman, 1832), p. 30.

74 Elsdon Best and Johannes Andersen, *Forest Lore of the Maori: With Methods of Snaring, Trapping, and Preserving Birds and Rats, Uses of Berries, Roots, Fern-root, and Forest Products, with Mythological Notes on Origins, Karakia Used, etc.*, Dominion Museum Bulletin; no. 14 & Polynesian Society Memoir; no. 18 (Wellington, NZ: 1942; repr. Wellington, NZ: E C Keating, Govt. Printer, 1977), p. 31.

75 Edward Shortland, *The Southern Districts of New Zealand: A Journal, with Passing Notices of the Customs of the Aborigines* (London: Longman, Brown, Green, & Longmans, 1851), pp. 241–242.

76 Charles Heaphy, '[Continued from page 115]', *Nelson Examiner and New Zealand Chronicle,* 26 Sept 1846, p. 118.

77 Arthur Dudley Dobson, *Reminiscences of Arthur Dudley Dobson, Engineer, 1841–1930*, Facsimile of 2nd (1930) edn (Christchurch, NZ: Capper Press, 1984), p. 64.

78 J H H St John, *Pakeha Rambles through Maori Lands* (Wellington, NZ: Printed by Robert Burrett, 1873), p. 161.

79 Reader's Digest Services Pty, *Wild New Zealand* (Sydney: Reader's Digest, 1981), p. 19.

80 Graeme Wynn, 'Destruction under the Guise of Improvement? The Forest, 1840–1920', in *Environmental Histories of New Zealand,* ed. by Eric Pawson and Tom Brooking (Melbourne: Oxford University Press, 2002), pp. 100–116 (p. 105).

81 C J Abraham, *Journal of a Walk with the Bishop of New Zealand, from Auckland to Taranaki, in August 1855*, Missions to the Heathen; no. 31 (London: Society for the Propagation of the Gospel, 1856), p. 9.

82 William Williams and Jane Williams, *The Turanga Journals, 1840–1850: Letters and Journals of William and Jane Williams, Missionaries to Poverty Bay* ed. by Frances Porter (Wellington, NZ: Price Milburn for Victoria University Press, 1974), pp. 137n, 176n. Also Lillian Gladys Keys, *The Life and Times of Bishop Pompallier* (Christchurch, NZ: Pegasus Press, 1957), p. 175.

83 William Colenso, 'Notes and Reminiscences of Early Crossings of the Romantically-situated Lake Waikaremoana, County of Hawke's Bay, of its Neighbouring Country, and of its Peculiar Botany; performed in the Years 1841 and 1843', *Transactions and Proceedings of the New Zealand Institute,1894,* 27 (Tenth of New Series) (1894), pp. 359–382 (p. 369).

84 Robert Fitzroy, *Remarks on New Zealand, in February 1846*, Facsimile of 1st (1846) edn (Dunedin, NZ: Hocken Library, University of Otago, 1969), p. 36n.

85 Murray Gladstone Thomson, *A Pakeha's Recollections: The Reminiscences of Murray Gladstone Thomson* (Wellington, NZ: A H & A W Reed, 1944), p. 36.

86 Peter Entwisle, *Behold the Moon: The European Occupation of the Dunedin District, 1770–1848* (Dunedin, NZ: Port Daniel Press, 1998), pp. 18–19.

87 Murray Gladstone Thomson, *A Pakeha's Recollections: The Reminiscences of Murray Gladstone Thomson* (Wellington, NZ: A H & A W Reed, 1944), pp. 65–66.

88 Ibid., p. 82.

89 Ibid., p. 84.

90 Quoted in Alexander Marjoribanks, *Travels in New Zealand* (London: Smith, Elder, 1845; repr. Christchurch: Capper Press, 1973), pp. 117–118.

91 A D Mead, *Richard Taylor, Missionary Tramper* (Wellington, NZ: A H & A W Reed, 1966), p. 52.

92 James Buller, *Forty Years in New Zealand: Including a Personal Narrative, an Account of Maoridom, and the Christianization and Colonization of the Country* (London: Hodder and Stoughton, 1878), pp. 33–37.

93 Ibid., p. 37.

94 Ibid., pp. 300–302.

95 Richard Taylor, *Te Ika a Maui, or, New Zealand and Its Inhabitants: Illustrating the Origin, Manners, Customs, Mythology, Religion, Rites, Songs, Proverbs, Fables, and Language of the Natives*, Facsimile of 1st (1855) edn (Wellington, NZ: A H & A W Reed, 1974), p. 386.

96 *The Oxford Companion to British History,* ed. by John Cannon (Oxford: Oxford University Press, 1997), p. 809.

97 S S Frere and J K S St Joseph, *Roman Britain from the Air,* ed. by David R Wilson, Cambridge Air Surveys (Cambridge, UK: Cambridge University Press, 1983), p. 9.

98 Ibid., p. 12.

99 James Watson, *Links: A History of Transport and New Zealand Society* (Wellington, NZ: Ministry of Transport, 1996), p. 34.

100 Ernst Dieffenbach, *Travels in New Zealand: with Contributions to the Geography, Geology, Botany and Natural History of that Country*, 2 vols (London: John Murray, 1843; repr. Christchurch: Capper Press, 1974), vol. 1, p. 144.

101 Ibid., p. 156.

102 Charles Heaphy, 'Account of an Exploring Expedition to the S.W. of Nelson', *Nelson Examiner and New Zealand Chronicle,* 7 Mar 1846, p. 3.

103 Charles Heaphy, 'Notes of an Expedition to Kawatiri and Araura, on the Western Coast of Middle Island: Performed by Messrs. Heaphy and Brunner', *Nelson Examiner and New Zealand Chronicle,* 3 Oct 1846, p. 123.

104 Thomas Brunner, 'Journal of an Expedition to Explore the Interior of the Middle Island, New Zealand, 1846–8', in *Early Travellers in New Zealand,* ed. by Nancy M Taylor (London: Oxford University Press, 1959), pp. 257–320 (p. 277).

105 A D Mead, *Richard Taylor, Missionary Tramper* (Wellington, NZ: A H & A W Reed, 1966), p. 10.

106 John Pascoe, *Exploration New Zealand* (Wellington, NZ: A H & A W Reed, 1971), p. 9.

107 W H Secker, 'Maori Tracks a Boon to Settlement', *Stockade,* 3, no. 3 & 4 (1975–6), pp. 1–10.

108 George Augustus Selwyn, *New Zealand. Part I, Letters from the Bishop to the Society for the Propagation of the Gospel, together with Extracts from*

his Visitation Journal, from July 1842 to January 1843, 3rd edn (London: Printed for the Society for the Propagation of the Gospel, 1847), p. 49.

109 Ernst Dieffenbach, *Travels in New Zealand: with Contributions to the Geography, Geology, Botany and Natural History of that Country*, 2 vols (London: John Murray, 1843; repr. Christchurch: Capper Press, 1974), vol. 1, p. 289.

110 John Johnson, 'Notes from a Journal', in *Early Travellers in New Zealand,* ed. by Nancy M Taylor (London: Oxford University Press, 1959), pp. 116–185 (p. 140).

111 James Belich, *Making Peoples: A History of the New Zealanders: From Polynesian Settlement to the End of the Nineteenth Century* (North Shore, NZ: Penguin Books, 2007), pp. 145–146.

112 Ann Parsonson, 'The Challenge to Mana Maori', in *The Oxford History of New Zealand*, 2nd edn, ed. by Geoffrey W Rice (Auckland, NZ: Oxford University Press, 1992), pp. 167–198 (p. 170).

113 Marion Shoard, *This Land is Our Land: The Struggle for Britain's Countryside*, 2nd edn (London: Gaia Books, 1997), pp. 42–43.

114 Frank McLynn, *Crime and Punishment in Eighteenth-century England* (London: Routledge, 1989), pp. 202–203.

115 Ibid., pp. 209–210.

116 *Ki Te Whaiao: An Introduction to Maori Culture and Society,* ed. by Tania M Ka'ai and others (Auckland, NZ: Pearson Education New Zealand, 2004), pp. 51–52.

117 Ibid., pp. 55–56.

118 Michael King, *The Penguin History of New Zealand* (Auckland, NZ: Penguin Books, 2003), p. 80.

119 William Colenso, *Memoranda of an Excursion, Made in the Northern Island of New Zealand, in the Summer of 1841–42* (Launceston, V.D. Land: Printed at the Office of the Launceston Examiner, 1844), p. 7.

120 Richard Taylor, *Te Ika a Maui, or, New Zealand and Its Inhabitants: Illustrating the Origin, Manners, Customs, Mythology, Religion, Rites, Songs, Proverbs, Fables, and Language of the Natives*, Facsimile of 1st (1855) edn (Wellington, NZ: A H & A W Reed, 1974), p. 385.

121 Ibid., p. 386.

122 Ngawini Keelan, 'Maori Heritage: Visitor Management and Interpretation', in *Heritage Management in New Zealand and Australia: Visitor Management, Interpretation and Marketing,* ed. by C. Michael Hall and Simon McArthur (Auckland, NZ: Oxford University Press, 1993), pp. 95–102 (p. 97).

123 Ann Parsonson, 'The Challenge to Mana Maori', in *The Oxford History of New Zealand*, 2nd edn, ed. by Geoffrey W Rice (Auckland, NZ: Oxford University Press, 1992), pp. 167–198 (pp. 170–172).

124 James Belich, *Making Peoples: A History of the New Zealanders: From Polynesian Settlement to the End of the Nineteenth Century* (North Shore, NZ: Penguin Books, 2007), pp. 83–84.

125 Eric Pawson, 'The Meanings of Mountains', in *Environmental Histories of New Zealand,* ed. by Eric Pawson and Tom Brooking (Melbourne: Oxford University Press, 2002), pp. 136–150 (p. 138).

126 J M R Owens, 'New Zealand before Annexation', in *The Oxford History of New Zealand,* ed. by Geoffrey W Rice (Auckland, NZ: Oxford University Press, 1992), pp. 28–53 (p. 45).

127 Sidney M Mead, *Landmarks, Bridges and Visions: Aspects of Maori Culture: Essays* (Wellington, NZ: Victoria University Press, 1997), p. 232.

128 S Percy Smith, 'History and Traditions of the Taranaki Coast: Chapter I', *Journal of the Polynesian Society,* 16, no. 3 (1907), pp. 120–133 (pp. 129–133).

129 S Percy Smith, 'History and Traditions of the Taranaki Coast: Chapter VII', *Journal of the Polynesian Society,* 17, no. 1 (1908), pp. 1–47 (facing p. 1).

130 S Percy Smith, 'History and Traditions of the Taranaki Coast: Chapter I', *Journal of the Polynesian Society,* 16, no. 3 (1907), pp. 120–133 (pp. 129–130, 133).

131 Angela Ballara gives a date of about mid-1820 for the death of Marore, in *Taua* (2003), p. 307

132 Patricia Burns, *Te Rauparaha: A New Perspective*, Reprint of 1980 edn (Auckland, NZ: Penguin, 1983), p. 64.

133 Pei Te Hurinui Jones, *King Potatau: An Account of the Life of Potatau Te Wherowhero, the First Maori King* (Wellington, NZ: Polynesian Society, 1960), p. 51.

134 Bruce Biggs, 'Jones, Pei Te Hurinui 1898 - 1976', in *Dictionary of New Zealand Biography* (22 June 2007) <http://www.dnzb.govt.nz/> [accessed 21 Feb 2010].

135 Angela Ballara, 'Pakeha Uses of Takitimutanga: Who Owns Tribal Tradition?', *Stout Centre Review,* 3, no. 2 (Mar 1993), pp. 17–21 (p. 17).

136 *Ki Te Whaiao: An Introduction to Maori Culture and Society,* ed. by Tania M Ka'ai and others (Auckland, NZ: Pearson Education New Zealand, 2004), pp. 13–19.

137 Anne Salmond, *Between Worlds: Early Exchanges between Maori and Europeans, 1773–1815* (Auckland, NZ: Viking, 1997), pp. 259–260.

138 Ibid., p. 20. Some other accounts gave different reasons for his killing.

139 Augustus Earle, *A Narrative of a Nine Months' Residence in New Zealand, in 1827: Together with a Journal of a Residence in Tristan D'Acunha, an Island Situated between South America and the Cape of Good Hope* (London: Longman, Rees, Orme, Brown, Green, & Longman, 1832), p. 19.

140 Elsdon Best, 'Maori Agriculture', *Journal of the Polynesian Society,* 39, no. 156 (1930), pp. 346–380 (pp. 372–373).

141 William Swainson, *New Zealand and Its Colonization* (London: Smith, Elder and Co., 1859), pp. 18–19.

142 James Belich, *Making Peoples: A History of the New Zealanders: From Polynesian Settlement to the End of the Nineteenth Century* (North Shore, NZ: Penguin Books, 2007), pp. 205–206.

143 H F McKillop, *Reminiscences of Twelve Months' Service in New Zealand as a Midshipman, During the Late Disturbances in that Colony* (London: Richard Bentley, 1849; repr. Christchurch: Capper Press, 1973), pp. 87–88.

144 Richard Taylor, *Te Ika a Maui, or, New Zealand and Its Inhabitants: Illustrating the Origin, Manners, Customs, Mythology, Religion, Rites, Songs, Proverbs, Fables, and Language of the Natives*, Facsimile of 1st (1855) edn (Wellington, NZ: A H & A W Reed, 1974), p. 59.

145 Howard Robinson, *A History of the Post Office in New Zealand* (Wellington, NZ: Government Printer, 1964), p. 73.

146 *Ki Te Whaiao: An Introduction to Maori Culture and Society,* ed. by Tania M Ka'ai and others (Auckland, NZ: Pearson Education New Zealand, 2004), p. 61.

147 Ibid., pp. 64–66.

148 David Young, *Woven by Water: Histories from the Whanganui River* (Wellington, NZ: Huia Publishers, 1998), pp. 21–22.

149 Ibid., p. 18.

150 Ibid., p. 16.

151 H Guthrie-Smith, *Tutira: The Story of a New Zealand Sheep Station*, 4th edn (Wellington, NZ: A H & A W Reed, 1969), p. 102.

152 Ibid., p. 103.

153 A H Carrington, *Ngai Tahu: A Migration History: The Carrington Text,* ed. by Te Maire Tau and Atholl Anderson (Wellington, NZ: Bridget Williams Books by association with Te Runanga o Ngai Tahu, 2008), p. 35.

154 Robert Ward, *Life among the Maories of New Zealand: Being a Description of Missionary, Colonial, and Military Achievements,* ed. by Thomas Lowe and William Whitby (London: G Lamb, 1872), p. 195.

155 Judith Binney, *Encircled Lands: Te Urewera, 1820–1921* (Wellington, NZ: Bridget Williams Books, 2009), p. 139.

156 J M R Owens, 'New Zealand before Annexation', in *The Oxford History of New Zealand,* ed. by Geoffrey W Rice (Auckland, NZ: Oxford University Press, 1992), pp. 28–53 (p. 28).

157 S Percy Smith, 'Notes of a Journey from Taranaki to Mokau, Taupo, Rotomahana, Tarawera, and Rangitikei, 1858', in *Early Travellers in New Zealand,* ed. by Nancy M Taylor (London: Oxford University Press, 1959), pp. 351–386 (p. 386).

158 John Savage, *Some Account of New Zealand: Particularly the Bay of Islands, and Surrounding Country, with a Description of the Religion and Government, Language, Arts, Manufactures, Manners and Customs of the Natives, etc.*, Facsimile of 1807 edn (London: J Murray and A Constable, 1973), p. 31.

159 Janet Davidson, 'Maori Prehistory: The State of the Art', *Journal of the Polynesian Society,* 92, no. 3 (1983), pp. 291–308 (p. 299).

160 Ngawini Keelan, 'Maori Heritage: Visitor Management and Interpretation', in *Heritage Management in New Zealand and Australia: Visitor Management, Interpretation and Marketing,* ed. by C. Michael Hall and Simon McArthur (Auckland, NZ: Oxford University Press, 1993), pp. 95–102 (p. 100).

161 *The Oxford History of New Zealand Literature in English,* ed. by Terry Sturm (Auckland, NZ: Oxford University Press, 1991), p. 37.

162 Ernst Dieffenbach, *Travels in New Zealand: with Contributions to the Geography, Geology, Botany and Natural History of that Country*, 2 vols (London: John Murray, 1843; repr. Christchurch: Capper Press, 1974), vol. 1, p. 106.

163 Ibid., pp. 337, 346.

164 Richard A Cruise, *Journal of a Ten Months' Residence in New Zealand*, 2nd edn (London: Longman, Hurst, Rees, Orme, Brown and Green, 1824), p. 315.

165 Alexander Turnbull Library (Wellington, NZ), Extracts from Journal, in Taylor, Richard (Rev) 1805–1873, MS-Papers-0254-04. Ian Church, *The*

Stratford Inheritance: A History of Stratford and Whangamomona Counties (Waikanae, NZ: Heritage Press, 1990), p. 18.

166 James Buller, *Forty Years in New Zealand: Including a Personal Narrative, an Account of Maoridom, and the Christianization and Colonization of the Country* (London: Hodder and Stoughton, 1878), p. 71.

167 Ernst Dieffenbach, *Travels in New Zealand: with Contributions to the Geography, Geology, Botany and Natural History of that Country*, 2 vols (London: John Murray, 1843; repr. Christchurch: Capper Press, 1974), vol. 2, p. 175.

168 James Belich, *Making Peoples: A History of the New Zealanders: From Polynesian Settlement to the End of the Nineteenth Century* (North Shore, NZ: Penguin Books, 2007), p. 171.

169 Angela Ballara, *Taua: 'Musket Wars', 'Land Wars' or Tikanga? Warfare in Maori Society in the Early Nineteenth Century* (Auckland, NZ: Penguin Books, 2003), pp. 72–73.

170 Edward Shortland, *The Southern Districts of New Zealand: A Journal, with Passing Notices of the Customs of the Aborigines* (London: Longman, Brown, Green, & Longmans, 1851), p. 184.

171 Ibid., p. 184.

172 John C Bidwill, *Rambles in New Zealand*, Facsimile of 1st (1841) edn (Christchurch, NZ: Capper Press, 1974), p. 74.

173 Ibid., p. 75.

174 S Percy Smith, 'Notes of a Journey from Taranaki to Mokau, Taupo, Rotomahana, Tarawera, and Rangitikei, 1858', in *Early Travellers in New Zealand,* ed. by Nancy M Taylor (London: Oxford University Press, 1959), pp. 351–386 (p. 355).

175 Ibid. (p. 357–358).

176 Ernst Dieffenbach, *Travels in New Zealand: with Contributions to the Geography, Geology, Botany and Natural History of that Country*, 2 vols (London: John Murray, 1843; repr. Christchurch: Capper Press, 1974), vol. 1, pp. 313–314.

177 John Johnson, 'Notes from a Journal', in *Early Travellers in New Zealand,* ed. by Nancy M Taylor (London: Oxford University Press, 1959), pp. 116–185 (pp. 181–182).

178 Charles Heaphy, 'Notes of an Expedition to Kawatiri and Araura, on the Western Coast of Middle Island: Performed by Messrs. Heaphy and Brunner', *Nelson Examiner and New Zealand Chronicle,* 5 Sept 1846, p. 105.

179 Patricia Burns, *Te Rauparaha: A New Perspective*, Reprint of 1980 edn (Auckland, NZ: Penguin, 1983), pp. 164–165. Also Hilary Mitchell and John Mitchell, *Te Tau Ihu o Te Waka: A History of Maori of Nelson and Marlborough*, 2 vols (Wellington: Huia Publishers in association with Wakatu Inc, 2004), vol. 1, pp. 117, 126.

180 Ernst Dieffenbach, *Travels in New Zealand: with Contributions to the Geography, Geology, Botany and Natural History of that Country*, 2 vols (London: John Murray, 1843; repr. Christchurch: Capper Press, 1974), vol. 1, p. 92.

181 Edward Shortland, *The Southern Districts of New Zealand: A Journal, with Passing Notices of the Customs of the Aborigines* (London: Longman, Brown, Green, & Longmans, 1851), p. 183.

182 Quoted in *Early Travellers in New Zealand,* ed. by Nancy M Taylor (London: Oxford University Press, 1959), p. 187.

183 Michael Fitzgerald, 'Heaphy, Charles 1820 - 1881', in *The Dictionary of New Zealand Biography: Volume One, 1769–1869* (Wellington, NZ: Dept. of Internal Affairs, 1990), pp. 181–183.

184 Barry Brailsford, *Greenstone Trails: The Maori and Pounamu*, 2nd edn (Hamilton, NZ: Stoneprint Press, 1996), p. 67.

185 J S Polack, *Manners and Customs of the New Zealanders: With Notes Corroborative of Their Habits, Usages, etc.*, Facsimile of 1840 edn, 2 vols (Christchurch, NZ: Capper Press, 1976), vol. 1, pp. 36–37.

186 M P K Sorrenson, 'Maori and Pakeha', in *The Oxford History of New Zealand,* ed. by Geoffrey W Rice (Auckland, NZ: Oxford University Press, 1992), pp. 141–166 (pp. 152–153).

187 The Land Registration Act 1841 (5 Victoriae 1841 No 9) established register offices.

188 Oliver A Gillespie, *South Canterbury: A Record of Settlement*, 2nd edn (Timaru, NZ: South Canterbury Centennial History Committee, 1971), p. 25.

Chapter 2: Once a Highway, Always a Highway

1 Anne Salmond, *Between Worlds: Early Exchanges between Maori and Europeans, 1773–1815* (Auckland, NZ: Viking, 1997), p. 332.

2 Harry Morton, *The Whale's Wake* (Dunedin, NZ: McIndoe for the University of Otago Press, 1982), p. 126.

3 Anne Salmond, *Between Worlds: Early Exchanges between Maori and Europeans, 1773–1815* (Auckland, NZ: Viking, 1997), p. 472.

4 Michael King, *The Penguin History of New Zealand* (Auckland, NZ: Penguin Books, 2003), pp. 131–139.

5 Ibid., p. 169.

6 Ibid., pp. 156–157.

7 Claudia Orange, *The Treaty of Waitangi* (Wellington, NZ: Allen & Unwin, Port Nicholson Press with assistance from the Historical Publications Branch, Dept. of Internal Affairs, 1987), pp. 60, 81.

8 Michael King, *The Penguin History of New Zealand* (Auckland, NZ: Penguin Books, 2003), p. 165.

9 John Liddiard Nicholas, *Narrative of a Voyage to New Zealand Performed in the Years 1814 and 1815 in Company with the Rev. Samuel Marsden*, Facsimile of 1817 edn, 2 vols (Auckland: Wilson and Horton, 1971), vol. 1, pp. 34, 171.

10 Emma Meyer, 'Horses: Introduction of the Horse', in *Te Ara – The Encyclopedia of New Zealand* (Mar 2009) <http://www.TeAra.govt.nz/en/horses/1> [accessed 23 Mar 2010].

11 James Watson, *Links: A History of Transport and New Zealand Society* (Wellington, NZ: Ministry of Transport, 1996), pp. 34, 41, 53.

12 Harriet Louisa Gore Browne, *Narrative of the Waitara Purchase and the Taranaki War,* ed. by W P Morrell (Dunedin, NZ: University of Otago Press, 1965), p. 11.

13 Ernst Dieffenbach, *Travels in New Zealand: with Contributions to the Geography, Geology, Botany and Natural History of that Country*, 2 vols (London: John Murray, 1843; repr. Christchurch: Capper Press, 1974), vol. 1, pp. 217, 220.

14 John Rochfort, *The Adventures of a Surveyor in New Zealand and the Australian Gold Diggings* (London: David Bogue, 1853; repr. Christchurch: Capper Press, 1974), pp. 33–34.

15 Arthur Dudley Dobson, *Reminiscences of Arthur Dudley Dobson, Engineer, 1841–1930*, Facsimile of 2nd (1930) edn (Christchurch, NZ: Capper Press, 1984), p. 136.

16 Margaret Wigley, *'Ready Money': The Life of William Robinson of Hill River, South Australia and Cheviot Hills, North Canterbury* (Christchurch, NZ: Canterbury University Press, 2006), pp. 137–139.

17 Ibid., p. 152.

18 Ibid., p. 217.

19 James Watson, *Links: A History of Transport and New Zealand Society* (Wellington, NZ: Ministry of Transport, 1996), p. 35.

20 Mike Taylor, 'The Grove Track', *New Zealand Memories*, no. 84 (June-July 2010), pp. 1, 24–27 (p. 25).

21 Ibid. (pp.1, 24).

22 Robert Macfarlane, *The Wild Places* (London: Granta Books, 2007), pp. 213–238.

23 Charles Norman Nicholls, *With My Pack on My Back: The Story of Tramping in the New Zealand Bush During the Years 1917–1927* (Howick, NZ: C N Nicholls, 1985), p. 138.

24 Alexander Marjoribanks, *Travels in New Zealand* (London: Smith, Elder, 1845; repr. Christchurch: Capper Press, 1973), p. 64.

25 Arthur Whitehead, *A Treatise on Practical Surveying, as Particularly Applicable to New Zealand and Other Colonies* (London: Longman & Co, 1848), p. 160.

26 Oliver A Gillespie, *South Canterbury: A Record of Settlement*, 2nd edn (Timaru, NZ: South Canterbury Centennial History Committee, 1971), p. 239.

27 Kay Mooney, *History of the County of Hawke's Bay*, 5 vols (Napier, NZ: Hawke's Bay County Council, 1973–1992), part 3, p. 43.

28 Michael King, *Maori: A Photographic and Social History* (Auckland, NZ: Reed Books, 1984), p. 113. Also James Watson, *Links: A History of Transport and New Zealand Society* (Wellington, NZ: Ministry of Transport, 1996), pp. 35–36.

29 Michael King, *The Penguin History of New Zealand* (Auckland, NZ: Penguin Books, 2003), p. 169.

30 Ibid., p. 107 & rear cover.

31 Roberta McIntyre, *Whose High Country?: A History of the South Island High Country of New Zealand* (North Shore, NZ: Penguin Books, 2008), p. 56.

32 John Christie, *History of Waikouaiti*, Facsimile of 2nd (1929) edn (Christchurch, NZ: Kiwi Publishers, 1998), pp. 81–82.

33 C W S Moore, *Northern Approaches: A History of Waitati, Waikouaiti, Palmerston, Dunback, Moeraki, Hampden and Surrounding Districts*, Facsimile of 1st (1958) edn (Christchurch, NZ: Capper Press, 1978), p. 11.

34 Julie Bremner, 'Charles Suisted', in *The Advance Guard: Prize-winning and Other Leading Essays from the Historical Biography Competition Conducted by the Otago Daily Times to Mark the 125th Anniversary of the Otago Settlement,* ed. by G J Griffiths, 3 vols (Dunedin, NZ: Otago Daily Times, 1973–1974), vol. 2, pp. 99–150 (pp. 137–138).

35 C W S Moore, *Northern Approaches: A History of Waitati, Waikouaiti, Palmerston, Dunback, Moeraki, Hampden and Surrounding Districts*,

Facsimile of 1st (1958) edn (Christchurch, NZ: Capper Press, 1978), p. 37.

36 Murray Gladstone Thomson, *A Pakeha's Recollections: The Reminiscences of Murray Gladstone Thomson* (Wellington, NZ: A H & A W Reed, 1944), p. 66.

37 Ibid., p. 67.

38 Henry Duckworth, *Early Otago: History of Anderson's Bay, from 1844 to December 1921 and Tomahawk, from 1857 to March, 1923* (Dunedin, NZ: Coull Somerville, 1923), p. 15.

39 Murray Gladstone Thomson, *A Pakeha's Recollections: The Reminiscences of Murray Gladstone Thomson* (Wellington, NZ: A H & A W Reed, 1944), p. 66.

40 George Griffiths and Maarire Goodall, *Maori Dunedin* (Dunedin, NZ: Otago Heritage Books, 1980), p. 16.

41 A H Reed, *The Story of Early Dunedin* (Wellington, NZ: A H & A W Reed, 1956), pp. 71–72.

42 Ibid., p. 162.

43 Ibid., pp. 272–273.

44 Ibid., p. 275.

45 G S Cooper, '15 Feb 1857: Notes of the Journey Overland from Auckland to Ahuriri [Hawke Bay area]', *AJHR* (July–Sept 1862), C-1, pp. 326–329 (p. 329).

46 New Zealand Walking Access Commission, *Minutes: New Zealand Walking Access Commission Meeting: 24 August 2009* (Wellington, NZ: NZWAC, 2009).

47 Ibid.

48 Archives New Zealand (Wellington), Sketch survey of the district between Napier and the Taupo table lands, showing the proposed lines of road to Taupo, annexed to the report of the Provincial Engineer of Hawke's Bay, January 1864, ACGO 8368 IA36/18/144.

49 Alexander Turnbull Library (Wellington, NZ), Central North Island showing war campaigns and trails led by Colonel George Whitmore against Maori during the New Zealand Wars, MapColl-832hkm/1868-1869/Acc.5862.

50 Herbert Meade, *A Ride through the Disturbed Districts of New Zealand: Together with Some Account of the South Sea Islands: Being Selections from the Journals and Letters of Lieut. the Hon. Herbert Meade, R.N.,* ed. by Robert H Meade (London: John Murray, 1870), p. 141.

51 Ibid., pp. 158–159.

52 Kay Mooney, *History of the County of Hawke's Bay*, 5 vols (Napier, NZ: Hawke's Bay County Council, 1973–1992), part 3, p. 9.

53 Ibid., part 3, p. 11.

54 *Early Travellers in New Zealand,* ed. by Nancy M Taylor (London: Oxford University Press, 1959), p. xviii.

55 *Hawke's Bay Herald,* 31 Jan 1871. Quoted in Kay Mooney, *History of the County of Hawke's Bay*, 5 vols (Napier, NZ: Hawke's Bay County Council, 1973–1992), part 3, p. 13.

56 Kay Mooney, *History of the County of Hawke's Bay*, 5 vols (Napier, NZ: Hawke's Bay County Council, 1973–1992), part 3, p. 9.

57 Harry Morton, *The Whale's Wake* (Dunedin, NZ: McIndoe for the University of Otago Press, 1982), pp. 109–110.

58 A H Reed, *The Story of Early Dunedin* (Wellington, NZ: A H & A W Reed, 1956), p. 69.

59 Wheeler, *The New Zealand Goldfields, 1861: A Series of Letters Reprinted from the Melbourne 'Argus'*, Victorian New Zealand, a Reprint Series; no. 1 (Dunedin, NZ: Hocken Library, 1976), p. 23.

60 Margaret S Shaw and Edgar D Farrant, *The Taieri Plain: Tales of the Years That Are Gone*, Otago Centennial Historical Publications (Christchurch, NZ: Whitcombe & Tombs, under the auspices of the Otago Centennial Historical Committee, 1949), pp. 22–23.

61 Alan Cooper, 'The Rise and Fall of the Anglo-Saxon Law of the Highway', *Haskins Society Journal,* 12 (2002), pp. 39–69 (p. 39).

62 Ibid. (p. 42).

63 Marion Shoard, *This Land is Our Land: The Struggle for Britain's Countryside*, 2nd edn (London: Gaia Books, 1997), p. 265.

64 Nigel Curry, 'The Divergence and Coalescence of Public Outdoor Recreation Values in New Zealand and England: An Interplay between Rights and Markets', *Leisure Studies,* 23, no. 3 (July 2004), pp. 205–223.

65 Brian E Hayes, *Roading Law as It Applies to Unformed Roads* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 6.

66 Bruce Mason, *Public Roads: A Guide to Rights of Access to the Countryside* (Dunedin, NZ: Public Lands Coalition, 1991), p. 1.

67 Walking Access Consultation Panel, *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), pp. 139–140.

68 A D Mead, *Richard Taylor, Missionary Tramper* (Wellington, NZ: A H & A W Reed, 1966), pp. 246, 249.

69 Oliver A Gillespie, *South Canterbury: A Record of Settlement*, 2nd edn (Timaru, NZ: South Canterbury Centennial History Committee, 1971), p. 243.

70 New Zealand Institute of Surveyors, 'Ancient Roads', *New Zealand Surveyor,* 13, no. 2 (June 1926), pp. 40–41 (p. 40).

71 Duncan Webb, 'These Boots Were Made for Walking', *Avenues: The Arts, Entertainment and Business in Christchurch,* Feb 2006, p. 97.

72 William Swainson, *New Zealand and Its Colonization* (London: Smith, Elder and Co., 1859), p. 260.

73 Ibid., pp. 260–261.

74 J M Barrington and T H Beaglehole, *Maori Schools in a Changing Society: An Historical Review* (Wellington, NZ: New Zealand Council for Educational Research, 1974), p. 28.

75 Charles Hursthouse, *An Account of the Settlement of New Plymouth in New Zealand, from Personal Observation, During a Residence There of Five Years* (London: Smith, Elder and Co, 1849; repr. Christchurch: Capper Press, 1975), p. 30.

76 Ferdinand von Hochstetter, *New Zealand: Its Physical Geography, Geology and Natural History: With Special Reference to the Results of Government Expeditions to the Provinces of Auckland and Nelson*, trans. by Edward Sauter from *Neu-Seeland* published in 1863 (Stuttgart: J G Cotta, 1867), p. 275.

77 M P K Sorrenson, 'Maori and Pakeha', in *The Oxford History of New Zealand,* ed. by Geoffrey W Rice (Auckland, NZ: Oxford University Press, 1992), pp. 141–166 (pp. 153–154).

78 B Wells, *The History of Taranaki: A Standard Work on the History of the Province* (New Plymouth: Edmondson and Avery, 1878), p. 191.

79 Reproduced in ibid., p. 191.

80 James Belich, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict* (Auckland, NZ: Penguin Books, 1998), p. 82.

81 Judith Binney, *Encircled Lands: Te Urewera, 1820–1921* (Wellington, NZ: Bridget Williams Books, 2009), pp. 222–225.

82 C J Abraham, *Journal of a Walk with the Bishop of New Zealand, from Auckland to Taranaki, in August 1855*, Missions to the Heathen; no. 31 (London: Society for the Propagation of the Gospel, 1856), p. 6.

83 Arthur Dudley Dobson, *Reminiscences of Arthur Dudley Dobson, Engineer, 1841–1930*, Facsimile of 2nd (1930) edn (Christchurch, NZ: Capper Press, 1984), p. 130.

84 W H Skinner, *Reminiscences of a Taranaki Surveyor* (New Plymouth, NZ: Thomas Avery & Sons, 1946), p. 44.

85 Nola Easdale, *Kairuri: The Measurer of Land: The Life of the 19th Century Surveyor Pictured in His Art and Writing* (Petone, NZ: Highgate-Price Milburn, 1988), p. 16.

86 Arthur Whitehead, *A Treatise on Practical Surveying, as Particularly Applicable to New Zealand and Other Colonies* (London: Longman & Co, 1848), pp. 57, 59.

87 Janet Holm, *Caught Mapping: The Life and Times of New Zealand's Early Surveyors* (Christchurch, NZ: Hazard Press, 2005), p. 165.

88 Nola Easdale, *Kairuri: The Measurer of Land: The Life of the 19th Century Surveyor Pictured in His Art and Writing* (Petone, NZ: Highgate-Price Milburn, 1988), p. 135.

89 Janet Holm, *Caught Mapping: The Life and Times of New Zealand's Early Surveyors* (Christchurch, NZ: Hazard Press, 2005), p. 164.

90 Arthur Whitehead, *A Treatise on Practical Surveying, as Particularly Applicable to New Zealand and Other Colonies* (London: Longman & Co, 1848), p. 48.

91 Barry Brailsford, *Greenstone Trails: The Maori and Pounamu*, 2nd edn (Hamilton, NZ: Stoneprint Press, 1996), Author's note and pp. 124–133.

92 James Cowan, 'The Trail of Adventure: Exploring the North Island Main Trunk Railway Route', *New Zealand Railways Magazine,* 8, no. 6 (2 Oct 1933), pp. 41–44 (pp. 41–42).

93 David Colquhoun, 'Cowan, James 1870 - 1943', in *Dictionary of New Zealand Biography* (22 June 2007) <http://www.dnzb.govt.nz/> [accessed 20 Dec 2009].

94 James Cowan, 'Where the Main Trunk Runs', *New Zealand Surveyor,* 11, no. 3 (March 1918), pp. 83–87 (p. 83).

95 David Young, *Woven by Water: Histories from the Whanganui River* (Wellington, NZ: Huia Publishers, 1998), pp. 193–194.

96 James Cowan, 'Where the Main Trunk Runs', *New Zealand Surveyor,* 11, no. 3 (March 1918), pp. 83–87 (p. 85).

97 R S Fletcher, *Single Track: The Construction of the North Island Main Trunk Railway* (Auckland, NZ: Collins, 1978), p. 200.

98 New Zealand Historic Places Trust and Errol Vincent, 'Ohakune to Horopito Coach Road' (22 Oct 2004) <http://www.historic.org.nz/Register/ListingDetail.asp?RID=7574&sm=> [accessed 12 Apr 2009].

99 R S Fletcher, *Single Track: The Construction of the North Island Main Trunk Railway* (Auckland, NZ: Collins, 1978), p. 203.

100 New Zealand Historic Places Trust and Errol Vincent, 'Ohakune to Horopito Coach Road' (22 Oct 2004) <http://www.historic.org.nz/Register/ListingDetail.asp?RID=7574&sm=> [accessed 12 Apr 2009].

101 Ministry of Tourism, 'New Zealand Cycleway – Possible Quick Start Tracks' (27 July 2009) <http://www.beehive.govt.nz/sites/all/files/Key_NewZealandCyclewayQuickStartTracks.pdf> [accessed 2 Aug 2009].

102 Graham Langton, 'Douglas, Charles Edward 1840 - 1916', in *Dictionary of New Zealand Biography* (22 June 2007) <http://www.dnzb.govt.nz/> [accessed 14 Aug 2010].

103 *Mr. Explorer Douglas,* ed. by John Pascoe (Wellington, NZ: A H & A W Reed, 1957), pp. 17–18.

104 Ibid., pp. 18–25. An intriguing mention of track-cutting, Pascoe does not give the source.

105 Erik Olssen, *A History of Otago* (Dunedin, NZ: John McIndoe, 1984), p. 54.

106 Ibid., pp. 52–53.

107 John Rawson Elder, *Goldseekers and Bushrangers in New Zealand* (London: Blackie and Son, 1930), p. 70.

108 E M Lovell-Smith, *Old Coaching Days in Otago and Southland* (Christchurch, NZ: Lovell-Smith and Venner, 1931), p. 39.

109 Hocken Library (Dunedin, NZ), Experiences of William Martin as a goldminer at Gabriels Gully in 1861, related to and written down by Miss Beatrix Howes, MS-0203.

110 Edward Shortland, *The Southern Districts of New Zealand: A Journal, with Passing Notices of the Customs of the Aborigines* (London: Longman, Brown, Green, & Longmans, 1851), p. 172.

111 James Watson, *Links: A History of Transport and New Zealand Society* (Wellington, NZ: Ministry of Transport, 1996), p. 94.

112 Hocken Library (Dunedin, NZ), Experiences of William Martin as a goldminer at Gabriels Gully in 1861, related to and written down by Miss Beatrix Howes, MS-0203.

113 James Watson, *Links: A History of Transport and New Zealand Society* (Wellington, NZ: Ministry of Transport, 1996), p. 71.

114 Hocken Library (Dunedin, NZ), Experiences of William Martin as a goldminer at Gabriels Gully in 1861, related to and written down by Miss Beatrix Howes, MS-0203.

115 Erik Olssen, *A History of Otago* (Dunedin, NZ: John McIndoe, 1984), p. 58.

116 John Rawson Elder, *Goldseekers and Bushrangers in New Zealand* (London: Blackie and Son, 1930), p. 63.

117 Alice McKenzie, *Pioneers of Martins Bay: Life in New Zealand's Most Remote Settlement,* ed. by Alice Margaret Leaker, Rev. of 1st & 2nd (1947 & 1952) edn (Arrowtown, NZ: Lakes District Museum in association with Alice Margaret Leaker, 2006), pp. 10–11.

118 John Hall-Jones, *Martins Bay* (Invercargill, NZ: Craig Printing, 1987), pp. 19-20.

119 Quoted in ibid., pp. 36–37.

120 Ibid., pp. 38–39.

121 Mrs Peter MacKenzie, *Pioneers of Martins Bay* (Dunedin, NZ: Otago Daily Times and Witness Newspapers, 1947), p. 23.

122 'Martin's Bay', *Otago Witness,* 24 Feb 1877, p. 17.

123 Mrs Peter MacKenzie, *Pioneers of Martins Bay* (Dunedin, NZ: Otago Daily Times and Witness Newspapers, 1947), p. 115.

124 Department Of Conservation, 'Pyke – Big Bay Route' (June 2010) <http://www.doc.govt.nz/upload/documents/parks-and-recreation/tracks-and-walks/southland/pyke-big-bay-brochure.pdf> [accessed 31 Dec 2010].

125 Alice McKenzie, *Pioneers of Martins Bay: Life in New Zealand's Most Remote Settlement,* ed. by Alice Margaret Leaker, Rev. of 1st & 2nd (1947 & 1952) edn (Arrowtown, NZ: Lakes District Museum in association with Alice Margaret Leaker, 2006), pp. 159–160.

126 Ibid., p. 3.

127 Cited in John Hall-Jones, *Martins Bay* (Invercargill, NZ: Craig Printing, 1987), p. 180.

128 Ibid., p. 180.

129 'Lake County', *Otago Witness,* 8 Oct 1886, p. 16.

130 'Overland to Martin's Bay', *Otago Daily Times,* 7 March 1882, p. 4.

131 'Lake County', *Otago Witness,* 6 June 1885, p. 12.

132 Alice McKenzie, *Pioneers of Martins Bay: Life in New Zealand's Most Remote Settlement,* ed. by Alice Margaret Leaker, Rev. of 1st & 2nd (1947 & 1952) edn (Arrowtown, NZ: Lakes District Museum in association with Alice Margaret Leaker, 2006), p. 3.

133 Ibid., p. 100.

134 Howard Robinson, *A History of the Post Office in New Zealand* (Wellington, NZ: Government Printer, 1964), p. 1.

135 Ibid., p. 69n.

136 Ibid., p. 3.

137 Ibid., pp. 19–22.

138 William Fox, *The Six Colonies of New Zealand* (London: John W. Parker and Son, 1851), p. 138.

139 Howard Robinson, *A History of the Post Office in New Zealand* (Wellington, NZ: Government Printer, 1964), pp. 56–58.

140 Ibid., pp. 68–69.

141 Quoted in ibid., p. 58.

142 Ibid., p. 69.

143 Ibid., pp. 70–71.

144 John R Slattery, *The Mails of North Canterbury: The Postal History between the Waimakariri and Waipara River, 1855–1979* (Christchurch, NZ: Stirling, 1980), p. 9.

145 Ibid., p. 11.

146 Ibid., p. 79.

147 Ibid., p. 11.

148 Charles Norman Nicholls, *With My Pack on My Back: The Story of Tramping in the New Zealand Bush During the Years 1917–1927* (Howick, NZ: C N Nicholls, 1985), p. 136.

149 Alan Cooper, 'The Rise and Fall of the Anglo-Saxon Law of the Highway', *Haskins Society Journal,* 12 (2002), pp. 39–69 (pp. 46–51).

150 Victoria R., 'Instructions of 1840. Victoria R.', in *The Ordinances of New Zealand Passed in the First Ten Sessions of the General Legislative Council: A.D. 1841 to A.D. 1849: to Which Are Prefixed the Acts of Parliament, Charters, and Royal Instructions Relating to New Zealand* (Wellington, NZ: Printed for the Colonial Government, 1850), pp. 9–22 (p. 19).

151 Brian E Hayes, *The Law on Public Access Along Water Margins* (Wellington: Ministry of Agriculture and Forestry, 2003), p. 3.

152 Allan John Baldwin, 'Explaining the Queen's Chain Myth: the Evolution of Laws for Marginal Strips', *New Zealand Surveyor*, no. 289 (April 1999), pp. 28–33 (p. 29).

153 Brian E Hayes, *The Law on Public Access Along Water Margins* (Wellington: Ministry of Agriculture and Forestry, 2003), p. 7.

154 Walking Access Consultation Panel, *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 30.

155 Crown Lands Office, 'Public Notification', *Te Aroha News,* 14 July 1888, p. 7.

156 Dianne Bardsley, 'Unravelling the Queen's Chain', *NZWords,* Apr 2005, p. 10.

157 Graham E Anderson, 'The Queen's Chain (Not a Limp Wrist Ornament)', *The Landscape*, no. 5 (Dec 1977), pp. 14–16 (p. 15).

158 Allan John Baldwin, 'Access to and along Water Margins: The Queen's Chain Myth' (MSurv thesis, University of Otago, 1997), pp. 65, 68.

159 Ibid., p. 69.

160 G N W B, 'The Law in St. Lucia', *The Law Journal,* 76 (23 Sept 1933), p. 172.

161 Ibid.

Chapter 3: Lost to Human Ken

1 W G McClymont, *The Exploration of New Zealand*, 2nd edn (London: Oxford University Press, 1959), p. 30.

2 James Belich, *Making Peoples: A History of the New Zealanders: From Polynesian Settlement to the End of the Nineteenth Century* (North Shore, NZ: Penguin Books, 2007), p. 116.

3 James Belich, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict* (Auckland, NZ: Penguin Books, 1998), p. 30.

4 James Watson, *Links: A History of Transport and New Zealand Society* (Wellington, NZ: Ministry of Transport, 1996), p. 48.

5 *Early Travellers in New Zealand,* ed. by Nancy M Taylor (London: Oxford University Press, 1959), p. 350.

6 James Belich, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict* (Auckland, NZ: Penguin Books, 1998), p. 24.

7 Ibid., pp. 41–44.

8 Ibid., pp. 49–52, 61–64.

9 Ibid., p. 62.

10 James Belich, 'McDonnell, Thomas 1831-1833? - 1899', in *Dictionary of New Zealand Biography* (22 June 2007) <http://www.dnzb.govt.nz/> [accessed 5 Feb 2010].

11 Thomas W Gudgeon, *Reminiscences of the War in New Zealand* (London: Sampson Low, Marston, Searle, & Rivington, 1879), p. 130.

12 Ibid., p. 133.

13 Ibid., p. 135.

14 *Early Travellers in New Zealand,* ed. by Nancy M Taylor (London: Oxford University Press, 1959), p. 513.

15 J H H St John, *Pakeha Rambles through Maori Lands* (Wellington, NZ: Printed by Robert Burrett, 1873), p. 159.

16 Ibid., p. 158.
17 Ibid., p. 156.
18 Judith Binney, *Encircled Lands: Te Urewera, 1820–1921* (Wellington, NZ: Bridget Williams Books, 2009), p. 148.
19 Ibid., pp. 147n, 204.
20 Ibid., p. 148.
21 Ibid., pp. 148–152.
22 John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District*, Facsimile of 1st (1959) edn (Auckland, NZ: Reed, 1992), pp. 261–262.
23 Jan Kelly, 'Maori Maps', *Cartographica,* 36, no. 2 (Summer 1999), pp. 1–30 (p. 16).
24 James Belich, *I Shall Not Die: Titokowaru's War, New Zealand, 1868–9* (Wellington, NZ: Allen & Unwin in association with the Port Nicholson Press, 1989), pp. 114–137.
25 Ibid., p. 127.
26 Ibid., p. 133.
27 Peter Webster, *Rua and the Maori Millennium* (Wellington, NZ: Price Milburn for Victoria University Press, 1979), p. 82.
28 David Young, *Woven by Water: Histories from the Whanganui River* (Wellington, NZ: Huia Publishers, 1998), pp. 83-84.
29 Michael King, *The Penguin History of New Zealand* (Auckland, NZ: Penguin Books, 2003), p. 218.
30 Maurice Crompton-Smith, 'Forty-five Years Ago', *New Zealand Surveyor,* 14, no. 5 (Mar 1930), pp. 210–212 (p. 211).
31 Tom Brooking, *The History of New Zealand,* ed. by Frank W Thackeray and John E Findling, Greenwood Histories of the Modern Nations (Westport, Conn: Greenwood Press, 2004), p. 59.
32 Ibid., p. 39.
33 Giselle M Byrnes, 'Surveying – the Maori and the Land: An Essay in Historical Representation', *New Zealand Journal of History,* 31, no. 1 (1997), pp. 85–98 (pp. 85-91).
34 Patricia Burns, *Te Rauparaha: A New Perspective*, Reprint of 1980 edn (Auckland, NZ: Penguin, 1983), p. 219.
35 Judith Binney, *Encircled Lands: Te Urewera, 1820–1921* (Wellington, NZ: Bridget Williams Books, 2009), pp. 294–309.
36 Tom Brooking, *The History of New Zealand,* ed. by Frank W Thackeray and John E Findling, Greenwood Histories of the Modern Nations (Westport, Conn: Greenwood Press, 2004), p. 59.
37 Peter Webster, *Rua and the Maori Millennium* (Wellington, NZ: Price Milburn for Victoria University Press, 1979), pp. 128, 139.
38 James Buller, *Forty Years in New Zealand: Including a Personal Narrative, an Account of Maoridom, and the Christianization and Colonization of the Country* (London: Hodder and Stoughton, 1878), p. 37.
39 Judith Binney, *Encircled Lands: Te Urewera, 1820–1921* (Wellington, NZ: Bridget Williams Books, 2009), 322–323.
40 Ibid., p. 323.
41 Peter Webster, *Rua and the Maori Millennium* (Wellington, NZ: Price Milburn for Victoria University Press, 1979), p. 93.
42 William Colenso, 'Notes and Reminiscences of Early Crossings of the Romantically-situated Lake Waikaremoana, County of Hawke's Bay, of

its Neighbouring Country, and of its Peculiar Botany; performed in the Years 1841 and 1843', *Transactions and Proceedings of the New Zealand Institute,1894,* 27 (Tenth of New Series) (1894), pp. 359–382 (p. 370).

43 Judith Binney, *Encircled Lands: Te Urewera, 1820–1921* (Wellington, NZ: Bridget Williams Books, 2009), pp. 240–251.

44 Robert Price, *Through the Uriwera Country* (Napier, NZ: Printed at the Daily Telegraph Office, 1891), pp. 16–17.

45 Ibid., p. 19.

46 Ibid., pp. 26–28.

47 Judith Binney, *Encircled Lands: Te Urewera, 1820–1921* (Wellington, NZ: Bridget Williams Books, 2009), pp. 367–383.

48 Ibid., p. 466.

49 An extract from this map is reproduced in ibid., p. 467.

50 David Alexander, *The Land Development Schemes of the Urewera Inquiry District*, Evidence to the Te Urewera District Inquiry: Wai 894-A74 (July 2002), p. 253.

51 A H Matheson, *The Wairere Track: Ancient Highway of Maori and Missionary* (Tauranga: A H Matheson, 1975), pp. 2–5, 7.

52 James Bodell, 'Reminiscences', *Bay of Plenty Times,* 31 Mar 1888, p. 2.

53 A H Matheson, *The Wairere Track: Ancient Highway of Maori and Missionary* (Tauranga: A H Matheson, 1975), p. 7.

54 Barry Brailsford, *Greenstone Trails: The Maori and Pounamu*, 2nd edn (Hamilton, NZ: Stoneprint Press, 1996), p. 97.

55 Ibid., pp. 163–170.

56 Harry Morton, *The Whale's Wake* (Dunedin, NZ: McIndoe for the University of Otago Press, 1982), pp. 170–171.

57 Edward Shortland, *The Southern Districts of New Zealand: A Journal, with Passing Notices of the Customs of the Aborigines* (London: Longman, Brown, Green, & Longmans, 1851), p. 179.

58 George Griffiths and Maarire Goodall, *Maori Dunedin* (Dunedin, NZ: Otago Heritage Books, 1980), p. 16.

59 Murray Gladstone Thomson, *A Pakeha's Recollections: The Reminiscences of Murray Gladstone Thomson* (Wellington, NZ: A H & A W Reed, 1944), pp. 115–116.

60 Edward J Wakefield, *Adventure in New Zealand, from 1839 to 1844; with Some Account of the Beginning of the British Colonization of the Islands*, Facsimile of 1st (1845) edn, 2 vols (Auckland, NZ: Wilson & Horton, 1971), vol. 2, pp. 345–346. Also *Letters from Settlers and Labouring Emigrants, in the New Zealand Company's Settlements of Wellington, Nelson, and New Plymouth: From February, 1842, to January, 1843* (London: Smith, Elder and Co, 1843), p. 184.

61 'Footprints of Three Centuries Stamped out Ancient Trail', *Taranaki Herald,* 21 Mar 1959.

62 C J Abraham, *Journal of a Walk with the Bishop of New Zealand, from Auckland to Taranaki, in August 1855*, Missions to the Heathen; no. 31 (London: Society for the Propagation of the Gospel, 1856), pp. 26–27.

63 *An Encyclopaedia of New Zealand,* ed. by A H McLintock, 3 vols (Wellington, NZ: R E Owen, Govt printer, 1966), vol. 1, p. 890.

64 H Guthrie-Smith, *Tutira: The Story of a New Zealand Sheep Station*, 4th edn (Wellington, NZ: A H & A W Reed, 1969), p. 73.

65 Ibid., p. 76.

66 Ibid., p. 72.

67 William Williams and Jane Williams, *The Turanga Journals, 1840–1850: Letters and Journals of William and Jane Williams, Missionaries to Poverty Bay* ed. by Frances Porter (Wellington, NZ: Price Milburn for Victoria University Press, 1974), p. 142.

68 Ibid., pp. 280–281, 327, 438–439, 503, 520, 523, 557–558.

69 Ibid., p. 503.

70 Ibid., p. 557.

71 Thomas Samuel Grace, S J Brittan and A V Grace, *A Pioneer Missionary among the Maoris, 1850-1879: Being Letters and Journals of Thomas Samuel Grace* (Palmerston North, NZ: G H Bennett & Co, 1928), pp. 5–6.

72 Ibid., p. 6.

73 Ibid., pp. 7–10.

74 Harold C Williams, *Te Kowhai Track: Poverty Bay – Bay of Plenty, 1840-1992*, 3rd edn (Gisborne, NZ: H C Williams, 1992), p. 20.

75 Ibid., pp. 20–27.

76 Ibid., p. 27.

77 Quoted in ibid., p. 27.

78 Ibid., p. 29.

79 Thomas W Gudgeon, *Reminiscences of the War in New Zealand* (London: Sampson Low, Marston, Searle, & Rivington, 1879), p. 362.

80 'Poverty Bay Herald: Published Every Evening', *Poverty Bay Herald,* 29 May 1897, p. 2.

81 'The Stock Track', *Poverty Bay Herald,* 24 Apr 1908, p. 6.

82 'From Gisborne to Rotorua', *Poverty Bay Herald,* 1 Feb 1906, p. 2.

83 Judith Binney, 'Maungapohatu Revisited: Or, How the Government Underdeveloped a Maori Community', *Journal of the Polynesian Society,* 92, no. 3 (1983), pp. 353–392 (pp. 364–365).

84 Gordon Ell, *Shadows on the Land: Signs from the Maori Past* (Auckland, NZ: The Bush Press, 1985), p. 76.

85 Judith Binney, 'Maungapohatu Revisited: Or, How the Government Underdeveloped a Maori Community', *Journal of the Polynesian Society,* 92, no. 3 (1983), pp. 353–392.

86 Kirstie Ross, 'Signs of Landing: Pakeha Outdoor Recreation and the Cultural Colonisation of New Zealand' (MA thesis, University of Auckland, 1999), p. 75.

87 Charles Norman Nicholls, *With My Pack on My Back: The Story of Tramping in the New Zealand Bush During the Years 1917–1927* (Howick, NZ: C N Nicholls, 1985), p. 137.

88 Kirstie Ross, 'Signs of Landing: Pakeha Outdoor Recreation and the Cultural Colonisation of New Zealand' (MA thesis, University of Auckland, 1999), 82–84.

89 George Augustus Selwyn, *New Zealand. Part I, Letters from the Bishop to the Society for the Propagation of the Gospel, together with Extracts from his Visitation Journal, from July 1842 to January 1843*, 3rd edn (London: Printed for the Society for the Propagation of the Gospel, 1847), p. 77.

90 Ibid., p. 79.

91 Ibid., p. 82.

92 Raewyn Mackenzie, 'Hikoi: Two Tribes Retrace Ancient Paths', *New Zealand Geographic*, no. 18 (Apr–Jun 1993), pp. 86–102.

93 Barry Brailsford, *Greenstone Trails: The Maori and Pounamu*, 2nd edn (Hamilton, NZ: Stoneprint Press, 1996), p. 35.

94 C J Abraham, *Journal of a Walk with the Bishop of New Zealand, from Auckland to Taranaki, in August 1855*, Missions to the Heathen; no. 31 (London: Society for the Propagation of the Gospel, 1856), pp. 9, 11.

95 Ian Church, *The Stratford Inheritance: A History of Stratford and Whangamomona Counties* (Waikanae, NZ: Heritage Press, 1990), p. 13.

96 A D Mead, *Richard Taylor, Missionary Tramper* (Wellington, NZ: A H & A W Reed, 1966), p. 56, 75.

97 Ibid., p. 56.

98 Ibid., pp. 73–77.

99 James Cowan, *Sir Donald Maclean: The Story of a New Zealand Statesman* (Dunedin, NZ: A H & A W Reed, 1940), pp. 51–54.

100 Whanganui Regional Museum (Whanganui, NZ), A copy of a diary written by Major Brassy [Brassey] in the year 1850, Ref 1972.33.1.

101 James Cowan, *Sir Donald Maclean: The Story of a New Zealand Statesman* (Dunedin, NZ: A H & A W Reed, 1940), p. 54.

102 Whanganui Regional Museum (Whanganui, NZ), A copy of a diary written by Major Brassy [Brassey] in the year 1850, Ref 1972.33.1.

103 'Obituary: The Late Sir John L C Richardson', *Otago Witness,* 14 Dec 1878, p. 6.

104 John L C Richardson, *A Summer's Excursion in New Zealand, with Gleanings from Other Writers* (London: Kerby and Sons, 1854), pp. 198–227.

105 New Zealand Government, *New Zealand Government Gazette (Province of New Munster),* 28 Feb 1853, pp. 41–42.

106 David Young, *Woven by Water: Histories from the Whanganui River* (Wellington, NZ: Huia Publishers, 1998), p. 46.

107 'Taranaki', *Nelson Examiner and New Zealand Chronicle,* 12 Dec 1863, p. 2.

108 New Zealand Walking Access Commission, *Draft National Strategy for Walking Access [Sept 2009]* (Wellington, NZ: NZWAC, Sept 2009).

109 Ibid.

110 'News and Notes', *Hawera & Normanby Star,* 9 June 1897, p. 2.

111 'Our Back Country (No. 6)', *Hawera & Normanby Star,* 8 Mar 1899, p. 2.

112 S Percy Smith, 'History and Traditions of the Taranaki Coast: Chapter XI – Continued', *Journal of the Polynesian Society,* 18, no. 1 (1909), pp. 1–25 (p. 24).

113 W B Johnston, 'The Development of Communication Lines across the Taranaki Uplands' (MA thesis, Canterbury University College, 1949), p. 16.

114 Department Of Lands and Survey, 'Taranaki 1892 [map]', *AJHR,* 4 (1892), I-9, facing p. 50.

115 Department of Lands and Survey, *Wanganui River: Map to Accompany Report by Mr. J. T. Stewart*, 1: 253,440. Map (Wellington, NZ: Department of Lands and Survey, 1897).

116 Puke Ariki (New Plymouth, NZ), Old native tracks in Land District of Taranaki [map], in Archives, Acc. no. ARC2004-334.

117 Puke Ariki (New Plymouth, NZ), Old Maori tracks in Taranaki as delineated by H M Skeet 1907 [map], in Archives, Acc. no. ARC2007-248.

118 S Percy Smith, 'History and Traditions of the Taranaki Coast: Chapter VII', *Journal of the Polynesian Society,* 17, no. 1 (1908), pp. 1–47 (facing p. 1).

119 GeoSmart, *Whanganui*, 1: 95,000 & 1:160,000. Parkmap 273-05 & 273-06, 4th edn (Wellington, NZ: Department of Conservation, 2005).

120 Ian Church, *The Stratford Inheritance: A History of Stratford and Whangamomona Counties* (Waikanae, NZ: Heritage Press, 1990), p. 13.

121 Philip Temple, *The Shell Guide to the Matemateaonga Walkway* (Christchurch, NZ: Whitcoulls, 1986), p. 7.

122 'News and Notes', *Hawera & Normanby Star,* 9 June 1897, p. 2.

123 John Skinner, surveyor, *Taranaki and Its Back Country*, 1:253,440. Map (New Plymouth, NZ: Hooker and Co., Lithos, 1902).

124 Ian Church, *The Stratford Inheritance: A History of Stratford and Whangamomona Counties* (Waikanae, NZ: Heritage Press, 1990), p. 89.

125 Ibid., p. 90.

126 Ibid., p. 90.

127 Philip Temple, *The Shell Guide to the Matemateaonga Walkway* (Christchurch, NZ: Whitcoulls, 1986), p. 11.

128 Ibid., p. 11.

129 Automobile Association (Auckland) and New Zealand Walkway Commission, *AA Book of New Zealand Walkways : A Guide to the Walkways Administered by the New Zealand Walkway Commission* (Auckland, NZ: Lansdowne, 1982), p. 67.

130 Department of Lands and Survey, 'Report of the Department of Lands and Survey for the Year Ended 31 March 1981', *AJHR,* 2 (1981), C.1, pp. 1–52 (p. 13).

131 Automobile Association (Auckland) and New Zealand Walkway Commission, *AA Book of New Zealand Walkways : A Guide to the Walkways Administered by the New Zealand Walkway Commission* (Auckland, NZ: Lansdowne, 1982), pp. 64, 68.

132 Automobile Association (N.Z.), *AA Guide to Walkways, North Island, New Zealand* (Auckland, NZ: Lansdowne Press, 1987), pp. 209, 215.

133 Wanganui Conservancy, 'Matemateaonga Track', Department of Conservation (Sept 2008) <http://www.doc.govt.nz/upload/documents/parks-and-recreation/tracks-and-walks/wanganui/matemateaonga-track-brochure.pdf> [accessed 12 Oct 2009].

134 Anthony Dreaver, 'Adkin, George Leslie 1888 - 1964', in *Dictionary of New Zealand Biography* (22 June 2007) <http://www.dnzb.govt.nz/> [accessed 21 July 2010].

135 Roger Duff, 'The Maori Geography of the Wellington Coast: *Horowhenua: Its Maori Place-names and Their Topographic and Historical Background:* By G Leslie Adkin', *New Zealand Geographer,* 5, no. 2 (Oct 1949), pp. 172–173 (p. 172).

136 G Leslie Adkin, *Horowhenua: Its Maori Place-names and Their Topographic and Historical Background* (Wellington, NZ: Department of Internal Affairs, 1948), p. 8.

137 Roberta McIntyre, *Whose High Country?: A History of the South Island High Country of New Zealand* (North Shore, NZ: Penguin Books, 2008), p. 297.

138 Ibid., p. 297.

139 Peter L Horn, 'Moa Tracks: An Unrecognised Legacy from an Extinct Bird?', *New Zealand Journal of Ecology,* 12 (supplement) (1989), pp. 45–50.

140 Hardwicke Knight, *Otago Peninsula: A Local History*, 2nd edn (Broad Bay, Otago Peninsula, NZ: Hardwicke Knight, 1979), pp. 54, 59, 108.

141 *Early Travellers in New Zealand,* ed. by Nancy M Taylor (London: Oxford University Press, 1959), p. 513.

142 J H H St John, *Pakeha Rambles through Maori Lands* (Wellington, NZ: Printed by Robert Burrett, 1873), p. 65.

143 James Belich, *Making Peoples: A History of the New Zealanders: From Polynesian Settlement to the End of the Nineteenth Century* (North Shore, NZ: Penguin Books, 2007), p. 353.

144 Edward Shortland, *The Southern Districts of New Zealand: A Journal, with Passing Notices of the Customs of the Aborigines* (London: Longman, Brown, Green, & Longmans, 1851), pp. 179–249.

145 Thomas Morland Hocken, *Contributions to the Early History of New Zealand (Settlement of Otago)* (London: Sampson Low, 1898), p. 150.

146 'The Opening Trip', *Otago Witness,* 14 Sept 1878, p. 8.

147 'Bicycle Riding: Dunedin, This Day', *Nelson Evening Mail,* 21 Feb 1894, p. 2.

148 James Belich, *Paradise Reforged: A History of the New Zealanders from the 1880s to the Year 2000* (Auckland, NZ: Allen Lane: Penguin Press, 2001), p. 248.

149 Ann Parsonson, 'The Challenge to Mana Maori', in *The Oxford History of New Zealand*, 2nd edn, ed. by Geoffrey W Rice (Auckland, NZ: Oxford University Press, 1992), pp. 167–198 (p. 197).

150 Michael King, *The Penguin History of New Zealand* (Auckland, NZ: Penguin Books, 2003), p. 223.

151 Alison Dench, *Essential Dates: A Timeline of New Zealand History* (Auckland, NZ: Random House, 2005), p. 191.

152 Nigel Curry, 'The Divergence and Coalescence of Public Outdoor Recreation Values in New Zealand and England: An Interplay between Rights and Markets', *Leisure Studies,* 23, no. 3 (July 2004), pp. 205–223 (p. 206).

153 Quoted in Phil Macnaghten and John Urry, *Contested Natures*, Theory, Culture and Society (London: SAGE Publications, 1998), p. 200.

154 Vincent Pyke, *History of the Early Gold Discoveries in Otago* (Dunedin, NZ: Otago Daily Times and Witness Newspapers, 1887), p. 15.

155 Paul Shepard, *English Reaction to the New Zealand Landscape before 1850*, Pacific Viewpoint Monograph; no. 4 (Wellington, NZ: Department of Geography, Victoria University of Wellington, 1969), p. 1.

156 Lydia Wevers, 'The Pleasure of Walking', *New Zealand Journal of History,* 38, no. 1 (April 2004), pp. 39–51 (p. 40).

157 Hocken Library (Dunedin), Journal of John Empson 1937–38 / transcription, in vol. 2, Travels in Australia and New Zealand, MS-0153., pp. 107–109.

158 Charles Hursthouse, *New Zealand, or Zealandia, the Britain of the South*, 2 vols (London: Edward Stanford, 1857), vol. 1, pp. 224–225.

159 John Johnson, 'Notes from a Journal', in *Early Travellers in New Zealand,* ed. by Nancy M Taylor (London: Oxford University Press, 1959), pp. 116–185.

160 George French Angas, *Savage Life and Scenes in Australia and New Zealand: Being an Artist's Impressions of Countries and People at the Antipodes*, 2 vols (London: Smith, Elder, 1847), vol. 1, p. 245.

161 Nigel Curry, 'The Divergence and Coalescence of Public Outdoor Recreation Values in New Zealand and England: An Interplay between Rights and Markets', *Leisure Studies,* 23, no. 3 (July 2004), pp. 205–223 (p. 209).

162 James Watkin and Owen E MacFie, *Journal, 1840–1844* (Dunedin: Evening Star, 1931?), 6 March 1841.

163 James Watson, 'From the Frontier to Cyberspace: a History of Leisure, Recreation and Tourism in New Zealand', in *Time Out?: Leisure, Recreation and Tourism in New Zealand and Australia,* ed. by Harvey C Perkins and Grant Cushman (Auckland, NZ: Addison Wesley Longman New Zealand, 1998), pp. 16–33 (p. 18).

164 'Nelson Gold Fields: Wangapeka', *Nelson Examiner and New Zealand Chronicle,* 19 June 1861, p. 2.

165 'The Management of the Buller Gold-fields', *Nelson Examiner and New Zealand Chronicle,* 12 Dec 1863, p. 7.

166 'The Provincial Engineer's Annual Report on Public Works', *Nelson Examiner and New Zealand Chronicle,* 31 May 1873, p. 4.

167 David C Thorns and Charles P Sedgwick, *Understanding Aotearoa/New Zealand Historical Statistics* (Palmerston North, NZ: The Dunmore Press, 1997), p. 32.

168 Michael King, *The Penguin History of New Zealand* (Auckland, NZ: Penguin Books, 2003), p. 238.

169 Quoted in Patrick J Devlin and Kay L Booth, 'Outdoor Recreation and the Environment: Towards an Understanding of the Recreational Use of the Outdoors in New Zealand', in *Time Out?: Leisure, Recreation and Tourism in New Zealand and Australia,* ed. by Harvey C Perkins and Grant Cushman (Auckland, NZ: Addison Wesley Longman New Zealand, 1998), pp. 109–125 (p. 111).

Chapter 4: Tracks for Tourism and ... 1880–1930

1 Ramblers' Association, 'Timeline: A Walking History' (no date) <http://www.ramblers.org.uk/news/media/ramblers-history.html> [accessed 8 Apr 2007].

2 Chris Stringer, *Homo Britannicus: The Incredible Story of Human Life in Britain* (London: Allen Lane, 2006), pp. 7–11.

3 Margaret McClure, *The Wonder Country: Making New Zealand Tourism* (Auckland, NZ: Auckland University Press, 2004), p. 8. Anthony Trollope, *Australia and New Zealand: Authorized Australian Edition* (Melbourne, Aus: George Robertson, 1873), p. 648.

4 John Hall-Jones, *Martins Bay* (Invercargill, NZ: Craig Printing, 1987), pp. 27–28.

5 Reproduced in 'New Track to Martin's Bay', *Otago Witness,* 26 Feb 1870, p. 7.

6 John Hall-Jones, *Early Fiordland* (Wellington, NZ: A H & A W Reed, 1968), pp. 83, 101.

7 David L McFarlane, 'The Development of Tourism at the Head of Lake Wakatipu, 1860–1914' (BA (Hons) thesis, University of Otago, 1983), p. 24.

8 David Thom, *Heritage: The Parks of the People* (Auckland, NZ: Lansdowne Press, 1987), p. 86.

9 Union Steam Ship Company of New Zealand, *Maoriland: An Illustrated Handbook to New Zealand* (Melbourne: G. Robertson and Co, 1884), p. 137.

10 W T Parham, 'Sutherland, Donald 1843/1844? - 1919', in *Dictionary of New Zealand Biography* (7 Apr 2006) <http://www.dnzb.govt.nz/> [accessed 25 Apr 2007].

11 Lydia Wevers, 'The Pleasure of Walking', *New Zealand Journal of History,* 38, no. 1 (April 2004), pp. 39–51 (p. 43).

12 John Hall-Jones, *Early Fiordland* (Wellington, NZ: A H & A W Reed, 1968), p. 135.

13 Ibid., p. 137.

14 W T Parham, 'Sutherland, Donald 1843/1844? - 1919', in *Dictionary of New Zealand Biography* (7 Apr 2006) <http://www.dnzb.govt.nz/> [accessed 25 Apr 2007].

15 John Hall-Jones, *Early Fiordland* (Wellington, NZ: A H & A W Reed, 1968), p. 139.

16 'Convict Labour', *Star,* 14 Oct 1890, p. 4.

17 Reproduced in 'Lost His Way!', *Hawke's Bay Herald,* 20 June 1890, p. 4.

18 'Milford Sound Convict Establishment', *Otago Witness,* 14 Apr 1892, p. 17.

19 A B Scanlan, *Egmont: The Story of a Mountain* (Wellington, NZ: A H & A W Reed, 1961), pp. 18–31, 49–53.

20 Ibid., p. 58.

21 Ibid., p. 59.

22 Ian Church, *The Stratford Inheritance: A History of Stratford and Whangamomona Counties* (Waikanae, NZ: Heritage Press, 1990), p. 115.

23 Ibid., p. 116.

24 A B Scanlan, *Egmont: The Story of a Mountain* (Wellington, NZ: A H & A W Reed, 1961), p. 67.

25 'Mount Egmont: The Midhirst Tourist Track', *Taranaki Herald,* 29 Nov 1890, p. 2.

26 A B Scanlan, *Egmont: The Story of a Mountain* (Wellington, NZ: A H & A W Reed, 1961), p. 68.

27 'Road to Mountain House: To the Editor', *Taranaki Herald,* 18 Feb 1892, p. 3.

28 A B Scanlan, *Egmont: The Story of a Mountain* (Wellington, NZ: A H & A W Reed, 1961), pp. 70–71.

29 Alison Dench, *Essential Dates: A Timeline of New Zealand History* (Auckland, NZ: Random House, 2005), p. 125.

30 Len Richardson, 'Parties and Political Change', in *The Oxford History of New Zealand,* ed. by Geoffrey W Rice (Auckland, NZ: Oxford University Press, 1992), pp. 201–229 (pp. 209–210).

31 Department of Lands and Survey and H M Skeet, *Topographical Plan of Mt. Egmont (Taranaki) & Pouakai Range*, 1:63,360. Map (Wellington, NZ: Department of Lands and Survey, 1901).

32 'Mount Egmont', *Hawera & Normanby Star,* 15 Oct 1901, p. 2.

33 Department of Lands and Survey, '1902: Department of Lands and Survey (Annual Report on): Appendix VI', *AJHR,* 1 (1902), C-1 (pp. 85–86).

34 Ibid. (p. 86).

35 Department of Tourist and Health Resorts, '1903: Department of Tourist and Health Resorts (Second Annual Report)', *AJHR,* 3 (1903), H-2 (p. xi).

36 A B Scanlan, *Egmont: The Story of a Mountain* (Wellington, NZ: A H & A W Reed, 1961), p. 79.

37 Department of Lands and Survey, L Cussen and W Deverell, *The Tongariro District Shewing the Volcanoes*, 1: 130,000. Map (Wellington, NZ: Department of Lands and Survey, 1891).

38 *New Zealand Historical Atlas: Ko Papatuanuku e Takoto Nei,* ed. by Malcolm McKinnon, Barry Bradley and Russell Kirkpatrick (Auckland, NZ: David Bateman in association with Historical Branch, Dept. of Internal Affairs, 1997), plate 85.

39 Rev Father Kreymborg, 'A Visit to the Volcanoes', *New Zealand Tablet,* 5 Feb 1897, p. 27.

40 Craig Potton, *Tongariro: A Sacred Gift* (Nelson, NZ: Craig Potton Publishing, 1995), p. 141.

41 James Cowan, *The Tongariro National Park, New Zealand: Its Topography, Geology, Alpine and Volcanic Features, History and Maori Folk-lore* (Wellington, NZ: Published under the authority of the Tongariro National Park Board, 1927), p. 43. The bridle track is mentioned in Edith Searle Grossmann, 'The People's Parks and Playgrounds in New Zealand: Part II', *New Zealand Illustrated Magazine,* 1 Feb 1901, p. 385.

42 Quoted in James Cowan, *The Tongariro National Park, New Zealand: Its Topography, Geology, Alpine and Volcanic Features, History and Maori Folk-lore* (Wellington, NZ: Published under the authority of the Tongariro National Park Board, 1927), p. 47.

43 Department of Tourist and Health Resorts, '1904: Tourist and Health Resorts [Annual] Report', *AJHR,* 3 (1904), H-2 (p. 11).

44 Department of Conservation, 'Historic Waihohonu Hut' (no date) <http://www.doc.govt.nz/conservation/historic/by-region/tongariro-taupo/waihohonu-hut/> [accessed 13 Sept 2010].

45 Department of Lands and Survey, *Plan of Tongariro National Park and Its Surroundings*, 1:95,040. Map (Wellington, NZ: Department of Lands and Survey, 1909).

46 James Cowan, *The Tongariro National Park, New Zealand: Its Topography, Geology, Alpine and Volcanic Features, History and Maori Folk-lore* (Wellington, NZ: Published under the authority of the Tongariro National Park Board, 1927), p. 76.

47 Jackie Breen, 'Copland Track Heritage Assessment and Baseline Inspection Report', Department of Conservation (July 2007) <http://www.doc.govt.nz/upload/documents/conservation/historic/by-region/west-coast/copland-track-heritage-assessment/copland-full.pdf> [accessed 15 Aug 2010], p. 8.

48 Ibid., pp. 54–60.

49 Charles Douglas, 'Report by Mr. Douglas of Explorations Made along the Copland River. Karangarua, 8 June 1892', *AJHR,* 1 (1893), C-1, pp. 42–47 (p. 46).

50 *Mr. Explorer Douglas,* ed. by John Pascoe (Wellington, NZ: A H & A W Reed, 1957), p. 47.

51 Charles Douglas, 'Selections from the Douglas Papers', in *Mr. Explorer Douglas,* ed. by John Pascoe (Wellington, NZ: A H & A W Reed, 1957), pp. 99–299 (p. 164).

52 Ibid. (p. 177).

53 *Mr. Explorer Douglas,* ed. by John Pascoe (Wellington, NZ: A H & A W Reed, 1957), p. 48.

54 Jackie Breen, 'Copland Track Heritage Assessment and Baseline Inspection Report', Department of Conservation (July 2007) <http://www.doc.govt.nz/upload/documents/conservation/historic/by-region/west-coast/copland-track-heritage-assessment/copland-full.pdf> [accessed 15 Aug 2010], p. 9.

55 Ibid., p. 9. Also *West Coast Times,* 10 July 1901, p. 2.

56 Department of Tourist and Health Resorts, '1903: Department of Tourist and Health Resorts (Second Annual Report)', *AJHR,* 3 (1903), H-2 (p. xii).

57 Jackie Breen, 'Copland Track Heritage Assessment and Baseline Inspection Report', Department of Conservation (July 2007) <http://www.doc.govt.nz/upload/documents/conservation/historic/by-region/west-coast/copland-track-heritage-assessment/copland-full.pdf> [accessed 15 Aug 2010], pp. 9–13.

58 Department of Conservation, 'Historic Copland Track (c1901–13)' (no date) <http://www.doc.govt.nz/conservation/historic/by-region/west-coast/south-westland/historic-copland-track/> [accessed 15 Aug 2010].

59 Colin Moore, *Tramping New Zealand* (Auckland, NZ: Spot X Tramping NZ, 2007), p. 157.

60 Quoted in Jackie Breen, 'Croesus Track Heritage Assessment and Baseline Inspection Report', Department of Conservation (2006) <http://www.doc.govt.nz/upload/documents/conservation/historic/by-region/west-coast/croesus-track-heritage-assessment/croesus-full.pdf> [accessed 13 Sept 2010], pp. 9–10.

61 Ibid., p. 8.

62 Ibid., p. 7.

63 Ibid., p. 8.

64 Quoted in ibid., p. 9.

65 Ibid., p. 10.

66 Ibid., p. 10.

67 Ibid., p. 36.

68 Ibid., p. 37.

69 A D Willis, G Allen and F Allen, 'A Trip to Taupo', *Wanganui Herald,* 17 Apr 1894, p. 2.

70 M H Campion, P M Garland and J D Morris, *The Road to Mangamahu: A History of the Whangaehu River Valley from Reid's Hill to Mt View* (Wanganui, NZ: Wanganui Chronicle, 1988).

71 James Cowan, 'The Trail of Adventure: Exploring the North Island Main Trunk Railway Route', *New Zealand Railways Magazine,* 8, no. 6 (2 Oct 1933), pp. 41–44 (p. 43).

72 M H Campion, P M Garland and J D Morris, *The Road to Mangamahu: A History of the Whangaehu River Valley from Reid's Hill to Mt View* (Wanganui, NZ: Wanganui Chronicle, 1988), p. 14.

73 A D Willis, G Allen and F Allen, 'A Trip to Taupo', *Wanganui Herald,* 17 Apr 1894, p. 2.

74 Ibid.

75 M H Campion, P M Garland and J D Morris, *The Road to Mangamahu: A History of the Whangaehu River Valley from Reid's Hill to Mt View* (Wanganui, NZ: Wanganui Chronicle, 1988), p. 17.

76 Jonathan Brough, 'Tracks: Pelorus Sound and French Pass', *Colonist,* 29 Dec 1900, p. 4.

77 N S Coad, 'Department of Lands and Survey: A Century of Service to the Land', *New Zealand Agricultural Science,* 10, no. 3 (Aug 1976), pp. 75–77 (p. 75).

78 Ibid. (p. 75).

79 Ibid. (p. 76).

80 Chris Maclean, *Tararua: The Story of a Mountain Range* (Wellington, NZ: Whitcombe Press, 1994), pp. 87–91.

81 *Tararua Story: Published in Commemoration of the Silver Jubilee of the Tararua Tramping Club, 1919–1944,* ed. by B D A Greig, 2nd edn (Wellington, NZ: Tararua Tramping Club, 1946), photo, Survey Party on Mt Dundas, pp. 48–49.

82 Brian Marshall, 'From Sextants to Satellites: A Cartographic Time Line for New Zealand', *New Zealand Map Society Journal*, no. 18 (2005), pp. 1–136 (pp. 42, 62, 81, 90, 91).

83 A Settler, 'Progress of Settlement in Taranaki for Past Twelve Months', *Taranaki Herald,* 12 June 1900, p. 3.

84 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 50.

85 Tom Brooking, 'McKenzie, John 1839 -1901', in *Dictionary of New Zealand Biography* (22 June 2007) <http://www.dnzb.govt.nz/> [accessed 7 Nov 2009].

86 Brian E Hayes, *Roads, Water Margins and Riverbeds: The Law on Public Access* (Dunedin, NZ: Faculty of Law, University of Otago, 2008), pp. 18–24, 38–39.

87 Ross Galbreath, *Working for Wildlife: A History of the New Zealand Wildlife Service* (Wellington, NZ: Bridget Williams Books in association with Historical Branch, Department of Internal Affairs, 1993), p. 224.

88 Michael Bassett, *The Mother of All Departments: The History of the Department of Internal Affairs* (Auckland, NZ: Auckland University Press in association with the Historical Branch, Dept of Internal Affairs, 1997), pp. 54, 65.

89 R M McDowall, *Gamekeepers for the Nation: The Story of New Zealand's Acclimatisation Societies, 1861–1990* (Christchurch, NZ: Canterbury University Press, 1994), p. 10.

90 Ross Galbreath, *Working for Wildlife: A History of the New Zealand Wildlife Service* (Wellington, NZ: Bridget Williams Books in association with Historical Branch, Department of Internal Affairs, 1993), p. 2.

91 R M McDowall, *Gamekeepers for the Nation: The Story of New Zealand's Acclimatisation Societies, 1861–1990* (Christchurch, NZ: Canterbury University Press, 1994), p. 467.

92 W A Sullivan, *Changing the Face of Eden: A History of the Auckland Acclimatisation Societies, 1861–1990* (Hamilton, NZ: Auckland/Waikato Fish and Game Council, 1998), pp. 98–99.

93 'Acclimatisation Society's Conference', *Wanganui Chronicle,* 2 Oct 1897, p. 2.

94 Land for Settlements Act 1892, Land for Settlements Act 1894, and Land for Settlements Amendment Act 1896.

95 'Municipal Electoral Reform', *Evening Post,* 7 Oct 1897, p. 4.

96 Marion Shoard, *This Land is Our Land: The Struggle for Britain's Countryside*, 2nd edn (London: Gaia Books, 1997), pp. 245–248.

97 R M McDowall, *Gamekeepers for the Nation: The Story of New Zealand's Acclimatisation Societies, 1861–1990* (Christchurch, NZ: Canterbury University Press, 1994), pp. 65–74.

98 'Acclimatisation', *Otago Witness,* 13 Feb 1864, p. 1.

99 'Rod and Gun: By Rambler', *Evening Post,* 28 Sept 1901, p. 6.

100 'Westland Acclimatisation Society', *West Coast Times,* 14 Oct 1902, p. 3.

101 'Land and Water: Otago Acclimatisation Society', *Otago Witness,* 8 July 1903, p. 63.

102 Ross Galbreath, *Working for Wildlife: A History of the New Zealand Wildlife Service* (Wellington, NZ: Bridget Williams Books in association with Historical Branch, Department of Internal Affairs, 1993), pp. 10–11.

103 Carol Stewart, D M Johnston and M Newall, *Lake Taupo Access Review*, Institute of Geological & Nuclear Sciences Science Report; 2003, no. 3 (Lower Hutt, NZ: Institute of Geological & Nuclear Sciences, 2003), p. 39.

104 Chris Maclean, *Tararua: The Story of a Mountain Range* (Wellington, NZ: Whitcombe Press, 1994), p. 108.

105 Alexander Bathgate, *Picturesque Dunedin; or, Dunedin and Its Neighbourhood in 1890, with a Short Historical Account of the City and Its Principal Institutions* (Dunedin, NZ: Mills, Dick and Co, 1890), p. 260.

106 Harkley Barker, 'The Pleasure and Benefit of Walking', *Tuapeka Times,* 26 Sept 1891, p. 2.

107 Quoted in Chris Maclean, *Tararua: The Story of a Mountain Range* (Wellington, NZ: Whitcombe Press, 1994), p. 109.

108 Quoted in ibid., p. 111.

109 Quoted in ibid., p. 112.

110 Ibid., p. 113.

111 Quoted in ibid., p. 117.

112 Ibid., p. 114.

113 David L McFarlane, 'The Development of Tourism at the Head of Lake Wakatipu, 1860–1914' (BA (Hons) thesis, University of Otago, 1983), p. 38.

114 Ibid., p. 53.

115 Ibid., p. 54.

116 New Zealand Tourist and Publicity Department, *Notes on the Early History of the Department of Tourist and Health Resorts, 1901-1915* (Wellington, NZ: Research Section, New Zealand Tourist and Publicity Department, 1986).

117 Department of Tourist and Health Resorts, '1903: Department of Tourist and Health Resorts (Second Annual Report)', *AJHR,* 3 (1903), H-2 (p. xiv).

118 Lydia Wevers, 'The Pleasure of Walking', *New Zealand Journal of History,* 38, no. 1 (April 2004), pp. 39–51 (p. 45).

119 Department of Tourist and Health Resorts, '1904: Tourist and Health Resorts [Annual] Report', *AJHR,* 3 (1904), H-2 (p. 16).

120 Nancy Harris, 'Baughan, Blanche Edith 1870 - 1958', in *Dictionary of New Zealand Biography* (7 Apr 2006) <http://www.dnzb.govt.nz/> [accessed 31 May 2007].

121 Lydia Wevers, 'The Pleasure of Walking', *New Zealand Journal of History,* 38, no. 1 (April 2004), pp. 39–51 (p. 49).

122 Blanche Edith Baughan, *Forest and Ice*, Dainty Booklet; no. 16 (Christchurch, NZ: Whitcombe & Tombs, 1913), p. 30.

123 Ibid., pp. 33–34.

124 Kirstie Ross, *Going Bush: New Zealanders and Nature in the Twentieth Century,* ed. by Caroline Daley and Deborah Montgomerie, AUP Studies in Cultural and Social History; no. 5 (Auckland, NZ: Auckland University Press, 2008), p. 51.

125 David C Thorns and Charles P Sedgwick, *Understanding Aotearoa/New Zealand Historical Statistics* (Palmerston North, NZ: The Dunmore Press, 1997), p. 54.

126 Motor-vehicles Act 1924.

127 David C Thorns and Charles P Sedgwick, *Understanding Aotearoa/New Zealand Historical Statistics* (Palmerston North, NZ: The Dunmore Press, 1997), p. 53.

128 David Thom, *Heritage: The Parks of the People* (Auckland, NZ: Lansdowne Press, 1987), p. 6.

129 Ibid., p. 132.

130 Ibid., pp. 132–133.

131 Jackie Breen, 'Copland Track Heritage Assessment and Baseline Inspection Report', Department of Conservation (July 2007) <http://www.doc.govt.nz/upload/documents/conservation/historic/by-region/west-coast/copland-track-heritage-assessment/copland-full.pdf> [accessed 15 Aug 2010], pp. 55–58.

132 Ibid., pp. 19–20, 58.

133 Herbert E Evans, 'The Tramper and the Law', *Tararua: Annual Magazine of the Tararua Tramping Club*, no. 12 (Sept 1958), pp. 58–62 (p. 59).

134 Jack Ede, *Mountain Men of Milford* (Christchurch, NZ: J Ede, 1988), p. 57.

135 Ibid., p. 63.

136 Lenore Oakley, *Harry Ell and His Summit Road: A Biography of Henry George Ell* (Christchurch, NZ: The Caxton Press, 1960).

137 Reuben Dale Peterson, 'Discussion of and Alternatives for the Provision of Public Recreational Access to the Port Hills of Canterbury' (BRS (Hons) thesis, Lincoln University, 1996), p. 16.

138 Ibid., p. 17.

139 Paul Star and Lynne Lochhead, 'Children of the Burnt Bush: New Zealanders and the Indigenous Remnant, 1880-1930', in *Environmental Histories of New Zealand,* ed. by Eric Pawson and Tom Brooking (Melbourne: Oxford University Press, 2002), pp. 119–135 (p. 127).

140 Rob Brown, 'A Heart for the Hills', *New Zealand Geographic*, no. 60 (Nov–Dec 2002), pp. 76–94 (p. 82).

141 'The Summit Road: A Magnificent Outlook', *Star,* 2 Aug 1907, p. 3.

142 Rob Brown, 'A Heart for the Hills', *New Zealand Geographic*, no. 60 (Nov–Dec 2002), pp. 76–94 (p. 82).

143 Chris Maclean, *Tararua: The Story of a Mountain Range* (Wellington, NZ: Whitcombe Press, 1994), p. 224.

144 Michael King, *The Penguin History of New Zealand* (Auckland, NZ: Penguin Books, 2003), p. 279.

145 Chris Maclean, *Tararua: The Story of a Mountain Range* (Wellington, NZ: Whitcombe Press, 1994), p. 126.

146 Ibid., p. 130.

147 *Tararua Story: Published in Commemoration of the Silver Jubilee of the Tararua Tramping Club, 1919–1944,* ed. by B D A Greig, 2nd edn (Wellington, NZ: Tararua Tramping Club, 1946), p. 14.

148 Kirstie Ross, *Going Bush: New Zealanders and Nature in the Twentieth Century,* ed. by Caroline Daley and Deborah Montgomerie, AUP Studies in Cultural and Social History; no. 5 (Auckland, NZ: Auckland University Press, 2008), p. 12.

149 Quoted in Chris Maclean, *Tararua: The Story of a Mountain Range* (Wellington, NZ: Whitcombe Press, 1994), p. 126.

150 John Pascoe, *Land Uplifted High* (Christchurch, NZ: Whitcombe & Tombs, 1952), p. 217.

151 Kirstie Ross, *Going Bush: New Zealanders and Nature in the Twentieth Century,* ed. by Caroline Daley and Deborah Montgomerie, AUP Studies in Cultural and Social History; no. 5 (Auckland, NZ: Auckland University Press, 2008), p. 54.

152 George M Moir, *Moir's Guide Book to the Tramping Tracks and Routes of the Great Southern Lakes and Fiords of Western Otago and Southland,* ed. by W S Gilkison and A H Hamilton, 2nd edn (Dunedin, NZ: New Zealand Alpine Club in conjunction with Otago Expansion League with assistance from Dept. of Internal Affairs, 1948), p. 4.

153 Chris Maclean, *Tararua: The Story of a Mountain Range* (Wellington, NZ: Whitcombe Press, 1994), p. 131.

154 Quoted in 'Tracking the Bush: Tramping Club's Activities: Tauherenikau via Smith's Creek', *Evening Post,* 9 June 1926, p. 10.

155 Chris Maclean, *Tararua: The Story of a Mountain Range* (Wellington, NZ: Whitcombe Press, 1994), pp. 146–147.

156 Ross Kerr, *A Chronology of the Tararua and Rimutaka Ranges*, 5 edn (Levin, NZ: Ross Kerr Publications, 2006).

157 Kirstie Ross, *Going Bush: New Zealanders and Nature in the Twentieth Century,* ed. by Caroline Daley and Deborah Montgomerie, AUP Studies in Cultural and Social History; no. 5 (Auckland, NZ: Auckland University Press, 2008), p. 56.

158 'Tramping and Sport: Paying for Tracks', *Evening Post,* 10 Oct 1929, p. 6.

159 Quoted in 'Track-making and Subsidy Cover: Faith Proved by Works: Tararua Playground', *Evening Post,* 14 June 1930, p. 6.

160 Kirstie Ross, *Going Bush: New Zealanders and Nature in the Twentieth Century,* ed. by Caroline Daley and Deborah Montgomerie, AUP Studies in Cultural and Social History; no. 5 (Auckland, NZ: Auckland University Press, 2008), p. 79.

161 Ibid., p. 80.

162 Michael King, 'Between Two Worlds', in *The Oxford History of New Zealand,* ed. by Geoffrey W Rice (Auckland, NZ: Oxford University Press, 1992), pp. 285–307 (p. 297).

163 Joan Druett, *Exotic Intruders: The Introduction of Plants and Animals into New Zealand* (Auckland, NZ: Heinemann, 1983), p. 34.

Chapter 5: Well-tracked Wastelands, 1930–1970

1 James Cowan, *The Tongariro National Park, New Zealand: Its Topography, Geology, Alpine and Volcanic Features, History and Maori Folk-lore* (Wellington, NZ: Published under the authority of the Tongariro National Park Board, 1927), 141–142.

2 Ibid., p. 76.

3 David Thom, *Heritage: The Parks of the People* (Auckland, NZ: Lansdowne Press, 1987), p. 138.

4 Ibid., pp. 138–139.

5 Alison Dench, *Essential Dates: A Timeline of New Zealand History* (Auckland, NZ: Random House, 2005), p. 161.

6 R W Burrell, *Fifty Years of Mountain Federation, 1931-1981* (Wellington, NZ: Federated Mountain Clubs of New Zealand, 1983), p. 13.

7 Arthur Pass became Arthur's Pass in 1956. David Thom, *Heritage: The Parks of the People* (Auckland, NZ: Lansdowne Press, 1987), p. 156.

8 Department of Lands and Survey, '1937: Department of Lands and Survey: Public Domains and National Parks of New Zealand (Annual Report on)', *AJHR,* 2 (1937-38), C-10 (p. 8).

9 R W Burrell, *Fifty Years of Mountain Federation, 1931-1981* (Wellington, NZ: Federated Mountain Clubs of New Zealand, 1983), pp. 19–22.

10 Ibid., p. 23.

11 David Thom, *Heritage: The Parks of the People* (Auckland, NZ: Lansdowne Press, 1987), 147–151.

12 John Halkett, Peter Berg and Brian Mackrell, *Tree People: Forest Service Memoirs* (Wellington, NZ: New Zealand Forestry Corporation, 1991), p. 22.

13 Ibid., p. 26.

14 'National Park: Tararua Ranges Memorial Plan: Trampers Approve', *Evening Post,* 10 May 1937, p. 12.

15 M M Roche, Gavin McLean and Tim Galloway, *History of Forestry* (Wellington, NZ: New Zealand Forestry Corporation in association with GP Books, 1990), p. 417.

16 F Allsop, *The First Fifty Years of New Zealand's Forest Service: A History from the Time of Its Setting up in 1919 to the Celebration of Its Fiftieth Anniversary in 1969*, New Zealand Forest Service; no. 59 (Wellington, NZ: A R Shearer, Government Printer, 1973), pp. 37–38.

17 David Young, *Our Islands, Our Selves: A History of Conservation in New Zealand* (Dunedin, NZ: University of Otago Press in association with the Dept of Conservation and the Ministry for Culture and Heritage, 2004), p. 151.

18 M M Benjamin, 'Managing the Tararua Forest Park', *New Zealand Journal of Forestry,* 10, no. 2 (1965), pp. 185–193 (p. 191).

19 Ibid. (p. 187).

20 R W Burrell, *Fifty Years of Mountain Federation, 1931-1981* (Wellington, NZ: Federated Mountain Clubs of New Zealand, 1983), p. 97.

21 John Halkett, Peter Berg and Brian Mackrell, *Tree People: Forest Service Memoirs* (Wellington, NZ: New Zealand Forestry Corporation, 1991), p. 149.

22 *Walks and Tracks in the Catlins* (Dunedin, NZ: Department of Lands and Survey for the South East Otago Reserves Board and the New Zealand Forest Service, 1980), p. 1.

23 Graham Bishop and Antony Hamel, *From Sea to Silver Peaks: A Guide to the Walking Tracks, Beaches, Viewpoints and Special Attractions of Dunedin*, 2nd edn (Dunedin, NZ: Silver Peaks Press, 1997), pp. 150–151.

24 R W Burrell, *Fifty Years of Mountain Federation, 1931-1981* (Wellington, NZ: Federated Mountain Clubs of New Zealand, 1983), p. 99.

25 Ibid., p. 106.

26 Ibid., p. 106.

27 George M Moir, *Moir's Guide Book to the Tramping Tracks and Routes of the Great Southern Lakes and Fiords of Western Otago and Southland,* ed. by W S Gilkison and A H Hamilton, 2nd edn (Dunedin, NZ: New Zealand Alpine Club in conjunction with Otago Expansion League with assistance from Dept. of Internal Affairs, 1948), p. 77.

28 Chris Maclean, *John Pascoe* (Nelson, NZ: Craig Potton Publishing in association with The Whitcombe Press, 2003), pp. 33–39.

29 Ibid., p. 98.

30 John Pascoe, 'Canterbury High Country: The Sheep and Sheepmen of the Mountains', *New Zealand Geographer,* 1, no. 1 (April 1945), pp. 19–39 (p. 21).

31 Alison Dench, *Essential Dates: A Timeline of New Zealand History* (Auckland, NZ: Random House, 2005), p. 173.

32 Federated Mountain Clubs, 'Access to the Mountains and to Tramping and Stalking Areas', *FMC Bulletin*, no. 5 (Mar 1959), p. 8.

33 Mavis M Davidson, 'Trampers, Climbers and Forest Recreation', *New Zealand Journal of Forestry,* 10, no. 2 (1965), pp. 194–199 (p. 198).

34 R W Burrell, *Fifty Years of Mountain Federation, 1931-1981* (Wellington, NZ: Federated Mountain Clubs of New Zealand, 1983), p. 106.

35 Ibid., p. 107–108.

36 Federated Mountain Clubs, 'Access to Mountain Land', *FMC Bulletin*, no. 35 (Apr 1970), p. 1.

37 A S D Evans, 'Access to Mountain Lands', *FMC Bulletin*, no. 39 (July 1971), pp. 5–6.

38 R W Burrell, *Fifty Years of Mountain Federation, 1931-1981* (Wellington, NZ: Federated Mountain Clubs of New Zealand, 1983), p. 108.

39 Ibid., p. 25.

40 N S Coad, 'Department of Lands and Survey: A Century of Service to the Land', *New Zealand Agricultural Science,* 10, no. 3 (Aug 1976), pp. 75–77 (p. 77).

41 Department of Tourist and Health Resorts, 'Department of Tourist and Health Resorts (Annual Report of the)', *AJHR,* 3 (1949), H-2 (p. 9).

42 David Thom, *Heritage: The Parks of the People* (Auckland, NZ: Lansdowne Press, 1987), 160–161.

43 Department of Lands and Survey, *The Department of Lands and Survey, 1876-1976: Centennial* (Wellington, NZ: Department of Lands and Survey, 1976), p. 10.

44 David Thom, *Heritage: The Parks of the People* (Auckland, NZ: Lansdowne Press, 1987), p. 162.

45 R W Burrell, *Fifty Years of Mountain Federation, 1931-1981* (Wellington, NZ: Federated Mountain Clubs of New Zealand, 1983), p. 26.

46 R M McDowall, *Gamekeepers for the Nation: The Story of New Zealand's Acclimatisation Societies, 1861–1990* (Christchurch, NZ: Canterbury University Press, 1994), p. 31.

47 Ibid., pp. 32–33, 166.
48 W A Sullivan, *Changing the Face of Eden: A History of the Auckland Acclimatisation Societies, 1861–1990* (Hamilton, NZ: Auckland/Waikato Fish and Game Council, 1998), pp. 199–221, 384.
49 R M McDowall, *Gamekeepers for the Nation: The Story of New Zealand's Acclimatisation Societies, 1861–1990* (Christchurch, NZ: Canterbury University Press, 1994), p. 42.
50 'Sporting Rights: Access to Rivers: Acclimatisation Affairs', *Evening Post,* 9 May 1935, p. 10.
51 Ibid.
52 Ross Galbreath, *Working for Wildlife: A History of the New Zealand Wildlife Service* (Wellington, NZ: Bridget Williams Books in association with Historical Branch, Department of Internal Affairs, 1993), pp. 5–12.
53 David Young, *Our Islands, Our Selves: A History of Conservation in New Zealand* (Dunedin, NZ: University of Otago Press in association with the Dept of Conservation and the Ministry for Culture and Heritage, 2004), p. 131.
54 Ken Francis, *Wildlife Ranger: My Years in the New Zealand Outdoors* (Christchurch, NZ: Whitcoulls Publishers, 1983), pp. 39, 72.
55 David Young, *Our Islands, Our Selves: A History of Conservation in New Zealand* (Dunedin, NZ: University of Otago Press in association with the Dept of Conservation and the Ministry for Culture and Heritage, 2004), pp. 153–156.
56 David Yerex, *Deer: The New Zealand Story* (Christchurch, NZ: Canterbury University Press, 2001), 34–35.
57 Peter McKelvey, *Steepland Forests: A Historical Perspective of Protection Forestry in New Zealand* (Christchurch, NZ: Canterbury University Press, 1995), p. 94.
58 David Yerex, *Deer: The New Zealand Story* (Christchurch, NZ: Canterbury University Press, 2001), pp. 35–36.
59 Ibid., pp. 39, 48.
60 David Young, *Our Islands, Our Selves: A History of Conservation in New Zealand* (Dunedin, NZ: University of Otago Press in association with the Dept of Conservation and the Ministry for Culture and Heritage, 2004), p. 133.
61 David Yerex, *Deer: The New Zealand Story* (Christchurch, NZ: Canterbury University Press, 2001), pp. 36–37.
62 Ken Francis, *Wildlife Ranger: My Years in the New Zealand Outdoors* (Christchurch, NZ: Whitcoulls Publishers, 1983), p. 73.
63 Ibid., p. 73.
64 Ibid., p. 89.
65 Quoted in Jackie Breen, 'Landsborough Rangers Hut: A Report Prepared for South Westland/Weheka Area Office: Heritage Assessment', Department of Conservation (June 2006) <http://www.doc.govt.nz/upload/documents/conservation/historic/by-region/west-coast/landsborough%20rangers%20hut/landsborough-rangers-hut-heritage-assessment.pdf> [accessed 6 Aug 2010], p. 9.
66 Ibid.
67 Ibid., p. 31.
68 Quoted in ibid., p. 11.

69 Jock Phillips, 'Walking Tracks – Walking for Work', in *Te Ara - The Encyclopedia of New Zealand* (2 Mar 2009) <http://www.TeAra.govt.nz/en/walking-tracks/2> [accessed 4 Aug 2010].

70 Jackie Breen, 'Landsborough Rangers Hut: A Report Prepared for South Westland/Weheka Area Office: Heritage Assessment', Department of Conservation (June 2006) <http://www.doc.govt.nz/upload/documents/conservation/historic/by-region/west-coast/landsborough%20rangers%20hut/landsborough-rangers-hut-heritage-assessment.pdf> [accessed 6 Aug 2010], p. 31.

71 Ibid., p. 32.

72 Ross Galbreath, *Working for Wildlife: A History of the New Zealand Wildlife Service* (Wellington, NZ: Bridget Williams Books in association with Historical Branch, Department of Internal Affairs, 1993), pp. 16–30, 64–80.

73 Ibid., p. 28.

74 Ibid., p. 42.

75 George M Moir, *Moir's Guide Book to the Tramping Tracks and Routes of the Great Southern Lakes and Fiords of Western Otago and Southland*, ed. by W S Gilkison and A H Hamilton, 2nd edn (Dunedin, NZ: New Zealand Alpine Club in conjunction with Otago Expansion League with assistance from Dept. of Internal Affairs, 1948), p. 93.

76 David Yerex, *Deer: The New Zealand Story* (Christchurch, NZ: Canterbury University Press, 2001), p. 40.

77 Ross Galbreath, *Working for Wildlife: A History of the New Zealand Wildlife Service* (Wellington, NZ: Bridget Williams Books in association with Historical Branch, Department of Internal Affairs, 1993), p. 77.

78 David Yerex, *Deer: The New Zealand Story* (Christchurch, NZ: Canterbury University Press, 2001), p. 48.

79 Ibid., p. 42.

80 Ibid., p. 66.

81 Ibid., pp. 79–88.

82 Ross Galbreath, *Working for Wildlife: A History of the New Zealand Wildlife Service* (Wellington, NZ: Bridget Williams Books in association with Historical Branch, Department of Internal Affairs, 1993), pp. 41–42.

83 Ibid., p. 164.

84 Ibid., p. 208.

85 Julia Bradshaw, *The Land of Doing Without: Davey Gunn of the Hollyford* (Christchurch, NZ: Canterbury University Press, 2007), pp. 15–19.

86 Ibid., pp. 25–26.

87 Ibid., pp. 28–29.

88 Ibid., p. 29.

89 Alwyn Owen, 'Gunn, David John', in *Dictionary of New Zealand Biography* (1 Sept 2010) <http://www.dnzb.govt.nz/> [accessed 31 Dec 2010].

90 Julia Bradshaw, *The Land of Doing Without: Davey Gunn of the Hollyford* (Christchurch, NZ: Canterbury University Press, 2007), p. 30.

91 Ibid., p. 35.

92 Alwyn Owen, 'Gunn, David John', in *Dictionary of New Zealand Biography* (1 Sept 2010) <http://www.dnzb.govt.nz/> [accessed 31 Dec 2010].

93 Physical Welfare and Recreation Act 1937, section 8.

94 Kirstie Ross, *Going Bush: New Zealanders and Nature in the Twentieth Century,* ed. by Caroline Daley and Deborah Montgomerie, AUP Studies in Cultural and Social History; no. 5 (Auckland, NZ: Auckland University Press, 2008), p. 88.

95 Ibid., p. 88.

96 Mavis M Davidson, 'Trampers, Climbers and Forest Recreation', *New Zealand Journal of Forestry,* 10, no. 2 (1965), pp. 194–199 (p. 196).

97 Kirstie Ross, *Going Bush: New Zealanders and Nature in the Twentieth Century,* ed. by Caroline Daley and Deborah Montgomerie, AUP Studies in Cultural and Social History; no. 5 (Auckland, NZ: Auckland University Press, 2008), p. 90.

98 Ibid., p. 90.

99 Ibid., p. 90.

100 Ibid., p. 91.

101 Ibid., p. 91.

102 Mavis M Davidson, 'Trampers, Climbers and Forest Recreation', *New Zealand Journal of Forestry,* 10, no. 2 (1965), pp. 194–199 (p. 197).

103 Chris Maclean, *John Pascoe* (Nelson, NZ: Craig Potton Publishing in association with The Whitcombe Press, 2003), pp. 129–131.

104 Department of Internal Affairs, 'Department of Internal Affairs (Annual Report of the)', *AJHR,* 3 (1950), H-22 (p. 15).

105 Kirstie Ross, *Going Bush: New Zealanders and Nature in the Twentieth Century,* ed. by Caroline Daley and Deborah Montgomerie, AUP Studies in Cultural and Social History; no. 5 (Auckland, NZ: Auckland University Press, 2008), p. 91.

106 F S Maclean, *Challenge for Health: A History of Public Health in New Zealand* (Wellington, NZ: R E Owen, Government Printer, 1964), p. 246.

107 'Waterworks: Historical Sketch of Early Schemes', *Poverty Bay Herald,* 26 Oct 1907, p. 10.

108 Bruce Mason, *Outdoor Recreation in Otago: a Recreation Plan. Volume Two: Silverpeaks & Otago's Alps* (Wellington, NZ: Federated Mountain Clubs of New Zealand, 1989), pp. 13, 21.

109 Quoted in David Malcolm James Richmond, 'Dunedin in the 1860's: Some Aspects of Settlement' (MA thesis, University of Otago, 1972), p. 176.

110 Ibid., pp. 219–223.

111 'The Picture Almanacs', *Otago Witness,* 17 Feb 1888, p. 33.

112 K C McDonald, *City of Dunedin: A Century of Civic Enterprise* (Dunedin, NZ: Dunedin City Corporation, 1965), pp. 250–253.

113 Leslie H Reynolds, 'Mr Leslie H. Reynolds's Report', *Otago Daily Times,* 12 May 1899, p. 2.

114 K C McDonald, *City of Dunedin: A Century of Civic Enterprise* (Dunedin, NZ: Dunedin City Corporation, 1965), p. 252.

115 'Waitati-Leith Water Supply', *Otago Witness,* 21 Feb 1906, p. 13.

116 Dunedin Expansion League, *A Guide to Dunedin and Surrounding Districts* (Dunedin, NZ: Dunedin Expansion League, 1914), p. 19.

117 Antony Hamel, *Dunedin Tracks and Trails: An Illustrated Guide to Dunedin Walks, Tramps and Mountain Bike Routes* (Dunedin, NZ: Silver Peaks Press, 2008), p. 5.06.

118 New Zealand Parliament, '22 November 1951: Dunedin Waterworks (Taieri River Supply) Extension Bill', *Parliamentary Debates (Hansard),* 296 (1952), pp. 1018–1022 (p. 1019).

119 A H Reed, *Walks around Dunedin* (Wellington, NZ: A H & A W Reed, 1954), p. 34.

120 'Committee Approves Flagstaff Walkway', *Otago Daily Times,* 7 Mar 1974, p. 10. Also 'Walkway Project Now Under Way', *Otago Daily Times,* 24 July 1974, p. 11.

121 Joyce J Herd and George John Griffiths, *Discovering Dunedin: 503 Things To See and Do in and around Dunedin* (Dunedin, NZ: John McIndoe, 1980), p. 82.

122 Graham Bishop and Antony Hamel, *From Sea to Silver Peaks: A Guide to the Walking Tracks, Beaches, Viewpoints and Special Attractions of Dunedin* (Dunedin, NZ: McIndoe Publishers, 1993), p. 60.

123 P J McKelvey, 'Recreation and Amenity in Indigenous State Forests', *New Zealand Journal of Forestry,* 10, no. 2 (1965), pp. 175–184 (p. 181).

124 Mavis M Davidson, 'Trampers, Climbers and Forest Recreation', *New Zealand Journal of Forestry,* 10, no. 2 (1965), pp. 194–199 (p. 198).

125 Peter McKelvey, *Steepland Forests: A Historical Perspective of Protection Forestry in New Zealand* (Christchurch, NZ: Canterbury University Press, 1995), p. 250.

126 M M Benjamin, 'Managing the Tararua Forest Park', *New Zealand Journal of Forestry,* 10, no. 2 (1965), pp. 185–193 (p. 189).

127 P J McKelvey, 'Recreation and Amenity in Indigenous State Forests', *New Zealand Journal of Forestry,* 10, no. 2 (1965), pp. 175–184 (pp. 181–182).

128 New Zealand Forest Service, 'Report of the Director-General of Forests for the Year Ended 31 March 1967', *AJHR,* 2 (1967), C.3, pp. 1–58 (p. 7).

129 Peter McKelvey, *Steepland Forests: A Historical Perspective of Protection Forestry in New Zealand* (Christchurch, NZ: Canterbury University Press, 1995), p. 250.

130 M M Roche, Gavin McLean and Tim Galloway, *History of Forestry* (Wellington, NZ: New Zealand Forestry Corporation in association with GP Books, 1990), p. 389.

131 Harriet Ritvo, *The Dawn of Green: Manchester, Thirlmere, and Modern Environmentalism* (Chicago, IL: University of Chicago Press, 2009).

132 Erica Nathan, *Lost Waters: A History of a Troubled Catchment*, MUP Academic Monograph (Carlton, Vic: Melbourne University Press, 2007).

133 Marion Shoard, *This Land is Our Land: The Struggle for Britain's Countryside*, 2nd edn (London: Gaia Books, 1997), pp. 85–86.

134 Simon Rycroft, 'Access and Alignment: A Passport to Rutlandshire', in *Rights of Way: Policy, Culture and Management,* ed. by Charles Watkins, Rural Studies Series (London: Pinter, 1996), pp. 129–141 (p. 137).

135 Ibid. (p. 139).

136 William H Pearsall and Winifred Pennington, *The Lake District: A Landscape History,* ed. by Margaret Davies and others, The New Naturalist; no. 53 (London: Collins, 1973), p. 73.

137 Erica Nathan, *Lost Waters: A History of a Troubled Catchment*, MUP Academic Monograph (Carlton, Vic: Melbourne University Press, 2007), pp. 69–71.

138 Ibid., pp. 8–11.

139 Ibid., p. 190.

140 Rodney District Council, 'Walking Tracks in Rodney District' (no date) <http://www.rodney.govt.nz/ServicesAtoZ/Documents/Walkway_Cycleway/Walking-Tracks-Rodney-District.pdf> [accessed 29 Dec 2010], p. 6.

141 Department Of Conservation, 'Waipapa River Track' (no date) <http://www.doc.govt.nz/parks-and-recreation/tracks-and-walks/northland/bay-of-islands/waipapa-river-track/> [accessed 30 Dec 2010].

142 Department Of Conservation, 'Mount Auckland Atuanui Walkway' (2010) <http://www.doc.govt.nz/parks-and-recreation/tracks-and-walks/auckland/north-auckland/mount-auckland-atuanui-walkway/> [accessed 29 Dec 2010].

143 Jock Phillips, 'Walking Tracks – Walking for Work', in *Te Ara - The Encyclopedia of New Zealand* (2 Mar 2009) <http://www.TeAra.govt.nz/en/walking-tracks/2> [accessed 4 Aug 2010].

144 Paul Kennett, Simon Kennett and Jonathan Kennett, *Classic New Zealand Mountain Bike Rides*, 6th edn (Wellington, NZ: The Kennett Bros, 2005), p. 79.

145 Greater Wellington Regional Council, 'Walking Tracks' (2010) <http://www.gw.govt.nz/Walking-tracks-2/> [accessed 5 Oct 2010].

146 Paul Mahoney, *The Era of the Bush Tram in New Zealand* (Wellington, NZ: IPL Books, 1998), pp. 12–14.

147 Ibid., p. 12.

148 Ibid., pp. 10, 171, 174.

149 Ibid., p. 175.

150 Ibid., pp. 175–176.

151 Ibid., p. 175.

152 G M O'Neill and others, 'The Recreational Use of Exotic Forests', *New Zealand Journal of Forestry,* 10, no. 2 (1965), pp. 201–220 (p. 201).

153 Ibid. (p. 201).

154 Ibid. (p. 203).

155 Ibid. (p. 205).

156 Ibid. (pp. 206–209).

157 Kirstie Ross, 'Signs of Landing: Pakeha Outdoor Recreation and the Cultural Colonisation of New Zealand' (MA thesis, University of Auckland, 1999), p. 32.

158 'Lady Tramper Throws Bombshell', *New Zealand Truth,* 3 July 1935, p. 16.

159 Federated Mountain Clubs of New Zealand, *Safety in the Mountains: A Handbook for Trampers and Mountaineers* (Wellington, NZ: Federated Mountain Clubs of New Zealand, 1937), p. 12.

160 Kirstie Ross, 'Signs of Landing: Pakeha Outdoor Recreation and the Cultural Colonisation of New Zealand' (MA thesis, University of Auckland, 1999), p. 105.

161 Quoted in ibid., p. 107.

162 National Parks Authority of New Zealand, *New Zealand National Parks* (Wellington, NZ: National Parks Authority of New Zealand, 1957), pp. 1, 32.

163 James Belich, *Paradise Reforged: A History of the New Zealanders from the 1880s to the Year 2000* (Auckland, NZ: Allen Lane: Penguin Press, 2001), p. 530.

164 Michael Bassett, *The Mother of All Departments: The History of the Department of Internal Affairs* (Auckland, NZ: Auckland University Press in association with the Historical Branch, Dept of Internal Affairs, 1997), pp. 110–111.

165 Tim Beaglehole, *A Life of J.C. Beaglehole: New Zealand Scholar* (Wellington, NZ: Victoria University Press, 2006), p. 273.

166 Malcolm McKinnon, 'The Uncompleted Centennial Atlas', in *Creating a National Spirit: Celebrating New Zealand's Centennial,* ed. by William L Renwick (Wellington, NZ: Victoria University Press, 2004), pp. 149–160 (p. 149).

167 David Young, *Our Islands, Our Selves: A History of Conservation in New Zealand* (Dunedin, NZ: University of Otago Press in association with the Dept of Conservation and the Ministry for Culture and Heritage, 2004), p. 129.

168 Malcolm McKinnon, 'The Uncompleted Centennial Atlas', in *Creating a National Spirit: Celebrating New Zealand's Centennial,* ed. by William L Renwick (Wellington, NZ: Victoria University Press, 2004), pp. 149–160 (150–151).

169 Quoted in ibid. (p. 151).

170 Tim Beaglehole, *A Life of J.C. Beaglehole: New Zealand Scholar* (Wellington, NZ: Victoria University Press, 2006), pp. 71–76.

171 Ibid., pp. 279n–280n.

172 Malcolm McKinnon, 'The Uncompleted Centennial Atlas', in *Creating a National Spirit: Celebrating New Zealand's Centennial,* ed. by William L Renwick (Wellington, NZ: Victoria University Press, 2004), pp. 149–160 (p. 158).

173 Tim Beaglehole, *A Life of J.C. Beaglehole: New Zealand Scholar* (Wellington, NZ: Victoria University Press, 2006), p. 281.

174 Ibid., p. 302.

175 Department of Internal Affairs, 'Department of Internal Affairs (Annual Report of the)', *AJHR,* 3 (1950), H-22 (p. 39).

176 Tim Beaglehole, *A Life of J.C. Beaglehole: New Zealand Scholar* (Wellington, NZ: Victoria University Press, 2006), p. 303.

177 Ibid., p. 304. Also Alexander Turnbull Library (Wellington, NZ), Heenan to Glover, 3 December 1948, in Correspondence – Denis Glover re Caxton Press, MS-Papers-1132-082. Also Alexander Turnbull Library (Wellington, NZ), Heenan to Leicester Webb, 16 August 1940, in Correspondence – Leicester C Webb, MS-Papers-1132-250.

178 Tim Beaglehole, *A Life of J.C. Beaglehole: New Zealand Scholar* (Wellington, NZ: Victoria University Press, 2006), p. 304.

179 Chris Maclean, *John Pascoe* (Nelson, NZ: Craig Potton Publishing in association with The Whitcombe Press, 2003), pp. 165, 227.

180 National Historic Places Trust, 'Report of the National Historic Places Trust for the Year Ended 31 March 1960', *AJHR,* 3 (1960), H.27 (p. 17).

181 Ibid. (pp. 17–20).

182 Malcolm McKinnon, 'The Uncompleted Centennial Atlas', in *Creating a National Spirit: Celebrating New Zealand's Centennial,* ed. by William L Renwick (Wellington, NZ: Victoria University Press, 2004), pp. 149–160 (p. 158).

183 *New Zealand Historical Atlas: Ko Papatuanuku e Takoto Nei,* ed. by Malcolm McKinnon, Barry Bradley and Russell Kirkpatrick (Auckland, NZ: David Bateman in association with Historical Branch, Dept. of Internal Affairs, 1997), p. 9.

184 Ibid., p. 9 and plates 17–26.

185 Isaac Davison, 'Anglers Refused Access to River over Summer', *New Zealand Herald,* 24 Nov 2010.

186 Les F Molloy and B J Forde, *Land Alone Endures: Land Use and the Role of Research*, DSIR Discussion Paper; no. 3 (Wellington, NZ: Department of Scientific and Industrial Research, 1980), p. 67.

187 Eric Pawson, 'The Meanings of Mountains', in *Environmental Histories of New Zealand,* ed. by Eric Pawson and Tom Brooking (Melbourne: Oxford University Press, 2002), pp. 136–150 (p. 150).

188 The figure thirty-one comes from the 2007 Acland report. It may have been slightly low. Information from DOC in 2008 indicated that thirty-six walkways had been formally established by notice in the *New Zealand Gazette*.

Chapter 6: Walkways, Gazetted and ... 1975–2003

1 R W Burrell, *Fifty Years of Mountain Federation, 1931-1981* (Wellington, NZ: Federated Mountain Clubs of New Zealand, 1983), p. 36.

2 '1,200-mile Track for N.Z. Trampers', *Otago Daily Times,* 9 Sep 1968, p. 9.

3 R W Burrell, *Fifty Years of Mountain Federation, 1931-1981* (Wellington, NZ: Federated Mountain Clubs of New Zealand, 1983), p. 36.

4 Canterbury United Council, *Port Hills Recreation Study*, Report: CUC (NZ); no. 378–380, 3 vols (Christchurch, NZ: Canterbury United Council, 1986), vol. 2.

5 R W Burrell, *Fifty Years of Mountain Federation, 1931-1981* (Wellington, NZ: Federated Mountain Clubs of New Zealand, 1983), p. 37.

6 New Zealand Parliament, '11 April 1975: New Zealand Walkways Bill', *Parliamentary Debates (Hansard),* 396 (1975), pp. 448–453 (p. 448).

7 Automobile Association (Auckland) and New Zealand Walkway Commission, *AA Book of New Zealand Walkways : A Guide to the Walkways Administered by the New Zealand Walkway Commission* (Auckland, NZ: Lansdowne, 1982), p. 34.

8 Benedict Free, Technical Support Officer - Recreation, Department of Conservation, to P McDonald, subject 'Mount Auckland Walkway', 27 May 2009 [Email].

9 New Zealand Walkway Commission, *New Zealand Walkway Commission: Its Functions & Plans* (Wellington, NZ: New Zealand Walkway Commission, 1977), p. 2.

10 Kay L Booth, 'Rights of Public Access for Outdoor Recreation in New Zealand' (PhD thesis, University of Otago, 2006), p. 82.

11 New Zealand Parliament, '11 April 1975: New Zealand Walkways Bill', *Parliamentary Debates (Hansard),* 396 (1975), pp. 448–453 (p. 448).

12 Ibid. (p. 451).

13 Ibid. (p. 452).

14 Ibid. (pp. 449–450).

15 New Zealand Parliament, '5 September 1975: New Zealand Walkways Bill', *Parliamentary Debates (Hansard),* 401 (1975), pp. 4258–4263 (p. 4263).

16 Department of Lands and Survey, *The Department of Lands and Survey, 1876-1976: Centennial* (Wellington, NZ: Department of Lands and Survey, 1976), p. 10.

17 Department of Lands and Survey, *Activities of the Department of Lands and Survey* (Wellington, NZ: Department of Lands and Survey, 1975), p. 2.

18 Department of Lands and Survey, 'Report of the Department of Lands and Survey for the Year Ended 31 March 1977', *AJHR,* 1 (1977), C.1 (p. 20).

19 Council of Outdoor Recreation Associations of New Zealand, *Submission on 'Walking Access in the New Zealand Outdoors'* (Wellington, NZ: Council of Outdoor Recreation Associations of New Zealand, 2003), p. 2.

20 Department of Lands and Survey, 'Report of the Department of Lands and Survey for the Year Ended 31 March 1978', *AJHR,* 3 (1978), C.1 (p. 13).

21 New Zealand Walkway Commission, *Proceedings of the New Zealand Walkways Seminar, Lincoln College, Canterbury, 10–12 May 1979* (Wellington, NZ: Department of Lands and Survey, 1979), p. 15.

22 Ibid., p. 18.

23 David C Thorns and Charles P Sedgwick, *Understanding Aotearoa/New Zealand Historical Statistics* (Palmerston North, NZ: The Dunmore Press, 1997), p. 33.

24 Ibid., p. 54.

25 N S Coad, 'Policy Planning for Best Use of Land', *Forest and Bird*, no. 197 (Aug 1975), pp. 2–6 (p. 6).

26 Geoff Chapple, 'Long Trails: Origins, Governance & Volunteer Support in the USA, Canada & UK: A Report with Reference to Te Araroa, NZ's Long Pathway: Based on a Churchill Fellowship of 2000' (1 Apr 2001) <http://www.teararoa.org.nz/userfiles/file/Brochure/Long%20Trails%20Monograph%202001.pdf> [accessed 14 Mar 2009], pp. 29–30.

27 New Zealand Walkway Commission, *New Zealand Walkway Commission: Its Functions & Plans* (Wellington, NZ: New Zealand Walkway Commission, 1977), p. 4.

28 New Zealand Walkway Commission Staff, 'New Zealand's National Walkway Network', *Parks,* 4, no. 3 (1979), pp. 13–15.

29 Fish and Game New Zealand, 'Anglers and Hunters Support New Access Strategy', *Reel Life*, vol. 2, issue 7 (14 Sept 2004) <http://www.reellife.co.nz/reellife/8/issue7_nationalnews_article3.asp> [accessed 30 Nov 2004].

30 New Zealand Walkway Commission Staff, 'New Zealand's National Walkway Network', *Parks,* 4, no. 3 (1979), pp. 13–15 (p. 14).

31 Southland Acclimatisation Society, *Annual Report: 1984* (Invercargill, NZ: Southland Acclimatisation Society, 1984), p. 19.

32 New Zealand Walkway Commission, *Proceedings of the New Zealand Walkways Seminar, Lincoln College, Canterbury, 10–12 May 1979* (Wellington, NZ: Department of Lands and Survey, 1979), p. 7.

33 Ibid., pp. 8–9.

34 Walking Access Consultation Panel, *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 45.

35 New Zealand Walkway Commission, *Proceedings of the New Zealand Walkways Seminar, Lincoln College, Canterbury, 10–12 May 1979* (Wellington, NZ: Department of Lands and Survey, 1979), p. 35.

36 Ibid., p. 22.

37 New Zealand Walkway Commission Staff, 'New Zealand's National Walkway Network', *Parks,* 4, no. 3 (1979), pp. 13–15 (p. 15).

38 Department of Lands and Survey, 'Report of the Department of Lands and Survey for the Year Ended 31 March 1981', *AJHR,* 2 (1981), C.1, pp. 1–52 (p. 13).

39 Automobile Association (Auckland) and New Zealand Walkway Commission, *AA Book of New Zealand Walkways : A Guide to the Walkways Administered by the New Zealand Walkway Commission* (Auckland, NZ: Lansdowne, 1982), p. 207.

40 Ibid., 184–186.

41 Otago District Walkway Committee, *Walk Week 12–20 March 1983: An Evaluation* (Dunedin, NZ: Otago District Walkway Committee?, 1983).

42 Department of Conservation, *The Silverpeaks Route*, Leaflet (Dunedin, NZ: Department of Conservation, 1993).

43 David Barnes, 'Choosing the Right Track', Otago Daily Times Online (30 Sept 2009) <http://www.odt.co.nz/print/75844> [accessed 30 Sept 2009].

44 New Zealand Walkway Commission, *Proceedings of the New Zealand Walkways Seminar, Lincoln College, Canterbury, 10–12 May 1979* (Wellington, NZ: Department of Lands and Survey, 1979), p. 9.

45 Ibid., pp. 10–14.

46 Ibid., pp. 15–16.

47 Federated Mountain Clubs of New Zealand, *The Future of Walkways: Proceedings of the First New Zealand Walkways Conference, Carey Park, Auckland, February 1989* (Wellington, NZ: Federated Mountain Clubs, 1990), p. 16.

48 Ibid., p. 24A.

49 Ibid., p. 38.

50 Ibid., pp. 6–7.

51 Ibid., p. 43.

52 D Alexander, 'Land and Property Law and the Environment', in *Handbook of Environmental Law,* ed. by R Harris (Wellington, NZ: Royal Forest and Bird Protection Society of New Zealand, 2004), pp. 409–427 (p. 437).

53 Ibid. (p. 437).

54 New Zealand Walkway Commission, *Proceedings of the New Zealand Walkways Seminar, Lincoln College, Canterbury, 10–12 May 1979* (Wellington, NZ: Department of Lands and Survey, 1979), p. 16.

55 Ibid., p. 18.

56 Department of Lands and Survey, *New Zealand Walkways Act: A Guide to Landowners*, Pamphlet (Wellington, NZ: Department of Lands and Survey, produced for the NZ Walkway Commission, 1980).

57 New Zealand Walking Access Commission, *Minutes: New Zealand Walking Access Commission Meeting: 14 June 2010* (Wellington, NZ: NZWAC, 2010), p. 7.

58 New Zealand Walkway Commission, *Proceedings of the New Zealand Walkways Seminar, Lincoln College, Canterbury, 10–12 May 1979* (Wellington, NZ: Department of Lands and Survey, 1979), p. 16.

59 Ibid., p. 17.

60 Hugh Barr, 'Future of the Walkways System', *FMC Bulletin*, no. 94 (June 1988), pp. 14–16 (p. 15).

61 Alison Dench, *Essential Dates: A Timeline of New Zealand History* (Auckland, NZ: Random House, 2005), p. 255.

62 Peter Clough, 'Walkways: Will Walkways Win Out?', *New Zealand Parks & Recreation: Journal of the New Zealand Institute of Parks and Recreation Administration,* 4, no. 2 (May 1989), pp. 17–18 (p. 17).

63 Ibid. (p. 17).

64 Federated Mountain Clubs of New Zealand, *The Future of Walkways: Proceedings of the First New Zealand Walkways Conference, Carey Park, Auckland, February 1989* (Wellington, NZ: Federated Mountain Clubs, 1990), p. 4.

65 Ibid., p. 42.

66 New Zealand Parliament, '5 April 1990: Conservation Law Reform Bill and New Zealand Walkways Bill', *Parliamentary Debates (Hansard),* 506 (1990), pp. 1373–1386 (p. 1374).

67 Ibid. (p. 1383).

68 Federated Mountain Clubs of New Zealand, *The Future of Walkways: Proceedings of the First New Zealand Walkways Conference, Carey Park, Auckland, February 1989* (Wellington, NZ: Federated Mountain Clubs, 1990), p. 57.

69 Peter Clough, 'Walkways: Will Walkways Win Out?', *New Zealand Parks & Recreation: Journal of the New Zealand Institute of Parks and Recreation Administration,* 4, no. 2 (May 1989), pp. 17–18 (p. 17).

70 New Zealand Parliament, '5 April 1990: Conservation Law Reform Bill and New Zealand Walkways Bill', *Parliamentary Debates (Hansard),* 506 (1990), pp. 1373–1386 (p. 1374).

71 Judith Bell, *I See Red: The Shocking Story of a Battle against the Warehouse* (Wellington, NZ: Awa Press, 2006), p. 22.

72 Michael King, *The Penguin History of New Zealand* (Auckland, NZ: Penguin Books, 2003), p. 503.

73 Damien O'Connor, 'Press Release: High Country Lease Decision Reflects Labour Position', New Zealand Labour Party (4 Aug 2010) <http://www.labour.org.nz/news/high-country-lease-decision-reflects-labour-position> [accessed 12 Sept 2010].

74 'Internet', in *Encyclopaedia Britannica* (2010) <http://www.search.eb.com/eb/article-9001458> [accessed 7 Sept 2010].

75 Department of Conservation, 'New Zealand Walkways Policy' (April 1995) <http://www.doc.govt.nz/About-DOC/Policies-Plans-and-Reports/021~NZ-Walkways-Policy-(Full-Text).asp> [accessed 9 May 2006], section 2.1.

76 Ibid., section 8.2.

77 Kay L Booth and Catherine Peebles, 'Patterns of Use', in *Outdoor Recreation in New Zealand,* ed. by Patrick J Devlin, Ross Corbett and Catherine Peebles (Wellington, NZ: Department of Conservation and Lincoln University, 1995), vol. 1, pp. 31–61 (pp. 33, 39, 43).

78 Patrick J Devlin and Kay L Booth, 'Outdoor Recreation and the Environment: Towards an Understanding of the Recreational Use of

the Outdoors in New Zealand', in *Time Out?: Leisure, Recreation and Tourism in New Zealand and Australia,* ed. by Harvey C Perkins and Grant Cushman (Auckland, NZ: Addison Wesley Longman New Zealand, 1998), pp. 109–125 (p. 114).

79 P Mason, S Leberman and S Barnett, 'Walkway Users, Activity Patterns, Issues of Conflict and Management Dimensions: An Urban Based Case Study from New Zealand', in *Motivations, Behaviour and Tourist Types – Reflections on International Tourism* (Sunderland, UK: Centre for Travel and Tourism and Business Education Publishers, 2000), pp. 301–320 (p. 301).

80 Ibid. (p. 315).

81 Ibid. (p. 316).

82 Hunter Donaldson, New Zealand Walking Access Commission, to P McDonald, subject 'Walkways and easements.xls', 7 May 2009 [Email].

83 Marion Shoard, *This Land is Our Land: The Struggle for Britain's Countryside*, 2nd edn (London: Gaia Books, 1997), pp. 267–268.

84 Royal Forest and Bird Protection Society of New Zealand, 'Walkways System Needs a "Shake-up"', *Forest & Bird*, no. 287 (Feb 1998), p. 5.

85 Ibid.

86 Ibid.

87 Ibid.

88 Kay L Booth, 'Rights of Public Access for Outdoor Recreation in New Zealand' (PhD thesis, University of Otago, 2006), p. 162.

89 Federated Mountain Clubs of New Zealand, *The Future of Walkways: Proceedings of the First New Zealand Walkways Conference, Carey Park, Auckland, February 1989* (Wellington, NZ: Federated Mountain Clubs, 1990), pp. 4, 42, 57.

90 David Allen, 'Paper Roads and Walkways on the Otago Peninsula' (BSurv thesis, University of Otago, 1993), pp. 3–4.

91 Dirk Reiser, 'Rural Tourism in New Zealand: The Otago Peninsula – Perspectives of Landholder Attitudes and Public Access to Private Lands' (PGDipTour dissertation, University of Otago, April 2000), p. 68.

92 Quoted in Deborah Pearlman and J J Pearlman, 'Is the Right To Roam Attainable? An Aspiration or a Pragmatic Way Forward?', in *Rights of Way: Policy, Culture and Management,* ed. by Charles Watkins, Rural Studies Series (London: Pinter, 1996), pp. 49–68 (p. 55).

93 Scottish Natural Heritage, 'Access Legislation: The Case for Change' (27 Nov 2001) <http://www.snh.org.uk/pdfs/access/sr-spcfc.pdf> [accessed 24 Mar 2008], p. 2.

94 Alistair Hall, 'We Are the Greatest', *New Zealand Wilderness,* July 2004, pp. 33–39.

95 Ibid.

96 Geoff Chapple, 'First New Zealand, the Book … and Then New Zealand, the Movie', *Sunday Star,* 16 May 1993, p. A11.

97 Ibid.

98 Geoff Chapple, to P McDonald, subject 'Sunday Star Article, 1993', 10 Mar 2009 [Email].

99 Geoff Chapple, 'First New Zealand, the Book … and Then New Zealand, the Movie', *Sunday Star,* 16 May 1993, p. A11.

100 Geoff Chapple, *Te Araroa: The New Zealand Trail: One Man Walks His Dream* (Auckland, NZ: Random House, 2002), p. 16.

101 Ibid., p. 16.
102 Ibid., p. 17.
103 Ibid., p. 18.
104 Mike White, 'Talking the Walk', *North & South,* Mar 2004, pp. 68–75.
105 Geoff Chapple, *Te Araroa: The New Zealand Trail: One Man Walks His Dream* (Auckland, NZ: Random House, 2002), pp. 19–22.
106 Ibid., p. 23.
107 Ibid., p. 23.
108 Ibid., p. 23.
109 A search of New Zealand library catalogues for a copy of the report *Te Araroa – North Island Foot Trail* was unsuccessful.
110 Mike White, 'Talking the Walk', *North & South,* Mar 2004, pp. 68–75.
111 Ibid. (pp. 73–74).
112 Ibid. (p. 74).
113 Geoff Chapple, *Te Araroa: The New Zealand Trail: One Man Walks His Dream* (Auckland, NZ: Random House, 2002), pp. 140–141.
114 Ibid., p. 141.
115 Ibid., pp. 141, 143.
116 Geoff Chapple, 'Long Trails: Origins, Governance & Volunteer Support in the USA, Canada & UK: A Report with Reference to Te Araroa, NZ's Long Pathway: Based on a Churchill Fellowship of 2000' (1 Apr 2001) <http://www.teararoa.org.nz/userfiles/file/Brochure/Long%20Trails%20Monograph%202001.pdf> [accessed 14 Mar 2009], p. 3.
117 Ibid., p. 4.
118 Ibid., p. 7.
119 Ibid., p. 6.
120 Quoted in ibid., p. 7.
121 Ibid., p. 11.
122 Marion Shoard, *This Land is Our Land: The Struggle for Britain's Countryside*, 2nd edn (London: Gaia Books, 1997), p. 277.
123 Geoff Chapple, 'Long Trails: Origins, Governance & Volunteer Support in the USA, Canada & UK: A Report with Reference to Te Araroa, NZ's Long Pathway: Based on a Churchill Fellowship of 2000' (1 Apr 2001) <http://www.teararoa.org.nz/userfiles/file/Brochure/Long%20Trails%20Monograph%202001.pdf> [accessed 14 Mar 2009], p. 23.
124 Ibid., p. 25.
125 Ibid., p. 13.
126 Ibid., p. 14.
127 Ibid., pp. 20–21.
128 Ibid., p. 30.
129 Ibid., p. 31.
130 Ibid., p. 32.
131 Ibid., p. 35.
132 Ibid., p. 35.
133 Ross Henderson, 'Scheme Backs National Pathway', *Dominion,* 20 Nov 2001, p. 13.
134 Te Araroa Trust, 'Sub-trusts Sought', *Te Araroa: Newsletter,* Oct 2002, p. 3.
135 Te Araroa Trust, 'Trust and DOC Sign MOU', *Te Araroa: Newsletter,* Oct 2002, p. 1.

136 Te Araroa Trust, 'Sub-trusts Sought', *Te Araroa: Newsletter,* Oct 2002, p. 3.

137 Quoted in Te Araroa Trust, 'Book Wins Prize', *Te Araroa: Newsletter,* July 2003, p. 1.

138 Geoff Chapple, *Te Araroa: The New Zealand Trail: One Man Walks His Dream* (Auckland, NZ: Random House, 2002), p. 69.

Chapter 7: PANZ and Public Ownership

1 Kay L Booth, 'Rights of Public Access for Outdoor Recreation in New Zealand' (PhD thesis, University of Otago, 2006), p. 145.

2 Brian E Hayes, *Roading Law as It Applies to Unformed Roads* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), pp. 13–19.

3 Ibid., p. 38.

4 Ibid., p. 52.

5 Walking Access Consultation Panel, *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), pp. 142–143.

6 Ibid., pp. 35–36.

7 New Zealand Walking Access Commission, *New Zealand Outdoor Access Code* (Wellington, NZ: NZWAC, June 2010), p. 9.

8 Brian E Hayes, *Roading Law as It Applies to Unformed Roads* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. v.

9 Bruce J Mason, *Back Country Boom*, National Parks Series; no. 2, 3rd edn (Wellington, NZ: Department of Lands and Survey for the National Parks Authority, 1977), p. 8.

10 Ibid., p. 30.

11 Bruce Mason, Sue Maturin and Public Lands Coalition, to Planning and Development Select Committee, subject 'Submission on Conservation Law Reform Bill', 8 Sep 1989 [Letter].

12 John R Milligan, 'Public Access to Water, a New Zealand Mirage', *The Landscape*, no. 3 (June 1977), p. 12.

13 Southland Acclimatisation Society, *Annual Report: 1981* (Invercargill, NZ: Southland Acclimatisation Society, 1981), p. 14.

14 Southland Acclimatisation Society, *Annual Report: 1987* (Invercargill, NZ: Southland Acclimatisation Society, 1987), p. 20.

15 Walking Access Consultation Panel, *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 31.

16 Hardwicke Knight, *Otago Peninsula: A Local History*, 2nd edn (Broad Bay, Otago Peninsula, NZ: Hardwicke Knight, 1979), p. 107.

17 David Allen, 'Paper Roads and Walkways on the Otago Peninsula' (BSurv thesis, University of Otago, 1993), p. vii.

18 Dunedin City Council, *Legal Roads Recreational Access Development Policy*, draft edn (Dunedin, NZ: Dunedin City Council, about 1991).

19 David Allen, 'Paper Roads and Walkways on the Otago Peninsula' (BSurv thesis, University of Otago, 1993), p. 5–4.

20 Ibid., p. 2–13.

21 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 22.

22 Ibid., p. 64.

23 David Allen, 'Paper Roads and Walkways on the Otago Peninsula' (BSurv thesis, University of Otago, 1993), p. 6–4.

24 Doug Wither, Chairman, Otago Peninsula Public Access Working Party, to Dunedin City Council Chief Executive on the subject 'Public Walking Routes - Otago Peninsula', 25 Sept 1991 [Report].

25 Paul Gorman and Sharon Lippert, 'Row Over Land Access Escalates', *Otago Daily Times,* 6 Jan 1992, p. 1.

26 Neil Clarkson, 'Wirecutters – Walkers' Option', *The Press,* 1 Nov 1996, pp. 13–14.

27 Note: a few of the walking tracks on the Peninsula were originally permitted tracks that predated these 1990s additions, having been established by negotiations between the Otago Peninsula Trust and private landowners.

28 Community and Recreation Services of Dunedin City Council, *Otago Peninsula Tracks*, Leaflet (Dunedin, NZ: Community and Recreation Services of Dunedin City Council, 1997).

29 E L Clark and M J Hilton, 'Measuring and Reporting Changing Public Access to and along the Coast', *New Zealand Geographer,* 59, no. 1 (July 2003), pp. 7–16 (p. 9).

30 David Allen, 'Paper Roads and Walkways on the Otago Peninsula' (BSurv thesis, University of Otago, 1993), p. 5–10.

31 Graham Bishop and Antony Hamel, *From Sea to Silver Peaks: A Guide to the Walking Tracks, Beaches, Viewpoints and Special Attractions of Dunedin*, 2nd edn (Dunedin, NZ: Silver Peaks Press, 1997), p. 53.

32 P J McKelvey, 'Recreation and Amenity in Indigenous State Forests', *New Zealand Journal of Forestry,* 10, no. 2 (1965), pp. 175–184 (p. 181).

33 Antony Hamel, *Dunedin Tracks and Trails: An Illustrated Guide to Dunedin Walks, Tramps and Mountain Bike Routes* (Dunedin, NZ: Silver Peaks Press, 2008), p. 4.01.

34 Neil Clarkson, 'Wirecutters – Walkers' Option', *The Press,* 1 Nov 1996, pp. 13–14.

35 Neal Wallace, 'Paper Lines Let Townies Loose on Otago Land', *New Zealand Farmer,* 27 Apr 1994.

36 Walking Access Consultation Panel, *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), pp. 133–135.

37 Gil Norman, 'Trouble Looms on "Paper Roads"', *Dominion Sunday Times,* 12 May 1991, p. 2.

38 Murray Williams, 'Guide Details Road Rights', *Dominion,* 16 Aug 1991, p. 3.

39 Bruce Mason, *Public Roads: A Guide to Rights of Access to the Countryside* (Dunedin, NZ: Public Lands Coalition, 1991), p. 21.

40 Bruce Mason, 'Recreation Access New Zealand: A 2007 Initiative', Recreation Access New Zealand (5 Apr 2007) <http://www.recreationaccess.org.nz/> [accessed 10 Apr 2007].

41 'Bid to Stop Grab of Public's Land', *New Zealand Farmer,* 13 Apr 1994, p. 29.

42 Public Access New Zealand, 'PANZ Objectives: Extract from Deed of Trust' (18 Sept 1998) <http://www.publicaccessnewzealand.com/files/objectives.html> [accessed 9 July 2007].

43 Ibid.

44 Kay L Booth, 'Rights of Public Access for Outdoor Recreation in New Zealand' (PhD thesis, University of Otago, 2006), p. 83.

45 Bruce Mason, Sue Maturin and Public Lands Coalition, to Planning and Development Select Committee, subject 'Submission on Conservation Law Reform Bill', 8 Sep 1989 [Letter].

46 Geoffrey Palmer, Prime Minister, 'Press Statement: Queen's Chain Safe', 28 Nov 1989.

47 Public Access New Zealand, 'Why Is Public Ownership Necessary?', *Public Access*, no. 1 (Sept 1992), pp. 2–3.

48 D Alexander, 'Land and Property Law and the Environment', in *Handbook of Environmental Law,* ed. by R Harris (Wellington, NZ: Royal Forest and Bird Protection Society of New Zealand, 2004), pp. 409–427 (p. 412).

49 Walking Access Consultation Panel, *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 132.

50 Marion Shoard, 'Robbers v . Revolutionaries: What the Battle for Access Is Really All About', in *Rights of Way: Policy, Culture and Management,* ed. by Charles Watkins, Rural Studies Series (London: Pinter, 1996), pp. 11–23 (p. 16).

51 Ibid. (p. 22).

52 Elena Ares and Grahame Allen, 'Research Paper 00/31: The *Countryside and Rights of Way* Bill – Access and Rights of Way', House of Commons Library (17 March 2000) <http://www.parliament.uk/commons/lib/research/rp2000/rp00-031.pdf> [accessed 3 Mar 2003], pp. 12–13.

53 Public Access New Zealand, 'The "Final Solution" for Public Access?', *Public Access*, no. 7 (June 1996), pp. 1–3 (p. 3).

54 Bruce Mason, 'High Country Access: A Review of Existing Provisions and Future Options', Recreation Access New Zealand (19 Mar 2010) <http://www.recreationaccess.org.nz/files/high_country_access_03_2010.html> [accessed 9 June 2010].

55 Rob Greenaway & Associates, *Port Hills Recreation Strategy* (Christchurch, NZ: Christchurch City Council, 2004), p. 5.

56 Mark Pickering, *The Port Hills: The Complete Guide to All the Walking Tracks and Mountain Bike Trails*, Rev. edn (Christchurch, NZ: M. Pickering, 2002), rear cover.

57 Rob Greenaway & Associates, *Port Hills Recreation Strategy* (Christchurch, NZ: Christchurch City Council, 2004), p. 5.

58 Kay Holder, Regional Parks Team Leader, Christchurch City Council, to Pete McDonald, 4 Sept 2007 [Email].

59 Reuben Dale Peterson, 'Discussion of and Alternatives for the Provision of Public Recreational Access to the Port Hills of Canterbury' (BRS (Hons) thesis, Lincoln University, 1996), p. 28.

60 Automobile Association (N.Z.), *AA Guide to Walkways, South Island, New Zealand* (Auckland, NZ: Lansdowne Press, 1987), p. 146.

61 Rob Greenaway & Associates, *Port Hills Recreation Strategy* (Christchurch, NZ: Christchurch City Council, 2004), pp. 30, 53.

62 Greater Wellington Regional Council, 'Publicly Available Information from Report PE 04.714' (1 Feb 2005) <http://www.gw.govt.nz/story_images/1669_waitangirua_farm_s3217.pdf> [accessed 4 Aug 2007], p. 2.

63 Ibid., p. 1.

64 On 13 April 2010, in response to a request from Hugh Barr of CORANZ, the Walking Access Commission provided him with its list of gazetted walkways that existed immediately before the commencement of the Walking Access Act 2008. Belmont was listed as having twenty kilometres of walkway, gazetted in 2000.

65 Greater Wellington Regional Council, 'Publicly Available Information from Report PE 04.714' (1 Feb 2005) <http://www.gw.govt.nz/story_images/1669_waitangirua_farm_s3217.pdf> [accessed 4 Aug 2007], p. 1.

66 Ibid., p. 2.

67 Chris Carter, Minister of Conservation, 'Press Release: Waitangirua and Whareroa Farms Saved for Public' (19 Aug 2005) <http://www.beehive.govt.nz/Print/PrintDocument.aspx?DocumentID=24038> [accessed 4 Aug 2007].

68 Until June 2005, Molesworth Station was managed by LINZ in conjunction with Landcorp Farming Limited and was vulnerable to sale should a National Party government be elected. On 31 June 2005 Molesworth Station became a recreation reserve managed by DOC. Landcorp would continue the farming on the station under a new pastoral lease.

69 Policy Information and Regions Group, 'New Zealand Agriculture, Forestry and Horticulture in Brief: June 2005: Key Facts', Ministry of Agriculture and Forestry (June 2005) <http://www.maf.govt.nz/mafnet/rural-nz/agriculture-forestry-horticulture-in-brief/2005/key-facts-01.htm> [accessed 17 Dec 2005].

70 Bruce Mason, *Public Roads: A Guide to Rights of Access to the Countryside* (Dunedin, NZ: Public Lands Coalition, 1991), p. 23.

71 Public Access New Zealand, 'Conservation Areas', *Public Access*, no. 1 (Sept 1992), p. 6.

72 Public Access New Zealand, 'Papuni Road – Wairoa District', *Public Access*, no. 4 (May 1994), pp. 9–10.

73 Public Access New Zealand, 'Court of Appeal Decision Welcomed', *Public Access*, no. 11 (Apr 1999), p. 6.

74 Public Access New Zealand, 'Press Release: Major Strategy for Improving Public Access to Outdoors Released' (10 July 2003) <http://www.publicaccessnewzealand.org/files/public_access_strategy2003.html> [accessed 2 Aug 2003].

75 Public Access New Zealand, 'Improving Public Access to the Outdoors: A Strategy for Implementing Government's Election Policies' (10 July 2003) <http://www.publicaccessnewzealand.com/files/access_strategy_version_1.pdf> [accessed 29 July 2007], pp. 11–12.

76 Ibid., pp. 10–11.

77 Brian E Hayes, 'Roading Law as it Applies to Unformed Roads – The Sequel', Walking Access Consultation Panel (16 Oct 2007) <http://www.walkingaccess.org.nz/publications/Unformed_legal_roads_-_final_version_of_response.pdf> [accessed 9 Mar 2008], p. 2.

78 Bruce Mason, 'The Stopping of Bushey Park Road: Public Policy Implications', Omakau, NZ: Recreation Access New Zealand (Dec 2010) [DVD].

79 Public Access New Zealand, 'Improving Public Access to the Outdoors: A Strategy for Implementing Government's Election Policies' (10 July 2003) <http://www.publicaccessnewzealand.com/files/access_strategy_version_1.pdf> [accessed 29 July 2007], p. 20.

80 The Property Law Act 1952 was repealed on 1 January 2008 by section 366(c) of the Property Law Act 2007.

81 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 65.

82 Bruce Mason, 'Idiotic Outcomes Inevitable', *Fish & Game New Zealand,* May 2005, pp. 40–41.

83 Ibid.

84 Ibid.

85 Bruce Mason, 'Off-road Vehicles Destroying the Environment, and Others' Enjoyment of the Outdoors', Recreation Access New Zealand (10 Aug 2007) <http://www.recreationaccess.org.nz/files/off-road_vehicles.html> [accessed 15 Feb 2008].

86 Bruce Mason, 'Idiotic Outcomes Inevitable', *Fish & Game New Zealand,* May 2005, pp. 40–41.

87 Bruce Mason, 'High Country Access: A Review of Existing Provisions and Future Options', Recreation Access New Zealand (19 Mar 2010) <http://www.recreationaccess.org.nz/files/high_country_access_03_2010.html> [accessed 9 June 2010].

88 See the note at the end of Neil Clarkson, 'Wirecutters – Walkers' Option', *The Press,* 1 Nov 1996, pp. 13–14.

89 John Saunders, 'Lobby Group Will Demand to Be Heard', *Evening Standard,* 25 Nov 1997, p. 2.

90 Ibid.

91 Ibid.

92 Ibid.

93 New Zealand Press Association, 'Lobby Group Sees Outdoor Threats as Potential Election Issue' (9 Aug 1999) <http://global.factiva.com.ezproxy.otago.ac.nz/ha/default.aspx> [accessed 5 Jan 2007].

94 'Call for Better Deal for Tramping, Fishing', *The Press,* 2 July 2002, p. 4.

Chapter 8: Tenure Review, 1994–2003

1 G W Kearsley and W G Croy, 'Land Tenure Change in the South Island High Country and Its Implications for Recreation and Tourism in New Zealand', in *Environmental Management and Pathways to Sustainable Tourism,* ed. by Mike Robinson, Reflections on International Tourism (Sunderland: Centre for Travel and Tourism in association with Business Education Publishers, 2000), pp. 113–123 (p. 114).

2 Jim Sutton, Minister of Agriculture and for Rural Affairs, John Tamihere, Minister for Land Information and Chris Carter, Minister of Conservation, 'Cabinet Paper: Government Objectives for the South Island High Country' (Aug 2003) <http://www.linz.govt.nz/docs/supporting-info/about-linz/oia-hc-objectives.pdf> [accessed 3 Feb 2008], p. 2.

3 Roberta McIntyre, *Whose High Country?: A History of the South Island High Country of New Zealand* (North Shore, NZ: Penguin Books, 2008), p. 318.

4 Quoted in Ann Brower, *Who Owns the High Country?: The Controversial Story of Tenure Review in New Zealand* (Nelson, NZ: Craig Potton Publishing, 2008), p. 31.

5 Public Lands Coalition, 'Our High Country Heritage: Will Labour Sell to the Highest Bidder?', *Public Land News,* Nov 1988.

6 Office of Crown Lands, *The Tenure of Crown Pastoral Land: The Issues and Options: A Discussion Paper* (Wellington, NZ: Commissioner of Crown Lands, 1994).

7 Maurice Dick, 'Zealot Stalks the Hillsides', *New Zealand Farmer,* 13 Apr 1994, p. 29.

8 Brian Turner, 'Mason Article Under Attack', *New Zealand Farmer,* 6 July 1994, p. 8.

9 Jim Sutton, Minister of Agriculture and for Rural Affairs, John Tamihere, Minister for Land Information and Chris Carter, Minister of Conservation, 'Cabinet Paper: Government Objectives for the South Island High Country' (Aug 2003) <http://www.linz.govt.nz/docs/supporting-info/about-linz/oia-hc-objectives.pdf> [accessed 3 Feb 2008], p. 4.

10 Bruce Mason, 'Outdoorsmen v Fed Farmers', *The Independent: New Zealand's Business Weekly,* 14 July 1995, p. 10.

11 Ibid.

12 Ann Brower, *Who Owns the High Country?: The Controversial Story of Tenure Review in New Zealand* (Nelson, NZ: Craig Potton Publishing, 2008), p. 32.

13 Ibid., pp. 35–36.

14 John Page and Ann Brower, 'Property Law in the South Island High Country – Statutory, Not Common Law Leases', *Waikato Law Review: Taumauri,* 15 (2007), pp. 48–63 (p. 48).

15 Jim Sutton, Minister of Agriculture and for Rural Affairs, John Tamihere, Minister for Land Information and Chris Carter, Minister of Conservation, 'Cabinet Paper: Government Objectives for the South Island High Country' (Aug 2003) <http://www.linz.govt.nz/docs/supporting-info/about-linz/oia-hc-objectives.pdf> [accessed 3 Feb 2008], p. 4.

16 Bruce Ansley, 'This Land Is Your Land, This Land Is My Land', *New Zealand Listener,* 2 Mar 2002, pp. 16–22.

17 Ibid.

18 Bruce Ansley, 'Heart in the High Lands', *New Zealand Listener,* 12 July 2003, pp. 16–22.

19 John Tamihere, Minister for Land Information, 'Press Release: Objectives for the South Island High Country' (18 Aug 2003) <http://www.beehive.govt.nz/PrintDocument.cfm?DocumentID=17584> [accessed 2 Sept 2004].

20 Jim Sutton, Minister of Agriculture and for Rural Affairs, John Tamihere, Minister for Land Information and Chris Carter, Minister of Conservation, 'Cabinet Paper: Government Objectives for the South Island High Country' (Aug 2003) <http://www.linz.govt.nz/docs/supporting-info/about-linz/oia-hc-objectives.pdf> [accessed 3 Feb 2008], p. 2.

21 John Tamihere, Minister for Land Information, 'Press Release: Objectives for the South Island High Country' (18 Aug 2003) <http://www.beehive.govt.nz/PrintDocument.cfm?DocumentID=17584> [accessed 2 Sept 2004].

Chapter 9: Report, Consultation and Delay, 2003–2004

1 Jim Sutton, Minister for Rural Affairs, *Cabinet Finance, Infrastructure and Environment Committee: Public Access over Private Land* (Wellington, NZ: Office of the Minister for Rural Affairs, 20 Mar 2002), p. 2.

2 Jim Sutton, Minister for Rural Affairs, 'Press Release: Minister Launches Land Access Reference Group' (23 Jan 2003) <http://www.beehive.govt.nz/ViewDocument.cfm?DocumentID=15902> [accessed 14 Nov 2004].

3 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 104.

4 Jim Sutton, Minister for Rural Affairs, *Cabinet Finance, Infrastructure and Environment Committee: Public Access over Private Land* (Wellington, NZ: Office of the Minister for Rural Affairs, 20 Mar 2002), p. 9.

5 Ibid., p. 10.

6 Roberta McIntyre, *Whose High Country?: A History of the South Island High Country of New Zealand* (North Shore, NZ: Penguin Books, 2008), pp. 89–90.

7 Bruce Mason, 'Walking Access – A Step Forward – With a Sting in the Tail', Recreation Access New Zealand (5 Apr 2007) <http://www.recreationaccess.org.nz/> [accessed 14 Apr 2007].

8 Public Access New Zealand, 'Press Release: Government's Public Access Plan "Pie in the Sky"' (23 Jan 2003) <http://www.publicaccessnewzealand.com/files/access_ref_group.html> [accessed 29 July 2007].

9 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 106.

10 Kay L Booth, 'Rights of Public Access for Outdoor Recreation in New Zealand' (PhD thesis, University of Otago, 2006), p. 232.

11 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 98.

12 Annette Scott, 'Acland Lashes Back at Critics', *New Zealand Farmers Weekly,* 15 Sept 2004.

13 Gottlieb Braun-Elwert, to P McDonald, subject 'StopTenureReview', 27 Feb 2008 [Email].

14 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), pp. 74–75.

15 Public Access New Zealand, 'Improving Public Access to the Outdoors: A Strategy for Implementing Government's Election Policies' (10 July 2003) <http://www.publicaccessnewzealand.com/files/access_strategy_version_1.pdf> [accessed 29 July 2007], p. 10.

16 Ibid., p. 4.

17 Ibid., p. 11.

18 Public Access New Zealand, 'Land Access Reference Group Report 2003: PANZ Commentary and Checklist of Pros and Cons' (5 Oct 2003) <http://www.publicaccessnewzealand.com/files/access_ref_group_pros_cons.html> [accessed 29 July 2007].

19 Council of Outdoor Recreation Associations of New Zealand, *Submission on 'Walking Access in the New Zealand Outdoors'* (Wellington, NZ: Council of Outdoor Recreation Associations of New Zealand, 2003), p. 2.

20 Ibid., p. 2.

21 Barbara Marshall and Federated Mountain Clubs of New Zealand, *Re: Access Issues [FMC's submission to the Land Access Ministerial Reference Group]* (Wellington, NZ: Federated Mountain Clubs, 28 March 2003), p. 14.

22 New Zealand Fish and Game Council, *Submission on 'Walking Access in the New Zealand Outdoors'* (Wellington, NZ: New Zealand Fish and Game Council, Dec 2003), p. 2.

23 Federated Farmers of New Zealand, *Submission on 'Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group'* (Wellington, NZ: Federated Farmers of New Zealand, Nov 2003), p. 6.

24 Quoted in Alan Cooper, 'The Rise and Fall of the Anglo-Saxon Law of the Highway', *Haskins Society Journal,* 12 (2002), pp. 39–69 (p. 42).

25 Mark Pickering, *The Port Hills: The Complete Guide to All the Walking Tracks and Mountain Bike Trails*, Rev. edn (Christchurch, NZ: M. Pickering, 2002), p. 16.

26 Public Access New Zealand, 'Improving Public Access to the Outdoors: A Strategy for Implementing Government's Election Policies' (10 July 2003) <http://www.publicaccessnewzealand.com/files/access_strategy_version_1.pdf> [accessed 29 July 2007], p. 13.

27 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 53.

28 Ibid., p. 90.

29 Department of Conservation, 'New Zealand Walkways Policy' (April 1995) <http://www.doc.govt.nz/About-DOC/Policies-Plans-and-Reports/021~NZ-Walkways-Policy-(Full-Text).asp> [accessed 9 May 2006], section 2.1.

30 New Zealand Conservation Authority, *New Zealand's Walkways* (Wellington, NZ: New Zealand Conservation Authority, 2003), p. 5.

31 Department of Conservation, 'New Zealand Walkways Policy' (April 1995) <http://www.doc.govt.nz/About-DOC/Policies-Plans-and-Reports/021~NZ-Walkways-Policy-(Full-Text).asp> [accessed 9 May 2006], section 8.11.

32 Tara Ross, 'Maori Bill DOC for Use of Track', *Sunday Star-Times,* 4 Sept 2005.

33 Ibid.

34 Department of Conservation, 'New Zealand Walkways Policy' (April 1995) <http://www.doc.govt.nz/About-DOC/Policies-Plans-and-Reports/021~NZ-Walkways-Policy-(Full-Text).asp> [accessed 9 May 2006], section 8.11.

35 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 17.

36 Chris Carter, Minister of Conservation, 'Press Release: DOC Proposes 250km of New Walking Tracks' (30 Sep 2003) <http://www.beehive.govt.nz/ViewDocument.aspx?DocumentID=17973> [accessed 4 June 2007].

37 Department of Conservation, 'Towards a Better Network of Visitor Facilities: Overview Fact-sheet' (Sep 2003) <http://www.doc.govt.nz/Explore/DOC-Recreation-Opportunities-Review/images/overview.pdf> [accessed 12 Oct 2003].

38 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 75.

39 Dunedin City Council, *Track Policy and Strategy: Community and Recreation Planning* (Dunedin, NZ: Dunedin City Council, 1998; repr. 2002), p. 20.

40 Jacinda Baker, Reserve Planner, Dunedin City Council, to P McDonald, subject 'Cleghorn St', 14 Mar 2006 [Email].

41 Public Access New Zealand, 'Improving Public Access to the Outdoors: A Strategy for Implementing Government's Election Policies' (10 July 2003) <http://www.publicaccessnewzealand.com/files/access_strategy_version_1.pdf> [accessed 29 July 2007], pp. 11–12.

42 Ibid., pp. 4, 11–12.

43 Bruce Mason, *Public Roads: A Guide to Rights of Access to the Countryside* (Dunedin, NZ: Public Lands Coalition, 1991), C.1 Why 'Public Way' instead of 'Road'?

44 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 90.

45 Pete McDonald, 'High-quality Access: A Response to the Feedback Questions That Were Attached to the Report, *Walking Access in the New Zealand Outdoors*' (Oct 2003) <http://homepages.paradise.net.nz/petemcd/hqa/hqa.htm> [accessed 8 Aug 2004], pp. 44–51.

46 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 76.

47 Ibid., p. 65.

48 Pete McDonald, 'High-quality Access: A Response to the Feedback Questions That Were Attached to the Report, *Walking Access in the New Zealand Outdoors*' (Oct 2003) <http://homepages.paradise.net.nz/petemcd/hqa/hqa.htm> [accessed 8 Aug 2004], pp. 45–48.

49 Public Access New Zealand, 'Land Access Reference Group Report 2003: PANZ Commentary and Checklist of Pros and Cons' (5 Oct 2003) <http://www.publicaccessnewzealand.com/files/access_ref_group_pros_cons.html> [accessed 29 July 2007], Cons, 10.

50 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 42.

51 Barbara Marshall and Federated Mountain Clubs of New Zealand, *Re: Access Issues [FMC's submission to the Land Access Ministerial Reference Group]* (Wellington, NZ: Federated Mountain Clubs, 28 March 2003), p. 13.

52 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 65.

53 Ibid., p. 94.

54 Brian E Hayes, *The Law on Public Access Along Water Margins* (Wellington: Ministry of Agriculture and Forestry, 2003), p. 28.

55 New Zealand Fish and Game Council, *Submission on 'Walking Access in the New Zealand Outdoors'* (Wellington, NZ: New Zealand Fish and Game Council, Dec 2003), p. 3.

56 Public Access New Zealand, 'Improving Public Access to the Outdoors: A Strategy for Implementing Government's Election Policies' (10 July 2003) <http://www.publicaccessnewzealand.com/files/access_strategy_version_1.pdf> [accessed 29 July 2007], p. 19.

57 Rob Greenaway, *Walking Access in the New Zealand Outdoors*, Draft article, unpublished (Christchurch, NZ: Rob Greenaway, 2005).

58 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 54.

59 Public Access New Zealand, 'The "Queen's Chain" ', *Public Access*, no. 1 (Sept 1992), pp. 10–11.

60 Ibid.

61 Public Access New Zealand, 'Improving Public Access to the Outdoors: A Strategy for Implementing Government's Election Policies' (10 July 2003) <http://www.publicaccessnewzealand.com/files/access_strategy_version_1.pdf> [accessed 29 July 2007], p. 20.

62 Ibid., (p. 20).

63 Resource Management Act 1991, section 2 (1).

64 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 54.

65 Walking Access Consultation Panel, *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 56.

66 Public Access New Zealand, 'Improving Public Access to the Outdoors: A Strategy for Implementing Government's Election Policies' (10 July 2003) <http://www.publicaccessnewzealand.com/files/access_strategy_version_1.pdf> [accessed 29 July 2007], p. 17.

67 Ibid., p. 17.

68 D Alexander, 'Land and Property Law and the Environment', in *Handbook of Environmental Law,* ed. by R Harris (Wellington, NZ: Royal Forest and Bird Protection Society of New Zealand, 2004), pp. 409–427 (p. 423).

69 Ibid. (p. 423).

70 Brian E Hayes, *Elements of the Law on Movable Water Boundaries* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), pp. 38, 53.

71 Public Access New Zealand, 'Improving Public Access to the Outdoors: A Strategy for Implementing Government's Election Policies' (10 July 2003) <http://www.publicaccessnewzealand.com/files/access_strategy_version_1.pdf> [accessed 29 July 2007], pp. 17-18.

72 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), pp. 50–51.

73 Ibid., pp. 56–58.

74 Ministry of Agriculture and Forestry, 'Meeting Record of Stakeholder and Public Meetings for Walking Access in the New Zealand Outdoors Consultation (September – November 2003)' (March 2004) <http://

www.maf.govt.nz/mafnet/rural-nz/people-and-their-issues/access/meeting-notes/meeting-notes.pdf> [accessed 1 Dec 2004], p. 12.

75 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 82.

76 Quoted in Public Access New Zealand, 'Access News', *Public Access*, no. 2 (Mar 1993), pp. 15–16.

77 Walking Access Consultation Panel, *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 91.

78 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 41.

79 Ibid., p. 89.

80 D Alexander, 'Land and Property Law and the Environment', in *Handbook of Environmental Law,* ed. by R Harris (Wellington, NZ: Royal Forest and Bird Protection Society of New Zealand, 2004), pp. 409–427 (p. 418).

81 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 5.

82 Ibid., p. 13.

83 Council of Outdoor Recreation Associations of New Zealand, *Submission on 'Walking Access in the New Zealand Outdoors'* (Wellington, NZ: Council of Outdoor Recreation Associations of New Zealand, 2003), p. 3.

84 Ibid., p. 3.

85 Walking Access Consultation Panel, *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 71.

86 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 39.

87 Tom Brooking, '"Bursting-up" the Greatest Estate of All: Liberal Maori Land Policy, 1891–1911', *New Zealand Journal of History,* 26, no. 1 (1992), pp. 78–98 (p. 79, graph).

88 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 39.

89 Mick Strack and Elizabeth Jeffery, 'Access to Landlocked Maori Land', *New Zealand Surveyor*, no. 299 (Dec 2009), pp. 31–35.

90 Diane Crengle, *Taking into Account the Principles of the Treaty of Waitangi: Ideas for the Implementation of Section 8 Resource Management Act 1991* (Wellington, NZ: Ministry for the Environment, 1993), p. 11.

91 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 22.

92 Quoted in Ministry of Agriculture and Forestry, *Analysis of Written Submissions on the Report 'Walking Access in the New Zealand Outdoors'* (Wellington, NZ: Ministry of Agriculture and Forestry, 2004), p. 22.

93 Quoted in ibid., p. 21.

94 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 80.

95 Public Access New Zealand, 'Improving Public Access to the Outdoors: A Strategy for Implementing Government's Election Policies' (10 July 2003) <http://www.publicaccessnewzealand.com/files/access_strategy_version_1.pdf> [accessed 29 July 2007], pp. 11–13.

96 Scottish Natural Heritage, 'Scottish Outdoor Access Code: Public Access to the Outdoors: Your Rights and Responsibilities' (1 July 2004) <http://www.snh.org.uk/pdfs/access/ApprovedCode050604.pdf> [accessed 2 Dec 2005].

97 Pete McDonald, 'High-quality Access: A Response to the Feedback Questions That Were Attached to the Report, *Walking Access in the New Zealand Outdoors*' (Oct 2003) <http://homepages.paradise.net.nz/petemcd/hqa/hqa.htm> [accessed 8 Aug 2004], pp. 20–21.

98 Hon Jim Sutton, Minister of Rural Affairs, 'Media Statement – 11 August 2003'. <http://www.maf.govt.nz/mafnet/rural-nz/people-and-their-issues/access/ministerial.htm> [21 September 2003].

99 Jim Sutton, Minister for Rural Affairs, 'Cabinet Paper: Walking Access in the New Zealand Outdoors' (20 Dec 2004) <http://www.beehive.govt.nz/ViewDocument.cfm?DocumentID=21918> [accessed 22 Dec 2004], p. 3.

100 Walking Access Consultation Panel, *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 76.

101 Ministry of Agriculture and Forestry, *Analysis of Written Submissions on the Report 'Walking Access in the New Zealand Outdoors'* (Wellington, NZ: Ministry of Agriculture and Forestry, 2004), p. 9.

102 Ibid., p. 9.

103 Federated Farmers of New Zealand, *Submission on 'Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group'* (Wellington, NZ: Federated Farmers of New Zealand, Nov 2003), p. 3.

104 Annette Scott, 'Acland Lashes Back at Critics', *New Zealand Farmers Weekly,* 15 Sept 2004.

Chapter 10: Government Silence

1 Howard Keene, 'John Acland', *The Press,* 16 Aug 2003, p. 9.

2 Kay L Booth, 'Rights of Public Access for Outdoor Recreation in New Zealand' (PhD thesis, University of Otago, 2006), pp. 176–225.

3 Ibid., p. 176.

4 Ibid., p. 96.

5 Ibid., pp. 210–215.

6 Ibid., pp. 177, 190.

7 Ibid., p. 187.

8 Denis Welch, *Helen Clark: A Political Life* (Auckland, NZ: Penguin Books, 2009), p. 189.

9 Public Access New Zealand, 'Press Release: Government Claims of "Guaranteed" Access over Foreshore Fraudulent' (16 Sept 2004) <http://www.publicaccessnewzealand.org/> [accessed 16 Sept 2004].

10 Kay L Booth, 'Rights of Public Access for Outdoor Recreation in New Zealand' (PhD thesis, University of Otago, 2006), p. 219.
11 Natasha Holland, ' "Flawed" RMA on Fed Strategy List' (8 Nov 2005) <http://stuff.co.nz/stuff> [accessed 8 Nov 2005].
12 Ann Brower, *Who Owns the High Country?: The Controversial Story of Tenure Review in New Zealand* (Nelson, NZ: Craig Potton Publishing, 2008), p. 8.
13 Hans Willems, 'Whatever Happened to the Queen's Chain?', *Daily Post,* 31 August 2005, section A, p. 12.
14 Robert Bremer and Tom Brooking, 'Federated Farmers and the State', in *State and Economy in New Zealand,* ed. by Brian Roper and Chris Rudd (Auckland, NZ: Oxford University Press, 1993), pp. 108–127 (p. 117).
15 Jim Sutton, Minister for Rural Affairs, Four-page update brochure, 'Walking Access in the New Zealand Outdoors', sent to submitters, Aug 2004 [Brochure].
16 Federated Farmers of New Zealand, 'Public Access across Private Land' (Sept 2004) <http://www.fedfarm.org.nz/issues/Access.html> [accessed 25 Oct 2004].

Introduction to Part Three

1 Bridget Cull, 'Farmers Upset by Sex in the Paddocks', *Nelson Mail,* 1 Jan 2004.
2 Federated Farmers of New Zealand, 'Public Access across Private Land' (Sept 2004) <http://www.fedfarm.org.nz/issues/Access.html> [accessed 25 Oct 2004].
3 Federated Farmers of New Zealand, 'Mythbusters' (13 Sept 2004) <http://www.fedfarm.org.nz/issues/documents/Mythbusters_000.pdf> [accessed 25 Oct 2004].

Chapter 11: Disputed Need for Change

1 Wellington Recreational Marine Fishers Association, 'Wellington Coastline Access Submission' (25 Apr 2003) <http://www.option4.co.nz/Marine_Protection/lostaccess.htm> [accessed 25 Oct 2004].
2 New Zealand Recreational Canoeing Association and Maree Baker, 'Submission to Ministry of Agriculture and Forestry: Walking Access in the New Zealand Outdoors' (30 Nov 2003) <http://www.rivers.org.nz/article/SubmissionToMAFReAccess> [accessed 18 Nov 2004].
3 New Zealand Recreational Canoeing Association, Maree Baker and Mike Savory, 'Submission to Land Access Reference Group: Public Access to the Seashore, Lakes and Rivers, and Over Private Land' (28 Mar 2003) <http://www.rivers.org.nz/article/SubmissionToLandAccessReferenceGroup> [accessed 20 Nov 2004].
4 Barbara Marshall and Federated Mountain Clubs of New Zealand, *Re: Access Issues [FMC's submission to the Land Access Ministerial Reference Group]* (Wellington, NZ: Federated Mountain Clubs, 28 March 2003), p. 1.
5 Public Access New Zealand, Hugh Barr and others, 'PDF Library: Mt Hikurangi and Judicial Review' (1990–2000) <http://www.publicaccessnewzealand.com/> [accessed 28 Dec 2009].
6 Norman McIntyre, John Jenkins and Kay L Booth, 'Global Influences on Access: The Changing Face of Access to Public Conservation Lands

in New Zealand', *Journal of Sustainable Tourism,* 9, no. 5 (2001), pp. 434–450 (p. 446).

7 Ibid. (p. 446).

8 Kay L Booth, 'Rights of Public Access for Outdoor Recreation in New Zealand' (PhD thesis, University of Otago, 2006), pp. 235–239.

9 Ian Mackersey, 'Kaimanawa Access: We Shall Overcome', *New Zealand Wilderness,* Nov 2003, pp. 20–26.

10 Ibid.

11 Hugh Barr, 'Pigeon Post: Private Access', *New Zealand Wilderness,* Dec 2003, p. 5.

12 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 70.

13 Ibid., p. 70.

14 Ibid., p. 73.

15 Federated Farmers of New Zealand, 'Public Access across Private Land' (Sept 2004) <http://www.fedfarm.org.nz/issues/Access.html> [accessed 25 Oct 2004].

16 New Zealand Walkway Commission, *Proceedings of the New Zealand Walkways Seminar, Lincoln College, Canterbury, 10–12 May 1979* (Wellington, NZ: Department of Lands and Survey, 1979).

17 Ministry of Agriculture and Forestry, *Analysis of Written Submissions on the Report 'Walking Access in the New Zealand Outdoors'* (Wellington, NZ: Ministry of Agriculture and Forestry, 2004), pp. 13–14.

18 Neal Wallace, 'Public Access Could Hit Farm Wealth, Says Expert', *Otago Daily Times,* 5 Nov 2004, section Farming.

19 Mick Strack, 'Rethinking Property Rights in New Zealand', FIG Working Week 2004, Athens, Greece, May 22-27, 2004 (2004) <https://www.fig.net/pub/athens/papers/ts17/TS17_2_Strack.pdf> [accessed 14 June 2010], p. 7.

20 Ann Brower, *Who Owns the High Country?: The Controversial Story of Tenure Review in New Zealand* (Nelson, NZ: Craig Potton Publishing, 2008), p. 154.

21 Ibid., p. 154.

22 A H Reed, *A. H. Reed: An Autobiography* (Wellington, NZ: A H & A W Reed, 1967), p. 134.

23 Dirk Reiser, 'Rural Tourism in New Zealand: The Otago Peninsula – Perspectives of Landholder Attitudes and Public Access to Private Lands' (PGDipTour dissertation, University of Otago, April 2000), pp. 55–56.

24 Dunedin City Council, *Track Policy and Strategy: Community and Recreation Planning* (Dunedin, NZ: Dunedin City Council, 1998; repr. 2002), p. 21.

25 Federated Farmers of New Zealand, *Submission to MAF Reference Group on the Access to Land Issue* (Wellington, NZ: Federated Farmers of New Zealand, Apr 2003), p. 20.

26 Federated Farmers of New Zealand, *Submission on 'Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group'* (Wellington, NZ: Federated Farmers of New Zealand, Nov 2003), p. 5.

Chapter 12: Legislation and Goodwill

1 Federated Farmers of New Zealand, *Submission to MAF Reference Group on the Access to Land Issue* (Wellington, NZ: Federated Farmers of New Zealand, Apr 2003), p. 4.

2 Federated Farmers of New Zealand, *Submission on 'Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group'* (Wellington, NZ: Federated Farmers of New Zealand, Nov 2003), p. 4.

3 Jim Sutton, Minister for Rural Affairs, 'Press Release: Land Access Reference Group Report Released' (11 Aug 2003) <http://www.beehive.govt.nz/ViewDocument.cfm?DocumentID=17528> [accessed 28 Oct 2004].

4 Roberta McIntyre, *Whose High Country?: A History of the South Island High Country of New Zealand* (North Shore, NZ: Penguin Books, 2008), p. 168.

5 Tom Brooking, *Lands for the People? The Highland Clearances and the Colonisation of New Zealand: A Biography of John McKenzie by Tom Brooking* (Dunedin, NZ: University of Otago Press, 1996), p. 245.

6 Tom Brooking, 'McKenzie, John 1839 -1901', in *Dictionary of New Zealand Biography* (22 June 2007) <http://www.dnzb.govt.nz/> [accessed 7 Nov 2009].

7 Tom Brooking, *Lands for the People? The Highland Clearances and the Colonisation of New Zealand: A Biography of John McKenzie by Tom Brooking* (Dunedin, NZ: University of Otago Press, 1996), pp. 131–134.

8 Tom Brooking, *The History of New Zealand,* ed. by Frank W Thackeray and John E Findling, Greenwood Histories of the Modern Nations (Westport, Conn: Greenwood Press, 2004), p. 82.

9 Barry Gustafson, *From the Cradle to the Grave: A Biography of Michael Joseph Savage* (Auckland, NZ: Reed Methuen Publishers, 1986), p. 87.

10 Federated Farmers of New Zealand, 'About FFNZ' (2002) <http://www.fedfarm.org.nz/about%20FFNZ/index.html> [accessed 29 Oct 2004].

11 Jim Sutton, Minister for Rural Affairs, 'Press Release: Land Access Reference Group Report Released' (11 Aug 2003) <http://www.beehive.govt.nz/ViewDocument.cfm?DocumentID=17528> [accessed 28 Oct 2004].

12 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), pp. 77–79.

13 Bruce Mason, *Public Roads: A Guide to Rights of Access to the Countryside* (Dunedin, NZ: Public Lands Coalition, 1991), p. 14.

14 Public Access New Zealand, 'Improving Public Access to the Outdoors: A Strategy for Implementing Government's Election Policies' (10 July 2003) <http://www.publicaccessnewzealand.com/files/access_strategy_version_1.pdf> [accessed 29 July 2007], pp. 3, 13.

15 David Allen, 'Paper Roads and Walkways on the Otago Peninsula' (BSurv thesis, University of Otago, 1993), ch. 5, p. 5.

16 Quoted in Fish and Game New Zealand, 'Land Access Review Public Meetings', *Reel Life*, vol. 1, issue 2 (28 Oct 2003) <http://www.reellife.co.nz/reellife/7/issue2_nationalnews_article1.asp> [accessed 9 Nov 2004].

17 Bruce Mason, *Public Roads: A Guide to Rights of Access to the Countryside* (Dunedin, NZ: Public Lands Coalition, 1991), p. 7.

18 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 40.

19 Federated Farmers of New Zealand, *Submission on 'Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group'* (Wellington, NZ: Federated Farmers of New Zealand, Nov 2003), p. 13.

20 Ibid., p. 13.

21 Federated Farmers of New Zealand, 'Proposal: Code of Conduct' (13 Sept 2004) <http://www.fedfarm.org.nz/issues/documents/CodeofConduct.pdf> [accessed 9 Nov 2004].

22 Bernadette Cooney, 'Farmers Fear Access Law Change', *Nelson Mail,* 2 Nov 2004.

23 For example, New Zealand Labour Party and New Zealand First Party, 'Confidence and Supply Agreement with New Zealand First' (17 Oct 2005) <http://www.beehive.govt.nz/Documents/Files/NZFirst.pdf> [accessed 13 Apr 2008].

24 Rob Roney, Chairman, New Zealand Fish and Game Council, 'Speech: Developing a Sustainable Relationship: Federated Farmers National Conference 18/19 July 2007' (July 2007) <http://www.fishandgame.org.nz/Site/Features/NationalNewsJuly1.aspx> [accessed 27 Oct 2007].

Chapter 13: Information Gap

1 Outdoor Recreation Planning Task Force and Colin Abbott, *Policy for Outdoor Recreation in New Zealand 1985* (Wellington, NZ: New Zealand Council for Recreation and Sport, 1985), p. 30.

2 Bridget Cull, 'This Land is Our Land?', *Nelson Mail,* 27 Sept 2003.

3 Public Access New Zealand, 'Improving Public Access to the Outdoors: A Strategy for Implementing Government's Election Policies' (10 July 2003) <http://www.publicaccessnewzealand.com/files/access_strategy_version_1.pdf> [accessed 29 July 2007], p. 3.

4 Kay L Booth, 'Rights of Public Access for Outdoor Recreation in New Zealand' (PhD thesis, University of Otago, 2006), p. 246.

5 Public Access New Zealand, 'Improving Public Access to the Outdoors: A Strategy for Implementing Government's Election Policies' (10 July 2003) <http://www.publicaccessnewzealand.com/files/access_strategy_version_1.pdf> [accessed 29 July 2007], pp. 7–8.

6 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), pp. 78–79.

7 Federated Farmers of New Zealand, *Submission on 'Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group'* (Wellington, NZ: Federated Farmers of New Zealand, Nov 2003), p. 8.

8 Jim Sutton, Minister for Rural Affairs, Four-page update brochure, 'Walking Access in the New Zealand Outdoors', sent to submitters, Aug 2004 [Brochure].

9 Walking Access Consultation Panel, *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 41.

10 Brian Marshall, 'From Sextants to Satellites: A Cartographic Time Line for New Zealand', *New Zealand Map Society Journal*, no. 18 (2005), pp. 1–136 (pp. 37, 81, 95).

11 Department of Lands and Survey, *The Department of Lands and Survey, 1876-1976: Centennial* (Wellington, NZ: Department of Lands and Survey, 1976), p. 10.

12 Roberta McIntyre, *Whose High Country?: A History of the South Island High Country of New Zealand* (North Shore, NZ: Penguin Books, 2008), p. 285.

13 Brian Marshall, 'From Sextants to Satellites: A Cartographic Time Line for New Zealand', *New Zealand Map Society Journal*, no. 18 (2005), pp. 1–136 (pp. 98, 102).

14 Ministry of Agriculture and Forestry, *Analysis of Written Submissions on the Report 'Walking Access in the New Zealand Outdoors'* (Wellington, NZ: Ministry of Agriculture and Forestry, 2004), p. 32.

15 Ibid., p. 32.

16 Community and Recreation Services of Dunedin City Council, *Dunedin Track Research 2003–2004: Final Report* (Dunedin, NZ: Dunedin City Council, 2004).

17 Karel Kriz, 'Are We Living in a Cartographic Illiterate Society?', in *Cartography and Art,* ed. by William Cartwright, Georg Gartner and Antje Lehn (Berlin: Springer, 2009), pp. 59–68 (p. 68).

18 Pete McDonald, 'Buskin Track (80114) and Others' (April 2005) <http://homepages.paradise.net.nz/petemcd/bt/bt.htm> [accessed 16 May 2005], pp. 5, 7, 12.

19 The notation-only practice started under the Department of Survey and Land Information (DOSLI). In 1996 a part of DOSLI became Land Information New Zealand. The notation-only practice continued under LINZ, a government department, not an SOE. Terralink NZ Ltd, established at the same time as LINZ in 1996, was an SOE; it was privatised in 2001, becoming Terralink International Ltd.

20 Public Access New Zealand, 'Improving Public Access to the Outdoors: A Strategy for Implementing Government's Election Policies' (10 July 2003) <http://www.publicaccessnewzealand.com/files/access_strategy_version_1.pdf> [accessed 29 July 2007], pp. 21–22.

21 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 55.

22 Ibid., p. 59.

23 Walking Access Consultation Panel, *Outdoor Walking Access: Consultation Document* (Wellington, NZ: Ministry of Agriculture and Forestry, 2006), p. 10.

24 Mike Boyes, John Maxted and Nancy Rehrer, 'Abstracts: Healthy People, Healthy Planet' in *New Zealand Recreation Association Annual Conference: Remarkable Recreation Queenstown 2004* (Queenstown, NZ: 2004), p. 6.

25 Brian Pink, 'National Population Projections: 2004 (base) – 2051', Statistics New Zealand (16 Dec 2004) <http://www.stats.govt.nz/store/2006/07/national-population-projections-04%28base%29-51-hotp.htm> [accessed 3 Oct 2007].

26 Nigel Curry, 'The Divergence and Coalescence of Public Outdoor Recreation Values in New Zealand and England: An Interplay between Rights and Markets', *Leisure Studies,* 23, no. 3 (July 2004), pp. 205–223.

27 Jeremy Rowan Robinson and Theresa Egleton, 'Land Reform (Scotland) Act 2003 – Implications for Owners and Occupiers', Paull and Williamsons (Solicitors) (9 Feb 2005) <http://www.paull-williamsons.co.uk/news/showdeal.asp?did=125> [accessed 2 Mar 2006], p. 1.

28 Matthias Schellhorn, *The Marlborough Sounds: A Recreational Profile*, Maritime Parks; no. 1 (Blenheim, NZ: Marlborough Sounds Maritime Park Board, 1984), pp. 38, 73.

29 Jonathan Kennett and others, *Ride: The Story of Cycling in New Zealand,* ed. by Bronwen Wall (Wellington, NZ: The Kennett Brothers, 2004), p. 175.

Chapter 14: Public Access and Farm Management

1 Ministry of Agriculture and Forestry, *Analysis of Written Submissions on the Report 'Walking Access in the New Zealand Outdoors'* (Wellington, NZ: Ministry of Agriculture and Forestry, 2004), p. 15.

2 'To Correspondents: "Ratepayer", Horokiwi Road', *Evening Post,* 6 Feb 1885, p. 2.

3 Janet Holm, *Nothing but Grass and Wind: The Rutherfords of Canterbury* (Christchurch, NZ: Hazard Press, 1992), p. 38.

4 Roberta McIntyre, *Whose High Country?: A History of the South Island High Country of New Zealand* (North Shore, NZ: Penguin Books, 2008), p. 139.

5 Janet Holm, *Nothing but Grass and Wind: The Rutherfords of Canterbury* (Christchurch, NZ: Hazard Press, 1992), p. 38.

6 Federated Farmers of New Zealand, *Submission on 'Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group'* (Wellington, NZ: Federated Farmers of New Zealand, Nov 2003), p. 2.

7 Ministry of Agriculture and Forestry, *Analysis of Written Submissions on the Report 'Walking Access in the New Zealand Outdoors'* (Wellington, NZ: Ministry of Agriculture and Forestry, 2004), p. 16.

8 Federated Farmers of New Zealand, *Submission to MAF Reference Group on the Access to Land Issue* (Wellington, NZ: Federated Farmers of New Zealand, Apr 2003), p. 25.

9 Department of Conservation, 'New Zealand Walkways Policy' (April 1995) <http://www.doc.govt.nz/About-DOC/Policies-Plans-and-Reports/021~NZ-Walkways-Policy-(Full-Text).asp> [accessed 9 May 2006], section 2.1.

10 New Zealand Fish and Game Council, *Submission on 'Walking Access in the New Zealand Outdoors'* (Wellington, NZ: New Zealand Fish and Game Council, Dec 2003), p. 5.

11 Ministry of Agriculture and Forestry, *Analysis of Written Submissions on the Report 'Walking Access in the New Zealand Outdoors'* (Wellington, NZ: Ministry of Agriculture and Forestry, 2004), p. 25.

12 Shonagh Lindsay and Fish and Game New Zealand, 'Public Access: Key Points', *Reel Life*, vol. 2, issue 7 (14 Sept 2004) <http://www.reellife.co.nz/reellife/7/issue7_nationalnews_article4.asp> [accessed 9 Nov 2004].

13 Dunedin City Council, *Track Policy and Strategy: Community and Recreation Planning* (Dunedin, NZ: Dunedin City Council, 1998; repr. 2002), p. 3.

14 National Sheep Association, 'The UK Sheep Industry & Its Stratified Breeding System' (no date) <http://www.nationalsheep.org.uk/joomla/images/stories/pdf/Chapter_04.pdf> [accessed 30 July 2009].

15 Statistics New Zealand, *New Zealand Official Yearbook 2010 – Te Pukapuka Houanga Whaimana o Aotearoa 2010*, 107th edn (Rosedale, Auckland, NZ: David Bateman, 2010), p. 358.

16 Countryside Agency, *Managing Public Access: A Guide for Land Managers* (Cheltenham, UK: Countryside Agency, 2005), pp. 25–26.

17 Kate Conto, Senior Policy Officer, Ramblers' Association, to Pete McDonald about public footpaths, 19 Aug 2009 [Email].

18 Countryside Agency, *Managing Public Access: A Guide for Land Managers* (Cheltenham, UK: Countryside Agency, 2005), p. 16.

19 Ibid., p. 58.

20 G Landsberg, W Hunthausen and L Ackerman, *Handbook of Behaviour Problems of the Dog and Cat* (Oxford, UK: Butterworth-Heinemann, 1997), p. 141.

21 Dunedin City Council, *Control of Dogs* (Dunedin, NZ: Dunedin City Council, 2004), Schedule D.

22 Department of Conservation, 'Press Release: Public Asked to Stay off Walkway During Lambing' (8 Aug 2000) <http://www.scoop.co.nz/stories/GE0008/S00009.htm> [accessed 7 Dec 2008].

23 Department Of Conservation, 'Mangawhai Walk' (2008) <http://www.doc.govt.nz/parks-and-recreation/tracks-and-walks/northland/whangarei-area/mangawhai-walk/> [accessed 7 Dec 2008].

24 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 12.

25 G W Kearsley and W G Croy, 'Land Tenure Change in the South Island High Country and Its Implications for Recreation and Tourism in New Zealand', in *Environmental Management and Pathways to Sustainable Tourism,* ed. by Mike Robinson, Reflections on International Tourism (Sunderland: Centre for Travel and Tourism in association with Business Education Publishers, 2000), pp. 113–123 (p. 119).

26 Federated Farmers of New Zealand, *Submission on 'Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group'* (Wellington, NZ: Federated Farmers of New Zealand, Nov 2003), p. 28.

27 Editorial, 'Taking a Stand over Access to Land', *Nelson Mail,* 3 Nov 2004.

28 Automobile Association (Auckland) and New Zealand Walkway Commission, *AA Book of New Zealand Walkways : A Guide to the Walkways Administered by the New Zealand Walkway Commission* (Auckland, NZ: Lansdowne, 1982), p. 34.

29 Don Grady, *Outward Bound at Anakiwa* (Auckland, NZ: Century Hutchinson, 1987), p. 102.

30 Public Access New Zealand, 'The "Final Solution" for Public Access?', *Public Access*, no. 7 (June 1996), pp. 1–3.

31 John Wilson, FMC president and Federated Mountain Clubs of New Zealand, 'Trampers Tread Carefully on Access Issue [Letter]', *Rural*

News (1 April 2003) <http://www.knowledge-basket.co.nz/ruralnews/welcome.html> [accessed 16 Dec 2004].

32 Federated Farmers of New Zealand, *Submission to MAF Reference Group on the Access to Land Issue* (Wellington, NZ: Federated Farmers of New Zealand, Apr 2003), p. 28.

33 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 19.

34 Ibid., p. 91.

35 New Zealand Forest Owners Association, '[NZFOA Submission on] *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group*' (8 Dec 2003) <http://www.nzfoa.nzforestry.co.nz/press_release_8Dec03.asp> [accessed 1 Sept 2004].

36 New Zealand Institute of Forestry, 'Submission on Report of the Land Access Ministerial Reference Group on Walking Access in the New Zealand Outdoors', New Zealand Institute of Forestry (Nov 2003) <http://www.nzif.org.nz/news/submissions/WalkingAccessSub.pdf> [accessed 16 Sept 2007], p. 2.

37 Ibid., p. 2.

38 Walking Access Consultation Panel, *Outdoor Walking Access: Consultation Document* (Wellington, NZ: Ministry of Agriculture and Forestry, 2006), p. 28.

39 Ministry of Agriculture and Forestry, *Statement of Intent*, Parliamentary Papers Presented to the House of Representatives of New Zealand; C.5 SOI (Wellington, NZ: Ministry of Agriculture and Forestry, 2005), vol. 2005/06, p. 82.

40 Federated Farmers of New Zealand, 'Press Release: Walkers Threaten Biosecurity' (10 Apr 2003) <http://www.fedfarm.org.nz/media%20releases/PR050-03.html> [accessed 13 Nov 2004].

41 Federated Farmers of New Zealand, *Submission to MAF Reference Group on the Access to Land Issue* (Wellington, NZ: Federated Farmers of New Zealand, Apr 2003), p. 16.

42 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 35.

43 Fish and Game New Zealand, 'Land Access Review Public Meetings', *Reel Life*, vol. 1, issue 2 (28 Oct 2003) <http://www.reellife.co.nz/reellife/7/issue2_nationalnews_article1.asp> [accessed 9 Nov 2004].

44 Neal Wallace, 'Unease over Govt's Land Access Plan: Farmer Wants Right of Control: Catlins', *Otago Daily Times,* 8 Nov 2004, section The Regions.

45 Ministry of Agriculture and Forestry, *Analysis of Written Submissions on the Report 'Walking Access in the New Zealand Outdoors'* (Wellington, NZ: Ministry of Agriculture and Forestry, 2004), p. 37.

46 Ibid., p. 26.

47 Scottish Natural Heritage, 'The Provision of Paths in Scotland' (10 Feb 2004) <http://www.snh.org.uk/pdfs/access/sr-sppp.pdf> [accessed 2 Oct 2004], p. 1.

48 Federated Farmers of New Zealand, *Submission to MAF Reference Group on the Access to Land Issue* (Wellington, NZ: Federated Farmers of New Zealand, Apr 2003), p. 2.

49 Ibid., p. 15.

50 Federated Farmers of New Zealand, *Submission on 'Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group'* (Wellington, NZ: Federated Farmers of New Zealand, Nov 2003), p. 8.

51 Ministry of Agriculture and Forestry, *Analysis of Written Submissions on the Report 'Walking Access in the New Zealand Outdoors'* (Wellington, NZ: Ministry of Agriculture and Forestry, 2004), p. 74.

Chapter 15: The Queen's Chain and ... Property Rights

1 Jim Sutton, Minister for Rural Affairs, 'Press Release: Questions and Answers on Land Access' (11 Aug 2003) <http://www.beehive.govt.nz/ViewDocument.cfm?DocumentID=17529> [accessed 2 Nov 2004].

2 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 14.

3 Ibid., p. 46.

4 Brian E Hayes, *The Law on Public Access Along Water Margins* (Wellington: Ministry of Agriculture and Forestry, 2003), pp. 34–42.

5 Kay L Booth, 'Rights of Public Access for Outdoor Recreation in New Zealand' (PhD thesis, University of Otago, 2006), pp. 152–157.

6 Public Access New Zealand, 'The "Queen's Chain"', *Public Access*, no. 1 (Sept 1992), pp. 10–11.

7 Kay L Booth, 'Rights of Public Access for Outdoor Recreation in New Zealand' (PhD thesis, University of Otago, 2006), p. 83.

8 Public Access New Zealand, 'Queen's Chain', *Public Access*, no. 5 (Nov 1994), pp. 2–4.

9 Federated Farmers of New Zealand, *Submission to MAF Reference Group on the Access to Land Issue* (Wellington, NZ: Federated Farmers of New Zealand, Apr 2003), p. 8.

10 Federated Farmers of New Zealand, *Submission on 'Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group'* (Wellington, NZ: Federated Farmers of New Zealand, Nov 2003), p. 10.

11 'Farmers on Defensive over Queen's Chain Proposal', *New Zealand Herald,* 28 Oct 2004.

12 Occupational Safety and Health Service of the Department of Labour, 'If Visitors to My Farm Are Injured, Am I Liable?', *Farming Bulletin,* April 1999, p. 1.

13 G W Kearsley and W G Croy, 'Land Tenure Change in the South Island High Country and Its Implications for Recreation and Tourism in New Zealand', in *Environmental Management and Pathways to Sustainable Tourism,* ed. by Mike Robinson, Reflections on International Tourism (Sunderland: Centre for Travel and Tourism in association with Business Education Publishers, 2000), pp. 113–123 (p. 116).

14 Public Access New Zealand, 'Private "Occupiers" Liability for Recreational Use', *Public Access*, no. 13 (Feb 2001), pp. 4–5.

15 Jim Sutton, Minister for Rural Affairs, 'Press Release: Questions and Answers on Land Access' (11 Aug 2003) <http://www.beehive.govt.nz/ViewDocument.cfm?DocumentID=17529> [accessed 2 Nov 2004].

16 Federated Farmers of New Zealand, *Submission on 'Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference*

Group' (Wellington, NZ: Federated Farmers of New Zealand, Nov 2003), p. 14.

17 Neal Wallace, 'Insurer Airs Concern over Public Access', *Otago Daily Times,* 26 Nov 2004, section Farming, p. 1.

18 Neal Wallace, 'Access Law Would Not Make Farmers Liable', *Otago Daily Times,* 9 Dec 2004, section General, p. 1.

19 Federated Farmers of New Zealand, *Submission to MAF Reference Group on the Access to Land Issue* (Wellington, NZ: Federated Farmers of New Zealand, Apr 2003), pp. 11–12.

20 NZ LAW, 'Proposed Public Walking Access over Rural Land', *Fineprint*, no. 33 (Autumn 2005) <http://www.nzlaw.co.nz/documents/Fineprint%20Issue%2033.pdf> [accessed 6 Apr 2006].

21 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 99–100.

Chapter 16: The Pastoral Landscape ... Property Rights

1 Jim Sutton, Minister for Rural Affairs, 'Press Release: Land Access Reference Group Report Released' (11 Aug 2003) <http://www.beehive.govt.nz/ViewDocument.cfm?DocumentID=17528> [accessed 28 Oct 2004].

2 Kristi Gray, 'Confused Anglers Missing Out', *The Press,* 3 Nov 2004.

3 Sally Rae, 'Farmers Feel Rates Burden is Unfair', *Otago Daily Times,* 16 Oct 2004, section The Regions, p. 1.

4 Marjorie Cook, 'Erosion of Property Rights Feared', *Timaru Herald,* 24 Jan 2003.

5 ACT New Zealand, 'Gerry Eckhoff' (26 Jun 2001) <http://www.act.org.nz/news/personal-information-4> [accessed 9 Jan 2010].

6 Jim Sutton, Minister for Rural Affairs, Four-page update brochure, 'Walking Access in the New Zealand Outdoors', sent to submitters, Aug 2004 [Brochure].

7 Neal Wallace, 'Landowners Urged to Protest Against Public Access', *Otago Daily Times,* 19 Aug 2004.

8 Federated Farmers of New Zealand, *Submission to MAF Reference Group on the Access to Land Issue* (Wellington, NZ: Federated Farmers of New Zealand, Apr 2003), p. 4.

9 William Blackstone, Sir, *Commentaries on the Laws of England*, 4 vols (Oxford: Clarendon Press, 1765–1769), vol. 2, 'Rights of Things'.

10 New Zealand Business Roundtable, 'Submission on *Walking Access in the New Zealand Outdoors*' (November 2003) <http://www.nzbr.org.nz/documents/submissions/submissions-2003/walking_access.pdf> [accessed 1 Sept 2004], p. 7.

11 Ann Brower, *Who Owns the High Country?: The Controversial Story of Tenure Review in New Zealand* (Nelson, NZ: Craig Potton Publishing, 2008), pp. 70–71.

12 Toni Morrison, *Song of Solomon*, Everyman's Library; no. 216 (1977; repr. London: David Campbell Publishers, 1995), p. 256.

13 Christine Dann, 'Losing Ground? Environmental Problems and Prospects at the Beginning of the Twenty-first Century', in *Environmental Histories of New Zealand,* ed. by Eric Pawson and Tom

Brooking (Melbourne: Oxford University Press, 2002), pp. 275–287 (p. 277).

14 Ibid. (p. 277).

15 There are conflicting reports of the number of chiefs who signed at Waitangi, see Claudia Orange, *The Treaty of Waitangi* (Wellington, NZ: Allen & Unwin, Port Nicholson Press with assistance from the Historical Publications Branch, Dept. of Internal Affairs, 1987), pp. 259–260.

16 Ibid., pp. 40–42.

17 Michael King, *The Penguin History of New Zealand* (Auckland, NZ: Penguin Books, 2003), p. 160.

18 James Belich, *Making Peoples: A History of the New Zealanders: From Polynesian Settlement to the End of the Nineteenth Century* (North Shore, NZ: Penguin Books, 2007), pp. 193–197.

19 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 41.

20 Fish and Game New Zealand, 'Land Access Review Public Meetings', *Reel Life*, vol. 1, issue 2 (28 Oct 2003) <http://www.reellife.co.nz/reellife/7/issue2_nationalnews_article1.asp> [accessed 9 Nov 2004].

21 New Zealand Business Roundtable, 'Submission on *Walking Access in the New Zealand Outdoors*' (November 2003) <http://www.nzbr.org.nz/documents/submissions/submissions-2003/walking_access.pdf> [accessed 1 Sept 2004], p. 7.

22 Ann Brower, *Who Owns the High Country?: The Controversial Story of Tenure Review in New Zealand* (Nelson, NZ: Craig Potton Publishing, 2008), p. 38.

23 Geoff Chapple, 'Rebirth of a New Zealand-long Foot Trail', *Forest & Bird*, no. 302 (Nov 2001), p. 4.

24 Federated Farmers of New Zealand, 'Press Release: Land Access: Proceed with Caution' (23 Jan 2003) <http://www.fedfarm.org.nz/media%20releases/PR007-03.html> [accessed 13 Nov 2004].

25 Dunedin City Council, *Track Policy and Strategy: Community and Recreation Planning* (Dunedin, NZ: Dunedin City Council, 1998; repr. 2002), p. 20.

26 Kay L Booth, 'Rights of Public Access for Outdoor Recreation in New Zealand' (PhD thesis, University of Otago, 2006), pp. 106–107.

27 Ibid., pp. 107–109.

28 Quoted in ibid., p. 107.

29 Federated Farmers of New Zealand, *Submission to MAF Reference Group on the Access to Land Issue* (Wellington, NZ: Federated Farmers of New Zealand, Apr 2003), p. 2.

30 Federated Farmers of New Zealand, 'Press Release: Farmer Goodwill Is Meeting the Needs of Recreational Users' (14 Apr 2003) <http://www.fedfarm.org.nz/media%20releases/PR053-03.html> [accessed 11 Nov 2004].

31 Jeremy Bentham, *The Works of Jeremy Bentham: Published under the Superintendence of His Executor, John Bowring*, 11 vols (Edinburgh: William Tait, 1843), vol. 2, p. 523.

32 Ibid., p. 142.

33 Barbara Marshall and Federated Mountain Clubs of New Zealand, *Re: Access Issues [FMC's submission to the Land Access Ministerial Reference*

Group] (Wellington, NZ: Federated Mountain Clubs, 28 March 2003), p. 8.

34 Kay L Booth, 'Rights of Public Access for Outdoor Recreation in New Zealand' (PhD thesis, University of Otago, 2006), pp. 280–281.

35 Janet Stephenson, 'Values in Space and Time: A Framework for Understanding and Linking Multiple Cultural Values in Landscapes' (PhD thesis, University of Otago, 2005).

36 Janet Stephenson, 'Values in Space and Time: A Framework for Understanding and Linking Multiple Cultural Values in Landscapes: Abstract', University of Otago (2005) <http://ourarchive.otago.ac.nz/handle/10523/123> [accessed 2 Jan 2011].

37 Paul Star and Lynne Lochhead, 'Children of the Burnt Bush: New Zealanders and the Indigenous Remnant, 1880-1930', in *Environmental Histories of New Zealand,* ed. by Eric Pawson and Tom Brooking (Melbourne: Oxford University Press, 2002), pp. 119–135 (pp. 131–132).

38 Eric Pawson, 'The Meanings of Mountains', in *Environmental Histories of New Zealand,* ed. by Eric Pawson and Tom Brooking (Melbourne: Oxford University Press, 2002), pp. 136–150 (p. 150).

39 Federated Farmers of New Zealand, *Submission on 'Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group'* (Wellington, NZ: Federated Farmers of New Zealand, Nov 2003), p. 2.

40 Lars Brabyn, 'Classifying Landscape Character', *Landscape Research,* 34, no. 3 (June 2009), pp. 299–321 (p. 300).

41 Ibid. (p. 299).

42 Ibid. (p. 315).

43 Ibid. (p. 299).

44 Mackenzie District Council, 'District Plan: Operative May 2004: Section 7 - Rural' (May 2004) <http://www.mackenzie.govt.nz/planning/dplan/S07%20-%20Rural.pdf> [accessed 13 Mar 2006].

45 Marion Read, 'The "Construction" of Landscape: A Case Study of the Otago Peninsula, Aotearoa/New Zealand' (PhD thesis, Lincoln University, 2005).

46 Dunedin City Council, 'District Plan Online Volume One' (no date) <http://www.cityofdunedin.com/city/?page=districtplan_vol1> [accessed 13 Mar 2006], 14. Landscape.

47 *Scotlands: Poets and the Nation,* ed. by Douglas Gifford and Alan Riach (Manchester, UK: Carcanet Press, 2004), p. 144.

48 Nigel Curry, 'Rights of Access to Land for Outdoor Recreation in New Zealand: Dilemmas Concerning Justice and Equity', *Journal of Rural Studies,* 17 (2001), pp. 409–419.

49 Kay L Booth, 'Rights of Public Access for Outdoor Recreation in New Zealand' (PhD thesis, University of Otago, 2006), pp. 81–82.

50 Norman McIntyre, John Jenkins and Kay L Booth, 'Global Influences on Access: The Changing Face of Access to Public Conservation Lands in New Zealand', *Journal of Sustainable Tourism,* 9, no. 5 (2001), pp. 434–450 (p. 446).

51 Kay L Booth, 'Rights of Public Access for Outdoor Recreation in New Zealand' (PhD thesis, University of Otago, 2006), p. 266.

52 Tom Brooking, *Lands for the People? The Highland Clearances and the Colonisation of New Zealand: A Biography of John McKenzie by Tom Brooking* (Dunedin, NZ: University of Otago Press, 1996), pp. 97–130.

Chapter 17: Access, Privacy and Rural Crime

1 Jim Sutton, Minister for Rural Affairs, 'Press Release: Questions and Answers on Land Access' (11 Aug 2003) <http://www.beehive.govt.nz/ViewDocument.cfm?DocumentID=17529> [accessed 2 Nov 2004].

2 Jim Sutton, Minister for Rural Affairs, 'Press Release: Minister Launches Land Access Reference Group' (23 Jan 2003) <http://www.beehive.govt.nz/ViewDocument.cfm?DocumentID=15902> [accessed 14 Nov 2004].

3 Federated Farmers of New Zealand, 'Press Release: Action Needed to Lower Rural Crime' (25 Oct 2004) <http://www.fedfarm.org.nz/media%20releases/PR195-04.html> [accessed 14 Nov 2004].

4 Ibid.

5 'Eckhoff Warns against Plans for Public Access', *Marlborough Express,* 4 Apr 2003.

6 Ministry of Agriculture and Forestry, *Analysis of Written Submissions on the Report 'Walking Access in the New Zealand Outdoors'* (Wellington, NZ: Ministry of Agriculture and Forestry, 2004), p. 36.

7 Fish and Game New Zealand, 'Shock! Horror! Campaign to Stop Access', *Reel Life*, vol. 2, issue 8 (22 Oct 2004) <http://www.reellife.co.nz/reellife/8/issue8_nationalnews_article2.asp> [accessed 13 Nov 2004].

8 Federated Farmers of New Zealand, 'Press Release: On Farm Security Threat to Rural New Zealand' (9 Apr 2003) <http://www.fedfarm.org.nz/media%20releases/PR048-03.html> [accessed 14 Nov 2004].

9 Federated Farmers of New Zealand, *Submission to MAF Reference Group on the Access to Land Issue* (Wellington, NZ: Federated Farmers of New Zealand, Apr 2003), p. 30.

10 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 36.

11 Ibid., p. 37.

12 Neal Wallace, 'Unease over Govt's Land Access Plan: Farmer Wants Right of Control: Catlins', *Otago Daily Times,* 8 Nov 2004, section The Regions.

13 Fish and Game New Zealand, 'Shock! Horror! Campaign to Stop Access', *Reel Life*, vol. 2, issue 8 (22 Oct 2004) <http://www.reellife.co.nz/reellife/8/issue8_nationalnews_article2.asp> [accessed 13 Nov 2004].

14 Jenny Chamberlain, 'Jack and Agnes: A Love Story', *North & South,* Mar 2005, pp. 37–47.

15 On 28 May 2008 a jury found Murray Foreman of Haumoana not guilty of murdering Jack Nicholas. This left the crime unsolved.

16 New Zealand Parliament, '2 September 2004: Questions for Oral Answer: Walking Access in the New Zealand Outdoors – Waterways', *Parliamentary Debates (Hansard),* 619 (2004), pp. 15312–15313.

17 Ruth Berry, 'Farmer's Widow Pleads with PM', *New Zealand Herald,* 14 Sept 2004.

18 Benedict Collins, 'Farmers Feeling Powerless with Rising Crime', *Rural News* (6 Oct 2004) <http://www.knowledge-basket.co.nz/ruralnews/welcome.html> [accessed 15 Nov 2004].

19 Benedict Collins, 'Rural Crime Rate No Worse', *Rural News* (19 Oct 2004) <http://www.knowledge-basket.co.nz/ruralnews/welcome.html> [accessed 15 Nov 2004].

20 Gavin Knight, National Statistics Manager, New Zealand Police, to P McDonald, 26 Nov 2004 [Letter].

21 Federated Farmers of New Zealand, 'Press Release: Action Needed to Lower Rural Crime' (25 Oct 2004) <http://www.fedfarm.org.nz/media%20releases/PR195-04.html> [accessed 14 Nov 2004].

22 Neal Wallace, 'Govt Pushes More Access to Farm Land', *Otago Daily Times,* 27 Oct 2004, section Front Page.

23 Ibid.

24 Otago Federated Farmers, 'Press Release: Worst Fears Realised' (27 Oct 2004) <http://www.fedfarm.org.nz/media%20releases/PR196-04.html> [accessed 16 Nov 2004].

25 Robert Bremer and Tom Brooking, 'Federated Farmers and the State', in *State and Economy in New Zealand,* ed. by Brian Roper and Chris Rudd (Auckland, NZ: Oxford University Press, 1993), pp. 108–127 (p. 110).

26 Austin V Mitchell, *Politics and People in New Zealand: Studies* (Christchurch, NZ: Whitcombe & Tombs, 1969), p. 41.

27 Rural Women New Zealand, 'Press Release: Rural Women Call for Rational Debate on Land Access' (28 Oct 2004) <http://www.knowledge-basket.co.nz/newztext/welcome.html> [accessed 23 Mar 2006].

28 Ministry of Agriculture and Forestry, *Summary of Submissions to the Ministerial Reference Group on Land Access* (Wellington, NZ: Ministry of Agriculture and Forestry, July 2003).

29 Ministry of Agriculture and Forestry, *Summary of Comments Made at Consultation on the Report of the Land Access Ministerial Reference Group, 'Walking Access in the New Zealand Outdoors'* (Wellington, NZ: Ministry of Agriculture and Forestry, March 2004).

30 Ibid., p. 1.

31 Ministry of Agriculture and Forestry, *Analysis of Written Submissions on the Report 'Walking Access in the New Zealand Outdoors'* (Wellington, NZ: Ministry of Agriculture and Forestry, 2004), p. 2.

32 Ibid., pp. 31–43.

33 'Economics Focus: A Biased Market', *Economist,* 1 Nov 2008.

34 Robert Fitzroy, *Remarks on New Zealand, in February 1846*, Facsimile of 1st (1846) edn (Dunedin, NZ: Hocken Library, University of Otago, 1969), p. 28.

35 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 99.

36 Ministry of Agriculture and Forestry, *Analysis of Written Submissions on the Report 'Walking Access in the New Zealand Outdoors'* (Wellington, NZ: Ministry of Agriculture and Forestry, 2004), pp. 57–58.

37 Jim Sutton, Minister for Rural Affairs, Four-page update brochure, 'Walking Access in the New Zealand Outdoors', sent to submitters, Aug 2004 [Brochure].

38 Federated Farmers of New Zealand, *Submission on 'Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group'* (Wellington, NZ: Federated Farmers of New Zealand, Nov 2003), p. 2.

39 Pete McDonald, 'High-quality Access: A Response to the Feedback Questions That Were Attached to the Report, *Walking Access in the New Zealand Outdoors*' (Oct 2003) <http://homepages.paradise.net.nz/petemcd/hqa/hqa.htm> [accessed 8 Aug 2004], p. 6.

40 North Canterbury Federated Farmers, 'Press Release: Farmers Unite - We've Had Enough' (29 Oct 2004) <http://www.fedfarm.org.nz/media%20releases/PR198-04.html> [accessed 17 Nov 2004].

41 New Zealand Fish and Game Council, *Submission on 'Walking Access in the New Zealand Outdoors'* (Wellington, NZ: New Zealand Fish and Game Council, Dec 2003), p. 7.

42 Editorial, 'Taking a Stand over Access to Land', *Nelson Mail,* 3 Nov 2004.

43 Editorial, 'Access and Reason', *The Press,* 15 Nov 2004.

44 Simon Fergusson, 'This Land Is My Land', *Marlborough Express,* 17 Nov 2004.

45 Jim Sutton, 'Walking Access Policy', *New Zealand Troutfisher,* Aug 2005.

46 Neal Wallace, 'Insurer Airs Concern over Public Access', *Otago Daily Times,* 26 Nov 2004, section Farming, p. 1.

47 Scottish Natural Heritage, 'Scottish Outdoor Access Code: A Consultative Draft: Public Access to the Outdoors: Your Rights and Responsibilities' (Mar 2003) <http://www.snh.org.uk/pdfs/access/access.pdf> [accessed 16 Mar 2006], p. 19.

48 Jeremy Rowan Robinson and Theresa Egleton, 'Land Reform (Scotland) Act 2003 – Implications for Owners and Occupiers', Paull and Williamsons (Solicitors) (9 Feb 2005) <http://www.paull-williamsons.co.uk/news/showdeal.asp?did=125> [accessed 2 Mar 2006], p. 5.

Chapter 18: Traditional Access and New Landowners

1 Jim Sutton, Minister for Rural Affairs, 'Press Release: Questions and Answers on Land Access' (11 Aug 2003) <http://www.beehive.govt.nz/ViewDocument.cfm?DocumentID=17529> [accessed 2 Nov 2004].

2 Roberta McIntyre, *Whose High Country?: A History of the South Island High Country of New Zealand* (North Shore, NZ: Penguin Books, 2008), pp. 341, 347.

3 Ibid., p. 342.

4 Bruce Ansley, 'This Land Is Your Land, This Land Is My Land', *New Zealand Listener,* 2 Mar 2002, pp. 16–22.

5 Ibid., p. 19.

6 New Zealand Recreational Canoeing Association and Maree Baker, 'Submission to Ministry of Agriculture and Forestry: Walking Access in the New Zealand Outdoors' (30 Nov 2003) <http://www.rivers.org.nz/article/SubmissionToMAFReAccess> [accessed 18 Nov 2004].

7 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 76.

8 Roberta McIntyre, *Whose High Country?: A History of the South Island High Country of New Zealand* (North Shore, NZ: Penguin Books, 2008), p. 345.

9 Te Araroa Trust, 'Shania's Songline', *Te Araroa: Newsletter*, no. 10 (Sept 2004), pp. 1, 4.

10 Bruce Ansley, 'Come on Over: The Shania Twain Deal Puts a New Face on Foreign Ownership of New Zealand Land', *New Zealand Listener,* 9 Oct 2004, pp. 14–18.

11 Roberta McIntyre, *Whose High Country?: A History of the South Island High Country of New Zealand* (North Shore, NZ: Penguin Books, 2008), p. 345.

Chapter 19: Walking Access Should Be Free

1 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 43.

2 Ministry of Agriculture and Forestry, *Summary of Submissions to the Ministerial Reference Group on Land Access* (Wellington, NZ: Ministry of Agriculture and Forestry, July 2003), p. 12.

3 Ministry of Agriculture and Forestry, *Analysis of Written Submissions on the Report 'Walking Access in the New Zealand Outdoors'* (Wellington, NZ: Ministry of Agriculture and Forestry, 2004), p. 100.

4 Federated Farmers of New Zealand, *Submission on 'Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group'* (Wellington, NZ: Federated Farmers of New Zealand, Nov 2003), p. 3.

5 Ibid., p. 3.

6 Ibid., p. 12.

7 Ibid., p. 12.

8 New Zealand Walking Access Commission, *Draft National Strategy for Walking Access [Sept 2009]* (Wellington, NZ: NZWAC, Sept 2009), p. 13.

9 New Zealand Walking Access Commission, '[Enhanced Access Fund] Guidelines for Applicants' (Mar 2010) <http://www.walkingaccess.org.nz/page/11/GuidelinesforApplicants.html> [accessed 9 Apr 2010].

10 Walking Access Consultation Panel, *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 42.

11 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 9.

12 Federated Farmers of New Zealand, *Submission on 'Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group'* (Wellington, NZ: Federated Farmers of New Zealand, Nov 2003), p. 14.

13 Mark Burton, Minister of Tourism, to P McDonald, 4 May 2004 [Letter].

14 Federated Farmers of New Zealand, *Submission to MAF Reference Group on the Access to Land Issue* (Wellington, NZ: Federated Farmers of New Zealand, Apr 2003), pp. 27–28.

15 Shonagh Lindsay and Fish and Game New Zealand, 'Public Access: Key Points', *Reel Life*, vol. 2, issue 7 (14 Sept 2004) <http://www.reellife.co.nz/reellife/7/issue7_nationalnews_article4.asp> [accessed 9 Nov 2004].

16 Jim Sutton, Labour spokesman for lands, 'Freedom of the Land' (Feb 1996) <http://www.publicaccessnewzealand.org/files/jim_sutton_mp_on_access.html> [accessed 20 Nov 2004].

17 Neal Wallace, 'Public Access Could Hit Farm Wealth, Says Expert', *Otago Daily Times,* 5 Nov 2004, section Farming.

18 Pete McDonald, 'Going Out for a Bike Ride: An AOK Diary, 2002–3' (May 2003) <http://homepages.paradise.net.nz/petemcd/gob/gob.htm> [accessed 8 Aug 2004], pp. 63–65 (web version).

19 'Tourism To Surpass Farming in Northland Economy', *New Zealand Herald,* 8 Nov 2004.

20 Julie A N Warren and C Nicholas Taylor, *Developing Rural Tourism in New Zealand* (Wellington, NZ: Centre for Research, Evaluation and Social Assessment, 1999), p. 56.

21 Ibid., p. 3–6.

22 Hugh Rose, Tangowahine Farm, to P McDonald, subject 'Walking Access', 17 Oct 2007 [Email].

23 Tess Redgrave, 'Stepping Out: The Rise and Rise of the Private Walking Track', *North & South,* Jan 2005, pp. 72–82.

24 Marion Shoard, 'Robbers v . Revolutionaries: What the Battle for Access Is Really All About', in *Rights of Way: Policy, Culture and Management,* ed. by Charles Watkins, Rural Studies Series (London: Pinter, 1996), pp. 11–23 (p. 23).

25 Bernard Shaw, *What I Said in N.Z.: The Newspaper Utterances of Mr. George Bernard Shaw in New Zealand, March 15th to April 14th, 1934* (Wellington, NZ: Commercial Printing and Publishing Company, 1934), pp. 10–11.

26 Margaret McClure, *The Wonder Country: Making New Zealand Tourism* (Auckland, NZ: Auckland University Press, 2004), p. 4.

27 Leslie Watkins, *Billion Dollar Miracle: The Authentic Story of the Birth and Amazing Growth of the Tourism Industry in New Zealand* (Auckland, NZ: Inhouse Publications, 1987), p. 6.

28 Margaret McClure, *The Wonder Country: Making New Zealand Tourism* (Auckland, NZ: Auckland University Press, 2004), p. 5.

29 Alison Dench, *Essential Dates: A Timeline of New Zealand History* (Auckland, NZ: Random House, 2005), p. 216.

30 Leslie Watkins, *Billion Dollar Miracle: The Authentic Story of the Birth and Amazing Growth of the Tourism Industry in New Zealand* (Auckland, NZ: Inhouse Publications, 1987), p. 6.

31 Margaret McClure, *The Wonder Country: Making New Zealand Tourism* (Auckland, NZ: Auckland University Press, 2004), pp. 288–289.

32 Statistics New Zealand, 'Press Release: Tourists Spend Record Amount' (7 Sept 2006) <http://www.stats.govt.nz/store/2006/09/tourism-satellite-account-2005.htm> [accessed 26 Apr 2009].

Chapter 20: Other Issues of 2003–2004

1 Howard Keene, 'John Acland', *The Press,* 16 Aug 2003, p. 9.

2 John Wilson, FMC president and Federated Mountain Clubs of New Zealand, 'Trampers Tread Carefully on Access Issue [Letter]', *Rural News* (1 April 2003) <http://www.knowledge-basket.co.nz/ruralnews/welcome.html> [accessed 16 Dec 2004].

3 Marjorie Cook, 'Erosion of Property Rights Feared', *Timaru Herald,* 24 Jan 2003.

4 Public Access New Zealand, 'Press Release: Government's Public Access Plan "Pie in the Sky"' (23 Jan 2003) <http://www.

publicaccessnewzealand.com/files/access_ref_group.html> [accessed 29 July 2007].

5 Public Access New Zealand, 'Press Release: Has Jim Sutton Hijacked Labour's Outdoor Policy?' (14 Feb 2003) <http://www.publicaccessnewzealand.com/files/access_ref_group.html> [accessed 29 July 2007].

6 Gareth Gillatt, 'Public or Private Land? A Group Researching Public Land Access Issues Is Unlikely to Have the Time or Experience Necessary to Give Clear Answers', *Rural News* (11 Feb 2003) <http://www.knowledge-basket.co.nz/ruralnews/welcome.html> [accessed 15 Dec 2004].

7 Terry Tacon, 'Hagenson - Access Issue Overstated', *Taranaki Daily News,* 30 Jan 2003, p. 14.

8 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. iii.

9 New Zealand Parliament, '2 September 2004: Questions for Oral Answer: Walking Access in the New Zealand Outdoors – Waterways', *Parliamentary Debates (Hansard),* 619 (2004), pp. 15312–15313.

10 Hamish Carnachan, 'Access Group Questioned: National Is Questioning Labour's Report into Public Access to Private Land', *Rural News* (8 Sept 2004) <http://www.knowledge-basket.co.nz/ruralnews/welcome.html> [accessed 25 Nov 2004].

11 Jim Sutton, 'Sutton Bites Back: Letter from Jim Sutton, Minister of Rural Affairs', *Rural News* (24 Sept 2004) <http://www.knowledge-basket.co.nz/ruralnews/welcome.html> [accessed 16 Dec 2004].

12 New Zealand Parliament, 'Members of Parliament: Current MPs: Hon David Parker' (30 Jan 2009) <http://www.parliament.nz/en-NZ/MPP/MPs/MPs/a/1/8/49MP441-Carter-David.htm> [accessed 30 Jan 2009].

13 Gottlieb Braun-Elwert, 'An Essay in Self-defence: Letter from Gottlieb Braun-Elwert', *Rural News* (24 Sept 2004) <http://www.knowledge-basket.co.nz/ruralnews/welcome.html> [accessed 16 Dec 2004].

14 The Hound, 'Minister of Silly Walks!', *Rural News* (16 Nov 2004) <http://www.knowledge-basket.co.nz/ruralnews/welcome.html> [accessed 16 Dec 2004].

15 Mike White, 'High Country Hijack', *North & South,* Nov 2006, pp. 40–52.

16 Royal Forest and Bird Protection Society of New Zealand, 'Mountain Guide Reached Great Heights', *Forest & Bird*, no. 330 (Nov 2008), p. 50.

17 North Canterbury Federated Farmers, 'Press Release: Public Access Meetings Designed to Disadvantage Landowners' (29 Sep 2003) <http://www.fedfarm.org.nz/media%20releases/PR194-03.html> [accessed 25 Nov 2004].

18 Jayne Hulbert, 'Rural Land Access Fires Up Meeting', *Taranaki Daily News,* 22 Oct 2003, p. 3.

19 ACT New Zealand, 'Press Release: Rural Land Access Could Get Ugly' (16 Aug 2004) <http://www.scoop.co.nz/mason/stories/PA0408/S00274.htm> [accessed 25 Nov 2004].

20 Erena McCaw, 'Govt Silent on Access Implications', *Rural News* (18 Oct 2004) <http://www.knowledge-basket.co.nz/ruralnews/welcome.html> [accessed 25 Nov 2004].

21 Neal Wallace, 'Public Access Could Hit Farm Wealth, Says Expert', *Otago Daily Times,* 5 Nov 2004, section Farming.

22 New Zealand National Party, 'Sutton Plans Private Property Impingement' (16 Aug 2004) <http://www.national.org.nz/Article.aspx?articleId=2571> [accessed 26 Nov 2004].

23 Ministry of Agriculture and Forestry, 'Agriculture and Forestry in the Nation's Economy' (no date) <http://www.maf.govt.nz/mafnet/rural-nz/overview/nzoverview005.htm> [accessed 26 Nov 2004].

24 Robert Bremer and Tom Brooking, 'Federated Farmers and the State', in *State and Economy in New Zealand,* ed. by Brian Roper and Chris Rudd (Auckland, NZ: Oxford University Press, 1993), pp. 108–127 (p. 108).

25 Roberta McIntyre, *Whose High Country?: A History of the South Island High Country of New Zealand* (North Shore, NZ: Penguin Books, 2008), pp. 249–252.

26 Ibid., p. 252.

27 Graeme Dunstall, 'The Social Pattern', in *The Oxford History of New Zealand*, 2nd edn, ed. by Geoffrey W Rice (Auckland, NZ: Oxford University Press, 1992), pp. 451–481 (pp. 455–457).

28 Tom Brooking, Robin Hodge and Vaughan Wood, 'The Grasslands Revolution Reconsidered', in *Environmental Histories of New Zealand,* ed. by Eric Pawson and Tom Brooking (Melbourne: Oxford University Press, 2002), pp. 169–182 (p. 178).

29 Graeme Dunstall, 'The Social Pattern', in *The Oxford History of New Zealand*, 2nd edn, ed. by Geoffrey W Rice (Auckland, NZ: Oxford University Press, 1992), pp. 451–481 (p. 461).

30 Robert Bremer and Tom Brooking, 'Federated Farmers and the State', in *State and Economy in New Zealand,* ed. by Brian Roper and Chris Rudd (Auckland, NZ: Oxford University Press, 1993), pp. 108–127 (p. 110).

31 Kay L Booth, 'Rights of Public Access for Outdoor Recreation in New Zealand' (PhD thesis, University of Otago, 2006), p. 253.

32 Federated Farmers of New Zealand, *Submission to MAF Reference Group on the Access to Land Issue* (Wellington, NZ: Federated Farmers of New Zealand, Apr 2003), p. 19.

33 Anne Beston, 'Farmers Slam the Gate over Access Plan', *New Zealand Herald,* 19 Aug 2004.

34 Dirk Reiser, 'Rural Tourism in New Zealand: The Otago Peninsula – Perspectives of Landholder Attitudes and Public Access to Private Lands' (PGDipTour dissertation, University of Otago, April 2000), pp. 55–56.

35 'Accessing the Great Outdoors', *Marlborough Express,* 16 Oct 2003.

36 Kay L Booth, 'Rights of Public Access for Outdoor Recreation in New Zealand' (PhD thesis, University of Otago, 2006), p. 267.

37 Ibid., p. 267–268.

38 The writer cited Canterbury United Council, *Port Hills Recreation Study*, Report: CUC (NZ); no. 378–380, 3 vols (Christchurch, NZ: Canterbury United Council, 1986), vol. 2.

39 Reuben Dale Peterson, 'Discussion of and Alternatives for the Provision of Public Recreational Access to the Port Hills of Canterbury' (BRS (Hons) thesis, Lincoln University, 1996), p. 33.

40 Kay L Booth, 'Rights of Public Access for Outdoor Recreation in New Zealand' (PhD thesis, University of Otago, 2006), pp. 268, 292.

41 Ibid., p. 292.

42 Grant Hunter, 'Working Together for Resource-based Recreation and Tourism, Sustainable Management, and Biodiversity', *New Zealand Geographer,* 56, no. 2 (Oct 2000), pp. 47–51 (p. 47).

43 Ibid., (p. 50).

44 Sylvia Allan and Kay L Booth, *River and Lake Recreation: Issues, Research Priorities and Annotated Bibliography* (Wellington, NZ: Environmental Planning and Assessment, 1992), pp. 19–21.

45 Kay L Booth, 'Rights of Public Access for Outdoor Recreation in New Zealand' (PhD thesis, University of Otago, 2006), p. 269.

46 Dirk Reiser, 'Rural Tourism in New Zealand: The Otago Peninsula – Perspectives of Landholder Attitudes and Public Access to Private Lands' (PGDipTour dissertation, University of Otago, April 2000), pp. 55–56.

47 G W Kearsley and W G Croy, 'Land Tenure Change in the South Island High Country and Its Implications for Recreation and Tourism in New Zealand', in *Environmental Management and Pathways to Sustainable Tourism,* ed. by Mike Robinson, Reflections on International Tourism (Sunderland: Centre for Travel and Tourism in association with Business Education Publishers, 2000), pp. 113–123 (p. 118).

48 Bob Douglas, Industry Manager, Federated Farmers of New Zealand, Letter to Local Government and Environment Select Committee, subject '[FFNZ submission on] Walking Access Bill', 21 May 2008 [Letter].

49 Green Party of Aotearoa New Zealand and Jeanette Fitzsimons, 'Press Release: Green Party Announces Its Public Access Position' (24 Nov 2004) <http://www.greens.org.nz/searchdocs/PR8105.html> [accessed 29 Nov 2004].

50 Dunedin City Council, *Track Policy and Strategy: Community and Recreation Planning* (Dunedin, NZ: Dunedin City Council, 1998; repr. 2002), p. 41.

51 Mike Christie and Jon Matthews, 'The Economic and Social Value of Walking in England', The Ramblers' Association (Sept 2003) <http://www.ramblers.org.uk/campaigns/EconVal.pdf> [accessed 16 Apr 2006], p. 6.

52 Hugh Millward, 'Countryside Recreational Access in West Europe and Anglo-America: a Comparison of Supply', *The Great Lakes Geographer,* 7, no. 1 (2000), pp. 38–52.

53 New Zealand Government, '625 km of New Track for Conservation Land' (21 Oct 2004) <http://www.beehive.govt.nz/ViewDocument.aspx?DocumentID=21273> [accessed 7 Jan 2006].

54 John M Jenkins and Evi Prin, 'Rural Landholder Attitudes: The Case of Public Recreational Access to "Private" Rural Lands', in *Tourism and Recreation in Rural Areas,* ed. by Richard Butler, Michael C Hall and John Jenkins (Chichester, UK: John Wiley and Sons, 1998), pp. 179–196.

55 Alan Creak, 'Alan Creak: So Much for Open Country', *New Zealand Herald,* 30 June 2005.

56 Policy Information and Regions Group, 'New Zealand Agriculture, Forestry and Horticulture in Brief: June 2005: Key Facts', Ministry of Agriculture and Forestry (June 2005) <http://www.maf.govt.nz/mafnet/rural-nz/agriculture-forestry-horticulture-in-brief/2005/key-facts-01.htm> [accessed 17 Dec 2005].

Chapter 21: FFNZ's Campaign

1 Jim Sutton, Minister for Rural Affairs, Four-page update brochure, 'Walking Access in the New Zealand Outdoors', sent to submitters, Aug 2004 [Brochure], p. 3.

2 Federated Farmers of New Zealand, *Submission on 'Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group'* (Wellington, NZ: Federated Farmers of New Zealand, Nov 2003), p. 3.

3 John Aspinall and Federated Farmers of New Zealand, 'Minister's Attack Disappoints Fed Farmers', *Otago Daily Times,* 1 Nov 2004, section Opinion.

4 Jim Sutton, Labour spokesman for lands, 'Freedom of the Land' (Feb 1996) <http://www.publicaccessnewzealand.org/files/jim_sutton_mp_on_access.html> [accessed 20 Nov 2004].

5 Ministry of Agriculture and Forestry, *Analysis of Written Submissions on the Report 'Walking Access in the New Zealand Outdoors'* (Wellington, NZ: Ministry of Agriculture and Forestry, 2004), p. 12.

6 Editorial, 'Access and Reason', *The Press,* 15 Nov 2004.

7 Robert Bremer and Tom Brooking, 'Federated Farmers and the State', in *State and Economy in New Zealand,* ed. by Brian Roper and Chris Rudd (Auckland, NZ: Oxford University Press, 1993), pp. 108–127 (p. 112).

8 Ibid., (p. 113).

9 Dan Hutchinson, 'The Voice of Rural Issues', *The Press,* 22 July 2006, p. 2.

10 Stephen Ward, 'Split Talk Denied in Federated Farmers', *Dominion Post,* 9 Mar 2006.

11 Andrew Swallow, 'Farming Leader to Step Down', *Timaru Herald,* 23 July 2005, p. 5.

12 Graeme Peters and Zoe Anderson, 'Media Relations on a Shoestring – How New Zealand's Largest Lobby Group Handles Its Public Relations', Conferenz (16 Nov 2004) <http://www.conferenz.co.nz/2004/library/p/peters_graeme.htm> [accessed 31 Jan 2006].

13 Ibid.

14 Ibid.

15 Stuff (Fairfax New Zealand), 'Farmers Prepared To Battle Govt for Compensation' (7 Dec 2004) <http://stuff.co.nz/stuff> [accessed 7 Dec 2004].

Chapter 22: The Footways Cabinet Paper

1 Richard Sutherland, 'Federated Farmers President Tom Lambie Takes Over as New Chancellor of Lincoln University', *IRN News,* 8 Dec 2004.

2 Jim Sutton, Minister for Rural Affairs, 'Cabinet Paper: Walking Access in the New Zealand Outdoors' (20 Dec 2004) <http://www.beehive.govt.nz/ViewDocument.cfm?DocumentID=21918> [accessed 22 Dec 2004].

3 Jim Sutton, Associate Minister for Rural Affairs, 'Walking Access in the New Zealand Outdoors: Key Government Objectives for the Walking Access Policy' (22 Dec 2004) <http://www.beehive.govt.nz/Documents/Files/Land%20Access%20backgrounder.pdf> [accessed 16 Apr 2005], p. 2.

4 Neal Wallace, 'Middle Path on Access Given Mixed Reception', *Otago Daily Times,* 23 Dec 2004.

5 Ibid.

6 Ibid.

7 Terry Tacon, 'Rethink Trims Waterway Access', *Taranaki Daily News,* 23 Dec 2004.

8 Ann Brower, *Who Owns the High Country?: The Controversial Story of Tenure Review in New Zealand* (Nelson, NZ: Craig Potton Publishing, 2008), p. 69.

9 Federated Farmers of New Zealand, 'Media Release: Government Listens with One Ear' (22 Dec 2004) <http://www.fedfarm.org.nz/media%20releases/PR233-04.html> [accessed 22 Dec 2004].

10 Ibid.

11 Marjorie Cook, 'Mt Aspiring Station: Keeping It All in the Family', Otago Daily Times Online (3 June 2010) <http://www.odt.co.nz/print/108996> [accessed 4 June 2010].

12 Roberta McIntyre, *Whose High Country?: A History of the South Island High Country of New Zealand* (North Shore, NZ: Penguin Books, 2008), p. 324.

13 Rural Women New Zealand, 'Press Release: Rural Women Oppose Legalised Trespass' (16 Aug 2004) <http://www.scoop.co.nz/mason/stories/PO0408/S00149.htm> [accessed 21 Nov 2004].

14 Public Access New Zealand, 'The "Queen's Chain" ', *Public Access*, no. 1 (Sept 1992), pp. 10–11.

15 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 32.

16 Council of Outdoor Recreation Associations of New Zealand and Hugh Barr, *Spotlight on Public Access Provides Major Opportunity for Access Improvement* (Wellington, NZ: Council of Outdoor Recreation Associations of New Zealand, 2003), p. 1.

17 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 74.

18 Ministry of Agriculture and Forestry, *Analysis of Written Submissions on the Report 'Walking Access in the New Zealand Outdoors'* (Wellington, NZ: Ministry of Agriculture and Forestry, 2004), p. 60.

19 Ibid., p. 4.

20 Ibid., pp. 74–76.

21 Ministry of Agriculture and Forestry, 'Meeting Record of Stakeholder and Public Meetings for Walking Access in the New Zealand Outdoors Consultation (September – November 2003)' (March 2004) <http://www.maf.govt.nz/mafnet/rural-nz/people-and-their-issues/access/meeting-notes/meeting-notes.pdf> [accessed 1 Dec 2004], p. 79.

22 Ministry of Agriculture and Forestry, *Analysis of Written Submissions on the Report 'Walking Access in the New Zealand Outdoors'* (Wellington, NZ: Ministry of Agriculture and Forestry, 2004), p. 3.

23 Michael King, *The Penguin History of New Zealand* (Auckland, NZ: Penguin Books, 2003), p. 433.

24 Rowan Taylor and others, *The State of New Zealand's Environment, 1997* (Wellington, NZ: Ministry for the Environment; GP Publications, 1997), pp. 8.8–8.9.

25 Michael Roche, ' "The Land We Have We Must Hold": Soil Erosion and Soil Conservation in Late Nineteenth- and Twentieth-century New Zealand', *Journal of Historical Geography,* 23, no. 4 (1997), pp. 447–458 (pp. 447–448).

26 Tom Brooking, Robin Hodge and Vaughan Wood, 'The Grasslands Revolution Reconsidered', in *Environmental Histories of New Zealand,* ed. by Eric Pawson and Tom Brooking (Melbourne: Oxford University Press, 2002), pp. 169–182 (p. 178).

27 Fish and Game New Zealand, 'Anglers and Hunters Support New Access Strategy', *Reel Life*, vol. 2, issue 7 (14 Sept 2004) <http://www.reellife.co.nz/reellife/8/issue7_nationalnews_article3.asp> [accessed 30 Nov 2004].

Chapter 23: Prelude to the General Election

1 Theresa Garner, Deputy Chief Reporter, *New Zealand Herald*, to P McDonald about the wording of a poll question 2005 [Email].

2 Kay L Booth, 'Rights of Public Access for Outdoor Recreation in New Zealand' (PhD thesis, University of Otago, 2006), pp. 207–210.

3 Federated Farmers of New Zealand, 'Press Release: Access Hypocrisy' (10 Mar 2005) <http://www.fedfarm.org.nz/media%20releases/PR031-05.html> [accessed 10 Mar 2005].

4 Jim Sutton, Associate Minister for Rural Affairs, 'Press Release: Land Access – Questions and Answers' (22 Dec 2004) <http://www.beehive.govt.nz/ViewDocument.cfm?DocumentID=21919> [accessed 22 Dec 2004].

5 Jim Sutton, Associate Minister for Rural Affairs, 'Access to the Great Outdoors' (22 Mar 2005) <http://www.beehive.govt.nz/HomepageFeature.aspx?id=1> [accessed 22 Mar 2005].

6 Bryan Hocken, 'Agriculture Minister Is Anti-farmer', *Taranaki Daily News,* 5 May 2005, p. 14.

7 Richard Rennie, 'Farmers Hit MPs Where It Hurts', *New Zealand Herald,* 28 Sept 2005.

8 Tom Lambie, 'What Farmers Want from the Next Government', *Chartered Accountants Journal of New Zealand,* 84, no. 4 (May 2005), pp. 8–9.

9 Jeremy Rowan Robinson and Theresa Egleton, 'Land Reform (Scotland) Act 2003 – Implications for Owners and Occupiers', Paull and Williamsons (Solicitors) (9 Feb 2005) <http://www.paull-williamsons.co.uk/news/showdeal.asp?did=125> [accessed 2 Mar 2006], p. 2.

10 Ministry of Agriculture and Forestry, *Statement of Intent*, Parliamentary Papers Presented to the House of Representatives of New Zealand; C.5 SOI (Wellington, NZ: Ministry of Agriculture and Forestry, 2005), vol. 2005/06, p. 15.

11 Ministry of Agriculture and Forestry, 'Foot and Mouth Disease' (May 2005) <http://www.biosecurity.govt.nz/pests-diseases/animals/foot-n-mouth/foot-and-mouth-fact-sheet-2005.pdf> [accessed 2 Apr 2006].

12 Federated Farmers of New Zealand, 'Press Release: Threat Boosts Access Concerns' (17 May 2005) <http://www.fedfarm.org.nz/media%20releases/PR0712005.html> [accessed 16 Mar 2006].

13 Ministry of Agriculture and Forestry, 'Press Release: Biosecurity Threat Investigation' (10 May 2005) <http://www.maf.govt.nz/mafnet/press/100505fmd.htm> [accessed 2 Apr 2006].

14 Ministry of Agriculture and Forestry, 'Press Release: Operation Waiheke Officially Stood Down' (24 May 2005) <http://www.maf.govt.nz/mafnet/press/250505fmd.htm> [accessed 2 Apr 2006].

15 New Zealand Treasury, '19 May 2005: Budget 2005: Vote Agriculture and Forestry', *Parliamentary Papers Presented to the House of Representatives of New Zealand,* 3 (2005), p. B.5 Vol.1 (p. 39).

16 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), pp. 76–78.

17 Ibid., pp. 31–32.

18 Ibid., p. 33.

19 Kevin Guerin, 'Protection against Government Takings: Compensation for Regulation?: New Zealand Treasury Working Paper 02/18', New Zealand Treasury (Sept 2002) <http://www.treasury.govt.nz/workingpapers/2002/twp02-18.pdf> [accessed 4 Dec 2005], p. i.

20 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), pp. 82–83.

21 Jim Sutton, Associate Minister for Rural Affairs, 'Press Release: Land Access – Questions and Answers' (22 Dec 2004) <http://www.beehive.govt.nz/ViewDocument.cfm?DocumentID=21919> [accessed 22 Dec 2004].

22 Jim Sutton, Minister for Rural Affairs, 'Cabinet Paper: Walking Access in the New Zealand Outdoors' (20 Dec 2004) <http://www.beehive.govt.nz/ViewDocument.cfm?DocumentID=21918> [accessed 22 Dec 2004], p. 6.

23 Mark Hay, 'Counsel: Public Access and Private Property Rights', Chapman Tripp (29 Aug 2003) <http://chapmantripp.co.nz/file_library/material_files/29_august_2003_counsel_.pdf> [accessed 3 Dec 2005].

24 NZ LAW, 'Proposed Public Walking Access over Rural Land', *Fineprint*, no. 33 (Autumn 2005) <http://www.nzlaw.co.nz/documents/Fineprint%20Issue%2033.pdf> [accessed 6 Apr 2006].

25 Richard Rennie, 'Farmers Hit MPs Where It Hurts', *New Zealand Herald,* 28 Sept 2005.

26 Jim Sutton, Associate Minister for Rural Affairs, 'Press Release: Government Response to Acland Report Issued' (22 Dec 2004) <http://www.beehive.govt.nz/ViewDocument.cfm?DocumentID=21918> [accessed 22 Dec 2004].

27 Kay L Booth, 'Rights of Public Access for Outdoor Recreation in New Zealand' (PhD thesis, University of Otago, 2006), p. 98.

28 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), pp. 70–71.

29 New Zealand Fish and Game Council, *Submission on 'Walking Access in the New Zealand Outdoors'* (Wellington, NZ: New Zealand Fish and Game Council, Dec 2003), p. 3.

30 Ibid., p. 6.

Chapter 24: A Bad Month for Footways

1 Federated Farmers of New Zealand, 'Press Release: Access Hypocrisy' (10 Mar 2005) <http://www.fedfarm.org.nz/media%20releases/PR031-05.html> [accessed 10 Mar 2005].

2 Hamish Carnachan and Sudesh Kissun, 'Access Issue Set to Ignite Election', *Rural News* (25 Jan 2005) <http://www.knowledge-basket.co.nz/ruralnews/welcome.html> [accessed 1 Jan 2006].

3 Benedict Collins, 'Rural Crime Rate No Worse', *Rural News* (19 Oct 2004) <http://www.knowledge-basket.co.nz/ruralnews/welcome.html> [accessed 15 Nov 2004].

4 Jim Sutton, Associate Minister for Rural Affairs, 'Press Release: Water Is Owned by All New Zealanders' (10 June 2005) <http://www.beehive.govt.nz/ViewDocument.aspx?DocumentID=23335> [accessed 11 June 2005].

5 Fish and Game New Zealand, 'Press Release: Fed Farmers Show True Colours and Try To Deny the Queen's Chain' (10 June 2005) <http://scoop.co.nz/stories/PO0506/S00096.htm> [accessed 11 June 2005].

6 Public Access New Zealand, 'Press Release: Access Leader Bars Government Entry to Property' (13 June 2005) <http://www.scoop.co.nz/stories/PO0506/S00118.htm> [accessed 13 Dec 2005].

7 Rob Brown, 'A Heart for the Hills', *New Zealand Geographic*, no. 60 (Nov–Dec 2002), pp. 76–94 (p. 92).

8 Alistair Hall, 'Access and Angst', *New Zealand Wilderness,* Apr 2005, pp. 26–31.

9 Public Access New Zealand, 'Improving Public Access to the Outdoors: A Strategy for Implementing Government's Election Policies' (10 July 2003) <http://www.publicaccessnewzealand.com/files/access_strategy_version_1.pdf> [accessed 29 July 2007], pp. 15–20.

10 Joanna Norris, 'Farmers To Lock Out Public', *The Press,* 11 June 2005, section Local News.

11 Public Access New Zealand, 'Land Access Reference Group Report 2003: PANZ Commentary and Checklist of Pros and Cons' (5 Oct 2003) <http://www.publicaccessnewzealand.com/files/access_ref_group_pros_cons.html> [accessed 29 July 2007], Cons, 8.

12 Public Access New Zealand, 'PANZ Overview' (5 Oct 2003) <http://www.publicaccessnewzealand.org/files/overview.html> [accessed July 2005].

13 Public Access New Zealand, 'PANZ Organisation' (3 Aug 1999) <http://www.publicaccessnewzealand.org/files/organisation.html> [accessed July 2005].

14 Jim Sutton, Labour spokesman for lands, 'Freedom of the Land' (Feb 1996) <http://www.publicaccessnewzealand.org/files/jim_sutton_mp_on_access.html> [accessed 20 Nov 2004].

15 Brian E Hayes, *The Law on Public Access Along Water Margins* (Wellington: Ministry of Agriculture and Forestry, 2003), p. 47.

16 Bruce Mason, 'Small Fixes to Long Ad Hocracy Are Quite All Right', *Otago Daily Times,* 22 June 2005, section Opinion, p. 1.

17 Walking Access Consultation Panel, *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 9.

18 Council of Outdoor Recreation Associations of New Zealand, *Submission on 'Walking Access in the New Zealand Outdoors'* (Wellington,

NZ: Council of Outdoor Recreation Associations of New Zealand, 2003), p. 5.

19 Heather Chalmers, 'Blanket Access Laws Overkill Say Anglers', *Rural News* (7 June 2005) <http://www.knowledge-basket.co.nz/ruralnews/welcome.html> [accessed 14 Dec 2005].

20 Ibid.

21 Neal Wallace, 'Unlikely Bedmates over Access Issues', *Otago Daily Times,* 14 June 2005, section The Regions, p. 13.

22 New Zealand Parliament, '14 June 2005: Questions for Oral Answer: Land – Public Access', *Parliamentary Debates (Hansard),* 626 (2005), pp. 21250–21251.

23 New Zealand National Party and David Carter, 'National's 2005 Agricultural Sector Policy' (16 June 2005) <http://www.national.org.nz/Article.aspx?ArticleId=4502> [accessed 15 Dec 2005].

24 Michelle Reiber, 'National Makes Four Main Promises to Rural Community: Agriculture Policy Launched This Morning at Fieldays', *IRN News,* 16 June 2005.

25 Fish and Game New Zealand, 'About Fish & Game New Zealand' (2007) <http://www.fishandgame.org.nz/Site/NZCouncil/NZCAboutFG.aspx> [accessed 22 Dec 2009].

26 Ibid.

27 Kay L Booth, 'Rights of Public Access for Outdoor Recreation in New Zealand' (PhD thesis, University of Otago, 2006), p. 166.

28 R M McDowall, *Gamekeepers for the Nation: The Story of New Zealand's Acclimatisation Societies, 1861–1990* (Christchurch, NZ: Canterbury University Press, 1994), pp. 431–432.

29 New Zealand Fish and Game Council, *Submission on 'Walking Access in the New Zealand Outdoors'* (Wellington, NZ: New Zealand Fish and Game Council, Dec 2003), p. 3–4.

30 Neal Wallace, 'Unlikely Bedmates over Access Issues', *Otago Daily Times,* 14 June 2005, section The Regions, p. 13.

31 Bryce Johnson, to P McDonald, subject 'Re: Unfortunate Differences', 20 June 2005 [Email].

32 Bryce Johnson, Director, Fish and Game New Zealand, to Reporters Covering the Federated Farmers Public Access Demonstration at Parliament Buildings Today, 23 June 2005 [Memorandum].

33 Alistair Hall, 'Access and Angst', *New Zealand Wilderness,* Apr 2005, pp. 26–31.

34 Joanna Norris, 'Farmers To Lock Out Public', *The Press,* 11 June 2005, section Local News.

35 Brian Stephenson, President, Federated Mountain Clubs of New Zealand, 'Press Release: "Action Orange" Is Short-sighted and Shallow, Say Federated Mountain Clubs', Federated Mountain Clubs (23 June 2005) <http://www.geocities.com/ken_sims_98/CORANZ/Access.html#others> [accessed 3 Jan 2008].

36 Royal Forest and Bird Protection Society of New Zealand, 'About Forest and Bird' (2001) <http://www.forestandbird.org.nz/aboutus/index.asp> [accessed 10 Apr 2006].

37 Kay L Booth, 'Public Access: An Overview of Public Access Rights and Responsibilities', in *Handbook of Environmental Law,* ed. by R Harris (Wellington, NZ: Royal Forest and Bird Protection Society of New Zealand, 2004), pp. 428–438.

38 Nicholas Hill, Chief Executive, Sport and Recreation New Zealand, to P McDonald, 15 Dec 2004 [Letter].

39 Kay L Booth, 'Rights of Public Access for Outdoor Recreation in New Zealand' (PhD thesis, University of Otago, 2006), pp. 163–165.

40 Ibid., p. 173.

41 Ibid., p. 292.

42 Ibid., p. 169.

43 Roberta McIntyre, *Whose High Country?: A History of the South Island High Country of New Zealand* (North Shore, NZ: Penguin Books, 2008), p. 259.

44 Ibid., p. 263.

45 R W Burrell, *Fifty Years of Mountain Federation, 1931-1981* (Wellington, NZ: Federated Mountain Clubs of New Zealand, 1983), p. 53.

46 Ibid., pp. 54–55.

47 Ibid., p. 56.

48 Roberta McIntyre, *Whose High Country?: A History of the South Island High Country of New Zealand* (North Shore, NZ: Penguin Books, 2008), p. 279.

49 Alan Mark, William Lee and Brian Patrick, 'Tussock Grasslands and Associated Mountain Lands', in *The Natural History of Southern New Zealand,* ed. by John Darby (Dunedin, NZ: University of Otago Press in association with Otago Museum, 2003), pp. 191–235 (p. 220).

50 From an interview, quoted in Kay L Booth, 'Rights of Public Access for Outdoor Recreation in New Zealand' (PhD thesis, University of Otago, 2006), p. 169.

51 Ibid., p. 271.

52 John Aspinall, 'Speech to South Island High Country Field Day, Molesworth Station, 16 March 2005', Federated Farmers of New Zealand (18 Mar 2005) <http://www.fedfarm.org.nz/media%20releases/PR038-05.html> [accessed 18 Mar 2005].

53 Federated Farmers of New Zealand, 'Public Access across Private Land: Dear Federated Farmers Member' (June 2005) <http://www.fedfarm.org.nz/issues/Access.html> [accessed 20 Nov 2005].

54 Michael Cullen, Deputy Prime Minister, 'Press Release: Respect for Property Rights in Everyone's Interests' (10 Feb 2004) <http://www.beehive.govt.nz/ViewDocument.aspx?DocumentID=18873> [accessed 11 Feb 2004].

55 Jim Sutton, Associate Minister for Rural Affairs, 'Press Release: Water Is Owned by All New Zealanders' (10 June 2005) <http://www.beehive.govt.nz/ViewDocument.aspx?DocumentID=23335> [accessed 11 June 2005].

56 Property Law Section of the New Zealand Law Society, 'Press Release: Walking Access in New Zealand' (14 June 2005) <http://www.nz-lawsoc.org.nz/general/Press/Pls%20media%2014-06-05.htm> [accessed 14 June 2005].

57 United Future New Zealand Party, 'Press Release: United Future Claims Victory on "No Compensation" Issue' (31 May 2005) <http://www.unitedfuture.org.nz/press/show_item.php?t=0&i=1123> [accessed 31 May 2005].

58 Jim Sutton, Associate Minister for Rural Affairs, 'Press Release: Farmers' Ribbon Campaign Mis-judged' (22 June 2005) <http://www.beehive.

govt.nz/ViewDocument.aspx?DocumentID=23483> [accessed 22 June 2005].

59 New Zealand Parliament, '23 June 2005: Questions for Oral Answer: Land – Public Access', *Parliamentary Debates (Hansard),* 627 (2005), pp. 21900–21901.

60 Ruth Berry, 'Retreat on Public Access to Farmland', *New Zealand Herald,* 29 June 2005.

61 Kay L Booth, 'Rights of Public Access for Outdoor Recreation in New Zealand' (PhD thesis, University of Otago, 2006), pp. 198–202.

62 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 82.

63 Tracy Watkins, 'Forced Access to Waterways Ruled Out', *Dominion Post,* 16 Aug 2004, p. 2.

64 New Zealand Parliament, '2 September 2004: Questions for Oral Answer: Walking Access in the New Zealand Outdoors – Waterways', *Parliamentary Debates (Hansard),* 619 (2004), pp. 15312–15313.

65 Jim Sutton, Minister for Rural Affairs, 'Cabinet Paper: Walking Access in the New Zealand Outdoors' (20 Dec 2004) <http://www.beehive.govt.nz/ViewDocument.cfm?DocumentID=21918> [accessed 22 Dec 2004], p. 5–6.

66 Jim Sutton, Associate Minister for Rural Affairs, 'Press Release: Land Access – Questions and Answers' (22 Dec 2004) <http://www.beehive.govt.nz/ViewDocument.cfm?DocumentID=21919> [accessed 22 Dec 2004].

67 Jonathan Milne, 'Maori Slam Access Law as Another "Attack on Rights" ', *New Zealand Herald,* 12 June 2005, p. 22.

68 Ernst Dieffenbach, *Travels in New Zealand: with Contributions to the Geography, Geology, Botany and Natural History of that Country*, 2 vols (London: John Murray, 1843; repr. Christchurch: Capper Press, 1974), vol. 2, pp. 172–173.

69 Ibid., p. 173.

70 Tariana Turia, Co-leader, Maori Party, 'Press Release: Maori Party Welcomes 11th Hour Backdown on Controversial Land Access Policy', Maori Party (30 June 2005) <http://www.maoriparty.com/press_statements/press_release_20050630_turia_government_backdown_land_access.htm> [accessed 3 Jan 2006].

71 New Zealand Parliament, '23 June 2005: Questions for Oral Answer: Land – Public Access', *Parliamentary Debates (Hansard),* 627 (2005), pp. 21900–21901.

72 Don Brash, Leader of the National Party, 'Press Release: National Will Not Let Labour Walk Over Rural NZ', New Zealand National Party (23 June 2005) <http://national.org.nz/Article.aspx?ArticleID=4566> [accessed 19 Jan 2006].

73 Benedict Collins, 'Officials Wary of Forced Access Agenda', *Rural News* (29 June 2005) <http://www.knowledge-basket.co.nz/ruralnews/welcome.html> [accessed 20 Jan 2006].

74 Ruth Berry, 'Farmers Welcome Access Backdown', *New Zealand Herald,* 30 June 2005.

75 Tariana Turia, Co-leader, Maori Party, 'Press Release: Maori Party Welcomes 11th Hour Backdown on Controversial Land Access Policy', Maori Party (30 June 2005) <http://www.maoriparty.com/press_

statements/press_release_20050630_turia_government_backdown_land_access.htm> [accessed 3 Jan 2006].

76 Nigel Curry, 'Rights of Access to Land for Outdoor Recreation in New Zealand: Dilemmas Concerning Justice and Equity', *Journal of Rural Studies,* 17 (2001), pp. 409–419.

77 Danny Keenan, 'Bound to the Land: Maori Retention and Assertion of Land and Identity', in *Environmental Histories of New Zealand,* ed. by Eric Pawson and Tom Brooking (Melbourne: Oxford University Press, 2002), pp. 246–260.

78 Philip Temple, 'Natural Values – A Personal View', *Public Access*, no. 9 (July 1997), pp. 5–6.

79 Terry Tacon, 'Farmers' Tractor Protest Barely Raises a Fart', *Taranaki Daily News,* 21 June 2005, p. 2.

80 Lyn Humphreys, 'Taranaki Farmers Slow to Protest', *Taranaki Daily News,* 20 June 2005.

81 Some reports said 26,000 signatures.

82 Kevin Taylor, 'Government Set to Stall Land Bill', *New Zealand Herald,* 24 June 2005.

83 Tim Cronshaw, 'Farmers Protest Access Law', *The Press,* 24 June 2005.

84 Federated Farmers of New Zealand, 'About FFNZ' (2002) <http://www.fedfarm.org.nz/about%20FFNZ/index.html> [accessed 29 Oct 2004].

85 Statistics New Zealand, 'A.2: Land Used for Agriculture and Forestry in New Zealand', Ministry of Agriculture and Forestry (Aug 2008) <http://www.maf.govt.nz/mafnet/rural-nz/statistics-and-forecasts/sonzaf/2008/tables/A-2.xls> [accessed 21 June 2009].

86 Grant Fleming, 'Govt Plans More Land Access Consultation' (29 June 2005) <http://stuff.co.nz/stuff> [accessed 29 June 2005].

87 Public Access New Zealand, 'Press Release: Major Strategy for Improving Public Access to Outdoors Released' (10 July 2003) <http://www.publicaccessnewzealand.org/files/public_access_strategy2003.html> [accessed 2 Aug 2003].

88 Kay L Booth, 'Rights of Public Access for Outdoor Recreation in New Zealand' (PhD thesis, University of Otago, 2006), p. 234.

89 Pita R Sharples, 'Speech: Sharples – Federated Farmers AGM Speech' (4 May 2007) <http://www.scoop.co.nz/stories/PA0705/S00134.htm> [accessed 4 May 2007].

90 Ruth Berry, 'Retreat on Public Access to Farmland', *New Zealand Herald,* 29 June 2005.

91 Andrea Fox, 'Access Mapping Will Cost "a Heap": Sutton', *New Zealand Farmers Weekly,* 4 July 2005.

92 Ibid.

93 Ibid.

94 Federated Farmers of New Zealand, *Submission on 'Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group'* (Wellington, NZ: Federated Farmers of New Zealand, Nov 2003), p. 6.

95 Federated Farmers of New Zealand, 'Press Release: Government Listens to Rural Concerns' (29 June 2005) <http://www.fedfarm.org.nz/media%20releases/PR1002005.html> [accessed 2 Jan 2006].

96 Jon Morgan, 'How It Looks to a Man of the Land', *Dominion Post,* 20 July 2005, p. 4.

97 Tom Lambie, 'Speech: The Federation – Past, Present and Future', Federated Farmers of New Zealand (26 July 2005) <http://www.fedfarm.org.nz/speech_notes/Tomsfinalspeech.html> [accessed 14 Mar 2006].

98 Federated Farmers of New Zealand, 'Why Farmers Object to the Government's Access Reforms' (June 2005) <http://www.fedfarm.org.nz/Field%20Day%20Flyer3.doc> [accessed 4 Apr 2006].

99 Federated Farmers of New Zealand, 'Press Release: Land Access: Proceed with Caution' (23 Jan 2003) <http://www.fedfarm.org.nz/media%20releases/PR007-03.html> [accessed 13 Nov 2004].

100 Ministry of Agriculture and Forestry, 'Press Release: Biosecurity Threat Investigation' (10 May 2005) <http://www.maf.govt.nz/mafnet/press/100505fmd.htm> [accessed 2 Apr 2006].

101 Jim Sutton, Associate Minister for Rural Affairs, 'Press Release: New Panel Formed To Consult on Walking Access' (4 Aug 2005) <http://www.beehive.govt.nz/ViewDocument.aspx?DocumentID=23904> [accessed 22 Aug 2005].

102 Bryce Johnson, 'Press Release: Government Review on Public Access', Fish and Game New Zealand (27 Aug 2007) <http://www.fishandgame.org.nz/Site/Features/Features_Media_AccessAug27.aspx> [accessed 31 Dec 2007].

103 New Zealand Government, 'Press Release: Walking Access Report – Questions and Answers' (7 Mar 2007) <http://www.scoop.co.nz/stories/PA0703/S00108.htm> [accessed 31 Dec 2007].

104 Jim Sutton, Associate Minister for Rural Affairs, 'Press Release: New Panel Formed To Consult on Walking Access' (4 Aug 2005) <http://www.beehive.govt.nz/ViewDocument.aspx?DocumentID=23904> [accessed 22 Aug 2005].

105 Robyn Twemlow, 'Farmers Welcome Consultation Panel', *The Press,* 5 Aug 2005.

106 Neal Wallace, 'Renewed Access Initiative Causes Anger', *Otago Daily Times,* 5 Aug 2005, section The Regions, p. 1.

107 Paul Morgan, Executive Deputy Chair of the Federation of Maori Authorities, to Damien O'Connor, Minister for Rural Affairs, 5 Aug 2005 [Letter].

Chapter 25: The 2005 General Election

1 Don Brash, 'Nationhood: An Address by Don Brash, Leader of the National Party, to the Orewa Rotary Club on 27 January 2004', New Zealand National Party (27 Jan 2004) <http://www.national.org.nz/speech_article.aspx?ArticleID=1614> [accessed 2 Sept 2004].

2 Public Access New Zealand, 'Labour Most "Access Friendly"', *Public Access*, no. 8 (Sept 1996), pp. 1–6.

3 Public Access New Zealand, 'Labour, Greens, United Provide Voter Choice', *Public Access*, no. 12 (Nov 1999), pp. 1–14.

4 New Zealand Labour Party, 'Rural Affairs' (Sept 2005) <http://www.labour.org.nz/policy/Policy2005_pdfs/ASTFIL53809.pdf> [accessed 12 Nov 2005].

5 Green Party of Aotearoa New Zealand and Jeanette Fitzsimons, 'Press Release: Green Party Announces Its Public Access Position' (24 Nov 2004) <http://www.greens.org.nz/searchdocs/PR8105.html> [accessed 29 Nov 2004].

6 Green Party of Aotearoa New Zealand, 'Agriculture and Rural Affairs Policy' (24 Aug 2005) <http://www.greens.org.nz/searchdocs/policy4756.html> [accessed 30 Dec 2005].

7 Outdoor Recreation New Zealand, 'ORNZ Commitments and Policy', *Marine, Fishing & Hunting News,* Jan 2005, p. 4.

8 United Future New Zealand Party, 'Policy: Outdoor Recreation: Commonsense Conservation' (Sept 2005) <http://www.unitedfuture.org.nz/download/outdoor-policy-0705.pdf> [accessed 30 Dec 2005].

9 Public Access New Zealand, 'DOC Failing Public Recreation', *Public Access*, no. 13 (Feb 2001), pp. 1–3.

10 United Future New Zealand Party, 'Policy: Outdoor Recreation: Commonsense Conservation' (Sept 2005) <http://www.unitedfuture.org.nz/download/outdoor-policy-0705.pdf> [accessed 30 Dec 2005].

11 New Zealand Government, '625 km of New Track for Conservation Land' (21 Oct 2004) <http://www.beehive.govt.nz/ViewDocument.aspx?DocumentID=21273> [accessed 7 Jan 2006].

12 Policy Information and Regions Group, 'New Zealand Agriculture, Forestry and Horticulture in Brief: June 2005: Key Facts', Ministry of Agriculture and Forestry (June 2005) <http://www.maf.govt.nz/mafnet/rural-nz/agriculture-forestry-horticulture-in-brief/2005/key-facts-01.htm> [accessed 17 Dec 2005].

13 Portugal is 9.2 million hectares. Austria and Switzerland combined would be 12.5 million hectares.

14 Larry Baldock, 'Press Release: Baldock Tells Govt: Don't Stall on Public Access Law', United Future New Zealand Party (29 June 2005) <http://www.unitedfuture.org.nz/press/show_item.php?t=0&i=1177> [accessed 2 Jan 2006].

15 United Future New Zealand Party, 'Policy: Outdoor Recreation: Commonsense Conservation' (Sept 2005) <http://www.unitedfuture.org.nz/download/outdoor-policy-0705.pdf> [accessed 30 Dec 2005].

16 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), pp. 17–19, 90–92.

17 New Zealand First Party, 'Environment [Policy]' (June 2005) <http://www.nzfirst.org.nz/policies/environment.php> [accessed 17 June 2005].

18 New Zealand First Party, 'Conservation [Policy]' (June 2005) <http://www.nzfirst.org.nz/policies/conservation.php> [accessed 17 June 2005].

19 New Zealand National Party and Nick Smith, 'National's Plan for the Environment' (13 Sept 2005) <http://www.national.org.nz/files/Environment.pdf> [accessed 1 Jan 2006].

20 New Zealand National Party and David Carter, 'National's 2005 Agricultural Sector Policy' (16 June 2005) <http://www.national.org.nz/Article.aspx?ArticleId=4502> [accessed 15 Dec 2005].

21 New Zealand National Party, 'Sutton Plans Private Property Impingement' (16 Aug 2004) <http://www.national.org.nz/Article.aspx?articleId=2571> [accessed 26 Nov 2004].

22 'Access Still on the Agenda', *Rural News* (9 Sept 2005) <http://www.knowledge-basket.co.nz/ruralnews/welcome.html> [accessed 2 Jan 2006].

23 Ibid.

24 Anna Claridge, 'Roy on Group to Probe Land Access', *Southland Times,* 24 Jan 2003, p. 2.

25 David Carter, 'Safety, Security Issues Surround Land Access', *Otago Daily Times,* 7 Apr 2005, section Opinion, p. 1.

26 Public Access New Zealand, '2002 Election Guide to Party Policies' (19 July 2002) <http://www.publicaccessnewzealand.com/files/2002_election_guide.html> [accessed 29 July 2007].

27 Stephen Franks, 'Speech: Human Sacrifices for the Safety God', ACT New Zealand (11 Oct 2004) <http://act.org.nz/news-article.aspx?id=26192> [accessed 3 Jan 2006].

28 ACT New Zealand, 'Sports and Recreation Policies' (Sept 2005) <http://act.org.nz/policy_sports.aspx> [accessed 3 Jan 2006].

29 Ibid.

30 Gerry Eckhoff, 'Press Release: Government Insults Rural New Zealand', ACT New Zealand (24 Jan 2003) <http://act.org.nz/news-article.aspx?id=23613> [accessed 4 Jan 2006].

31 Gerry Eckhoff, 'Press Release: Property Rights Must Be Protected', ACT New Zealand (4 Jan 2004) <http://www.act.org.nz/news-article.aspx/25147> [accessed 2 Jan 2006].

32 New Zealand Parliament, '1 December 2004: General Debate', *Parliamentary Debates (Hansard),* 622 (2004), pp. 17312–17313.

33 Gerry Eckhoff, 'Press Release: Fish and Game Declares War on Rural NZ', ACT New Zealand (25 Nov 2004) <http://www.act.org.nz/news-article.aspx/26367> [accessed 4 Jan 2006].

34 Gerry Eckhoff, 'Press Release: Shut Out Fish & Game Rangers, Says Eckhoff', ACT New Zealand (4 May 2005) <http://www.act.org.nz/news-article.aspx/26913> [accessed 4 Jan 2006].

35 Benedict Collins, 'Fish & Game vs ACT Fight Gets Personal', *Rural News* (9 June 2005) <http://www.knowledge-basket.co.nz/ruralnews/welcome.html> [accessed 4 Jan 2006].

36 Tim Fulton, 'Nothing "Extreme" about Increasing Public Access to Waterways', *New Zealand Farmers Weekly,* 22 Aug 2005.

37 Maori Party, 'Nga Kaupapa [Our Values]' (2005) <http://www.maoriparty.com/policy/policy_index.htm> [accessed 5 Jan 2006].

38 Maori Party, '[Constitution] Part 1 - Tikanga [Policies]' (18 Nov 2005) <http://www.maoriparty.com/tikanga.htm> [accessed 5 Jan 2006].

39 Vote for the Environment, 'Vote for the Environment: Party Ratings: Results of Questionnaire of Political Parties, 2005' (29 Aug 2005) <http://www.environmentvote.org.nz/party-ratings.asp> [accessed 20 Jan 2006].

40 Neal Wallace, 'National Believes Access Issue May Be Key', *Otago Daily Times,* 7 Apr 2005, section The Regions, p. 1.

41 Kay L Booth, 'Rights of Public Access for Outdoor Recreation in New Zealand' (PhD thesis, University of Otago, 2006), p. 269.

42 Helen Clark, Prime Minister, 'Press Release: Hon Jim Sutton to Retire' (2006) <http://www.beehive.govt.nz/release/hon+jim+sutton+retire> [accessed 21 Sept 2008].

43 Keith Sinclair, *A History of New Zealand*, Rev. edn (Auckland, NZ: Penguin Books, 2000), p. 213.

44 Ibid., p. 214.

45 Ibid., p. 245.

46 Quoted in Brian E Hayes, *Elements of the Law on Movable Water Boundaries* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 14.

47 Oxford University Press, 'land-grabber, n.', in *The Oxford English Dictionary*, 2nd ed, OED Online (1989) <http://dictionary.oed.com/cgi/entry/50129462> [accessed 27 Oct 2005].

48 Department of the Environment Transport and the Regions, 'Access to the Open Countryside in England and Wales: A Consultation Paper Issued Jointly by the Department of the Environment, Transport and the Regions and the Welsh Office' (18 Dec 1998) <http://www.defra.gov.uk/wildlife%2Dcountryside/consult/access/index.htm> [accessed 24 Oct 2005], Section 3d.

49 'Charges of Intimidation', *Taranaki Herald,* 27 Nov 1893, p. 2.

50 Kay L Booth, 'Rights of Public Access for Outdoor Recreation in New Zealand' (PhD thesis, University of Otago, 2006), p. 283.

Chapter 26: A Search for Consensus

1 New Zealand Labour Party and New Zealand First Party, 'Confidence and Supply Agreement with New Zealand First' (17 Oct 2005) <http://www.beehive.govt.nz/Documents/Files/NZFirst.pdf> [accessed 13 Apr 2008].

2 Kay L Booth, 'Rights of Public Access for Outdoor Recreation in New Zealand' (PhD thesis, University of Otago, 2006), p. 96.

3 New Zealand Labour Party and New Zealand First Party, 'Confidence and Supply Agreement with New Zealand First' (17 Oct 2005) <http://www.beehive.govt.nz/Documents/Files/NZFirst.pdf> [accessed 13 Apr 2008].

4 Public Access New Zealand, 'Improving Public Access to the Outdoors: A Strategy for Implementing Government's Election Policies' (10 July 2003) <http://www.publicaccessnewzealand.com/files/access_strategy_version_1.pdf> [accessed 29 July 2007], p. 13.

5 Federated Mountain Clubs of New Zealand, 'Seventy-fourth Annual Report and Statement of Accounts 2005' (2005) <http://www.fmc.org.nz/documents/annual_report.pdf> [accessed 2 Feb 2006], p. 10.

6 Federated Farmers of New Zealand, *Submission to MAF Reference Group on the Access to Land Issue* (Wellington, NZ: Federated Farmers of New Zealand, Apr 2003), p. 20.

7 Robyn Bristow, 'Fishing Trip Led "to Shots Fired"', *The Press,* 25 Mar 2006.

8 Ruth Berry, 'Retreat on Public Access to Farmland', *New Zealand Herald,* 29 June 2005.

9 Ministry of Agriculture and Forestry, 'Briefing for Incoming Ministers: Agriculture, Forestry, Rural Affairs' (Oct 2005) <http://www.maf.govt.nz/mafnet/publications/2005-briefing-for-incoming-ministers/agriculture-etc-briefing.pdf> [accessed 21 Jan 2006], Rural Affairs: 07.

10 Ibid., Rural Affairs: 07.

11 Policy Information and Regions Group, 'New Zealand Agriculture, Forestry and Horticulture in Brief: June 2005: Key Facts', Ministry of Agriculture and Forestry (June 2005) <http://www.maf.govt.nz/mafnet/rural-nz/agriculture-forestry-horticulture-in-brief/2005/key-facts-01.htm> [accessed 17 Dec 2005].

12 Ministry of Agriculture and Forestry, 'Briefing for Incoming Ministers: Agriculture, Forestry, Rural Affairs' (Oct 2005) <http://www.maf.govt.nz/mafnet/publications/2005-briefing-for-incoming-ministers/agriculture-etc-briefing.pdf> [accessed 21 Jan 2006], Rural Affairs: 05.

13 Ibid., Rural Affairs: 05.

14 Tauranga City Council and Western Bay of Plenty District Council, *Draft Wairoa River Valley Strategy* (Tauranga, NZ: Tauranga City Council & Western Bay of Plenty District Council, June 2005), p. 46.

15 Sandra Conchie, 'Landowners Storm Meeting over Walkway Plans', *Bay of Plenty Times,* 3 Nov 2005.

16 Tauranga City Council and Western Bay of Plenty District Council, *Draft Wairoa River Valley Strategy* (Tauranga, NZ: Tauranga City Council & Western Bay of Plenty District Council, June 2005), p. 9.

17 Federated Farmers of New Zealand, *Submission on 'Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group'* (Wellington, NZ: Federated Farmers of New Zealand, Nov 2003), p. 6.

18 'Farmers Talk Civil Disobedience Over Access', *Otago Daily Times,* 17 Nov 2004, section General, p. 1.

19 Richard Rennie, 'Farmers Hit MPs Where It Hurts', *New Zealand Herald,* 28 Sept 2005.

20 New Zealand Labour Party, 'Rural Affairs' (Sept 2005) <http://www.labour.org.nz/policy/Policy2005_pdfs/ASTFIL53809.pdf> [accessed 12 Nov 2005], p. 1.

21 Sandra Conchie, 'Landowners Vow to Fight Riverside Walkways Plan', *Bay of Plenty Times,* 4 Nov 2005.

22 New Zealand Conservation Authority, 'Walking Access Principles', Department of Conservation (15 Apr 2006) <http://www.doc.govt.nz/getting-involved/nz-conservation-authority-and-boards/nz-conservation-authority/policies-and-publications/policies/walking-access-principles/> [accessed 25 June 2010].

Chapter 27: Mapping the Tracks

1 Jim Sutton, Minister for Rural Affairs, 'Cabinet Paper: Walking Access in the New Zealand Outdoors' (20 Dec 2004) <http://www.beehive.govt.nz/ViewDocument.cfm?DocumentID=21918> [accessed 22 Dec 2004], p. 4.

2 Sudesh Kissun, 'The Fresh Face at Fed Farmers', *Rural News* (26 Jan 2005) <http://www.knowledge-basket.co.nz/ruralnews/welcome.html> [accessed 31 Jan 2005].

3 Owen Hembry, 'Former MP Speaks Up for Farmers', *New Zealand Herald,* 31 Jan 2005, section Business.

4 Annabel Young, *The Good Lobbyist's Guide* (Auckland, NZ: Exisle Publishing, 2003), pp. 15, 58.

5 Pete McDonald, 'Buskin Track (80114) and Others' (April 2005) <http://homepages.paradise.net.nz/petemcd/bt/bt.htm> [accessed 16 May 2005], p. 44.

6 George M Moir, *Guide Book to the Tourist Routes of the Great Southern Lakes: Including Te Anau, Wakatipu, Manapouri, Wanaka, Hawea, Monowai, Hauroto [Hauroko], etc. and the Fiords of Western Otago, N.Z.* (Dunedin, NZ: Otago Expansion League, 1925), p. 4.

7 Ken Francis, *Wildlife Ranger: My Years in the New Zealand Outdoors* (Christchurch, NZ: Whitcoulls Publishers, 1983), p. 14.

8 Brian Marshall, 'From Sextants to Satellites: A Cartographic Time Line for New Zealand', *New Zealand Map Society Journal*, no. 18 (2005), pp. 1–136 (pp. 64, 66).

9 Ibid. (p. 91).

10 J N Jennings, 'Maps and Those Who Travel the Hills', *New Zealand Cartographic Journal,* 5, no. 2 (1975), pp. 2–3 (p. 2).

11 George M Moir and Gerard Hall-Jones, *Moir's Guide Book to the Tramping Tracks and Routes of the Great Southern Lakes and Fiords of Otago and Southland: Southern Section, Hollyford Southwards.*, 5th edn (Eastbourne, NZ: New Zealand Alpine Club, 1979), pp. x, xvii.

12 Dave Mole, 'Mapping Through the Years', *FMC Bulletin*, no. 157 (Aug 2004), pp. 16–17 (p. 16).

13 Land Information New Zealand, 'Topographic Information Strategy 2005-2010' (June 2005) <http://www.linz.govt.nz/docs/topography/topo_info_strategy_2005_2010.pdf> [accessed 25 July 2005].

14 Land Information New Zealand, *Statement of Intent*, Parliamentary Papers Presented to the House of Representatives of New Zealand; C.14 SOI (Wellington, NZ: Land Information New Zealand, 2005), vol. 2005/06, p. 19.

15 Mick Strack, Lecturer in Land-surveying, to P McDonald, subject 'Recreational Map-users in New Zealand', 8 Aug 2006 [Email].

16 Rochelle Warrander, 'Trampers Warned Off Using Hunting Tracks on New Map', *Taranaki Daily News,* 22 May 1999, p. 5.

17 Pete McDonald, 'Buskin Track (80114) and Others' (April 2005) <http://homepages.paradise.net.nz/petemcd/bt/bt.htm> [accessed 16 May 2005], pp. 15–17.

18 Land Information New Zealand, 'Important Notes & Safety Warnings' (no date) <http://www.nztopoonline.linz.govt.nz/system-support/notes-warnings/index.html#tracks> [accessed 21 Feb 2009].

19 Doug Forster, Freshmap, to P McDonald, subject 'LINZ and Digital Track Data', 14 Oct 2007 [Email].

20 Peter Dymock, to P McDonald, subject 'Re: DOC's Censoring of LINZ Maps', 7 Oct 2007 [Email].

21 Chris Carter, Minister of Conservation, 'Press Release: DOC Proposes 250km of New Walking Tracks' (30 Sep 2003) <http://www.beehive.govt.nz/ViewDocument.aspx?DocumentID=17973> [accessed 4 June 2007].

22 Ministry of Agriculture and Forestry, 'Briefing for Incoming Ministers: Agriculture, Forestry, Rural Affairs' (Oct 2005) <http://www.maf.govt.nz/mafnet/publications/2005-briefing-for-incoming-ministers/agriculture-etc-briefing.pdf> [accessed 21 Jan 2006], Rural Affairs: 08.

23 Kevin Kelly, General Manager Policy, Land Information New Zealand, to P McDonald, 26 Oct 2005 [Letter].

24 Pete McDonald, 'Buskin Track (80114) and Others' (April 2005) <http://homepages.paradise.net.nz/petemcd/bt/bt.htm> [accessed 16 May 2005], pp. 44–45.

25 Ann Lacey Brower, 'Interest Groups, Vested Interests, and the Myth of Apolitical Administration: The Politics of Land Tenure Reform on the South Island of New Zealand: Report Submitted with Honour to Fulbright New Zealand February 2006', Fulbright New Zealand (Feb

2006) <http://www.fulbright.org.nz/voices/theses/docs/browera.pdf> [accessed 12 Feb 2008], 69–95.

26 Pete McDonald, 'Recreational Map-users in New Zealand: The Haves and the Have-nots' (Aug 2006) <http://homepages.paradise.net.nz/petemcd/hhn/hhn.htm> [accessed 30 Sept 2007].

27 Terralink International, 'Recreational Maps' (2006) <http://www.terralink.co.nz/products_services/maps_charts/map_products/recreational_maps/index.htm> [accessed 30 July 2006].

28 Geoff Aitken, 'Topographic Maps for Tomorrow: Wellington Walks and Tararua Tramps', NewTopo (NZ) (Oct 2005) <http://www.newtopo.co.nz/> [accessed 30 July 2006].

29 New Zealand Cartographic Society, 'GeoCart'2006: National Cartographic Conference: Preliminary Programme' (2006) <http://www.cartography.org.nz/geocart2006/programme.htm> [accessed 23 July 2006], Paper Session 4, Fanny LaRiviere, Abstract.

30 Hugh Barr and New Zealand Deerstalkers' Association, to Walking Access Consultation Panel: 'Response to the Acland Consultation Panel', 27 July 2006 [Letter], pp. 5–7.

31 Geoff Aitken, 'Wellington Walks: An Exercise in Topographic Map Evolution' (draft paper, 6 July 2006).

32 Pete Hodgson, Minister for Land Information, to P McDonald, 1 Feb 2006 [Letter].

33 New Zealand Cartographic Society, 'GeoCart'2006: National Cartographic Conference: Preliminary Programme' (2006) <http://www.cartography.org.nz/geocart2006/programme.htm> [accessed 23 July 2006], Paper Session 4, Fanny LaRiviere, Abstract.

34 Ibid., Paper Session 4, Geoff Aitken, Abstract.

35 *A History of the Ordnance Survey,* ed. by W A Seymour and John H Andrews (Folkestone, England: Wm Dawson and Sons, 1980), p. 302.

36 Brian Marshall, 'From Sextants to Satellites: A Cartographic Time Line for New Zealand', *New Zealand Map Society Journal*, no. 18 (2005), pp. 1–136 (p. 81).

37 Ibid. (p. 97).

38 Land Information New Zealand, 'Briefing for the Incoming Minister 2002: Section 1: Policy Issues' (2002) <http://www.linz.govt.nz/rcs/linz/25955/briefing_incoming_minister_policy_issues_20020826_final.pdf> [accessed 29 Aug 2005].

39 Some GPS receivers display an accuracy figure, but this is not regarded as reliable. I have been advised that with good sky view GPS receivers are, in 2009, fairly reliably accurate to about 10 metres.

40 Doug Forster, Freshmap, to P McDonald, subject 'LINZ and Digital Track Data', 14 Oct 2007 [Email].

41 Dunedin City Council, 'Search Tools – WebMap' (no date) <http://www.dunedincity.govt.nz/city/?page=searchtools_gis> [accessed 15 Oct 2007].

42 Pete McDonald, 'Maps for the People: The Mapping Issues of Walking Access in the New Zealand Outdoors' (Nov 2005) <http://homepages.paradise.net.nz/petemcd/lap/lap.htm> [accessed 2 Dec 2005], pp. 6–8.

43 Christchurch City Libraries, 'City and District Webmaps and GIS', Christchurch City Council (no date) <http://library.christchurch.org.nz/resources/NewZealand/Maps/CityAndDistrictWebma/index.asp> [accessed 15 Oct 2007].

44 Kevin Kelly, General Manager Policy, Land Information New Zealand, to P McDonald, 26 Oct 2005 [Letter].

45 Ibid.

46 David Parker, 'Parker: High Country Federated Farmers Conference: Friday 9 June 2006: Speech' (9 June 2006) <http://www.scoop.co.nz/stories/PA0606/S00134.htm> [accessed 30 Nov 2007].

47 Marginal strips created after July 2007 have been surveyed and will appear in the Walking Access Mapping System. The period that produced thousands of 'invisible' marginal strips lasted from April 1990 to June 2007.

48 Walking Access Consultation Panel, *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 45.

49 Land Information New Zealand, 'eSurvey Set For November Release', *Landscan*, Issue 25 (Oct 2003) <http://www.linz.govt.nz/publications/landscan/landscanocto03/index.html#5> [accessed 25 Nov 2007].

50 New Zealand Walking Access Commission, *Guidelines for the Management of Unformed Legal Roads* (Wellington, NZ: NZWAC, 2011), p. 14.

51 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), pp. 77–78.

52 Tom S Logsdon, 'GPS', in *Encyclopaedia Britannica* (no date) <http://www.search.eb.com.ezproxy.otago.ac.nz/eb/article-9396001> [accessed 3 Apr 2010].

53 Ibid.

54 Environment Court, 'Decision No. W21/2003 of the Local Government Act 1974 in the Matter of an Application under Clause 6 of the Tenth Schedule to the Act' (9 Apr 2003) <http://www.recreationaccess.org.nz/files/johnsons_road_decision.pdf> [accessed 28 Dec 2007], para 40.

55 Ibid., para 12.

56 New Zealand Recreational GPS Society, 'The Rules Of The NZ Recreational GPS Society Incorporated v1.1' (Apr 2003) <http://www.gps.org.nz/society/constitution_v1.1> [accessed 18 Oct 2007].

57 Rachel Dore, 'Mapping Service to Help Fonterra', *Central Districts Farmer,* 30 Sept 2003.

58 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 85.

59 Ibid., p. 90.

60 Ministry of Agriculture and Forestry, *Analysis of Written Submissions on the Report 'Walking Access in the New Zealand Outdoors'* (Wellington, NZ: Ministry of Agriculture and Forestry, 2004), p. 72.

61 Ordnance Survey, 'Ordnance Survey: Annual Report and Accounts 2004-05' (23 June 2005) <http://www.ordnancesurvey.co.uk/oswebsite/aboutus/reports/annualreport/index.html> [accessed 30 Aug 2005], p. 7.

62 Antony Hamel, to P McDonald, subject 'Total Number of Track-and-Waypoint Files?', 19 Oct 2007 [Email].

63 Mick Strack, 'Back to the Land: Walking Access to the Outdoors', *New Zealand Surveyor*, no. 295 (Dec 2005), pp. 20–27.

64 Peter Dymock, to P McDonald, subject 'Mapping of Tracks', 16 Sept 2007 [Email].

65 Antony Hamel, to GPS-users, subject 'GPSing the Maungatua Traverse', June 2006 [Email].

66 New Zealand Recreational GPS Society, 'Submission to the Walking Access Consultation Panel' (29 June 2006) <http://www.gps.org.nz/downloads/GPSSoc_Submission_WACP_20060629.pdf> [accessed 18 Oct 2007].

67 Public Access New Zealand, 'Sea Shore', *Public Access*, no. 2 (Mar 1993), pp. 5–6.

68 Greater Wellington Regional Council, 'Greater Wellington Regional Council Submission: to Walking Access Consultation Panel' (June 2006) <http://www.gw.govt.nz/council-reports/pdfs%5Creportdocs%5C2006_268_2_Attachment.pdf> [accessed 24 July 2006], p. 3.

69 Brian Marshall, 'From Sextants to Satellites: A Cartographic Time Line for New Zealand', *New Zealand Map Society Journal*, no. 18 (2005), pp. 1–136 (pp. 102–103).

70 Ibid. (p. 103).

71 Pete McDonald, 'Buskin Track (80114) and Others' (April 2005) <http://homepages.paradise.net.nz/petemcd/bt/bt.htm> [accessed 16 May 2005], p. 3.

72 Brian Marshall, 'From Sextants to Satellites: A Cartographic Time Line for New Zealand', *New Zealand Map Society Journal*, no. 18 (2005), pp. 1–136 (p. 93).

Chapter 28: Three Bills ... and Compensation

1 Gordon Copeland, 'Press Release: UF Bill Strengthens Kiwis' Grip on Their Patch of Godzone', United Future New Zealand Party (6 Mar 2003) <http://www.unitedfuture.org.nz/press/show_item.php?t=0&i=23> [accessed 22 Jan 2006].

2 'Magna Carta', in *Encyclopaedia Britannica CD 2000, Deluxe Edition, International Version*, Sydney: Oxford University Press (2000) [CD-ROM].

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

4 Marion Shoard, 'Robbers v . Revolutionaries: What the Battle for Access Is Really All About', in *Rights of Way: Policy, Culture and Management,* ed. by Charles Watkins, Rural Studies Series (London: Pinter, 1996), pp. 11–23 (p. 14).

5 Marion Shoard, *This Land is Our Land: The Struggle for Britain's Countryside*, 2nd edn (London: Gaia Books, 1997), pp. 41–43.

6 New Zealand Parliament, '2 September 2004: Questions for Oral Answer: Walking Access in the New Zealand Outdoors – Waterways', *Parliamentary Debates (Hansard),* 619 (2004), pp. 15312–15313.

7 Fish and Game New Zealand, 'National News & Information: Fish & Game Positions: Access' (2007) <http://www.fishandgame.org.nz/Site/Features/FGpositions.aspx> [accessed 20 Dec 2008].

8 New Zealand Parliament, '11 May 2005: New Zealand Bill of Rights (Private Property Rights) Amendment Bill: First Reading', *Parliamentary Debates (Hansard),* 625 (2005), pp. 20495–20509.

9 Nandor Tanczos, 'Comment on Gordon Copeland's NZ Bill of Rights (Private Property Rights) Amendment Bill', *New Zealand Farmers Weekly,* 2 Nov 2006.

10 David Carter, 'Press Release: Get Your Cheque Book Out for Roaming Rights', New Zealand National Party (8 Mar 2007) <http://www.national.org.nz/Article.aspx?articleId=9575> [accessed 3 Nov 2007].

11 Gordon Copeland, 'Press Release: Copeland: You Cannot Be Serious David?!', United Future New Zealand Party (8 Mar 2007) <http://www.scoop.co.nz/stories/PA0703/S00151.htm> [accessed 3 Nov 2007].

12 John Armstrong, 'Early for His Own Execution', *New Zealand Herald,* 17 May 2007.

13 Gordon Copeland, 'Press Release: Copeland Disappointed in National', Gordon Copeland (6 Sept 2007) <http://www.scoop.co.nz/stories/PA0709/S00098.htm> [accessed 3 Nov 2007].

14 George Mitchell, in *The Oxford Dictionary of Modern Quotations*, ed. by Elizabeth Knowles, *Oxford Reference Online* (2007) <http://www.oxfordreference.com/views/ENTRY.html?subview=Main&entry=t93.e1246> [accessed 28 Dec 2007].

15 Justice and Electoral Committee, 'New Zealand Bill of Rights (Private Property Rights) Amendment Bill: 255-1: Report of the Justice and Electoral Committee: 11 Sept 2007', *AJHR,* 13 (2005-08), I.22B, pp. 481–485 (p. 482).

16 Ibid. (p. 484).

17 New Zealand Parliament, '4 August 2004: Overseas Investment (Queen's Chain Extension) Amendment Bill: First Reading', *Parliamentary Debates (Hansard),* 619 (2004), pp. 14644–14654.

18 Stuff (Fairfax New Zealand), 'Farmers Worry Bill Will Erode Land Values' (15 Dec 2005) <http://stuff.co.nz/stuff> [accessed 16 Dec 2005].

19 Local Government and Environment Committee, *Overseas Investment (Queen's Chain Extension) Amendment Bill: 161-1*, Report of the Local Government and Environment Committee: 20 February 2009 (Wellington, NZ: House of Representatives, 2009).

20 Roger S Lough, 'Re: Overseas Investment Act [Letter to The Treasury]', New Zealand Treasury (30 Apr 2004) <http://www.treasury.govt.nz/release/fir/fir-lough-tsy-30apr.pdf> [accessed 11 Mar 2006].

21 Michael Cullen, Hon, Dr, Minister of Finance, 'News Release: Toward a More Effective Overseas Investment Regime' (10 Nov 2004) <http://www.beehive.govt.nz/ViewDocument.aspx?DocumentID=21443> [accessed 27 Jan 2006].

22 Finance and Expenditure Committee, 'Overseas Investment Bill: Government Bill: 222-2: Report of the Finance and Expenditure Committee: 9 May 2005', *AJHR,* 15 (2002-05), I.22D, pp. 195–217 (p. 203).

23 David Parker, 'Press Release: Marginal Strips Next to Waterways Will Protect NZers' Birthright', New Zealand Labour Party (9 May 2005) <http://www.labour.org.nz/Our_mps_top/david_parker/news/09May2005/index.html> [accessed 29 Jan 2006].

24 Finance and Expenditure Committee, 'Overseas Investment Bill: Government Bill: 222-2: Report of the Finance and Expenditure Committee: 9 May 2005', *AJHR,* 15 (2002-05), I.22D, pp. 195–217 (p. 205).

25 New Zealand Parliament, '16 June 2005: Overseas Investment Bill', *Parliamentary Debates (Hansard),* 626 (2005), pp. 21529–21608.

26 Te Araroa Trust, 'Shania's Songline', *Te Araroa: Newsletter*, no. 10 (Sept 2004), pp. 1, 4.

Chapter 29: New Consultation on Walking Access

1 Audrey Young, 'Cabinet's New Faces: Political Passion Started in School', *New Zealand Herald,* 19 Jan 2006.

2 'The Last Battle; New Zealand: Farmers Are Fighting for Survival in the Backdrop to Narnia', *Economist,* 21 Jan 2006.

3 David Carter, 'Press Release: Stop the Land Access Talk-fest', New Zealand National Party (26 Feb 2006) <http://www.national.org.nz/Article.aspx?ArticleId=5930> [accessed 22 Mar 2006].

4 Damien O'Connor, Minister for Rural Affairs, 'Press Release: Progress Being Made on Walking Access – O'Connor' (28 Feb 2006) <http://www.beehive.govt.nz/ViewDocument.aspx?DocumentID=25060> [accessed 22 Mar 2006].

5 Annette Scott, 'New Land Access Report Due Later This Month', *New Zealand Farmers Weekly,* 6 Mar 2006.

6 Benedict Collins, 'Access Critics Appeased', *Rural News* (8 Mar 2006) <http://www.knowledge-basket.co.nz/ruralnews/welcome.html> [accessed 9 Mar 2006].

7 Bruce Mason, 'Government Should Sack Land Access Group', Recreation Access New Zealand (18 Feb 2007) <http://www.recreationaccess.org.nz/files/ranz_on_land_access.html> [accessed 24 Dec 2007], in About Me.

8 Rural Women New Zealand, 'New Staff - New Year', *Rural Women Alive!,* 23 Dec 2005, p. 1.

9 Outdoor Recreation New Zealand, 'Where to from Here?', *Outdoor View Point,* Nov 2005, pp. 1–2.

10 Outdoor Recreation New Zealand, 'ORNZ 2006', *Outdoor View Point,* Mar 2006, p. 1.

11 Stuff (Fairfax New Zealand), 'Outdoor Recreation, United Future Split' (27 Mar 2006) <http://www.stuff.co.nz/stuff/0,2106,3617730a6160,00.html> [accessed 29 Mar 2006].

12 Peter Dunne, Hon, 'Press Release: Dunne: ORNZ Announcement No Surprise', United Future New Zealand Party (27 Mar 2006) <http://www.unitedfuture.org.nz/press/show_item.php?t=0&i=1366> [accessed 29 Mar 2006].

13 Walking Access Consultation Panel, *Outdoor Walking Access: Consultation Document* (Wellington, NZ: Ministry of Agriculture and Forestry, 2006), p. 1.

14 Ibid., p. 5.

15 Jim Sutton, Minister for Rural Affairs, Four-page update brochure, 'Walking Access in the New Zealand Outdoors', sent to submitters, Aug 2004 [Brochure].

16 Walking Access Consultation Panel, *Outdoor Walking Access: Consultation Document* (Wellington, NZ: Ministry of Agriculture and Forestry, 2006), pp. 15, 26–28.

17 Public Access New Zealand, 'Land Access Reference Group Report 2003: PANZ Commentary and Checklist of Pros and Cons' (5 Oct 2003) <http://www.publicaccessnewzealand.com/files/access_ref_group_pros_cons.html> [accessed 29 July 2007], Cons, 11.

18 Walking Access Consultation Panel, *Outdoor Walking Access: Consultation Document* (Wellington, NZ: Ministry of Agriculture and Forestry, 2006), p. 15.

19 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 15.

20 Walking Access Consultation Panel, *Outdoor Walking Access: Consultation Document* (Wellington, NZ: Ministry of Agriculture and Forestry, 2006), p. 22.

21 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 87.

22 Ibid., p. 87.

23 Walking Access Consultation Panel, *Outdoor Walking Access: Consultation Document* (Wellington, NZ: Ministry of Agriculture and Forestry, 2006), p. 20.

24 Otago Regional Council, *Regional Plan: Coast for Otago* (Dunedin, NZ: Otago Regional Council, 2001), pp. 56–57.

25 Sharon de Vries, Otago Regional Council, to P McDonald, 'Long Term Council Community Plan Submission', 24 July 2006 [Letter].

26 'Cycleway to Ravensbourne Opened', *Otago Daily Times,* 21 Dec 2006.

27 Stu Oldham, 'Funding Row Puts Walkway at Risk', *Otago Daily Times,* 11 June 2007.

28 Ibid.

29 Sarah Harvey, 'Users Welcome Track Extension in the Sun', *Otago Daily Times,* 20 Oct 2008.

30 Mark Price, 'Cycleway at Top of Roading Issues', Otago Daily Times Online (15 May 2009) <http://www.odt.co.nz/print/56114> [accessed 15 May 2009].

31 Walking Access Consultation Panel, *Outdoor Walking Access: Consultation Document* (Wellington, NZ: Ministry of Agriculture and Forestry, 2006), p. 20.

32 Local Government and Environment Committee, 'Petition 1999/0019 of John Lockwood Wheeler, on behalf of the Federated Mountain Clubs of New Zealand: Report of the Local Government and Environment Committee', *AJHR,* 14 (2002-2005), I.22C, p. 1053.

33 Federated Mountain Clubs of New Zealand, 'Seventy-fourth Annual Report and Statement of Accounts 2005' (2005) <http://www.fmc.org.nz/documents/annual_report.pdf> [accessed 2 Feb 2006], p. 10.

34 Jim Sutton, Minister for Rural Affairs, 'Cabinet Paper: Walking Access in the New Zealand Outdoors' (20 Dec 2004) <http://www.beehive.govt.nz/ViewDocument.cfm?DocumentID=21918> [accessed 22 Dec 2004], p. 8.

35 Walking Access Consultation Panel, *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 36.

36 'National Footpath Preservation Society', *The Times,* 30 Nov 1892, p. 6.

37 Scottish Parliament, 'Written Answers Monday 9 February 2009: Land Reform (Scotland) Act 2003' (2009) <http://www.scottish.parliament.uk/business/pqa/wa-09/wa0209.htm> [accessed 13 Feb 2010].

38 'Alleged Murder: Death of a Farmer: Evidence of a Quarrel: A Road-line Dispute', *Evening Post,* 19 Mar 1936, p. 11.

39 Ibid.

40 'Murder Charge: Waitepeka Tragedy: Accused for Trial', *Evening Post,* 28 Mar 1936, p. 25.

41 Ibid.

42 'Alleged Murder: Death of a Farmer: Evidence of a Quarrel: A Road-line Dispute', *Evening Post,* 19 Mar 1936, p. 11.

43 'Gunn Acquitted: Otago Murder Trial', *Evening Post,* 11 May 1936, p. 14.

44 Local Government New Zealand, 'Report to the Road Controlling Authorities Forum: 22 April 2005' (22 Apr 2005) <http://www.transit.govt.nz/content_files/rca/RCAOrgActivityUpdate46_Filename.pdf> [accessed 15 May 2006], p. 3.

45 Tim Fulton, 'Paper Roads New Path to Land Access', *New Zealand Farmers Weekly,* 31 July 2006.

46 Pete McDonald, 'A Submission on *Outdoor Walking Access: Consultation Document*' (May 2006) <http://homepages.paradise.net.nz/petemcd/wa/wa.htm> [accessed 1 Jun 2006], p. 46.

47 'Lost His Way!', *Hawke's Bay Herald,* 20 June 1890, p. 4.

48 Public Access New Zealand, 'Restraint Needed by 4WD Users', *Public Access*, no. 13 (Feb 2001), p. 7.

49 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 93.

50 Walking Access Consultation Panel, *Outdoor Walking Access: Consultation Document* (Wellington, NZ: Ministry of Agriculture and Forestry, 2006), p. 24.

51 Allison Rudd, 'Consultation over Dirt Road Ruts Planned: DCC Seeks Answer to 4WD Damage', *Otago Daily Times,* 25 Aug 2004.

52 David Carter, 'Speech: National Right Behind Farmers', New Zealand National Party (6 May 2006) <http://www.national.org.nz/Article.aspx?ArticleId=6363> [accessed 9 May 2006].

53 Walking Access Consultation Panel, *Outdoor Walking Access: Analysis of Written Submissions* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 5.

54 Nichola Lobban, 'Walking Access to Waterways Focus of Meeting', *Southland Times,* 18 May 2006.

55 Jayne Hulbert, 'Rural Land Access Fires Up Meeting', *Taranaki Daily News,* 22 Oct 2003, p. 3.

56 Terry Tacon, 'Land Access Meeting Low Key', *Taranaki Daily News,* 25 May 2006.

57 Dan Hutchinson, 'Walking Panel Blasted', *The Press,* 26 May 2006.

58 Ibid.

59 'No Trespassing', *Marlborough Express,* 28 June 2006, p. 17.

60 'Access Panel's Tough Time', *Rural News* (11 July 2006) <http://www.knowledge-basket.co.nz/ruralnews/welcome.html> [accessed 12 July 2006].

61 Nichola Lobban, 'Walking Access to Waterways Focus of Meeting', *Southland Times,* 18 May 2006.

62 Beck Eleven, 'Costs of Land Panel Defended', *The Press,* 5 July 2006.

63 Walking Access Consultation Panel, *Outdoor Walking Access: Analysis of Written Submissions* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 1.

64 Ibid., p. 109.

65 Ibid., pp. 1–2.

66 Ibid., pp. 2–4.

67 Ibid., p. 113.

68 New Zealand Recreational GPS Society, 'Submission to the Walking Access Consultation Panel' (29 June 2006) <http://www.gps.org.nz/downloads/GPSSoc_Submission_WACP_20060629.pdf> [accessed 18 Oct 2007], p. 2.

69 Federated Mountain Clubs of New Zealand and Brian Stephenson, President, 'Submission to the Walking Access Consultation Panel' (28 July 2006) <http://www.fmc.org.nz/documents/wlkingaccess280706.doc> [accessed 9 Dec 2007], p. 5.

70 Walking Access Consultation Panel, *Outdoor Walking Access: Analysis of Written Submissions* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 142.

Chapter 30: Interlude

1 Public Access New Zealand, 'An Important Message to Our Valued Supporters', *Public Access*, no. 14 (July 2006), pp. 4–5.

2 A W Project Services, *New Zealand Walkways in Canterbury*, A report to the Department of Conservation (Little River, Canterbury, NZ: A W Project Services, 2002).

3 Pete McDonald, 'Buskin Track (80114) and Others' (April 2005) <http://homepages.paradise.net.nz/petemcd/bt/bt.htm> [accessed 16 May 2005].

4 Kay L Booth, 'Rights of Public Access for Outdoor Recreation in New Zealand' (PhD thesis, University of Otago, 2006), p. 3.

5 Sylvia Allan and Kay L Booth, *River and Lake Recreation: Issues, Research Priorities and Annotated Bibliography* (Wellington, NZ: Environmental Planning and Assessment, 1992), pp. 26–237.

6 Kay L Booth, 'Rights of Public Access for Outdoor Recreation in New Zealand' (PhD thesis, University of Otago, 2006), pp. 118, 158.

7 Ibid.

8 Ibid., p. 4.

9 Ibid., p. 5.

10 Ibid., p. 297.

11 Ibid.

12 Ibid., p. 286.

13 Ibid., p. 287.

14 Ibid., p. 289.

15 Ralph W Emerson, *Essays: Second Series* (London: Isbister, 1903), p. 148.

16 Kay L Booth, 'Rights of Public Access for Outdoor Recreation in New Zealand' (PhD thesis, University of Otago, 2006), p. 290.

17 Ibid., p. 294.

18 Bruce Mason, 'Recreation Access New Zealand: A 2007 Initiative', Recreation Access New Zealand (5 Apr 2007) <http://www.recreationaccess.org.nz/> [accessed 10 Apr 2007], in About Me.

19 Tread Lightly, 'About Us: What Is Tread Lightly?' (2007) <http://www.treadlightly.org/page.php/aboutus/About-Us.html> [accessed 24 Dec 2007].

20 Tread Lightly, 'Current Official Partners' (2008) <http://www.treadlightly.org/page.php/partners-current/Current-Official-Partners.html> [accessed 16 Feb 2008].

21 Dunedin City Council, 'Summary of Statement of Proposal: Creation of New Bylaw – To Restrict Motor Vehicles on Unformed Legal Roads in Dunedin' (11 Dec 2006) <http://www.cityofdunedin.com/city/?MItypeObj=application/pdf&MIvalObj=consult_transplant_2&ext=.pdf> [accessed 22 Dec 2007].

22 Dunedin City Council, 'Recreation in Dunedin – Mountain Biking in Dunedin' (no date) <http://www.dunedincity.govt.nz/city/?page=rec_mountbike> [accessed 23 Dec 2007].

23 Chris Morris, 'Bylaw Bid to Curb Damage by 4WDs: City Council Seeking Input on Proposals', *Otago Daily Times,* 2 Sept 2004.

24 Dunedin City Council, *Hearings Subcommittee Agenda: Proposed Bylaw to Restrict Vehicle Access to Abbotts Hill Road, Karetai Road, Paradise Road and Brinsdon Road: Monday, 23 April 2007, 9.00 am* (Dunedin, NZ: Dunedin City Council, 2007).

25 Brian E Hayes, *Roading Law as It Applies to Unformed Roads* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 46.

26 Brian E Hayes, *Roads, Water Margins and Riverbeds: The Law on Public Access* (Dunedin, NZ: Faculty of Law, University of Otago, 2008), p. 91.

27 Dunedin City Council, *Hearings Subcommittee Agenda: Proposed Bylaw to Restrict Vehicle Access to Abbotts Hill Road, Karetai Road, Paradise Road and Brinsdon Road: Monday, 23 April 2007, 9.00 am* (Dunedin, NZ: Dunedin City Council, 2007).

28 Walking Access Consultation Panel, *Outdoor Walking Access: Analysis of Written Submissions* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 112.

29 Ibid., 116–117.

30 Ibid., p. 116.

31 Bruce Mason, 'Government Should Sack Land Access Group', Recreation Access New Zealand (18 Feb 2007) <http://www.recreationaccess.org.nz/files/ranz_on_land_access.html> [accessed 24 Dec 2007].

32 Ibid., in RANZ's Objects.

33 Ibid., in Planning Needed.

34 Ibid., in Access for Recreation.

35 Ibid.

36 Bruce Mason, 'Walking Access – A Step Forward – With a Sting in the Tail', Recreation Access New Zealand (5 Apr 2007) <http://www.recreationaccess.org.nz/> [accessed 14 Apr 2007].

Chapter 31: Report of the ... Access Consultation Panel

1 Damien O'Connor, Minister for Rural Affairs, 'Press Release: Walking Access Report Offers Way Forward' (7 Mar 2007) <http://www.beehive.govt.nz/release/walking+access+report+offers+way+forward> [accessed 28 Dec 2007].

2 Quoted in Pete McDonald, 'High-quality Access: A Response to the Feedback Questions That Were Attached to the Report, *Walking Access*

in the New Zealand Outdoors' (Oct 2003) <http://homepages.paradise.net.nz/petemcd/hqa/hqa.htm> [accessed 8 Aug 2004], p. 3–5.

3 Walking Access Consultation Panel, *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 15.

4 Reuben Dale Peterson, 'Discussion of and Alternatives for the Provision of Public Recreational Access to the Port Hills of Canterbury' (BRS (Hons) thesis, Lincoln University, 1996), pp. 35–36.

5 Walking Access Consultation Panel, *Outdoor Walking Access: Analysis of Written Submissions* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 111.

6 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 74.

7 Walking Access Consultation Panel, *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 26.

8 Ibid., p. 26.

9 New Zealand Walking Access Commission, *Minutes: New Zealand Walking Access Commission Meeting: 24 August 2009* (Wellington, NZ: NZWAC, 2009), p. 4.

10 Ministry of Agriculture and Forestry, *Analysis of Written Submissions on the Report 'Walking Access in the New Zealand Outdoors'* (Wellington, NZ: Ministry of Agriculture and Forestry, 2004), p. 65.

11 Ibid., p. 68.

12 Walking Access Consultation Panel, *Outdoor Walking Access: Analysis of Written Submissions* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 44.

13 Bryce Johnson, 'Press Release: Government Review on Public Access', Fish and Game New Zealand (27 Aug 2007) <http://www.fishandgame.org.nz/Site/Features/Features_Media_AccessAug27.aspx> [accessed 31 Dec 2007].

14 Walking Access Consultation Panel, *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 112.

15 Bruce Mason, 'Walking Access – A Step Forward – With a Sting in the Tail', Recreation Access New Zealand (5 Apr 2007) <http://www.recreationaccess.org.nz/> [accessed 14 Apr 2007].

16 Walking Access Consultation Panel, *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 114.

17 Mick Strack, 'Walking Access: Submission from Mick Strack: To Walking Access Consultation Panel' (June 2006) <http://prs.org.nz/submissions/20060612%20School%20of%20Surveying%20Submission%20to%20Acland.pdf> [accessed 22 Mar 2008], p. 2.

18 Walking Access Consultation Panel, *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 56.

19 Ibid., p. 66.

20 D Alexander, 'Land and Property Law and the Environment', in *Handbook of Environmental Law,* ed. by R Harris (Wellington, NZ:

Royal Forest and Bird Protection Society of New Zealand, 2004), pp. 409–427 (p. 420).

21 Ibid. (p. 421).

22 Walking Access Consultation Panel, *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 117.

23 Alan McMillan, Secretary, Public Access New Zealand, to distribution list, subject 'PANZ Media Release-WalkingAccessPanelreport', 7 Mar 2007 [Email].

24 Alan Cooper, 'The Rise and Fall of the Anglo-Saxon Law of the Highway', *Haskins Society Journal,* 12 (2002), pp. 39–69 (p. 48).

25 Public Access New Zealand, 'Government Lying about Road "Reforms" ', *Public Access*, no. 11 (Apr 1999), pp. 1–3.

26 Walking Access Consultation Panel, *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 30.

27 Brian E Hayes, *Roading Law as It Applies to Unformed Roads* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007).

28 Brian E Hayes, *Roads, Water Margins and Riverbeds: The Law on Public Access* (Dunedin, NZ: Faculty of Law, University of Otago, 2008), p. 92.

29 Brian E Hayes, *Roading Law as It Applies to Unformed Roads* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 48.

30 Walking Access Consultation Panel, *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 33.

31 Ibid., p. 33.

32 Ibid., p. 34.

33 Ibid., p. 9.

34 Ibid., p. 38.

35 Ibid., pp. 38–45.

36 Rochelle Warrander, 'Trampers Warned Off Using Hunting Tracks on New Map', *Taranaki Daily News,* 22 May 1999, p. 5.

37 Walking Access Consultation Panel, *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), 117.

38 Ibid., p. 43.

39 Peter Dymock, to P McDonald, subject 'Digital Track Data', 14 Oct 2007 [Email].

40 Walking Access Consultation Panel, *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 58.

41 Hunter Donaldson, Ministry of Agriculture and Forestry, to P McDonald, subject 'Re: Number of Gazetted Walkways', 2 July 2008 [Email].

42 Hunter Donaldson, New Zealand Walking Access Commission, to P McDonald, subject 'Walkways and easements.xls', 7 May 2009 [Email].

43 Walking Access Consultation Panel, *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 66.

44 Ibid., p. 59.

45 Ibid., p. 66.

46 Ibid., p. 62.

47 Bruce Mason, 'Walking Access – A Step Forward – With a Sting in the Tail', Recreation Access New Zealand (5 Apr 2007) <http://www.recreationaccess.org.nz/> [accessed 14 Apr 2007].

48 Ibid.

49 Walking Access Consultation Panel, *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 46.

50 Ibid., p. 48.

51 Ibid., p. 113.

52 Kay L Booth, 'Rights of Public Access for Outdoor Recreation in New Zealand' (PhD thesis, University of Otago, 2006), p. 96.

53 Ibid., p. 96.

54 Walking Access Consultation Panel, *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 49.

55 Doug Wither, Chairman, Otago Peninsula Public Access Working Party, to Dunedin City Council Chief Executive on the subject 'Public Walking Routes - Otago Peninsula', 25 Sept 1991 [Report].

56 Ibid., p. 3.

57 E L Clark and M J Hilton, 'Measuring and Reporting Changing Public Access to and along the Coast', *New Zealand Geographer,* 59, no. 1 (July 2003), pp. 7–16 (p. 10).

58 Brian E Hayes, *Elements of the Law on Movable Water Boundaries* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), pp. 46–48.

59 *Select Cases of Trespass from the King's Courts, 1307–1399,* ed. by Morris S Arnold, The Publications of the Selden Society (London: Selden Society, 1985), vol. 100.

60 *Cromwell Argus,* 24 Aug 1870, p. 4.

61 Herbert E Evans, 'The Tramper and the Law', *Tararua: Annual Magazine of the Tararua Tramping Club*, no. 12 (Sept 1958), pp. 58–62 (p. 58).

62 New Zealand Parliament, '22 November 1968: Criminal Trespass Bill', *Parliamentary Debates (Hansard),* 358 (1968), pp. 3377–3380 (p. 3377).

63 Ibid. (p. 3379).

64 Gordon McLauchlan, 'Trespass: Farmers' Rights under New Act', *New Zealand Journal of Agriculture,* 118, no. 2 (Feb 1969), p. 77.

65 Ibid.

66 Public Access New Zealand, 'Improving Public Access to the Outdoors: A Strategy for Implementing Government's Election Policies' (10 July 2003) <http://www.publicaccessnewzealand.com/files/access_strategy_version_1.pdf> [accessed 29 July 2007], p. 3.

67 Allan John Baldwin, 'Access to and along Water Margins: The Queen's Chain Myth' (MSurv thesis, University of Otago, 1997).

68 Kay L Booth, 'Rights of Public Access for Outdoor Recreation in New Zealand' (PhD thesis, University of Otago, 2006), p. 120.

69 Federated Mountain Clubs of New Zealand, *The Future of Walkways: Proceedings of the First New Zealand Walkways Conference, Carey Park, Auckland, February 1989* (Wellington, NZ: Federated Mountain Clubs, 1990), p. 40.

70 Ralph W Emerson, *Essays: Second Series* (London: Isbister, 1903), p. 153.

71 Alan P Herbert, *Uncommon Law: Being Sixty-six Misleading Cases Revised and Collected in One Volume* (London: Methuen, 1972), p. 1.

72 Allan John Baldwin, 'Access to and along Water Margins: The Queen's Chain Myth' (MSurv thesis, University of Otago, 1997), pp. 15–16.

73 Walking Access Consultation Panel, *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 68.

74 Ibid., p. 69.

75 Ibid., p. 70.

76 Ibid., p. 71.

77 Ibid., p. 72.

78 Alan McMillan, Secretary, Public Access New Zealand, to distribution list, subject 'PANZ Media Release-WalkingAccessPanelreport', 7 Mar 2007 [Email].

79 Council of Outdoor Recreation Associations of New Zealand, 'Press Release: Land Access Report Welcomed but Timid' (7 Mar 2007) <http://www.scoop.co.nz/stories/PO0703/S00080.htm> [accessed 2 Jan 2008].

80 Mike Houlahan, 'Farmers, Trampers in Step over Report', *New Zealand Herald,* 8 Mar 2007.

81 Federated Farmers of New Zealand, 'Press Release: Access Report Takes Right Path' (7 Mar 2007) <http://www.fedfarm.org.nz/media_release/2007_03_07.html> [accessed 2 Jan 2008].

82 Ibid.

83 Brian Stephenson, to Pete McDonald, subject 'WACP's Report', 24 Mar 2007 [Email].

84 Bruce Mason, 'Walking Access – A Step Forward – With a Sting in the Tail', Recreation Access New Zealand (5 Apr 2007) <http://www.recreationaccess.org.nz/> [accessed 14 Apr 2007].

85 Ibid.

86 Ibid.

87 Bruce Mason, 'Critique of *Roading Law as It Applies to Unformed Roads* (Hayes, 2007a)', Recreation Access New Zealand (16 July 2007) <http://www.recreationaccess.org.nz/files/Mason_critique_RLAIATUR.pdf> [accessed 22 July 2007].

88 Bruce Mason, Recreation Access New Zealand, to distribution list, subject 'News Media Release: Government Must Critically Re-examine Flawed Advice', 16 July 2007 [Email].

89 Brian E Hayes, *Roading Law as It Applies to Unformed Roads* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 49.

90 Bruce Mason, 'Critique of *Roading Law as It Applies to Unformed Roads* (Hayes, 2007a)', Recreation Access New Zealand (16 July 2007) <http://www.recreationaccess.org.nz/files/Mason_critique_RLAIATUR.pdf> [accessed 22 July 2007], pp. 1, 26.

91 Brian E Hayes, 'Roading Law as it Applies to Unformed Roads – The Sequel', Walking Access Consultation Panel (16 Oct 2007) <http://www.walkingaccess.org.nz/publications/Unformed_legal_roads_-_final_version_of_response.pdf> [accessed 9 Mar 2008], p. 1.

92 Brian Stephenson, to Pete McDonald, subject 'WACP's Report', 24 Mar 2007 [Email].

93 Bruce Mason, 'Critique of *Roading Law as It Applies to Unformed Roads* (Hayes, 2007a)', Recreation Access New Zealand (16 July 2007) <http://www.recreationaccess.org.nz/files/Mason_critique_RLAIATUR.pdf> [accessed 22 July 2007], p. 4.

94 Brian E Hayes, 'Roading Law as it Applies to Unformed Roads – The Sequel', Walking Access Consultation Panel (16 Oct 2007) <http://www.walkingaccess.org.nz/publications/Unformed_legal_roads_-_final_version_of_response.pdf> [accessed 9 Mar 2008], p. 18.

95 Bruce Mason, Researcher, Recreation Access New Zealand, to distribution list, subject 'Open Letter to Public Access New Zealand', 13 Dec 2007 [Email].

96 Gordon Copeland, 'Press Release: Walking Access Report a Source of Encouragement', United Future New Zealand Party (7 Mar 2007) <http://www.unitedfuture.org.nz/press/printable_item.php?i=1559> [accessed 8 Mar 2007].

97 Metiria Turei, Conservation Spokesperson, 'Press Release: Access Report Leaves Questions Unanswered', Green Party of Aotearoa New Zealand (7 Mar 2007) <http://www.greens.org.nz/searchdocs/PR10649.html> [accessed 2 Jan 2008].

98 Pita Sharples and Tariana Turia, 'Press Release: Maori Party Supports Govt's Backdown – But Points Out Sour Taste of Contradiction', Maori Party (8 Mar 2007) <http://www.maoriparty.com/index.php?option=com_content&task=view&id=907&Itemid=2> [accessed 2 Jan 2008].

99 Ibid.

100 Ibid.

101 David Carter, 'Press Release: Right to Roam Still Costing Bundles', New Zealand National Party (16 Apr 2007) <http://www.national.org.nz/Article.aspx?articleId=9971> [accessed 20 Nov 2007].

Chapter 32: Once Bitten, Twice Shy

1 Dave Witherow and Fish and Game New Zealand, 'Access Emergency', *Reel Life*, vol. 2, issue 9 (14 Mar 2005) <http://www.reellife.co.nz/reellife/15/issue9_columns3.asp> [accessed 1 Apr 2006].

2 Michael Cullen, Minister of Finance and David Parker, Minister for Land Information, 'Press Release: New Zealanders Gain Conservation and Public Access Benefits from Station Sale' (27 Mar 2007) <http://www.beehive.govt.nz/ViewDocument.aspx?DocumentID=28794> [accessed 28 Oct 2007].

3 New Zealand Parliament, '27 March 2007: Questions for Oral Answer: Overseas Investment Legislation – Conservation and Access', *Parliamentary Debates (Hansard),* 638 (2007), pp. 8317–8318.

4 Public Access New Zealand, 'Labour, Greens, United Provide Voter Choice', *Public Access*, no. 12 (Nov 1999), pp. 1–14 (p. 14).

5 Walking Access Consultation Panel, *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 32.

6 Brian E Hayes, *Roading Law as It Applies to Unformed Roads* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 48.

7 Bruce J Mason, 'Recreational Off-road Vehicles Destroying the Environment, and Others' Enjoyment of the Outdoors', Recreation

Access New Zealand (10 Aug 2007) <http://www.recreationaccess.org.nz/files/Off-road_vehicles.pdf> [accessed 15 Feb 2008].

8 Ibid.

9 Ibid., p. 3.

10 Damien O'Connor, Minister for Rural Affairs, 'Press Release: Negotiation and Agreement the Way Forward on Walking Access' (27 Aug 2007) <http://www.walkingaccess.org.nz/pr-06.html> [accessed 3 Oct 2007].

11 David Carter, 'Press Release: Access Report Another Case of "Told You So" ', New Zealand National Party (27 Aug 2007) <http://www.national.org.nz/Article.aspx?articleId=10902> [accessed 2 Mar 2008].

12 Damien O'Connor, Minister for Rural Affairs, 'Press Release: Minister Appoints Walking Access Advisory Board' (17 Oct 2007) <http://www.beehive.govt.nz/release/minister+appoints+walking+access+advisory+board> [accessed 2 Mar 2008].

13 John Gibb, 'Big Benefits from Rural Exercise: Dunedin Man on Access Panel', *Otago Daily Times,* 19 Oct 2007.

14 Jules Pretty, 'The Greening of Healthcare', *New Scientist,* 22/29 Dec 2007, p. 32.

15 Ibid.

16 Jonathan Calder, 'Out into the Sunlight and the Pure Wind', *Open Mind: The Mental Health Magazine*, no. 128 (July-Aug 2004), pp. 6–7.

17 Richard Jefferies, *The Story of My Heart: Edited, with the First Draft of the Author's Manuscript and an Introduction and Notes by Samuel J. Looker* (London: Constable, 1947), p. 20.

18 Bill Bunn, 'Walking Restores the World and Humanity', *Pacific Ecologist*, no. 18 (Winter 2009), pp. 17–18 (p. 17).

19 Ibid. (p. 17).

20 Ibid. (p. 18).

21 Parks and Gardens Division of Hutt City Council, *Draft: Making Tracks* (Lower Hutt: Hutt City Council, Nov 2008), pp. 14–15.

22 Damien O'Connor, Minister for Rural Affairs, 'Cabinet Paper: Walking Access – Organisational Structure, Legislation and Funding' (Dec 2007) <http://www.walkingaccess.org.nz/publications/S137_Dec_07_cab_sub_release_version.pdf> [accessed 9 Mar 2008].

23 Ibid., p. 4.

24 Ibid., p. 4.

25 Pete McDonald, 'High-quality Access: A Response to the Feedback Questions That Were Attached to the Report, *Walking Access in the New Zealand Outdoors*' (Oct 2003) <http://homepages.paradise.net.nz/petemcd/hqa/hqa.htm> [accessed 8 Aug 2004], p. 12.

26 Kay L Booth, 'Rights of Public Access for Outdoor Recreation in New Zealand' (PhD thesis, University of Otago, 2006), pp. 282–283.

27 Ibid., p. 281.

28 Sport and Recreation New Zealand, 'Press Release: Experienced Line-up on Sir Edmund Hillary Outdoor Recreation Council' (21 May 2009) <http://www.sparc.org.nz/experienced-line-up-on-sir-edmund-hillary-outdoor-recreation-council> [accessed 5 July 2009].

29 Damien O'Connor, Minister for Rural Affairs, 'Press Release: New Agency to Advise on Rural Walking Access' (14 Dec 2007) <http://www.beehive.govt.nz/ViewDocument.aspx?DocumentID=31668> [accessed 19 Dec 2007].

30 John Acland, Chair of the Walking Access Advisory Board, 'Press Release: Acland Welcomes New Agency' (17 Dec 2007) <http://www.infonews.co.nz/news.cfm?l=1&t=50&id=11381> [accessed 2 Mar 2008].

31 Tim Cronshaw, 'Old Trail Good Little Earner', *The Press,* 18 Jan 2008, p. 10.

32 Land Information New Zealand, 'Topographic News: New NZTopo50 Map Series Under Way', Land Information New Zealand (June 2007) <http://s1.ec1.cc/linz/catalog.asp?CatalogID=100051&PageID=2> [accessed 7 Oct 2007].

33 Peter Dymock, to P McDonald, subject 'Paper Maps 2009', 30 Sept 2007 [Email].

34 Doug Forster, Freshmap, to P McDonald, subject 'Foot-tracks in New Zealand: Origins and Recent Issues', 18 Jan 2009 [Email].

35 Walking Access Consultation Panel, *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 40.

36 *A History of the Ordnance Survey,* ed. by W A Seymour and John H Andrews (Folkestone, England: Wm Dawson and Sons, 1980), p. 302.

37 Mark Rowe, 'Access All Areas', *Geographical,* 80, no. 6 (June 2008), pp. 40–47 (p. 42).

38 Karel Kriz, 'Are We Living in a Cartographic Illiterate Society?', in *Cartography and Art,* ed. by William Cartwright, Georg Gartner and Antje Lehn (Berlin: Springer, 2009), pp. 59–68 (p. 63).

39 Land Information New Zealand, 'Topo50 Prototype – Legend Key' (Aug 2007) <http://www.linz.govt.nz/topography/projects-programmes/topo50-project/prototype/key/index.aspx> [accessed 1 Feb 2009].

40 LINZ Customer Services, to P McDonald, subject 'Closed Tracks', 16 Feb 2009 [Email].

41 Bruce Mason first publicised the existence of Buskin Track in 1989. The track was added to NZTopo*Online* in 2007 or 2008.

42 Hamish Wilson, 'Are We Lost Yet?', *Consumer,* Sept 2007, pp. 11–12.

43 Frank Neill, 'Stately Home in Sounds', *Marlborough Express,* 31 Dec 1979, p. 11.

44 'Walkweek [advertisement]', *Marlborough Express,* 16 Mar 1983, p. 18.

45 'Minister to Open New Walkway', *Marlborough Express,* 10 Mar 1983, p. 10.

46 'Marlborough Leads on Walkways Scene', *Marlborough Express,* 17 Nov 1983, p. 3.

47 Damien O'Connor, Minister for Rural Affairs, to P McDonald, 24 Aug 2007 [Letter].

48 Craig Potton, *The Story of Marlborough Sounds Maritime Park* (Blenheim, NZ: Marlborough Sounds Maritime Park Board, 1986), pp. 120–124, & map inside back cover.

49 Automobile Association (N.Z.), *AA Guide to Walkways, South Island, New Zealand* (Auckland, NZ: Lansdowne Press, 1987), pp. 14–22.

50 Hugh Barr, to P McDonald, subject 'Queen Charlotte Track', 11 Apr 2010 [Email].

51 Nick Ward, 'Queen Charlotte Walkway to be Upgraded', *Marlborough Express,* 7 May 1993, p. 5.

52 Ibid.

53 Ann-Marie Johnson, 'On the Fast Track to Overcrowding', *Dominion Post,* 15 Jan 2005, section A, p. 16.

54 Hugh Barr, to P McDonald, subject 'Queen Charlotte Track', 11 Apr 2010 [Email].

55 Tara Ross, 'Maori Bill DOC for Use of Track', *Sunday Star-Times,* 4 Sept 2005.

56 Roy Grose, Area Manager, Marlborough Sounds Area Office, DOC, to P McDonald, subject 'Queen Charlotte Track Access', 22 Dec 2005 [Email].

57 Geoff Chapple, 'The Long Pathway: Part 3', *New Zealand Geographic*, no. 60 (Nov–Dec 2002), pp. 66–74 (pp. 66–67).

58 Simon Kennett, 'Best Mountain Bike Ride', in *Best: A New Zealand Compendium,* ed. by Ella Griffiths (Wellington, NZ: Awa Press, 2004), pp. 98–99.

59 Department of Conservation, *Principles of Co-operation and Partnership for the Queen Charlotte Track as Recorded at a Meeting of Landowners in Picton on 18 May 2005*, Unpublished agreement (Nelson, NZ: Nelson-Marlborough Conservancy, 2005).

60 Adrian Griffiths, Nelson-Marlborough Conservancy, to P McDonald, subject 'Research Query, Fact-checking', 4 Jan 2006 [Email].

61 Ann-Marie Johnson, 'On the Fast Track to Overcrowding', *Dominion Post,* 15 Jan 2005, section A, p. 16.

62 Roy Grose, Area Manager, Marlborough Sounds Area Office, DOC, to P McDonald, subject 'Queen Charlotte Track Access', 22 Dec 2005 [Email].

63 'Track under Threat', *Marlborough Express,* 11 July 2007.

64 Ibid.

65 Roy Grose, Area Manager, Marlborough Sounds Area Office, DOC, to P McDonald, subject 'Queen Charlotte Track - 21%', 29 Mar 2010 [Email].

66 Damien O'Connor, Minister for Rural Affairs, to P McDonald, 24 Aug 2007 [Letter].

67 Chris Carter, Minister of Conservation, to P McDonald, 31 Aug 2007 [Letter].

68 'Donations Sought', *Nelson Mail,* 9 Nov 2007, p. 2.

69 Bonnie Tsui, 'Points South', *National Geographic Adventure,* 9, no. 9 (Nov 2007), pp. 62–65.

70 Charles Rawlings-Way and others, *New Zealand* (Melbourne, Aus: Lonely Planet Publications, 2008).

71 Maike van der Heide, ' "New Blood" on Sounds Track Committee', *Marlborough Express,* 27 June 2008.

72 Rachel Young, 'Push to Redirect Track', *Marlborough Express,* 12 May 2009.

73 New Zealand Walking Access Commission, *Minutes: New Zealand Walking Access Commission Meeting: Monday 23 March 2009* (Wellington, NZ: NZWAC, 2009), p. 1.

74 Catherine Tudhope, for Director-General of Conservation, to P McDonald, 19 Oct 2007 [Letter].

75 Walking Access Consultation Panel, *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 58.

76 For example, Upper Clutha Environmental Society Inc v Queenstown Lakes District Council, Environment Court, Christchurch, C47/2004, 15 April 2004.

77 Wilson Farm Partnership Trust v Queenstown Lakes District Council, Environment Court, Christchurch, C158/2005, 28 Oct 2005.

78 Marjorie Cook, ' "Sour Grapes" Claim as Track Access Closes', *Otago Daily Times,* 22 Dec 2005, section The Regions, p. 1.

79 Marjorie Cook, 'Owner Explains Closure of Mt Maude Track', *Otago Daily Times,* 22 Dec 2005, section Screen: Wanaka.

80 Marjorie Cook, ' "Sour Grapes" Claim as Track Access Closes', *Otago Daily Times,* 22 Dec 2005, section The Regions, p. 1.

81 Quoted in Marjorie Cook, 'Owner Explains Closure of Mt Maude Track', *Otago Daily Times,* 22 Dec 2005, section Screen: Wanaka.

82 NZCity, 'Environment Court Decision Slammed' (20 Jan 2006) <http://home.nzcity.co.nz/news/article.aspx?ID=58744> [accessed 23 Jan 2008].

83 Debbie Jamieson, 'Owners Close Walkways in Protest', *The Press,* 23 Jan 2006, p. 4.

84 Ibid.

85 Jacinda Baker, Reserve Planner, Dunedin City Council, to P McDonald, subject 'Cleghorn St', 14 Mar 2006 [Email].

86 Dunedin Expansion League, *A Guide to Dunedin and Surrounding Districts* (Dunedin, NZ: Dunedin Expansion League, 1914), p. 21.

87 Rebecca Fox, 'Abuse May End Access', *Otago Daily Times,* 23 Apr 2005, section Dunedin, p. 1.

88 Save the Otago Peninsula, 'Protect Harbour Cone: Urgent' (22 Nov 2007) <http://www.otago-peninsula.co.nz/harbourcone/Harbour_Cone.pdf> [accessed 1 Mar 2008], p. 3.

89 Ibid., p. 2.

90 Ibid., p. 6.

91 Damien O'Connor, Minister for Rural Affairs, to P McDonald, 5 Feb 2008 [Letter].

92 Elspeth McLean, 'DCC Buys Peninsula Property', *Otago Daily Times,* 25 Jan 2008.

93 Mick Strack, 'Rethinking Property Rights in New Zealand', FIG Working Week 2004, Athens, Greece, May 22-27, 2004 (2004) <https://www.fig.net/pub/athens/papers/ts17/TS17_2_Strack.pdf> [accessed 14 June 2010], p. 8.

94 New Zealand Parliament, '2 April 2008: Waitakere Ranges Heritage Area Bill: Third Reading', *Parliamentary Debates (Hansard),* 646 (2008), pp. 15288–15305 (p. 15288).

95 Waitakere Ranges Heritage Area Act 2008, Preamble.

96 Eric Pawson, 'The Meanings of Mountains', in *Environmental Histories of New Zealand,* ed. by Eric Pawson and Tom Brooking (Melbourne: Oxford University Press, 2002), pp. 136–150 (p. 149).

97 John Pascoe, *Land Uplifted High* (Christchurch, NZ: Whitcombe & Tombs, 1952), p. 33.

98 Ibid., p. 33.

99 Eric Pawson, 'The Meanings of Mountains', in *Environmental Histories of New Zealand,* ed. by Eric Pawson and Tom Brooking (Melbourne: Oxford University Press, 2002), pp. 136–150 (p. 149).

100 Office of the Parliamentary Commissioner for the Environment, *Managing Change in Paradise: Sustainable Development in Peri-urban Areas* (Wellington, NZ: Parliamentary Commissioner for the Environment, 2001), p. iii.

101 New Zealand Parliament, '2 April 2008: Waitakere Ranges Heritage Area Bill: Third Reading', *Parliamentary Debates (Hansard),* 646 (2008), pp. 15288–15305 (15292).

102 Ibid. (15293).

103 Ibid. (p. 15290).

104 Ibid. (p. 15291).

105 Waitakere Ranges Heritage Area Act 2008, section 7(2)(g).

106 'Waitakere: Backyard Adventure', *New Zealand Herald,* 13 Jan 2010.

107 Auckland Regional Council, 'Things to Do: Hillary Trail' (2009) <http://www.arc.govt.nz/parks/whats-on-in-parks/hillary-trail/hillary-trail_home.cfm> [accessed 16 May 2010].

108 Te Araroa Trust, 'News from the Trust: Breakthrough – Matapouri to Ngunguru: 2nd April 07' (2 Apr 2007) <http://www.teararoa.org.nz/ta_news.php?if=1&news_id=89> [accessed 6 Sept 2008].

109 Te Araroa Trust, 'Te Araroa Trust News: Our 2008 Year – 31 December 2008' (31 Dec 2008) <http://www.teararoa.org.nz/index.cfm/PageID/4/ViewPage/News/fullarticle/104> [accessed 22 Mar 2009].

110 Nikki MacDonald, 'Trail Blazers', *Dominion Post,* 19 July 2008, p. 1.

111 Kay L Booth, 'Rights of Public Access for Outdoor Recreation in New Zealand' (PhD thesis, University of Otago, 2006), p. 152.

112 Walking Access Consultation Panel, *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), pp. 53–54.

113 Ibid., pp. 52–53.

114 Jude Gillies, 'Trailblazer Takes Stock of Network's Development', *Otago Daily Times,* 3 Sept 2008.

115 Ibid.

116 'New West Coast Tracks to Open', *The Press,* 8 Nov 2008, p. 4.

117 Rob Brown, 'A Heart for the Hills', *New Zealand Geographic*, no. 60 (Nov–Dec 2002), pp. 76–94 (p. 80).

118 Rob Greenaway & Associates, *Port Hills Recreation Strategy* (Christchurch, NZ: Christchurch City Council, 2004), p. 30.

119 Mike Crean, 'Old Towpath for Ramblers', *The Press,* 23 Nov 1998, p. 25.

120 Bruce Mason, 'Govt Reckless in Push for Access to Private Land', *Otago Daily Times,* 21 June 2005, section Opinion, p. 1.

121 Anne Relling and Wanaka Community Board, *Draft Upper Clutha Walking and Cycling Strategy* (Queenstown, NZ: Queenstown Lakes District Council, 2006), p. 3.

122 Barbara Withington, 'Roxburgh Walking Track Fruition of Hard Work and Grant Money', *Southland Times,* 11 Jan 2008.

123 Clutha Mata-Au River Parkway, 'e-newsletter: May 2008' (May 2008) <http://www.cmrp.org.nz/e_newsletter.html> [accessed 16 Aug 2008].

124 Diane Brown, 'Five-year Target for New Trail', *Otago Daily Times,* 11 Sept 2008, p. 1.

125 Gibbston Community Association, 'Gibbston River Trail Gets Boost' (23 Feb 2008) <http://www.infonews.co.nz/news.cfm?id=15130> [accessed 12 Aug 2010].

126 Gibbston Community Association, 'Support Grows for Gibbston River Trail Completion' (27 Jan 2009) <http://www.infonews.co.nz/news.cfm?id=32750> [accessed 12 Aug 2010].

127 Gibbston Community Association, 'Press Release: $1.4m Gibbston River Trail [Will Be] Officially Opened on Dec 4 2010' (8 Nov 2010) <http://www.scoop.co.nz/stories/AK1011/S00138/4m-gibbston-river-trail-officially-opened-on-dec-4.htm> [accessed 6 Dec 2010].

128 Parks and Gardens Division of Hutt City Council, *Draft: Making Tracks* (Lower Hutt: Hutt City Council, Nov 2008), pp. 1, 11, 26, 36.

129 Ibid., pp. 5, 13, 20.

130 New Zealand Historic Places Trust and Errol Vincent, 'Ohakune to Horopito Coach Road' (22 Oct 2004) <http://www.historic.org.nz/Register/ListingDetail.asp?RID=7574&sm=> [accessed 12 Apr 2009].

131 David Bruce, 'Steps Eventually Taken to Develop Coastal Walkway in the South', *Taranaki Daily News,* 16 Mar 2006, p. 3.

132 Diana Reid, to P McDonald, subject 'Re: South Taranaki Coastal Trail', 23 July 2010 [Email].

133 Kelly Loney, 'Small Steps towards Southern Walkway', *Taranaki Daily News,* 25 May 2010.

134 Taranaki Regional Council, *Regional Walkways and Cycleways Strategy for Taranaki* (Stratford, NZ: Taranaki Regional Council, 2007), pp. 42–52.

135 Ibid., p. 55.

136 'Trail Blazers Question Land Access Law Move', *Country-Wide South,* 6 Dec 2004.

137 Kay L Booth, 'Rights of Public Access for Outdoor Recreation in New Zealand' (PhD thesis, University of Otago, 2006), p. 167.

138 Walking Access Consultation Panel, *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 52.

139 Tess Redgrave, 'Putaruru's Pumping', *North & South,* Aug 2004, p. 31.

140 'Trail Builders Tackle Pirongia Summit', *New Zealand Herald,* 2 Mar 2005.

141 Ibid.

142 Kristin MacFarlane, 'Walkway Workers Welcome', *Daily Post,* 14 Apr 2006.

143 Tanya Katterns, 'Castlepoint Locals Pitch in to Upgrade Walkway', *Dominion Post,* 12 Apr 2006, p. 4.

144 Roger Dane, 'An Off Road Walking Track from Okiato to Russell', *Russell Review,* 2005, pp. 92–94.

145 Roger Dane, 'An Update on the Okiato to Russell Walkway', *Russell Review,* 2006, p. 101.

146 Roger Dane, 'Okiato to Russell Walking Track', *Russell Review,* 2009, pp. 65–67.

147 Parks and Gardens Division of Hutt City Council, *Draft: Making Tracks* (Lower Hutt: Hutt City Council, Nov 2008), p. 20.

148 André Hueber, 'Ngunguru Track Forms Another Link in Cape Reinga–Bluff Trail', *Northern Advocate,* 3 Jan 2009.

149 Te Araroa Trust, 'Te Araroa Newsletter: Back Blocks Trail Blazer' (30 June 2009) <http://www.teararoa.org.nz/index.cfm/pageid/3/viewarchive/39> [accessed 5 July 2009].

150 Ten years later, in 2008, proposals emerged for an 11-km 'public walkway, fitness trail and visitor attraction' along the disused railway line between Kaikohe and Okaihau. Neal Wallace, 'Interference in Values Alleged', *Otago Daily Times,* 21 Oct 2008.

151 Dunedin City Council, *Track Policy and Strategy: Community and Recreation Planning* (Dunedin, NZ: Dunedin City Council, 1998; repr. 2002), p. 20.

152 Geoff Chapple, 'Long Trails: Origins, Governance & Volunteer Support in the USA, Canada & UK: A Report with Reference to Te Araroa, NZ's Long Pathway: Based on a Churchill Fellowship of 2000' (1 Apr 2001) <http://www.teararoa.org.nz/userfiles/file/Brochure/Long%20Trails%20Monograph%202001.pdf> [accessed 14 Mar 2009], p. 30.

153 Public Access New Zealand, 'Improving Public Access to the Outdoors: A Strategy for Implementing Government's Election Policies' (10 July 2003) <http://www.publicaccessnewzealand.com/files/access_strategy_version_1.pdf> [accessed 29 July 2007], p. 11.

154 Statistics New Zealand, 'A.2: Land Used for Agriculture and Forestry in New Zealand', Ministry of Agriculture and Forestry (Aug 2008) <http://www.maf.govt.nz/mafnet/rural-nz/statistics-and-forecasts/sonzaf/2008/tables/A-2.xls> [accessed 21 June 2009].

Chapter 33: Tenure Review Rolls on, 2004–2007

1 Roberta McIntyre, *Whose High Country?: A History of the South Island High Country of New Zealand* (North Shore, NZ: Penguin Books, 2008). Also Ann Brower, *Who Owns the High Country?: The Controversial Story of Tenure Review in New Zealand* (Nelson, NZ: Craig Potton Publishing, 2008).

2 Chris Carter, Minister of Conservation, 'Press Release: Capacity Package for High Country Tenure Review' (1 June 2004) <http://www.beehive.govt.nz/release/capacity+package+high+country+tenure+review> [accessed 12 Feb 2008].

3 High Country Accord, 'Fact Sheet [on Tenure Review]' (21 Mar 2005) <http://www.highcountryaccord.co.nz/downloads/High_Country_Accord_Fact_Sheet_2005-0321.doc> [accessed 12 Feb 2008], p. 5.

4 Royal Forest and Bird Protection Society of New Zealand, 'Tenure Review Fact Sheet' (18 Apr 2005) <http://www.forestandbird.org.nz/highcountry/tenure/factsheet.asp> [accessed 12 Feb 2008].

5 Caroline Saunders and Martin Emanuelsson, 'Economic Benefits and Costs of Freehold Versus Crown Ownership of High Natural Value Land with Economic (or Productive) Value', High Country Accord (12 Apr 2005) <http://www.highcountryaccord.co.nz/downloads/Lincoln__report_-_final.doc> [accessed 12 Feb 2008].

6 High Country Accord, 'Who Should Own the Tussocks?' (5 Sept 2005) <http://www.highcountryaccord.co.nz/downloads/Lincoln_Edited_Summary_2005-0905.doc> [accessed 12 Feb 2008].

7 Mick Strack, 'Back to the Land: Walking Access to the Outdoors', *New Zealand Surveyor*, no. 295 (Dec 2005), pp. 20–27 (p. 23).

8 Ann Lacey Brower, 'Interest Groups, Vested Interests, and the Myth of Apolitical Administration: The Politics of Land Tenure Reform on the South Island of New Zealand: Report Submitted with Honour to Fulbright New Zealand February 2006', Fulbright New Zealand (Feb 2006) <http://www.fulbright.org.nz/voices/theses/docs/browera.pdf> [accessed 12 Feb 2008].

9 Ibid., p. 3.

10 Ibid., p. 95.

11 Ibid., p. 2.

12 Ann Brower, *Who Owns the High Country?: The Controversial Story of Tenure Review in New Zealand* (Nelson, NZ: Craig Potton Publishing, 2008), p. 14.

13 Ibid., p. 15.

14 Federated Farmers of New Zealand, 'Press Release: High Country Report Flawed' (23 Feb 2006) <http://www.fedfarm.org.nz/media_release/2006-02-23.html> [accessed 13 Feb 2008].

15 Kamala Hayman, 'Study Says Farmers Freeloading', *The Press,* 24 Feb 2006.

16 Ann Brower, *Who Owns the High Country?: The Controversial Story of Tenure Review in New Zealand* (Nelson, NZ: Craig Potton Publishing, 2008), pp. 14–15.

17 Geoffrey Thomson, Co-chair, High Country Accord, 'Concerns about Dr Ann Brower's Research on Land Tenure Review', High Country Accord (11 Mar 2006) <http://www.highcountryaccord.co.nz/downloads/Concerns_re_Brower_Report.doc> [accessed 13 Feb 2008].

18 Ann Brower, *Who Owns the High Country?: The Controversial Story of Tenure Review in New Zealand* (Nelson, NZ: Craig Potton Publishing, 2008), pp. 24–25.

19 High Country Accord, 'Press Release: Lincoln Academic "Ill-informed" ' (17 Jan 2007) <http://www.highcountryaccord.co.nz/index.php?page=11> [accessed 3 Jan 2009].

20 Ann Brower, *Who Owns the High Country?: The Controversial Story of Tenure Review in New Zealand* (Nelson, NZ: Craig Potton Publishing, 2008), p. 62.

21 Ibid., pp. 66–67.

22 Canterbury-Aoraki Conservation Board, 'Press Release: Board Calls for Immediate Moratorium' (8 Aug 2006) <http://www.scoop.co.nz/stories/AK0608/S00077.htm> [accessed 13 Feb 2008].

23 Ann Brower, *Who Owns the High Country?: The Controversial Story of Tenure Review in New Zealand* (Nelson, NZ: Craig Potton Publishing, 2008), p. 82.

24 Quoted in ibid., p. 78.

25 Ibid., pp. 78–79.

26 Mike White, 'High Country Hijack', *North & South,* Nov 2006, pp. 40–52.

27 Royal Forest and Bird Protection Society of New Zealand, 'Press Release: Conservation Misses Out Again in Latest High Country Privatisation' (6 Sept 2006) <http://www.forestandbird.org.nz/mediarelease/2006/0906_conservationmissesout.asp> [accessed 13 Feb 2008].

28 David Parker, Minister for Land Information, 'Press Release: No Decision Yet on Blairich Station' (6 Sept 2006) <http://www.beehive.govt.nz/release/no+decision+yet+blairich+station> [accessed 13 Feb 2008].

29 Public Access New Zealand, to P McDonald, subject 'PANZ Backs Moratorium on High Country Tenure Review', 21 Sept 2006 [Email].

30 Lewis Evans and Neil Quigley, 'A Review of Ann Lacey Brower "Interest Groups, Vested Interests, and the Myth of Apolitical Administration: The Politics of Land Tenure Reform on the South Island of New Zealand" ' (15 Oct 2006) <http://www.

highcountryaccord.co.nz/downloads/Evans-Quigley_Report.pdf> [accessed 13 Feb 2008], p. 3.

31 Ibid.

32 Ibid., p. 16.

33 Ibid., p. 2.

34 Ann Lacey Brower, 'Interest Groups, Vested Interests, and the Myth of Apolitical Administration: The Politics of Land Tenure Reform on the South Island of New Zealand: Report Submitted with Honour to Fulbright New Zealand February 2006', Fulbright New Zealand (Feb 2006) <http://www.fulbright.org.nz/voices/theses/docs/browera.pdf> [accessed 12 Feb 2008], p. 91.

35 Lewis Evans and Neil Quigley, 'A Review of Ann Lacey Brower "Interest Groups, Vested Interests, and the Myth of Apolitical Administration: The Politics of Land Tenure Reform on the South Island of New Zealand" ' (15 Oct 2006) <http://www.highcountryaccord.co.nz/downloads/Evans-Quigley_Report.pdf> [accessed 13 Feb 2008], p. 8.

36 Ann Brower, *Who Owns the High Country?: The Controversial Story of Tenure Review in New Zealand* (Nelson, NZ: Craig Potton Publishing, 2008), p. 106.

37 Mike White, 'High Country Hijack', *North & South,* Nov 2006, pp. 40–52.

38 Quoted in Ann Brower, *Who Owns the High Country?: The Controversial Story of Tenure Review in New Zealand* (Nelson, NZ: Craig Potton Publishing, 2008), p. 137.

39 Ibid., p. 77.

40 Land Information New Zealand, 'Pastoral Lease Rent Rises Reflect Land Market Movements' (4 May 2007) <http://www.linz.govt.nz/home/news/items/20070504-pastoral-lease/index.html> [accessed 13 Feb 2008].

41 Neal Wallace, 'Crown Considers Minaret a Test Case', Otago Daily Times Online (2008) <http://www.odt.co.nz/print/27154> [accessed 6 Feb 2009].

42 David Parker, Minister for Land Information, 'Press Release: Govt to Work with High Country Farmers on Rent Issues' (4 May 2007) <http://www.beehive.govt.nz/release/govt+work+high+country+farmers+rent+issues> [accessed 13 Feb 2008].

43 Neal Wallace, 'Higher Rents Will Shape a New Landscape', *Otago Daily Times,* 8 May 2007.

44 StopTenureReview, 'Who We Are' (2007) <http://www.stoptenurereview.co.nz/us.html> [accessed 14 Feb 2008].

45 Ann Brower, *Who Owns the High Country?: The Controversial Story of Tenure Review in New Zealand* (Nelson, NZ: Craig Potton Publishing, 2008), p. 146.

46 StopTenureReview, 'Public Access: Outcomes for Recreational Access Are Shonky' (2007) <http://www.stoptenurereview.co.nz/access.html> [accessed 14 Feb 2008].

47 StopTenureReview, 'Who We Are' (2007) <http://www.stoptenurereview.co.nz/us.html> [accessed 14 Feb 2008].

48 StopTenureReview, 'Public Access: Outcomes for Recreational Access Are Shonky' (2007) <http://www.stoptenurereview.co.nz/access.html> [accessed 14 Feb 2008].

49 Chris Carter, Minister of Conservation and David Parker, Minister for Land Information, 'Cabinet Paper: South Island High Country: Landscape, Biodiversity and Access Issues' (1 June 2007) <http://www.linz.govt.nz/home/news/items/20070621-si-lakesides/cbc-si-cabinet-paper-050607.pdf> [accessed 13 Oct 2007].

50 Alan McMillan, Chairperson, Public Access New Zealand, 'A Simple Remedy for High Country Access', *The Press,* 6 Sept 2007.

51 Chris Carter, Minister of Conservation and David Parker, Minister for Land Information, 'Cabinet Paper: South Island High Country: Landscape, Biodiversity and Access Issues' (1 June 2007) <http://www.linz.govt.nz/home/news/items/20070621-si-lakesides/cbc-si-cabinet-paper-050607.pdf> [accessed 13 Oct 2007], Questions and Answers.

52 In this news release, the inclusion of DOC's Nature Heritage Fund purchases made the figures paint a more favourable picture for conservation than was actually the case. See Ann Brower, *Who Owns the High Country?: The Controversial Story of Tenure Review in New Zealand* (Nelson, NZ: Craig Potton Publishing, 2008), pp. 111–114.

53 Chris Carter, Minister of Conservation and David Parker, Minister for Land Information, 'Cabinet Paper: South Island High Country: Landscape, Biodiversity and Access Issues' (1 June 2007) <http://www.linz.govt.nz/home/news/items/20070621-si-lakesides/cbc-si-cabinet-paper-050607.pdf> [accessed 13 Oct 2007], Questions and Answers.

54 Ann Brower, *Who Owns the High Country?: The Controversial Story of Tenure Review in New Zealand* (Nelson, NZ: Craig Potton Publishing, 2008), pp. 148–149.

55 High Country Accord, 'Press Release: Another Blow for the High Country', 21 June 2007.

56 Ann Brower, *Who Owns the High Country?: The Controversial Story of Tenure Review in New Zealand* (Nelson, NZ: Craig Potton Publishing, 2008), pp. 118–136.

57 Chris Carter, Minister of Conservation and David Parker, Minister for Land Information, 'Cabinet Paper: South Island High Country: Properties for Crown Withdrawal from Tenure Review' (26 Oct 2007) <http://www.linz.govt.nz/docs/crownproperty/highcountry/cbc-properties-crown-withdrawal-tenure-review.pdf> [accessed 1 Jan 2009], p. 2.

58 David Parker, Minister for Land Information, 'Press Release: Lakeside Properties Identified for Protection' (15 Nov 2007) <http://www.beehive.govt.nz/release/lakeside+properties+identified+protection> [accessed 4 Jan 2009].

59 John Page and Ann Brower, 'Property Law in the South Island High Country – Statutory, Not Common Law Leases', *Waikato Law Review: Taumauri,* 15 (2007), pp. 48–63.

Chapter 34: Walking Access Act 2008

1 Public Access New Zealand, 'Labour, Greens, United Provide Voter Choice', *Public Access*, no. 12 (Nov 1999), pp. 1–14 (p. 1).

2 Ibid. (p. 14).

3 Public Access New Zealand, '2002 Election Guide to Party Policies' (19 July 2002) <http://www.publicaccessnewzealand.com/files/2002_election_guide.html> [accessed 29 July 2007].

4 New Zealand Government, 'Walking Access Bill 208-1 (2008), Government Bill' (8 Apr 2008) <http://www.legislation.govt.nz/bill/government/2008/0208-1/latest/viewpdf.aspx> [accessed 14 Apr 2008], p. 2.

5 Barbara Withington, 'Roxburgh Walking Track Fruition of Hard Work and Grant Money', *Southland Times,* 11 Jan 2008.

6 New Zealand Parliament, '15 April 2008: Walking Access Bill: First Reading', *Parliamentary Debates (Hansard),* 646 (2008), pp. 15639–15660 (p. 15640).

7 Ibid. (p. 15647).

8 Ibid. (p. 15647).

9 Ibid. (p. 15641).

10 Walking Access Consultation Panel, *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), pp. 117–118.

11 Barbara Marshall, Secretary, Federated Mountain Clubs of New Zealand, to Local Government and Environment Select Committee, subject '[FMC] Submission on Walking Access Bill', 18 May 2008 [Letter].

12 The New Zealand Walkways Amendment Act 1977 enabled the minister of lands, with the consent of the local body and affected landowners, to declare an unformed public road to be a walkway.

13 Bruce Mason, *Public Roads: A Guide to Rights of Access to the Countryside* (Dunedin, NZ: Public Lands Coalition, 1991), p. 23.

14 W B Johnson, Chief Executive, New Zealand Fish and Game Council, to Local Government and Environment Select Committee, subject '[NZFGC] Submission on Walking Access Bill', 21 May 2008 [Letter].

15 Brian E Hayes, *Roading Law as It Applies to Unformed Roads* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 45.

16 Bruce Mason, Researcher, Recreation Access New Zealand, to distribution list, subject 'An Act of Repression (5)', 26 Apr 2008 [Email].

17 Ibid.

18 Ibid.

19 Alan McMillan, to Local Government and Environment Select Committee, subject 'Submission on the Walking Access Bill', 16 May 2008 [Letter].

20 Bryce Johnson, to P McDonald, subject 'Walking Access Bill and Walkways Superimposed onto Unformed Public Roads', 21 Apr 2008 [Email].

21 W B Johnson, Chief Executive, New Zealand Fish and Game Council, to Local Government and Environment Select Committee, subject '[NZFGC] Submission on Walking Access Bill', 21 May 2008 [Letter], pp. 11-15.

22 Hugh Barr, 'Press Release: New Access Bill Downgrades, Closes Public Access', Council of Outdoor Recreation Associations of New Zealand (2008) <http://www.scoop.co.nz/stories/PO0806/S00121.htm> [accessed 21 Mar 2008].

23 Brian Stephenson, to P McDonald, subject 'Submission on the Walking Access Bill', 30 Apr 2008 [Email].

24 Barbara Marshall, Secretary, Federated Mountain Clubs of New Zealand, to Local Government and Environment Select Committee,

subject '[FMC] Submission on Walking Access Bill', 18 May 2008 [Letter].

25 Local Government and Environment Committee, 'Walking Access Bill: 208-2: Report of the Local Government and Environment Committee: 29 July 2008', *AJHR,* 14 (2005-08), I.22C, pp. 751–765.

26 Ibid. (p. 757).

27 New Zealand Parliament, '23 September 2008: Continued on 25 September 2008: Walking Access Bill – In Committee and Third Reading', *Parliamentary Debates (Hansard),* 650 (2008), pp. 19205–19222 (p. 19090).

28 Local Government and Environment Committee, 'Walking Access Bill: 208-2: Report of the Local Government and Environment Committee: 29 July 2008', *AJHR,* 14 (2005-08), I.22C, pp. 751–765 (p. 763).

29 Matt Philp, 'The No-Go Zones', *North & South,* Aug 2008, pp. 40–49.

30 Ibid.

31 'Apology and Clarification', *North & South,* Sept 2008, p. 16.

32 Matt Philp, 'The No-Go Zones', *North & South,* Aug 2008, pp. 40–49.

33 New Zealand Parliament, '26 August 2008: Walking Access Bill: Second Reading', *Parliamentary Debates (Hansard),* 649 (2008), pp. 17932–17949 (p. 17936).

34 Ibid. (p. 17945).

35 Ibid. (p. 17935).

36 Ibid. (pp. 17938–17939).

37 Ibid. (p. 17939).

38 Annabell Ross, 'Rugged Road Ahead for Access Group' (7 Oct 2008) <http://www.ruralnews.co.nz/Default.asp?task=article&subtask=print&item=16347&pageno=1> [accessed 20 Dec 2008].

39 New Zealand Parliament, '23 September 2008: Continued on 25 September 2008: Walking Access Bill – In Committee and Third Reading', *Parliamentary Debates (Hansard),* 650 (2008), pp. 19205–19222 (p. 19089).

40 Ibid. (p. 19209).

41 Ibid. (p. 19209).

42 Ibid. (p. 19222).

Chapter 35: Four Books ... and Exclusive Possession

1 Roberta McIntyre, *Whose High Country?: A History of the South Island High Country of New Zealand* (North Shore, NZ: Penguin Books, 2008), p. 7.

2 Ibid., p. 306.

3 Ibid., p. 310.

4 Ibid., pp. 348–349.

5 Ibid., p. 350.

6 Mike Crean, 'History with Gusto', *The Press,* 18 Oct 2008, p. 13.

7 High Country Accord, 'Press Release: Brower Book Should Be Read with a "Pinch of Salt" ' (2 Sept 2008) <http://www.highcountryaccord.co.nz/index.php?page=11> [accessed 3 Jan 2009].

8 Ann Brower, *Who Owns the High Country?: The Controversial Story of Tenure Review in New Zealand* (Nelson, NZ: Craig Potton Publishing, 2008), p. 25.

9 Richard Thomson, 'Scoop Review of Books: The Squattocracy's 2nd Land Grab: Who Owns the High Country? by Ann Brower' (16 Nov 2008) <http://books.scoop.co.nz/the-squatocracys-2nd-land-grab/> [accessed 24 Dec 2008].

10 Ann Brower, *Who Owns the High Country?: The Controversial Story of Tenure Review in New Zealand* (Nelson, NZ: Craig Potton Publishing, 2008), p. 161.

11 Ray Macleod, 'Little Advanced on High Country Ownership', *Otago Daily Times,* 17 Oct 2008.

12 Ibid.

13 Janine Bennetts, 'Rent Rise for Scenic Stations', *The Press,* 14 Oct 2006, p. 4.

14 Ibid.

15 Commissioner of Crown Lands v Minaret Station Ltd, District Court, Dunedin, LVP2/05, 31 July 2009, para. 2.

16 Commissioner of Crown Lands v Minaret Station Ltd, District Court, Dunedin, LVP2/05, 31 July 2009, para. 14.

17 Neal Wallace, 'Tribunal Told of Link between Rent and Tenure Review', *Otago Daily Times,* 15 Oct 2008.

18 Land Information New Zealand, 'Briefing to the Minister for Land Information' (Nov 2008) <http://www.linz.govt.nz/docs/supporting-info/publications/linz-bim-2008.pdf> [accessed 26 Dec 2008], p. 11.

19 Neal Wallace, 'Interference in Values Alleged', *Otago Daily Times,* 21 Oct 2008.

20 Iconic Adventures, 'Motatapu Icebreaker 09' (2008) <http://www.iconicadventures.co.nz/Motatapu/> [accessed 24 Jan 2009].

21 Iconic Adventures, 'Motatapu Icebreaker 50km High Country Mountain Bike' (2008) <http://www.iconicadventures.co.nz/Motatapu/Bike/bike.asp> [accessed 24 Jan 2009].

22 Goldrush, 'The Goldrush MultiSport Event' (2008) <http://www.goldrush.co.nz/> [accessed 24 Jan 2009].

23 Goldrush, 'Entry Forms: 21st – 23 March 2009' (2008) <http://www.goldrush.co.nz/entry_form.html> [accessed 24 Jan 2009].

24 LMS Events, 'Contact EPIC: NZ's Ultimate Mountain Biking Challenge: Lake Hawea, Wanaka, 25th April 2009' (2008) <http://www.lakehaweaepic.co.nz/about.html> [accessed 24 Jan 2009].

25 Ibid.

26 LMS Events, 'Contact EPIC: NZ's Ultimate Mountain Biking Challenge: Lake Hawea, Wanaka, 25th April 2009: Course Description' (2008) <http://www.lakehaweaepic.co.nz/course.html> [accessed 24 Jan 2009].

27 John Page and Ann Brower, 'Property Law in the South Island High Country – Statutory, Not Common Law Leases', *Waikato Law Review: Taumauri,* 15 (2007), pp. 48–63. Also John Page and Ann Brower, 'Views, Property Rights, and New Zealand Land Reform', *International Journal of Business and Globalization,* 2, no. 4 (2008), pp. 468–493.

28 Ann Brower, *Who Owns the High Country?: The Controversial Story of Tenure Review in New Zealand* (Nelson, NZ: Craig Potton Publishing, 2008), p. 43.

29 Richard Thomson, 'Scoop Review of Books: The Squattocracy's 2nd Land Grab: Who Owns the High Country? by Ann Brower' (16 Nov

2008) <http://books.scoop.co.nz/the-squatocracys-2nd-land-grab/> [accessed 24 Dec 2008].

30 Otago Daily Times Online, 'Fish and Game to Take on Farmers' (29 Aug 2008) <http://www.odt.co.nz/print/20153> [accessed 20 Dec 2008].

31 Land Information New Zealand, 'Briefing to the Minister for Land Information' (Nov 2008) <http://www.linz.govt.nz/docs/supporting-info/publications/linz-bim-2008.pdf> [accessed 26 Dec 2008], p. 12.

32 Federated Farmers of New Zealand, 'Press Release: Out of Step on Walking Access' (26 Sept 2008) <http://www.fedfarm.org.nz/n684.html> [accessed 26 Dec 2008].

33 Land Information New Zealand, 'Briefing to the Minister for Land Information' (Nov 2008) <http://www.linz.govt.nz/docs/supporting-info/publications/linz-bim-2008.pdf> [accessed 26 Dec 2008], p. 12.

34 Neal Wallace, 'Pastoral Lessees Go to Court', Otago Daily Times Online (26 Mar 2009) <http://www.odt.co.nz/print/48972> [accessed 26 Mar 2009].

35 NZPA, 'Court Strategy in Case for High Country Access Changes Suddenly' (26 Mar 2009) <http://www.voxy.co.nz/national/court-strategy-case-high-country-access-changes-suddenly/5/10958> [accessed 28 Mar 2009].

36 Ibid.

37 Ibid.

38 The New Zealand Fish and Game Council v Her Majesty's Attorney-General in Respect of Commissioner of Crown Lands and Anor, HC WN, CIV 2008-485-2020, 12 May 2009, para. 74.

39 The New Zealand Fish and Game Council v Her Majesty's Attorney-General in Respect of Commissioner of Crown Lands and Anor, HC WN, CIV 2008-485-2020, 12 May 2009, paras. 33–47.

40 High Country Accord, 'Press Release: High Court Confirms Lessees' Rights' (14 May 2009) <http://www.highcountryaccord.co.nz/index.php?page=11> [accessed 16 May 2009].

41 Ibid.

42 Federated Farmers of New Zealand, 'Press Release: Fish & Game's High Court Action a Disaster' (14 May 2009) <http://www.fedfarm.org.nz/n1470.html> [accessed 11 Dec 2009].

43 David Carter, 'Press Release: Minister Questions Court Action on Land Access', New Zealand National Party (15 May 2009) <http://www.national.org.nz/Article.aspx?articleId=29956> [accessed 16 May 2009].

44 Neal Wallace, 'High Court Finds for Farmers', Otago Daily Times Online (14 May 2009) <http://www.odt.co.nz/print/55865> [accessed 16 May 2009].

45 New Zealand Walking Access Commission, 'Court: A High Country Pastoral Lease Is Still a Lease' (12 May 2009) <http://www.walkingaccess.org.nz/store/doc/CrownPastoralLeaseHighCourtRuling.pdf> [accessed 25 May 2009].

46 New Zealand Walking Access Commission, *Minutes: New Zealand Walking Access Commission Meeting: Monday 23 March 2009* (Wellington, NZ: NZWAC, 2009), pp. 3–4.

47 Rob Roney, Chairman, New Zealand Fish and Game Council, 'Press Release: NZ Fish & Game Council Has Full Confidence in the Chief

Executive', NZF&GC (6 Nov 2009) <http://www.fishandgame.org.nz/Site/Features/Features_Media61109.aspx> [accessed 24 Dec 2009].

48 Ibid.

49 Ibid.

50 Ibid.

51 Rebecca Fox, 'F&G Council Lacks Trust in Chief Exec', Otago Daily Times Online (3 Nov 2009) <http://www.odt.co.nz/print/80504> [accessed 24 Dec 2009].

52 Rob Roney, Chairman, New Zealand Fish and Game Council, 'Press Release: NZ Fish & Game Council Has Full Confidence in the Chief Executive', NZF&GC (6 Nov 2009) <http://www.fishandgame.org.nz/Site/Features/Features_Media61109.aspx> [accessed 24 Dec 2009].

53 Ruth Mason, 'Track or Trail: Notes on Some Words Used by Trampers', *Tararua: Annual Magazine of the Tararua Tramping Club*, no. 12 (Sept 1958), pp. 22–32 (p. 24).

54 Mark Neeson, 'Walking Access in the Outdoors', *Primary Industry Management,* 7, no. 1 (Mar 2004), pp. 36–37 (p. 36).

55 Brian E Hayes, *Roads, Water Margins and Riverbeds: The Law on Public Access* (Dunedin, NZ: Faculty of Law, University of Otago, 2008), p. 3.

Chapter 36: NZWAC, Frugal Start-up

1 Sarah Arnott, 'Credit Crisis Rocks the World', *The Independent* (11 Oct 2008) <http://www.independent.co.uk/news/business/analysis-and-features/credit-crisis-rocks-the-world-957956.html> [accessed 18 Oct 2008].

2 John Stepek, 'The Darkest Day for Global Markets – So Far', *MoneyWeek* (6 Oct 2008) <http://www.moneyweek.com/investments/stock-markets/the-darkest-day-for-global-markets-so-far-69190.aspx> [accessed 11 Oct 2008].

3 Damien O'Connor, Minister for Rural Affairs, 'Press Release: Walking Access Commission Members Announced' (13 Oct 2008) <http://www.beehive.govt.nz/release/walking+access+commission+members+announced> [accessed 18 Oct 2008].

4 New Zealand Parliament, '23 September 2008: Continued on 25 September 2008: Walking Access Bill – In Committee and Third Reading', *Parliamentary Debates (Hansard),* 650 (2008), pp. 19205–19222 (p. 19210).

5 'Nelsonian Ready to Talk the Walk', *Nelson Mail* (15 Oct 2008) <http://www.stuff.co.nz/4728212a6510.html> [accessed 18 Oct 2008].

6 New Zealand Parliament, '23 September 2008: Continued on 25 September 2008: Walking Access Bill – In Committee and Third Reading', *Parliamentary Debates (Hansard),* 650 (2008), pp. 19205–19222 (p. 19216).

7 Ibid. (p. 19216).

8 National Party, 'Hon David Carter' (2009) <http://www.davidcarter.co.nz/> [accessed 30 Jan 2009].

9 National Party and Maori Party, 'Relationship and Confidence and Supply Agreement between the National Party and the Maori Party' (16 Nov 2008) <http://www.national.org.nz/files/agreements/National-Maori_Party_agreement.pdf> [accessed 23 Nov 2008].

10 Ibid.

11 'Gains and Risks', *The Press,* 17 Nov 2008.

12 Anthony Hubbard, 'Nick Smith: in the Nick of Time', *Sunday Star-Times,* 23 Nov 2008.

13 New Zealand Parliament, '26 August 2008: Walking Access Bill: Second Reading', *Parliamentary Debates (Hansard),* 649 (2008), pp. 17932–17949 (p. 17933).

14 Ibid. (p. 17940).

15 New Zealand Walking Access Commission, *Minutes: New Zealand Walking Access Commission Meeting: Monday 20 October 2008* (Wellington, NZ: NZWAC, 2008).

16 Ibid.

17 New Zealand Walking Access Commission, *Minutes: New Zealand Walking Access Commission Meeting: Wednesday 12 November 2008* (Wellington, NZ: NZWAC, 2008).

18 New Zealand Walking Access Commission, *Minutes: New Zealand Walking Access Commission Meeting: Tuesday 24 February 2009* (Wellington, NZ: NZWAC, 2009), pp. 7–8.

19 Ibid., p. 1.

20 Ibid., p. 1.

21 New Zealand Walking Access Commission, *Statement of Intent for 2008/11* (Wellington, NZ: NZWAC, 27 Feb 2009), pp. 7–8.

22 Ibid., pp. 8–9.

23 Ibid., p. 13.

24 Ibid., p. 9.

25 New Zealand Walking Access Commission, *Minutes: New Zealand Walking Access Commission Meeting: Wednesday 17 & Thursday 18 December 2008* (Wellington, NZ: NZWAC, 2008).

26 New Zealand Walking Access Commission, *Minutes: New Zealand Walking Access Commission Meeting: Tuesday 24 February 2009* (Wellington, NZ: NZWAC, 2009), pp. 6–7.

27 Ibid., pp. 8–9.

28 New Zealand Walking Access Commission, *Notes of Meeting of the New Zealand Walking Access Commission with the Waitakere City Council, Henderson, Monday 27 April 2009* (Wellington, NZ: NZWAC, 2009), p. 1.

29 New Zealand Walking Access Commission, *Annual Report: 30 September 2008 to 30 June 2009* (Wellington, NZ: NZWAC, 2009), p. 10.

30 New Zealand Walking Access Commission, *Statement of Intent for 2009/12* (Wellington, NZ: NZWAC, 25 May 2009), p. 6.

31 Ibid., pp. 6, 18.

32 Ibid., p. 14.

33 New Zealand Treasury, 'Performance Information for Appropriations: Vote Agriculture and Forestry: Primary Sector – Information Supporting the Estimates 2009/10 B.5A Vol.9' (28 May 2009) <http://www.treasury.govt.nz/budget/2008/ise/v9/ise08-v9-pia-agfor.pdf> [accessed 28 June 2009], pp. 12, 38.

34 Clair McEntee, 'Walkers and Trampers to View Online Maps from Next Year', *Dominion Post,* 25 May 2009, p. 5.

35 Damien O'Connor, 'Press Release: Rural New Zealand Abandoned in the Budget', New Zealand Labour Party (29 May 2009) <http://www.labour.org.nz/news/rural-new-zealand-abandoned-budget> [accessed 28 June 2009].

36 New Zealand Walkway Commission, *Proceedings of the New Zealand Walkways Seminar, Lincoln College, Canterbury, 10–12 May 1979* (Wellington, NZ: Department of Lands and Survey, 1979), p. 14.

37 Clair McEntee, 'Walkers and Trampers to View Online Maps from Next Year', *Dominion Post,* 25 May 2009, p. 5.

38 'Blog subject: Walking Access Commission', www.tramper.co.nz (16 May 2009) <http://www.tramper.co.nz/?view=topic&id=418&messageid=2751#message2751> [accessed 9 Oct 2010].

39 Doug Forster, Freshmap, to P McDonald, subject 'Queen Charlotte Walkway', 12 June 2010 [Email].

40 United States Geological Survey, '*The National Map* Corps' (16 Oct 2008) <http://nationalmap.gov/TheNationalMapCorps/> [accessed 25 Jan 2009].

41 Doug Forster, Freshmap, to P McDonald, subject 'Foot-tracks in New Zealand: Origins and Recent Issues', 18 Jan 2009 [Email].

42 Graeme Blick, 'New 1:50 000 National Map Series for New Zealand', *Survey Quarterly*, no. 58 (June 2009), pp. 26–29 (p. 28).

43 Land Information New Zealand, 'New Zealand Moves to New Official Maps' (22 Sept 2009) <http://www.linz.govt.nz/topography/projects-programmes/news-notices/20090922-new-official-maps/index.aspx> [accessed 28 Sept 2009].

44 New Zealand Walking Access Commission, *Minutes: New Zealand Walking Access Commission Meeting: 30–31 July 2009* (Wellington, NZ: NZWAC, 2009), p. 3.

45 New Zealand Walking Access Commission, *Annual Report: 30 September 2008 to 30 June 2009* (Wellington, NZ: NZWAC, 2009), p. 5.

46 New Zealand Walking Access Commission, 'Press Release: Appointment of Walking Access CEO' (8 June 2009) <http://www.walkingaccess.org.nz/store/doc/CEAppointment.pdf> [accessed 10 June 2009].

47 New Zealand Walking Access Commission, *Minutes: New Zealand Walking Access Commission Meeting: 25–26 May 2009* (Wellington, NZ: NZWAC, 2009), p. 1.

48 New Zealand Walking Access Commission, *Draft National Strategy on Walking Access: June 2009* (Wellington, NZ: NZWAC, June 2009), p. 9.

49 New Zealand Walking Access Commission, *Draft Background to the New Zealand Outdoor Access Code: June 2009* (Wellington: NZWAC, 2009).

50 Ibid., p. 2.

51 New Zealand Walking Access Commission, *Minutes: New Zealand Walking Access Commission Meeting: 25–26 May 2009* (Wellington, NZ: NZWAC, 2009), p. 4.

52 New Zealand Walking Access Commission, *Draft National Strategy for Walking Access [Sept 2009]* (Wellington, NZ: NZWAC, Sept 2009), p. 12.

53 New Zealand Walking Access Commission, *Annual Report: 30 September 2008 to 30 June 2009* (Wellington, NZ: NZWAC, 2009), p. 10.

54 David Carter, 'Speech: Walking Access Commission – Launch of National Strategy and Code of Conduct' (30 Sept 2009) <http://www.beehive.govt.nz/speech/walking+access+commission+%E2%80%93+launch+national+strategy+and+code+conduct> [accessed 6 Nov 2009].

55 New Zealand Walking Access Commission, *Draft National Strategy for Walking Access [Sept 2009]* (Wellington, NZ: NZWAC, Sept 2009), p. 4.

56 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 79.

57 New Zealand Walking Access Commission, *Draft National Strategy for Walking Access [Sept 2009]* (Wellington, NZ: NZWAC, Sept 2009), p. 12.

58 Ibid., p. 9.

59 Ibid., p. 5.

60 New Zealand Walking Access Commission, *Draft New Zealand Outdoor Access Code [Sept 2009]* (Wellington, NZ: NZWAC, Sept 2009), pp. 3, 7.

61 New Zealand Walking Access Commission, *Annual Report: 30 September 2008 to 30 June 2009* (Wellington, NZ: NZWAC, 2009), p. 16.

62 New Zealand Walking Access Commission, *Minutes: New Zealand Walking Access Commission Meeting: 30–31 July 2009* (Wellington, NZ: NZWAC, 2009), p. 4.

63 New Zealand Walking Access Commission, *Minutes: New Zealand Walking Access Commission Meeting: 30 September 2009* (Wellington, NZ: NZWAC, 2009), p. 2.

64 New Zealand Walking Access Commission, *Draft National Strategy for Walking Access [Sept 2009]* (Wellington, NZ: NZWAC, Sept 2009), p. 10.

65 New Zealand Walking Access Commission, *Minutes: New Zealand Walking Access Commission Meeting: 30–31 July 2009* (Wellington, NZ: NZWAC, 2009), p. 13.

66 Laura Basham, ' "Toothless" Walking Access Commission under Fire', *Nelson Mail,* 21 Oct 2009.

67 Ibid.

68 Ibid.

69 Tim Donoghue, 'Another Hapu Plans Protest Walk', *Dominion Post,* 6 Feb 2010.

70 New Zealand Walking Access Commission, *Minutes: New Zealand Walking Access Commission Meeting: 26 April 2010* (Wellington, NZ: NZWAC, 2010), p. 5.

71 New Zealand Walking Access Commission, 'Press Release: Commission Makes Access Grants' (19 July 2010) <http://www.walkingaccess.org.nz/store/doc/19July2010.pdf> [accessed 22 July 2010].

72 Matthew Haggart, 'Makarora Grant of $3600 to Help Establish Track', Otago Daily Times Online (20 July 2010) <http://www.odt.co.nz/print/116675> [accessed 20 July 2010].

73 Peter de Graaf, 'Grant Sees Walkway Link on Firm Footing', *Northern Advocate,* 28 July 2010.

74 'Funding Announced for Walkways', *Marlborough Express,* 20 July 2010.

75 Cathie Bell, New Zealand Walking Access Commission, to P McDonald, subject 'Re: The Twelve 2010 Access-fund Projects', 31 Aug 2010 [Email].

76 New Zealand Walking Access Commission, *Statement of Intent: 2010–2015* (Wellington, NZ: NZWAC, 2010), p. 9.

77 Ibid.

78 New Zealand Walking Access Commission, 'Field Advisors – Contract Role' (6 May 2010) <http://www.walkingaccess.org.nz/page/16/Vacancies.html> [accessed 6 May 2010].

79 New Zealand Walking Access Commission, 'Operations Advisor' (23 July 2010) <http://www.walkingaccess.org.nz/page/16/Vacancies.html> [accessed 26 July 2010].

80 New Zealand Walking Access Commission, 'Staff Hirings', *Accessing New Zealand*, no. 3 (July 2010), p. 4.

81 Cathie Bell, Communications Manager, NZWAC, to P McDonald, subject 'Press Release: Commission Appoints Regional Field Advisors', 21 Sept 2010 [Email].

82 Ibid.

83 Clair McEntee, 'Walkers and Trampers to View Online Maps from Next Year', *Dominion Post,* 25 May 2009, p. 5.

84 Neal Wallace, 'Concerns over Release of Public Walking Access Maps', Otago Daily Times Online (24 June 2010) <http://www.odt.co.nz/print/112162> [accessed 24 June 2010].

85 Ibid.

86 Ibid.

87 Ibid.

88 Ibid.

89 Tony Orman, Council of Outdoor Recreations Associations of New Zealand, 'Paper Roads Should Be Marked Out [Letter]', *Otago Daily Times,* 2 July 2010, p. 8.

90 Richard Wakelin, *History and Politics: Containing the Political Recollections and Leaves from the Writings of a New Zealand Journalist, 1851-1861-1862-1877* (Wellington, NZ: Lyon & Blair; George W Dutton, 1877), p. 49.

91 'News: Farmers and Walkers Agree Outdoor Access Code', Radio New Zealand (30 June 2010) <http://www.radionz.co.nz/news/stories/2010/06/30/12480aeb3f1b> [accessed 1 July 2010].

92 Colin King, 'Outdoor Access Code Supports New Zealanders' Love of the Great Outdoors' (9 July 2010) <http://www.colinking.co.nz/> [accessed 9 July 2010].

93 New Zealand Walking Access Commission, 'Code Launched', *Accessing New Zealand*, no. 3 (July 2010), pp. 1–2.

94 New Zealand Walking Access Commission, 'Signage Project' (no date) <http://www.walkingaccess.govt.nz/page/25/SignageProject.html> [accessed 18 Jan 2011].

95 New Zealand Walking Access Commission, *Minutes: New Zealand Walking Access Commission Board Meeting: 2 August 2010* (Wellington, NZ: NZWAC, 2010), p. 3.

96 New Zealand Walking Access Commission, *National Strategy for Walking Access* (Wellington, NZ: NZWAC, Sept 2010), p. 3.

97 John Key, Prime Minister, 'Press Release: PM Pledges $50 Million in Budget for Cycleway', New Zealand National Party (14 May 2009) <http://www.national.org.nz/Article.aspx?ArticleID=29941> [accessed 17 May 2009].

98 Ibid.

99 Colin Espiner, '$50m Pledge for Cycleways', *The Press,* 15 May 2009.

100 New Zealand Walking Access Commission, 'Press Release: Appointment of Walking Access CEO' (8 June 2009) <http://www.walkingaccess.org.nz/store/doc/CEAppointment.pdf> [accessed 10 June 2009], p. 1.

101 New Zealand Walking Access Commission, *Minutes: New Zealand Walking Access Commission Meeting: 25–26 May 2009* (Wellington, NZ: NZWAC, 2009), p. 4.

102 John Key, Prime Minister, 'Press Release: PM Announces First Cycleway Projects' (27 July 2009) <http://www.beehive.govt.nz/release/pm+announces+first+cycleway+projects> [accessed 1 Aug 2009].

103 Ministry of Tourism, 'New Zealand Cycleway – Possible Quick Start Tracks' (27 July 2009) <http://www.beehive.govt.nz/sites/all/files/Key_NewZealandCyclewayQuickStartTracks.pdf> [accessed 2 Aug 2009].

104 Ministry of Tourism, 'New Zealand Cycleway – Questions and Answers' (27 July 2009) <http://www.beehive.govt.nz/sites/all/files/Key_NewZealandCyclewayQuestions&Answers.pdf> [accessed 2 Aug 2009], p. 1.

105 Ibid., p. 4.

106 Ibid., p. 5.

107 Ibid., p. 2.

108 Ibid., p. 2.

109 John Armstrong, 'Cycleway Will Do Little to Create Jobs', *New Zealand Herald,* 28 July 2009.

110 John Key, Prime Minister, 'Press Release: PM Turns Sod on First Cycle Trail and Unveils Brand' (10 Nov 2009) <http://www.beehive.govt.nz/release/pm+turns+sod+first+cycle+trail+and+unveils+brand> [accessed 10 Nov 2009].

111 Ministry of Tourism, 'Press Release: Lucky Thirteen New Cycle Trails Planned' (11 Feb 2010) <http://www.tourism.govt.nz/Documents/Policy%20Website/Documents/NZCycleTrail/PhaseTwo/CycleTrailPhase2MediaReleaseFeb11%20.pdf> [accessed 11 July 2010].

112 John Key, 'Press Release: PM Opens First Stage of Ruapehu–Whanganui Cycle Trail' (2 July 2010) <http://www.beehive.govt.nz/release/pm+opens+first+stage+ruapehu-whanganui+cycle+trail> [accessed 10 July 2010].

113 John Key and Jonathan Coleman, 'Press Release: Eight New Cycle Trails Ready to Roll' (6 July 2010) <http://www.beehive.govt.nz/release/eight+new+cycle+trails+ready+roll> [accessed 10 July 2010].

114 Ministry of Tourism, 'Press Release: Five New Cycle Trails Get the Green Light' (23 Sept 2010) <http://www.tourism.govt.nz/Our-Work/New-Zealand-Cycle-Trail-Project/Cycle-Trail-Project-News/2010/Five-new-cycle-trails-get-the-green-light/> [accessed 24 Sept 2010].

115 Office of the Parliamentary Commissioner for the Environment, *Change in the High Country: Environmental Stewardship and Tenure Review* (Wellington, NZ: Parliamentary Commissioner for the Environment, 2009), p. 72.

116 Ibid., p. 76.

117 Ibid., p. 76.

118 Ibid., p. 80.

119 Neal Wallace, 'Strong Criticism of Tenure Review', Otago Daily Times Online (8 Apr 2009) <http://www.odt.co.nz/print/50785> [accessed 16 Apr 2009].

120 John Page, 'Grazing Rights and Public Lands in New Zealand and the Western United States: A Comparative Perspective', *Natural Resources Journal,* 49, no. 2 (Spring 2009), pp. 403–432 (p. 403).

121 Ibid. (p. 410).

122 Commissioner of Crown Lands v Minaret Station Ltd, District Court, Dunedin, LVP2/05, 31 July 2009, para. 231.

123 Commissioner of Crown Lands v Minaret Station Ltd, District Court, Dunedin, LVP2/05, 31 July 2009, para. 232.

124 High Country Accord, 'Press Release: Lobby Groups Misunderstand Tribunal Decision' (17 Aug 2009) <http://www.highcountryaccord.co.nz/index.php?page=11> [accessed 30 Aug 2009].

125 High Country Accord, 'Press Release: Victory for Farmers in Long Rent Battle' (31 July 2009) <http://www.highcountryaccord.co.nz/index.php?page=11> [accessed 30 Aug 2009].

126 Royal Forest and Bird Protection Society of New Zealand, 'Press Release: Millions of Dollars at Stake if Crown Doesn't Appeal High Country Land Decision' (13 Aug 2009) <http://www.forestandbird.org.nz/what-we-do/publications/media-releases> [accessed 30 Aug 2009].

127 High Country Accord, 'Press Release: Lobby Groups Misunderstand Tribunal Decision' (17 Aug 2009) <http://www.highcountryaccord.co.nz/index.php?page=11> [accessed 30 Aug 2009].

128 David Carter, Minister of Agriculture and Maurice Williamson, Minister for Land Information, 'Press Release: Government Delivers on High Country Promise' (26 Aug 2009) <http://www.beehive.govt.nz/release/government+delivers+high+country+promise> [accessed 30 Aug 2009].

129 New Zealand Cabinet, 'CAB Min (09) 26/7C: Minute of Decision: Crown Pastoral Land: 2009 and Beyond' (27 July 2009) <http://www.linz.govt.nz/docs/crownproperty/highcountry/2009-and-beyond-minute-of-decision.PDF> [accessed 5 Sept 2009], pp. 1–2.

130 Maurice Williamson, Minister for Land Information, David Carter, Minister of Agriculture and Tim Groser, Minister of Conservation, 'Cabinet Paper: Crown Pastoral Land – 2009 and Beyond' (13 July 2009) <http://www.linz.govt.nz/docs/crownproperty/highcountry/crown-pastoral-land-2009-and-beyond.pdf> [accessed 5 Sept 2009], p. 23.

131 David Carter, Minister of Agriculture and Maurice Williamson, Minister for Land Information, 'Press Release: Government Delivers on High Country Promise' (26 Aug 2009) <http://www.beehive.govt.nz/release/government+delivers+high+country+promise> [accessed 30 Aug 2009].

132 Land Environment & People, 'Prioritising River Values' (26 Apr 2010) <http://www.lincoln.ac.nz/Research-Centres/LEaP/Environmental-Management--Planning/Projects/Prioritising-river-values/> [accessed 21 May 2010].

133 High Country Accord, 'Press Release: Farmers Welcome New High Country Policy' (26 Aug 2009) <http://www.highcountryaccord.co.nz/index.php?page=11> [accessed 30 Aug 2009].

134 Royal Forest and Bird Protection Society of New Zealand, 'Press Release: Government Undermines High Country Protection' (26 Aug 2009) <http://www.forestandbird.org.nz/what-we-do/publications/media-releases> [accessed 30 Aug 2009].

135 Ibid.

136 Maurice Williamson, Minister for Land Information, David Carter, Minister of Agriculture and Tim Groser, Minister of Conservation, 'Cabinet Paper: Crown Pastoral Land – 2009 and Beyond' (13 July 2009) <http://www.linz.govt.nz/docs/crownproperty/highcountry/crown-pastoral-land-2009-and-beyond.pdf> [accessed 5 Sept 2009], p. 24.

137 Land Information New Zealand, 'Tenure Review Progress Reports' (31 July 2009) <http://www.linz.govt.nz/crown-property/pastoral-land-tenure-review/tenure-review/progress-report-activity-report/index.aspx> [accessed 6 Sept 2009].

138 Ann Brower, 'Land Rort, Pakeha Style', *Architecture New Zealand*, no. 1.2010 (Jan-Feb 2010), pp. 42–45 (p. 45).

139 Land Information New Zealand, 'Briefing to the Minister for Land Information' (Nov 2008) <http://www.linz.govt.nz/docs/supporting-info/publications/linz-bim-2008.pdf> [accessed 26 Dec 2008], p. 11.

140 Te Araroa Trust, 'Te Araroa Newsletter: Way through High Country' (18 Sept 2009) <http://www.teararoa.org.nz/index.cfm/pageid/3/viewarchive/46> [accessed 20 Sept 2009].

141 Mathew Clark, Manager Pastoral, Land Information New Zealand, to P McDonald, Official Information Act Request, 15 Oct 2009 [Letter].

142 David Carter, Minister of Agriculture and Maurice Williamson, Minister for Land Information, 'Press Release: Govt Announces New Pastoral Lease Rent Policy' (3 Aug 2010) <http://www.beehive.govt.nz/release/govt+announces+new+pastoral+lease+rent+policy> [accessed 4 Aug 2010].

143 Damien O'Connor, 'Press Release: High Country Lease Decision Reflects Labour Position', New Zealand Labour Party (4 Aug 2010) <http://www.labour.org.nz/news/high-country-lease-decision-reflects-labour-position> [accessed 12 Sept 2010].

144 Brian E Hayes, 'Roading Law as it Applies to Unformed Roads – The Sequel', Walking Access Consultation Panel (16 Oct 2007) <http://www.walkingaccess.org.nz/publications/Unformed_legal_roads_-_final_version_of_response.pdf> [accessed 9 Mar 2008], p. 36.

145 Bruce Mason, 'The Stopping of Bushey Park Road: Public Policy Implications', Omakau, NZ: Recreation Access New Zealand (Dec 2010) [DVD].

146 Brian E Hayes, 'Roading Law as it Applies to Unformed Roads – The Sequel', Walking Access Consultation Panel (16 Oct 2007) <http://www.walkingaccess.org.nz/publications/Unformed_legal_roads_-_final_version_of_response.pdf> [accessed 9 Mar 2008], p. 38.

147 Bruce Mason, 'The Stopping of Bushey Park Road: Public Policy Implications', Omakau, NZ: Recreation Access New Zealand (Dec 2010) [DVD].

148 Bruce Mason, 'Advice to Walking Access Commission: Creating and Managing Pedestrian-only Roads', Recreation Access New Zealand (23 Feb 2010) <http://www.recreationaccess.org.nz/files/pedestrian_roads.html> [accessed 7 June 2010].

149 Queen Charlotte Track Incorporated, 'QCTrack Tribute' (no date) <http://www.qctrack.co.nz/> [accessed 12 June 2010].

150 Maike van der Heide, 'Queen Charlotte Track Group Sets $12 Charge', *Marlborough Express,* 1 June 2010.

151 Department of Conservation, 'Press Release: Management of Private Land Sections of Queen Charlotte Track' (24 Mar 2010) <http://www.doc.govt.nz/about-doc/news/media-releases/management-of-private-land-sections-of-queen-charlotte-track/> [accessed 26 Mar 2010].

152 Ibid.

153 'Editorial: Landowners' Charge Fair Enough', *Marlborough Express,* 24 Mar 2010.

154 Ibid.

155 'News: Trampers Are Unhappy a Fee Is to Be Charged for Using the Queen Charlotte Track in the Marlborough Sounds', Radio New Zealand (24 Mar 2010) <http://www.radionz.co.nz/news/stories/2010/03/24/1247f8acf725> [accessed 24 Mar 2010]. Also Fritha Tagg, 'Trampers Are Happy to Pay', *Marlborough Express,* 30 Mar 2010.

156 'Should Trampers Pay to Use Tracks Featuring Privately-owned Land?', *New Zealand Herald,* 25 Mar 2010.

157 Maike van der Heide, 'Mayor Fears Fee a Deterrent', *Marlborough Express,* 23 Mar 2010.

158 Cathie Bell, New Zealand Walking Access Commission, to P McDonald, subject 'Queen Charlotte Track', 6 Apr 2010 [Email].

159 Roy Grose, Area Manager, Marlborough Sounds Area Office, DOC, to S Archdale, subject 'Google Alert – Queen Charlotte Track', 21 April 2010 [Email].

160 Ibid.

161 Juliet Gibbons, 'Press Release: Commercial Operators Accept New Track Access Fee', Queen Charlotte Track Inc (3 June 2010) <http://www.walknz.org.nz/2010/06/08/media-release-queen-charlotte-track/> [accessed 12 June 2010].

162 Maike van der Heide, 'Queen Charlotte Track Group Sets $12 Charge', *Marlborough Express,* 1 June 2010.

163 Juliet Gibbons, 'Press Release: Commercial Operators Accept New Track Access Fee', Queen Charlotte Track Inc (3 June 2010) <http://www.walknz.org.nz/2010/06/08/media-release-queen-charlotte-track/> [accessed 12 June 2010].

164 Maike van der Heide, 'Queen Charlotte Track Group Sets $12 Charge', *Marlborough Express,* 1 June 2010.

165 Queen Charlotte Track Land Cooperative, 'Q.C.T.L.C.' (July 2010) <http://www.qctlc.com/> [accessed 10 July 2010].

166 Matthew Haggart, 'Makarora Grant of $3600 to Help Establish Track', Otago Daily Times Online (20 July 2010) <http://www.odt.co.nz/print/116675> [accessed 20 July 2010].

167 Diana Reid, to P McDonald, subject 'Re: South Taranaki Coastal Trail', 23 July 2010 [Email].

168 Walking Access Consultation Panel, *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 115.

169 David Haynes, 'Thin End of the Wedge', *Fish & Game New Zealand,* May 2009, pp. 20–25.

170 David Haynes, 'Access Not All Areas' (2010) <http://www.nzfishing.com/articles/accessissues/accessnotallareas.htm> [accessed 16 July 2010].

171 David Haynes, to P McDonald, subject 'Re: The Squeaky Wheel', 28 Aug 2010 [Email].

172 Peter Dunne, 'Press Release: Public Access under Threat – Dunne', United Future New Zealand Party (26 Aug 2010) <http://www.unitedfuture.org.nz/default,1424,public_access_under_threat_dunne.sm> [accessed 6 Sept 2010].

173 Ibid.

174 Isaac Davison, 'Anglers Refused Access to River over Summer', *New Zealand Herald,* 24 Nov 2010.

Chapter 37: NZWAC, Fully Operational

1 Caitlin Nobes, 'Go on, Walk All over Hawke's Bay', Hawke's Bay Today (5 Oct 2010) <http://www.hawkesbaytoday.co.nz/local/news/go-on-walk-all-over-hawkes-bay/3925238/> [accessed 9 Oct 2010].

2 'Blog subject: Walking Access Commission', snuffitramblings.blogspot.com (5 Oct 2010) <http://snuffitramblings.blogspot.com/2010/10/walking-access-commission.html> [accessed 9 Oct 2010].

3 New Zealand Walking Access Commission, 'Regional Staff Join Up', *Accessing New Zealand*, no. 4 (Nov 2010), p. 1.

4 Mark Neeson, *Report on Visit to England, Scotland and Canada: 26 September–16 October 2010* (Wellington, NZ: New Zealand Walking Access Commission, 2010), p. 4.

5 Ibid., pp. 4–5.

6 Ibid., p. 7.

7 Ibid., p. 6.

8 New Zealand Walking Access Commission, 'Frequently Asked Questions: 3. Walking Access Mapping System' (Nov 2010) <http://www.walkingaccess.govt.nz/store/doc/WAC_0024_FAQ3_MappingSystem_AW.pdf> [accessed 22 Dec 2010].

9 George Williamson, New Zealand Walking Access Commission, to P McDonald, 24 Dec 2010 [Phone].

10 New Zealand Walking Access Commission, 'Mapping System Moves to Open Testing', *Accessing New Zealand*, no. 4 (Nov 2010), pp. 2, 4.

11 New Zealand Walking Access Commission, 'Frequently Asked Questions: 3. Walking Access Mapping System' (Nov 2010) <http://www.walkingaccess.govt.nz/store/doc/WAC_0024_FAQ3_MappingSystem_AW.pdf> [accessed 22 Dec 2010].

12 'Walking Commission, Feds in Map Spat', *New Zealand Farmers Weekly,* 1 Nov 2010.

13 Sally Kidson, 'Public Land Access Site Online Soon', *Nelson Mail,* 9 Dec 2010.

14 New Zealand Walking Access Commission, 'Walking Access Mapping System – Ara Hikoi: Purpose & Disclaimer' (22 Dec 2010) <http://wams.org.nz/wams/> [accessed 22 Dec 2010].

15 New Zealand Walking Access Commission, 'Frequently Asked Questions: 4. Unformed Legal Roads' (Nov 2010) <http://www.walkingaccess.govt.nz/store/doc/WAC_0024_FAQ4_UnformedLegalRoad_AW.pdf> [accessed 22 Dec 2010].

16 New Zealand Walking Access Commission, 'Frequently Asked Questions: 2. Access for Landholders' (Nov 2010) <http://www.walkingaccess.govt.nz/store/doc/WAC_0024_FAQ2_AccessRights_AW.pdf> [accessed 22 Dec 2010].

17 New Zealand Walking Access Commission, *Statement of Intent: 2011–2016* (Wellington, NZ: NZWAC, 2011), pp. 8, 16.

18 Bruce Mason, 'Advice to Walking Access Commission: Creating and Managing Pedestrian-only Roads', Recreation Access New Zealand (23 Feb 2010) <http://www.recreationaccess.org.nz/files/pedestrian_roads.html> [accessed 7 June 2010].

19 New Zealand Walking Access Commission, *Minutes: New Zealand Walking Access Commission Meeting: 22 November 2010* (Wellington, NZ: NZWAC, 2010), p. 2.

20 New Zealand Walking Access Commission, 'Guidance Document on Roads Prepared', *Accessing New Zealand*, no. 4 (Nov 2010), p. 3.

21 New Zealand Walking Access Commission, *Guidelines for the Management of Unformed Legal Roads* (Wellington, NZ: NZWAC, 2011).

22 New Zealand Walking Access Commission, 'Guidance Document on Roads Prepared', *Accessing New Zealand*, no. 4 (Nov 2010), p. 3.

23 New Zealand Walking Access Commission, *Guidelines for the Management of Unformed Legal Roads* (Wellington, NZ: NZWAC, 2011), pp. 17, 25.

24 New Zealand Walking Access Commission, 'Frequently Asked Questions: 1. Walking Access in the Outdoors' (Nov 2010) <http://www.walkingaccess.govt.nz/store/doc/WAC_0024_FAQ1_RecUsers_AW.pdf> [accessed 22 Dec 2010].

25 Steven Joyce, Minister of Transport, to Phil Glasson, Federated Mountain Clubs of New Zealand, 2 May 2011 [Letter].

26 New Zealand Walking Access Commission, *Minutes: New Zealand Walking Access Commission Meeting: 15 February 2011* (Wellington, NZ: NZWAC, 2011), pp. 6–7.

27 Steven Joyce, Minister of Transport, to Phil Glasson, Federated Mountain Clubs of New Zealand, 2 May 2011 [Letter].

28 New Zealand Walking Access Commission, 'Successful Launch for First EAF Project Completed', *Accessing New Zealand*, no. 5 (Mar 2011), p. 2.

29 New Zealand Walking Access Commission, 'Press Release: Outstanding Interest in Enhanced Access Fund' (26 April 2011) <http://www.walkingaccess.govt.nz/page/26/OutstandinginterestinEnhancedAccessFund.html> [accessed 29 April 2011].

30 New Zealand Walking Access Commission, 'Longstanding Access Chairman Retires', *Accessing New Zealand*, no. 5 (Mar 2011), p. 4.

31 New Zealand Walking Access Commission, *Statement of Intent: 2011–2016* (Wellington, NZ: NZWAC, 2011), pp. 34–35.

32 New Zealand Walking Access Commission, 'Dry Acheron Track Established in Canterbury' (2 May 2011) <http://www.walkingaccess.govt.nz/page/27/DryAcheronTrackestablishedinCanterbury.html> [accessed 8 May 2011].

33 New Zealand Government, 'Walking Access Act 2008: Land to Be Declared a Walkway – Dry Acheron Station, Canterbury', *New Zealand Gazette,* 3 Mar 2011, p. 628.

34 Jim Hale, 'Exclusive Capture', New Zealand Federation of Freshwater Anglers (4 Jan 2011) <http://www.nzffa.net/index.php?option=com_content&view=article&id=116:exclusive-capture&catid=45:access&Itemid=65> [accessed 7 Jan 2011].

35 Ibid.

36 Jim Hale, 'Press Release: Anglers Declare War on Blocked Trout Fishing Access', New Zealand Federation of Freshwater Anglers (4 Jan 2011) <http://www.scoop.co.nz/stories/AK1101/S00043/anglers-declare-war-on-blocked-trout-fishing-access.htm> [accessed 8 Jan 2011].

37 Bernard Carpinter and John Hartevelt, 'Business Day: Exclusive Deals Lock out Kiwi Anglers', *Dominion Post,* 6 Jan 2011.

38 'Blog subject: Press Release from NZFFA re Exclusive Capture of Fisheries', www.fishnhunt.co.nz (5 Jan 2011) <http://www.fishnhunt.co.nz/forum/YaBB.cgi?num=1294196557/10> [accessed 8 Jan 2011].

39 'It's Not Always Easy to Get the Lie of the Land', *Nelson Mail,* 8 Jan 2011, p. 17.

40 Ibid.

41 Deborah Coddington, 'Defend Property Rights or Become Nation of Serfs' (16 Jan 2011) <http://www.nzherald.co.nz/politics/news/article.cfm?c_id=280&objectid=10699928> [accessed 22 Jan 2011].

42 New Zealand Federation of Freshwater Anglers, 'Press Release: Exclusive Capture of Freshwater Fisheries Highlighted' (6 May 2011) <http://www.scoop.co.nz/stories/PO1105/S00098/exclusive-capture-of-freshwater-fisheries-highlighted.htm> [accessed 13 May 2011].

43 New Zealand Walking Access Commission, *Minutes: New Zealand Walking Access Commission Meeting: 15 February 2011* (Wellington, NZ: NZWAC, 2011), pp. 3–4.

44 Marion Shoard, *This Land is Our Land: The Struggle for Britain's Countryside*, 2nd edn (London: Gaia Books, 1997), p. 206.

45 Statistics New Zealand, *New Zealand Official Yearbook 2010 – Te Pukapuka Houanga Whaimana o Aotearoa 2010*, 107th edn (Rosedale, Auckland, NZ: David Bateman, 2010), p. 357.

46 New Zealand Walking Access Commission, *Statement of Intent: 2010–2015* (Wellington, NZ: NZWAC, 2010), pp. 20–21.

Chapter 38: Where Public Rights and ... Rights Meet

1 Marion Shoard, *This Land is Our Land: The Struggle for Britain's Countryside*, 2nd edn (London: Gaia Books, 1997), p. xix.

2 David Round, 'Access – The Kiwi Way', *New Zealand Geographic*, no. 65 (2003), pp. 4–5, 19 (p. 19).

3 John M Jenkins and Evi Prin, 'Rural Landholder Attitudes: The Case of Public Recreational Access to "Private" Rural Lands', in *Tourism and Recreation in Rural Areas,* ed. by Richard Butler, Michael C Hall and John Jenkins (Chichester, UK: John Wiley and Sons, 1998), pp. 179–196.

4 Eric Pawson, 'An Environmental History of New Zealand Agriculture', EDS National Conference (June 2008) <http://www.edsconference.com/content/docs/papers/Pawson%2C%20E.pdf> [accessed 5 Sept 2010], p. 5.

5 Ibid., p. 5.

6 Kay L Booth, 'Rights of Public Access for Outdoor Recreation in New Zealand' (PhD thesis, University of Otago, 2006), p. 273.

7 Statistics New Zealand, 'Subnational Population Projections: 2001 (base) – 2026 Update: Table 3: Projected Population Change of Territorial Authorities, Medium Series, 2001 (Base) – 2026', Statistics New Zealand (28 Feb 2005) <http://www.stats.govt.nz/store/2006/07/subnational-population-projections-01%28base%29-26update.htm> [accessed 3 Oct 2007].

8 Mick Strack, 'Back to the Land: Walking Access to the Outdoors', *New Zealand Surveyor*, no. 295 (Dec 2005), pp. 20–27 (p. 23).

9 Ibid. (p. 23).

10 Quoted in Reuben Dale Peterson, 'Discussion of and Alternatives for the Provision of Public Recreational Access to the Port Hills of Canterbury' (BRS (Hons) thesis, Lincoln University, 1996), p. 24.

11 Ibid., p. 25.

12 James Howard Kunstler, *The Long Emergency: Surviving the Converging Catastrophes of the Twenty-first Century* (London: Atlantic Books, 2006), p. 17.

13 Kay L Booth, 'Rights of Public Access for Outdoor Recreation in New Zealand' (PhD thesis, University of Otago, 2006), p. 21.

14 Ibid., p. 106.

15 New Zealand Conservation Authority & boards, *Submission on 'Creating a Healthy State for Outdoor Recreation in New Zealand'* (Wellington, NZ: NZCA & boards, Aug 2008).

16 New Zealand Parliament, '11 September 2008: Walking Access Bill – In Committee', *Parliamentary Debates (Hansard),* 650 (2008), pp. 18855–18861 (pp. 18856, 18857, 18859).

17 Countryside Agency, *The State of the Countryside 2000* (Cheltenham, UK: Countryside Agency, 2000).

18 R Hickey and Nigel R Curry, *Analysis of the Potential Costs to Local Authorities of Administering a Statutory Right of 'Open Access' over 'Mountain, Moor, Heath, Down and Common Land'*, A report to the Country Landowners' Association (Cheltenham, UK: Countryside and Community Research Unit, Cheltenham and Gloucester College of Higher Education, 1998).

19 Nigel Curry, 'The Divergence and Coalescence of Public Outdoor Recreation Values in New Zealand and England: An Interplay between Rights and Markets', *Leisure Studies,* 23, no. 3 (July 2004), pp. 205–223.

20 Pete McDonald, 'High-quality Access: A Response to the Feedback Questions That Were Attached to the Report, *Walking Access in the New Zealand Outdoors*' (Oct 2003) <http://homepages.paradise.net.nz/petemcd/hqa/hqa.htm> [accessed 8 Aug 2004], p. 3.

21 Ibid., p. 10.

22 R Campion and J Stephenson, 'The "Right to Roam": Lessons for New Zealand from Sweden's *Allemansrätt*', *Australasian Journal of Environmental Management,* 17, no. 1 (Mar 2010), pp. 18–26 (p. 18).

23 Ibid. (p. 20).

24 A Holt, *A Charter For Whom? The Access Provision of the National Parks and Access to the Countryside Act 1949* (London: Ramblers' Association, 1990), quoted in Deborah Pearlman and J J Pearlman, 'Is the Right To Roam Attainable? An Aspiration or a Pragmatic Way Forward?', in *Rights of Way: Policy, Culture and Management,* ed. by Charles Watkins, Rural Studies Series (London: Pinter, 1996), pp. 49–68 (p. 50).

25 Standards New Zealand, *Tracks and Outdoor Visitor Structures* (Wellington, NZ: Standards New Zealand, 2004), p. 8.

26 Parks and Gardens Division of Hutt City Council, *Draft: Making Tracks* (Lower Hutt: Hutt City Council, Nov 2008), p. 1.

27 Ibid., p. 1.

28 Quoted in Alan Cooper, 'The Rise and Fall of the Anglo-Saxon Law of the Highway', *Haskins Society Journal,* 12 (2002), pp. 39–69 (p. 51).

29 Public Access New Zealand, 'Improving Public Access to the Outdoors: A Strategy for Implementing Government's Election Policies' (10 July

2003) <http://www.publicaccessnewzealand.com/files/access_strategy_version_1.pdf> [accessed 29 July 2007], p. 11.

30 Doug Stevens, 'Nzfishing.com Submission to the Walking Access Commission', nzfishing.com (Nov 2009) <http://www.nzfishing.com/Issues/SubmissionToWalking%20AccessCommission.htm> [accessed 20 Dec 2009].

31 David L McFarlane, 'The Development of Tourism at the Head of Lake Wakatipu, 1860–1914' (BA (Hons) thesis, University of Otago, 1983), p. 53.

32 'On the Tararuas: Expedition to the Summit', *Evening Post,* 20 March 1911, p. 8.

33 Jackie Breen, 'Copland Track Heritage Assessment and Baseline Inspection Report', Department of Conservation (July 2007) <http://www.doc.govt.nz/upload/documents/conservation/historic/by-region/west-coast/copland-track-heritage-assessment/copland-full.pdf> [accessed 15 Aug 2010], p. 16.

34 Geoff Chapple, 'Long Trails: Origins, Governance & Volunteer Support in the USA, Canada & UK: A Report with Reference to Te Araroa, NZ's Long Pathway: Based on a Churchill Fellowship of 2000' (1 Apr 2001) <http://www.teararoa.org.nz/userfiles/file/Brochure/Long%20Trails%20Monograph%202001.pdf> [accessed 14 Mar 2009], p. 21.

35 Standards New Zealand, *Tracks and Outdoor Visitor Structures* (Wellington, NZ: Standards New Zealand, 2004), p. 33.

36 The Countryside Agency, *A Guide to Definitive Maps and Changes to Public Rights of Way* (Cheltenham, UK: The Countryside Agency, 2003), p. 12.

37 Ramblers' Association, 'Basics of Footpath Law' (no date) <http://www.ramblers.org.uk/info/britain/footpathlaw.html> [accessed 12 Jan 2008].

38 Jackie Breen, 'Copland Track Heritage Assessment and Baseline Inspection Report', Department of Conservation (July 2007) <http://www.doc.govt.nz/upload/documents/conservation/historic/by-region/west-coast/copland-track-heritage-assessment/copland-full.pdf> [accessed 15 Aug 2010], pp. 9–16.

39 'Tourist Track Wanted', *Evening Post,* 29 Aug 1910, p. 7.

40 Brenda Harwood, 'Realising a Dream Walk', *Star,* 12 Dec 2002, p. 6.

41 Simon McArthur and C Michael Hall, 'Visitor Management and Interpretation at Heritage Sites', in *Heritage Management in New Zealand and Australia: Visitor Management, Interpretation and Marketing,* ed. by C. Michael Hall and Simon McArthur (Auckland, NZ: Oxford University Press, 1993), pp. 18–39 (p. 23).

42 Geoff Chapple, 'Long Trails: Origins, Governance & Volunteer Support in the USA, Canada & UK: A Report with Reference to Te Araroa, NZ's Long Pathway: Based on a Churchill Fellowship of 2000' (1 Apr 2001) <http://www.teararoa.org.nz/userfiles/file/Brochure/Long%20Trails%20Monograph%202001.pdf> [accessed 14 Mar 2009], pp. 21–22.

43 Hamish Seaton, to P McDonald, subject 'New Nicols Track', 7 Apr 2008 [Email].

44 Simon Bloomberg, 'Biking and Walking Track on Barnicoat Range Opens', *Nelson Mail,* 6 Dec 2010, p. 4.

45 'Callaghans and Ahaura Foot Track', *Grey River Argus,* 11 May 1886, p. 4.

46 Jackie Breen, 'Copland Track Heritage Assessment and Baseline Inspection Report', Department of Conservation (July 2007) <http://

www.doc.govt.nz/upload/documents/conservation/historic/by-region/west-coast/copland-track-heritage-assessment/copland-full.pdf> [accessed 15 Aug 2010], p. 5.

47 Ibid., pp. 13–14, 16.

48 Ibid., pp. 54–60.

49 Chris Maclean, *Kapiti* (Wellington, NZ: Whitcombe Press, 1999), pp. 56–57.

50 Perhaps this 1997 figure of 8,600 kilometres excluded some categories of foot-track. In 2004 DOC maintained nearly 13,000 kilometres of walking and tramping tracks.

51 Mary Avery and others, *A GIS Based Walkway Management System*, Research Report; no. 97/08 (Lincoln, NZ: Centre for Computing and Biometrics, Lincoln University, 1997).

52 Ibid., p. 3.

53 Ibid., p. 9.

54 Ryan Clements, Queenstown Lakes District Council, to P McDonald, subject 'A GIS Based Walkway Management System', 7 Apr 2010 [Email].

55 Department of Conservation, *Annual Report: For the Year Ended 30 June*, Parliamentary Papers Presented to the House of Representatives of New Zealand; C.13 (Wellington, NZ: Department of Conservation, 2009), vol. 2008/09.

56 Standards New Zealand, *Tracks and Outdoor Visitor Structures* (Wellington, NZ: Standards New Zealand, 2004).

57 Department of Conservation, *Track Construction and Maintenance Guidelines*, Guidelines – VC 1672 (Wellington, NZ: Department of Conservation, July 2008).

58 Dunedin City Council, *Track Policy and Strategy: Community and Recreation Planning* (Dunedin, NZ: Dunedin City Council, 1998; repr. 2002), p. 12.

59 'Dropping In … David Gale, of Helicopters Otago, Drops Gravel on to the Mt Cargill Walking Track Yesterday', *Otago Daily Times,* 2 Aug 2006.

60 Rebecca Fox, 'Leith Saddle Walkway Delay', *Otago Daily Times,* 2 Apr 2009.

61 Green Hut Track Group, *The Ultimate Tramping Guide for Around Dunedin* (Dunedin, NZ: Green Hut Track Group, 2004), p. 27.

62 Michelle McCullough, 'Group Calling for Public to Use Track', *Star,* 20 Jan 2011, p. 8.

63 James Boucher, 'Track Work Marked', *Otago Daily Times,* 15 May 2008.

64 Walking Access Consultation Panel, *Outdoor Walking Access: Consultation Document* (Wellington, NZ: Ministry of Agriculture and Forestry, 2006), p. 5.

65 New Zealand Walking Access Commission, *National Strategy for Walking Access* (Wellington, NZ: NZWAC, Sept 2010), p. 5.

66 Mick Strack, 'Time to Put Public Access Issue on Right Track', *Otago Daily Times,* 3 Aug 2005, section Opinion, p. 1.

67 Tauranga City Council, 'Drinking Water Supply Catchment' (no date) <http://www.tauranga.govt.nz/council-services/water-drainage/water-supply/water-supply-system/drinking-water-supply-catchment-.aspx> [accessed 19 Oct 2010].

68 Cooperative Research Centre for Water Quality and Treatment, *Recreational Access to Drinking Water Catchments and Storages in Australia*, Research Report 24 (Perth: Department of Health, Western Australia, 2009), p. 2.

69 'Walk This Way', *Southland Times,* 10 June 2008, p. 6.

70 United Future New Zealand Party, 'Practical Access to Public Land' (2008) <http://www.unitedfuture.org.nz/assets/sm/695/46/PracticalAccesstoPublicLand-final.pdf> [accessed 31 Aug 2008].

71 Bob Douglas, Industry Manager, Federated Farmers of New Zealand, to Local Government and Environment Select Committee, subject '[FFNZ submission on] Walking Access Bill', 21 May 2008 [Letter].

72 'Queen Charlotte Wilderness Park: Outer Queen Charlotte Track', Queen Charlotte Wilderness Park (2005) <http://www.truenz.co.nz/wilderness/detailed.html> [accessed 5 July 2010].

73 Ibid.

74 Andrew Church and Neil Ravenscroft, 'Landowner Responses to Financial Incentive Schemes for Recreational Access to Woodlands in South East England', *Land Use Policy,* 25 (2008), pp. 1–16 (p. 4).

75 Ibid. (pp. 3–4).

76 Ibid. (p. 7).

77 Nigel Curry, 'The Divergence and Coalescence of Public Outdoor Recreation Values in New Zealand and England: An Interplay between Rights and Markets', *Leisure Studies,* 23, no. 3 (July 2004), pp. 205–223 (p. 218).

78 Ibid. (p. 218).

79 Tess Redgrave, 'Stepping Out: The Rise and Rise of the Private Walking Track', *North & South,* Jan 2005, pp. 72–82.

80 Ibid.

81 Walter Hirsh, 'Best Private Walking Track', in *Best: A New Zealand Compendium,* ed. by Ella Griffiths (Wellington, NZ: Awa Press, 2004), pp. 82–83.

82 Tess Redgrave, 'Stepping Out: The Rise and Rise of the Private Walking Track', *North & South,* Jan 2005, pp. 72–82.

83 Tim Cronshaw, 'This Farm Was Made for Walking', *The Press,* 7 Oct 2005, p. 10.

84 Anna McIntyre, 'A Private Coastal Stroll', *Marlborough Express,* 28 Nov 2005.

85 Michael Griffin, 'A Walk in the High Country', New Zealand Press Association (26 Jan 2006) <http://global.factiva.com.ezproxy.otago.ac.nz/ha/default.aspx> [accessed 31 Mar 2008].

86 Joanne O'Brien, 'Lighthouse Walk Beckons Trampers', *Marlborough Express,* 6 Feb 2006, p. 13.

87 Mary-Jane Angus, 'Farmers Cash in on Public's Desire to Enjoy the Great Outdoors', *Rural News* (27 July 2006) <http://www.knowledge-basket.co.nz/ruralnews/welcome.html> [accessed 31 Mar 2008].

88 Kelly Makiha, 'Mountain Access Cut off to Locals', *Daily Post,* 29 May 2006.

89 Ibid.

90 Ibid.

91 NewstalkZB, 'Tarawera Ban Irks Trampers' (31 May 2006) <http://www.newstalkzb.co.nz/default.asp> [accessed 31 May 2006].

92 Ibid.

93 Doug Woolerton, 'Press Release: Climb Every Mountain', New Zealand First Party (30 May 2006) <http://www.nzfirst.org.nz/content/display_item.php?t=0&i=2235> [accessed 1 Apr 2008].

94 Ibid.

95 Walking Access Consultation Panel, *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 72.

96 Mt Tarawera New Zealand Ltd, 'We Offer 6 Tour Packages to Mount Tarawera' (no date) <http://www.mttarawera.co.nz/pages/tours.htm> [accessed 2 Apr 2008].

97 Mark Burton, Minister of Tourism, to P McDonald, 4 May 2004 [Letter].

98 Ministry of Tourism, 'The Tourism Industry' (no date) <http://www.tourism.govt.nz/quicklinks/ql-tourismindustry.html> [accessed 13 Apr 2008].

99 Ibid.

100 Ann Brower, *Who Owns the High Country?: The Controversial Story of Tenure Review in New Zealand* (Nelson, NZ: Craig Potton Publishing, 2008), p. 28.

101 Ibid., p. 29.

102 New Zealand Walking Access Commission, *Statement of Intent: 2010–2015* (Wellington, NZ: NZWAC, 2010).

103 Fish and Game New Zealand, 'Press Release: Conservation and Recreation Groups Unite to Protect Wild Rivers' (28 Oct 2009) <http://www.fishandgame.org.nz/Site/Features/Features_Media2810092.aspx> [accessed 26 Dec 2009].

104 Pete McDonald, 'High-quality Access: A Response to the Feedback Questions That Were Attached to the Report, *Walking Access in the New Zealand Outdoors*' (Oct 2003) <http://homepages.paradise.net.nz/petemcd/hqa/hqa.htm> [accessed 8 Aug 2004], pp. 48–50.

105 New Zealand Walking Access Commission, 'Frequently Asked Questions: 1. Walking Access in the Outdoors' (Nov 2010) <http://www.walkingaccess.govt.nz/store/doc/WAC_0024_FAQ1_RecUsers_AW.pdf> [accessed 22 Dec 2010].

106 New Zealand Walking Access Commission, *National Strategy for Walking Access* (Wellington, NZ: NZWAC, Sept 2010), p. 19.

107 New Zealand Walkway Commission, *Proceedings of the New Zealand Walkways Seminar, Lincoln College, Canterbury, 10–12 May 1979* (Wellington, NZ: Department of Lands and Survey, 1979), p. 23.

108 Ibid., p. 31.

109 Kevin L Jones, *Nga Tohuwhenua Mai te Rangi: A New Zealand Archaeology in Aerial Photographs* (Wellington, NZ: Victoria University Press, 1994), p. 9.

110 Ibid., p. 270.

111 New Zealand Walking Access Commission, *National Strategy for Walking Access* (Wellington, NZ: NZWAC, Sept 2010), p. 11.

112 Gibbston Community Association, 'Press Release: $1.4m Gibbston River Trail [Will Be] Officially Opened on Dec 4 2010' (8 Nov 2010) <http://www.scoop.co.nz/stories/AK1011/S00138/4m-gibbston-river-trail-officially-opened-on-dec-4.htm> [accessed 6 Dec 2010].

113 Joanne Carroll, 'The Perfect Woman for a Hard Trail', Otago Daily Times Online (7 Aug 2010) <http://www.odt.co.nz/print/119681> [accessed 10 Aug 2010].

114 'The Gibbston River Trail from Start to Finish', Otago Daily Times Online (7 Dec 2010) <http://www.odt.co.nz/print/139481> [accessed 8 Dec 2010].

115 Susan Stevens, Gibbston Community Association, to P McDonald, subject 'Re: Gibbston River Trail', 10 Oct 2010 [Email].

116 Gibbston Community Association, 'Press Release: $1.4m Gibbston River Trail [Will Be] Officially Opened on Dec 4 2010' (8 Nov 2010) <http://www.scoop.co.nz/stories/AK1011/S00138/4m-gibbston-river-trail-officially-opened-on-dec-4.htm> [accessed 6 Dec 2010].

117 New Zealand Walking Access Commission, *Minutes: New Zealand Walking Access Commission Meeting: 14 June 2010* (Wellington, NZ: NZWAC, 2010), p. 7.

118 Anne Relling and Wanaka Community Board, *Draft Upper Clutha Walking and Cycling Strategy* (Queenstown, NZ: Queenstown Lakes District Council, 2006), pp. 3, 7.

119 Time may prove me wrong. In 2008, proposals emerged for an 11-km 'public walkway, fitness trail and visitor attraction' along the disused railway line between Kaikohe and Okaihau. In July 2009 the prime minister John Key named seven potential cycleway routes selected for a quick start. The government expected the Kaikohe–Okaihau track to form the first completed part of a cycleway from Hokianga to Opua.

120 Public Access New Zealand, 'Press Release: PANZ Does Not Want Access onto Private Land' (28 Jan 2003) <http://www.publicaccessnewzealand.com/files/access_ref_group.html> [accessed 5 Aug 2007].

121 Alistair Hall, 'Access and Angst', *New Zealand Wilderness,* Apr 2005, pp. 26–31.

122 Ibid., p. 29.

Appendix 2: Vanished Tracks

1 New Zealand Walking Access Commission, *National Strategy for Walking Access* (Wellington, NZ: NZWAC, Sept 2010), p. 16.

2 New Zealand Forest Owners Association, '[NZFOA Submission on] *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group*' (8 Dec 2003) <http://www.nzfoa.nzforestry.co.nz/press_release_8Dec03.asp> [accessed 1 Sept 2004].

3 Friends of the Whanganui River, 'Troublesome Tracks', *Whanganui River Annual,* 1992, pp. 14–15.

4 Ibid.

5 Ibid.

6 Bryan Dudley, 'We Like Tramping, Too: Jafa Makes a Plea for DoC to Give the Wilderness North of Taupo a Little More Attention', *Wilderness,* July 2006, p. 55.

7 'Closure of Mytton Walk Opposed', *Nelson Mail,* 27 Feb 1999, p. 3.

8 Greg Napp, Programme Manager, Golden Bay Area, DOC, to P McDonald, subject 'Mytton Nature Walk', 27 Nov 2008 [Email].

9 New Zealand Press Association, 'Lawyer Complains to DOC about Track', *The Press,* 3 Jun 1999, p. 7.

10 John Howard, 'D.O.C. Closes West Coast Tracks and Huts' (23 May 2000) <http://www.scoop.co.nz/stories/HL0005/S00094.htm> [accessed 25 Nov 2008].

11 Ibid.

12 Ibid.

13 Sandra Lee, Minister of Conservation, *Budget Announcement – Recreational Facilities Funding* (Wellington, NZ: Department of Conservation, 2002).

14 Ibid.

15 Chris Carter, Minister of Conservation, 'Press Release: DOC Proposes 250km of New Walking Tracks' (30 Sep 2003) <http://www.beehive.govt.nz/ViewDocument.aspx?DocumentID=17973> [accessed 4 June 2007].

16 Department of Conservation, *Towards a Better Network of Visitor Facilities: Otago Conservancy Proposal Summary: September 2003* (Christchurch, NZ: Department of Conservation, 2003), p. 5.

17 Department of Conservation, 'Towards a Better Network of Visitor Facilities: National Public Resource Document' (Sept 2003) <http://www.doc.govt.nz/Explore/DOC-Recreation-Opportunities-Review/Resource-document.pdf> [accessed 2 Sept 2004], p. 18.

18 Ibid., p. 18.

19 Joanna Harvey, 'Fight Looming over Orari Track Closure', *Timaru Herald,* 20 Nov 2003, p. 6.

20 Kimberley Rothwell, 'Change Afoot', *The Press,* 23 Oct 2004, p. 18.

21 New Zealand Government, '625 km of New Track for Conservation Land' (21 Oct 2004) <http://www.beehive.govt.nz/ViewDocument.aspx?DocumentID=21273> [accessed 7 Jan 2006].

22 Krysti Wetton, 'Track Closures on Kaitakes Upset Residents', *Taranaki Daily News,* 1 May 2006, p. 1.

23 Ibid.

24 Ibid.

25 Chris Carter, Minister of Conservation, 'Press Release: Summit to Chart Future of Outdoor Recreation' (10 July 2006) <http://www.beehive.govt.nz/release/summit+chart+future+outdoor+recreation> [accessed 27 Nov 2008].

26 David Round, 'Not Good Enough! David Round Sounds Off about Tourism and Recreation', *FMC Bulletin*, no. 166 (Nov 2006), pp. 14–15.

27 Ibid.

28 Ibid.

29 New Zealand National Party and Eric Roy, 'Policy 2008: Outdoor Recreation: Protecting the Birthright of All New Zealanders' (2008) <http://www.national.org.nz/files/.___0_0_outdoor.pdf> [accessed 27 Nov 2008].

30 Barbara Marshall and Federated Mountain Clubs of New Zealand, *Re: Access Issues [FMC's submission to the Land Access Ministerial Reference Group]* (Wellington, NZ: Federated Mountain Clubs, 28 March 2003), p. 6.

31 New Zealand Forest Service, *Berwick Forest and Waipori Forest*, Pamphlet, Rev. edn (Dunedin, NZ: New Zealand Forest Service and Dunedin City Council, 1983).

32 Otago District Walkway Committee, *Walk Week 12–20 March 1983: An Evaluation* (Dunedin, NZ: Otago District Walkway Committee?, 1983).

33 'Go Take a Walk – On National Walkways System', *Otago Daily Times,* 10 Mar 1983, p. 19.

34 Kay L Booth, 'Rights of Public Access for Outdoor Recreation in New Zealand' (PhD thesis, University of Otago, 2006), p. 113.

35 Penny Knock, *The 1987 Restructuring of Government Departments and Subsequent Incorporation and Privatisation of Forestry in New Zealand and the Effects on Access and Recreational Opportunities; The Organisation and Policies of Agencies Dealing with Forest Recreation in the United States of America* (Uckfield, UK: Nuffield Farming Scholarships Trust, 1993), pp. 44–45.

36 Ibid., part 3, p. 7.

37 Graham Bishop and Antony Hamel, *From Sea to Silver Peaks: A Guide to the Walking Tracks, Beaches, Viewpoints and Special Attractions of Dunedin*, 2nd edn (Dunedin, NZ: Silver Peaks Press, 1997), pp. 150–151.

38 Ivor Hayman, 'Track Closure May Continue', *Southland Times,* 6 July 2001, p. 14.

39 Ann Brower, *Who Owns the High Country?: The Controversial Story of Tenure Review in New Zealand* (Nelson, NZ: Craig Potton Publishing, 2008), pp. 10–11.

40 New Zealand Conservation Authority, *New Zealand's Walkways* (Wellington, NZ: New Zealand Conservation Authority, 2003), p. 50.

41 Tony Chandler, 'Port Robinson Walkway' (June 2007) <http://www.portrobinson.net.nz/Walkway.html> [accessed 28 Nov 2008].

42 Robyn Bristow, 'Track Access Stopped', *The Press,* 23 Nov 2004, p. 4.

43 Ibid.

44 Ibid.

45 Tony Chandler, 'Port Robinson Walkway' (June 2007) <http://www.portrobinson.net.nz/Walkway.html> [accessed 28 Nov 2008].

46 Kay Blundell, 'Walking Track Access Lost', *Dominion Post,* 16 Apr 2005, p. 20.

47 Helen Murdoch, 'Access Denied', *The Press,* 16 Mar 2007, p. 5.

48 Tasman District Council, *Walk Tasman* (Richmond, NZ: Tasman District Council, 2006), p. 74.

49 Helen Murdoch, 'Access Denied', *The Press,* 16 Mar 2007, p. 5.

50 Bary Jenkins and Bob Dickinson, 'Walkway's Status', *Nelson Mail,* 16 Dec 2006, p. 15.

51 Helen Murdoch, 'Access Denied', *The Press,* 16 Mar 2007, p. 5.

52 Lloyd L Kennedy, Community Services Manager, Tasman District Council, *Community Services Manager's Report: 31 January 2008* (Richmond, NZ: Tasman District Council, 2008).

53 'Waiheke's Walkways Are Disappearing', *Gulf News: Waiheke Island, New Zealand,* 19 Mar 1998, pp. 28–29.

54 Ibid.

55 Ramblers' Association, 'Basics of Footpath Law' (no date) <http://www.ramblers.org.uk/info/britain/footpathlaw.html> [accessed 12 Jan 2008].

56 'Waiheke's Walkways Are Disappearing', *Gulf News: Waiheke Island, New Zealand,* 19 Mar 1998, pp. 28–29.

57 Auckland City Council, 'Waiheke Island Walkways' (Nov 2008) <http://www.aucklandcity.govt.nz/whatson/places/walkways/waiheke/index.asp> [accessed 7 Dec 2008].

58 Faye Storer, to P McDonald, 'Waiheke Walkways – Final Draft', 19 Dec 2008 [Letter].

59 'Retired Couple's Security Concerns about Walkway', *Gulf News: Waiheke Island, New Zealand,* 31 Jan 2008.

60 Jenni McManus, 'Privy Council Takes Issue with Reclusive Privy Tissue Maker', *The Independent: New Zealand's Business Weekly,* 3 July 2002.

61 Octavia Hill, 'Footpath Preservation', *The Times,* 14 Sept 1892, p. 6.

62 Charles G Edwards, 'The Thames-side Footpath', *The Times,* 11 Jan 1898, p. 5.

63 Department of Conservation, 'Towards a Better Network of Visitor Facilities: Overview Fact-sheet' (Sep 2003) <http://www.doc.govt.nz/Explore/DOC-Recreation-Opportunities-Review/images/overview.pdf> [accessed 12 Oct 2003], p. 2.

64 The Countryside Agency, *A Guide to Definitive Maps and Changes to Public Rights of Way* (Cheltenham, UK: The Countryside Agency, 2003), p. 48.

65 Walking Access Consultation Panel, *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 51.

66 Rochelle West, 'Walkway Land to Return to Maori', *Taranaki Daily News,* 3 February 2005, p. 3.

67 Ibid.

Appendix 4: Mountain-biking Access ... Outdoors

1 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), pp. 104–105.

2 Pete McDonald, 'Going Out for a Bike Ride: An AOK Diary, 2002–3' (May 2003) <http://homepages.paradise.net.nz/petemcd/gob/gob.htm> [accessed 8 Aug 2004], pp. 12–13.

3 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 93.

4 Federated Mountain Clubs of New Zealand, *The Future of Walkways: Proceedings of the First New Zealand Walkways Conference, Carey Park, Auckland, February 1989* (Wellington, NZ: Federated Mountain Clubs, 1990), p. 17.

5 Department of Conservation, 'New Zealand Walkways Policy' (April 1995) <http://www.doc.govt.nz/About-DOC/Policies-Plans-and-Reports/021~NZ-Walkways-Policy-(Full-Text).asp> [accessed 9 May 2006], section 8.3.

6 Upper Hutt City Council, 'Parks & Walkways' (2002) <http://www.uhcc.govt.nz/City_Guide/Parks.asp> [accessed 15 Sept 2003].

7 Dunedin City Council, *Track Policy and Strategy: Community and Recreation Planning* (Dunedin, NZ: Dunedin City Council, 1998; repr. 2002), pp. 5, 13.

8 Department of Conservation, *Guidelines for Use of Bicycles on Tracks Managed by the Department* (Wellington, NZ: Department of Conservation, 1994), p. 2.

9 Ministry of Agriculture and Forestry, *Analysis of Written Submissions on the Report 'Walking Access in the New Zealand Outdoors'* (Wellington, NZ: Ministry of Agriculture and Forestry, 2004), p. 10.

10 Walking Access Consultation Panel, *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 127.

11 Pete McDonald, 'An Ill-founded Monopoly: Walkers' Exclusive Possession of All the Tracks in New Zealand's National Parks' (2003) <http://homepages.paradise.net.nz/petemcd/im/im.pdf> [accessed 10 June 2008], p. 25.

12 Mountain Bike New Zealand, *04/12/03 Draft - MTBNZ Heaphy Campaign Submission* (Wellington, NZ: Mountain Bike New Zealand, 2003), p. 7.

13 Ibid., p. 3.

14 Pete McDonald, 'An Ill-founded Monopoly: Walkers' Exclusive Possession of All the Tracks in New Zealand's National Parks' (2003) <http://homepages.paradise.net.nz/petemcd/im/im.pdf> [accessed 10 June 2008], p. 3.

15 Kay L Booth, 'Rights of Public Access for Outdoor Recreation in New Zealand' (PhD thesis, University of Otago, 2006), p. 127.

16 Guy Wynn-Williams, Bryce Buckland and Kevin Hague, *Land Access Report 2004*, A report dated 14 Apr 2004 (Wellington, NZ: Mountain Bike New Zealand, 2004).

17 Ibid.

18 Rosaleen MacBrayne, 'Bikes Likely to Use Tracks in National Parks', *New Zealand Herald,* 15 Oct 2004.

19 Guy Wynn-Williams, 'And Wheels Are Made for Riding', *New Zealand Herald,* 29 Oct 2004.

20 Ibid.

21 Department of Conservation, 'Press Release: Reminder Not to Mountain Bike on Heaphy Track' (9 May 2005) <http://www.doc.govt.nz/whats-new/presult.asp?prID=1865> [accessed 11 May 2005].

22 Sally Kidson, 'Bikers Still off Heaphy', *Nelson Mail,* 11 Feb 2006, p. 3.

23 Mountain Bike New Zealand, 'Suggestions for the Partial Review of the Kahurangi National Park Management Plan' (Nov 2007) <http://www.groundeffect.co.nz/MTBNZKahurangi.pdf> [accessed 12 June 2008].

24 'Time to Give Bikes a Go on the Heaphy', *Nelson Mail,* 6 Feb 2009, p. 9.

25 Department Of Conservation, 'Press Release: Kahurangi National Park Mountain Bike Trials' (8 Dec 2010) <http://www.doc.govt.nz/about-doc/news/media-releases/kahurangi-national-park-mountain-bike-trials/> [accessed 9 Dec 2010].

26 Ibid.

27 Walking Access Consultation Panel, *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 127–128.

28 Walking Access Consultation Panel, *Outdoor Walking Access: Analysis of Written Submissions* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. 9.

29 'Pedal Power Not Welcome in High Country', *Hawke's Bay Today,* 13 July 2006.

30 'Blog subject: Paper Roads Closed and Loss of Access', www.vorb.org.nz (7 May 2008) <http://www.vorb.org.nz/paper-roads-closed-and-loss-access-t78466.html#p1728133> [accessed 9 Oct 2010].

31 Local Government and Environment Committee, 'Walking Access Bill: 208-2: Report of the Local Government and Environment Committee: 29 July 2008', *AJHR,* 14 (2005-08), I.22C, pp. 751–765 (p. 752).

32 New Zealand Walking Access Commission, *National Strategy for Walking Access* (Wellington, NZ: NZWAC, Sept 2010), p. 17.

33 Iconic Adventures, 'First Flight: Span the Peninsula' (2006) <http://www.iconicadventures.co.nz/FirstFlight/default.asp> [accessed 18 Nov 2006].

34 Hayden Meikle, 'Route Unlocks Peninsula from End to End', *Otago Daily Times,* 16 Jan 2007.

35 Ibid.

36 'Challenge Offers Athletes Access to Private Property on Peninsula', *Star,* 22 Jan 2009, p. 46.

37 Otago Peninsula Challenge, 'Welcome to the Otago Peninsula Challenge' (28 Jan 2009) <http://www.otagopeninsulachallenge.co.nz/> [accessed 1 Feb 2009].

38 Steve Hepburn, 'Multisport: Leuchs to Lay Down Challenge in Peninsula Event', Otago Daily Times Online (31 Jan 2009) <http://www.odt.co.nz/print/41488> [accessed 2 Feb 2009].

39 Derek Morrison, 'Hardy Riders Rise to the Challenge', *Star,* 5 Feb 2009, p. 16.

40 James Boucher, 'Organisers Pleased as 640 Rise to the Challenge and Take on the Peninsula', *Star,* 4 Feb 2010, pp. 14–15.

41 Scottish Natural Heritage, 'Scottish Outdoor Access Code: Public Access to the Outdoors: Your Rights and Responsibilities' (1 July 2004) <http://www.snh.org.uk/pdfs/access/ApprovedCode050604.pdf> [accessed 2 Dec 2005], p. 4.

Appendix 5: Walking Access in Britain ... Compensation

1 Ramblers' Association, 'Scottish Outdoor Access Code' (2004) <http://www.ramblers.org.uk/scotland/access/Code/update2004.htm> [accessed 27 Oct 2005].

2 Compensation is payable, in some circumstances, when a person incurs a loss or expense as a result of the community right to buy, established under Part 2 of the Act.

3 Ramblers' Association, 'Provision for Walking' (2004) <http://www.ramblers.org.uk/info/factsandfigures/resources.html> [accessed 24 Oct 2005].

4 Deborah Pearlman and J J Pearlman, 'Is the Right To Roam Attainable? An Aspiration or a Pragmatic Way Forward?', in *Rights of Way: Policy, Culture and Management,* ed. by Charles Watkins, Rural Studies Series (London: Pinter, 1996), pp. 49–68 (pp. 62–63).

5 Ibid. (p. 67).

6 Noel Russell, *An Analysis of the Potential Costs to Landowners under a Statutory Right of 'Open Access' over 'Mountain, Moorland and Common Land': Report to the Country Landowners Association* (Manchester: School of Economic Studies, University of Manchester, 1997), p. 7.

7 Ibid., p. 7.

8 Ibid., p. 23.

9 Ibid., p. 35.
10 Department of the Environment Transport and the Regions, 'Access to the Open Countryside in England and Wales: A Consultation Paper Issued Jointly by the Department of the Environment, Transport and the Regions and the Welsh Office' (18 Dec 1998) <http://www.defra.gov.uk/wildlife%2Dcountryside/consult/access/index.htm> [accessed 24 Oct 2005], Section 3d.
11 Ibid.
12 Ramblers' Association, 'Walking Is Britain's Most Popular Outdoor Recreation' (2004) <http://www.ramblers.org.uk/info/factsandfigures/recreation.html> [accessed 30 Oct 2005].
13 'Rambling – When in Roam', *Economist,* 13 Mar 1999.
14 Quoted in Elena Ares and Grahame Allen, 'Research Paper 00/31: The *Countryside and Rights of Way* Bill – Access and Rights of Way', House of Commons Library (17 March 2000) <http://www.parliament.uk/commons/lib/research/rp2000/rp00-031.pdf> [accessed 3 Mar 2003].
15 Department of the Environment Transport and the Regions, 'Press Release: Government Promises Statutory Right of Access to Open Country' (8 Mar 1999) <http://global.factiva.com/> [accessed 8 Feb 2006].
16 United Kingdom Parliament, '8 March 1999: Countryside (Access)', *House of Commons Parliamentary Debates (Hansard): Bound Volume,* 327 (1999), columns 21–33.
17 Ibid.
18 Thomas Sutcliffe, 'Meacher's Right to Roam Wrong-foots the Conservatives', *Independent,* 9 Mar 1999, p. 8.
19 'Rambling – When in Roam', *Economist,* 13 Mar 1999.
20 Jill Sherman, 'Countryside Opened up to Ramblers', *The Times,* 9 Mar 1999, p. 1.
21 Department of the Environment Transport and the Regions, 'Analysis of Responses to the *Access to the Open Countryside [in England and Wales]* Consultation Paper' (8 Mar 1999) <http://www.defra.gov.uk/wildlife-countryside/access/analysis/index.htm> [accessed 22 Oct 2005], Chapter 6.
22 United Kingdom Parliament, '17 March 1999: Written Answers to Questions: Countryside Access', *House of Commons Parliamentary Debates (Hansard): Bound Volume,* 327 (1999), columns 669–670.
23 Entec UK and K Taylor, 'Appraisal of Options on Access to the Open Countryside of England and Wales', Department of the Environment, Transport and the Regions (8 Mar 1999) <http://www.defra.gov.uk/wildlife-countryside/access/appraise/index.htm> [accessed 30 Dec 2005], Executive Summary.
24 Ibid., Table 7.2.
25 Ibid., Appendix 6, Section 3.
26 Ibid., Appendix 6, Section 3.2.
27 Robert Cann, Campaigns Officer, Ramblers' Association, to P McDonald, subject 'CROW Act and the Capital or Market Value of Access Land', 27 Oct 2005 [Email].
28 Quoted in Elena Ares and Grahame Allen, 'Research Paper 00/31: The *Countryside and Rights of Way* Bill – Access and Rights of Way', House of Commons Library (17 March 2000) <http://www.parliament.uk/commons/lib/research/rp2000/rp00-031.pdf> [accessed 3 Mar 2003].

29 United Kingdom Parliament, '13 June 2000: Countryside and Rights of Way Bill', *House of Commons Parliamentary Debates (Hansard): Bound Volume,* 351 (2000), columns 794–915.

30 Ibid.

31 Ibid.

32 Countryside Agency, 'Frequently Asked Questions' (no date) <http://www.openaccess.gov.uk/S4/html/LWWCM/Section4/GeneralContent/FAQ/> [accessed 22 Oct 2005], 7. Landowners' Rights and Responsibilities.

33 Ramblers' Association, 'Your Questions Answered' (Sept 2004) <http://www.ramblers.org.uk/freedom/questions_answer.html> [accessed 25 Oct 2005].

34 Deborah Pearlman and J J Pearlman, 'Is the Right To Roam Attainable? An Aspiration or a Pragmatic Way Forward?', in *Rights of Way: Policy, Culture and Management,* ed. by Charles Watkins, Rural Studies Series (London: Pinter, 1996), pp. 49–68 (pp. 55–56).

35 Marion Shoard, 'Off the Track: Problems Looming for the Right to Roam', *Countryside Recreation*, 8, no. 2 (Summer 2000) <http://www.countrysiderecreation.org.uk/journal/summer2000/2-beaten.pdf> [accessed 28 Oct 2005].

36 Chris Baker, 'The Right to Roam', *Geographical,* 77, no. 7 (July 2005), pp. 28–32 (p. 28).

37 Countryside Rights Association, 'Countryside Rights Association' (no date) <http://www.countrysiderightsassociation.co.uk/nonflash/subtext3.htm> [accessed 25 Oct 2005].

38 'Farmers Fail To Front', *Rural News* (24 June 2005) <http://www.knowledge-basket.co.nz/ruralnews/welcome.html> [accessed 30 Oct 2005].

Appendix 6: Misinformation and the Right to Roam

1 Jim Sutton, Minister for Rural Affairs, *Cabinet Finance, Infrastructure and Environment Committee: Public Access over Private Land* (Wellington, NZ: Office of the Minister for Rural Affairs, 20 Mar 2002), p. 2.

2 Land Access Ministerial Reference Group, *Walking Access in the New Zealand Outdoors: A Report by the Land Access Ministerial Reference Group* (Wellington, NZ: Ministry of Agriculture and Forestry, 2003), p. 104.

3 Ibid., p. 99.

4 Ministry of Agriculture and Forestry, *Analysis of Written Submissions on the Report 'Walking Access in the New Zealand Outdoors'* (Wellington, NZ: Ministry of Agriculture and Forestry, 2004), pp. 57–58.

5 Jim Sutton, Minister for Rural Affairs, Four-page update brochure, 'Walking Access in the New Zealand Outdoors', sent to submitters, Aug 2004 [Brochure].

6 Annette Scott, 'Acland Lashes Back at Critics', *New Zealand Farmers Weekly,* 15 Sept 2004.

7 Tim Cronshaw, 'Rights of Access – Farmers Caught in Land Debate', *The Press,* 5 Nov 2004.

8 Jim Sutton, Associate Minister for Rural Affairs, 'Press Release: Land Access – Questions and Answers' (22 Dec 2004) <http://www.beehive.govt.nz/ViewDocument.cfm?DocumentID=21919> [accessed 22 Dec 2004].

9 Federated Farmers of New Zealand, 'Press Release: Access Hypocrisy' (10 Mar 2005) <http://www.fedfarm.org.nz/media%20releases/PR031-05.html> [accessed 10 Mar 2005].

10 Jim Sutton, Associate Minister for Rural Affairs, 'Access to the Great Outdoors' (22 Mar 2005) <http://www.beehive.govt.nz/HomepageFeature.aspx?id=1> [accessed 22 Mar 2005].

11 Ruth Berry, 'Retreat on Public Access to Farmland', *New Zealand Herald,* 29 June 2005.

12 Jim Sutton, Associate Minister for Rural Affairs, 'Press Release: Government Committed to Improving Access' (29 June 2005) <http://www.beehive.govt.nz/release/govt+remains+committed+public+access> [accessed 29 June 2005].

13 John Acland, 'Message from John Acland, Chair of the Walking Access Panel' (21 Apr 2006) <http://www.walkingaccess.org.nz/about-msg.html> [accessed 22 Apr 2006].

14 Nichola Lobban, 'Walking Access to Waterways Focus of Meeting', *Southland Times,* 18 May 2006.

15 Walking Access Consultation Panel, *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), p. iii.

16 Gottlieb Braun-Elwert, to P McDonald, subject 'StopTenureReview', 27 Feb 2008 [Email].

17 New Zealand Parliament, '11 September 2008: Walking Access Bill – In Committee', *Parliamentary Debates (Hansard),* 650 (2008), pp. 18855–18861 (pp. 18856, 18857, 18859).

18 R Campion and J Stephenson, 'The "Right to Roam": Lessons for New Zealand from Sweden's *Allemansrätt*', *Australasian Journal of Environmental Management,* 17, no. 1 (Mar 2010), pp. 18–26.

Abbreviations and Terminology

1 D Alexander, 'Land and Property Law and the Environment', in *Handbook of Environmental Law,* ed. by R Harris (Wellington, NZ: Royal Forest and Bird Protection Society of New Zealand, 2004), pp. 409–427 (p. 409).

2 George French Angas, *Savage Life and Scenes in Australia and New Zealand: Being an Artist's Impressions of Countries and People at the Antipodes*, 2 vols (London: Smith, Elder, 1847), vol. 1, pp. 244–245.

3 Ruth Mason, 'Track or Trail: Notes on Some Words Used by Trampers', *Tararua: Annual Magazine of the Tararua Tramping Club*, no. 12 (Sept 1958), pp. 22–32.

4 George M Moir, *Guide Book to the Tourist Routes of the Great Southern Lakes: Including Te Anau, Wakatipu, Manapouri, Wanaka, Hawea, Monowai, Hauroto [Hauroko], etc. and the Fiords of Western Otago, N.Z.* (Dunedin, NZ: Otago Expansion League, 1925), p. 21.

5 *Moir's Guide South: Guide Book to the Tracks and Routes of the Great Southern Lakes and Fiords of New Zealand,* ed. by Robin McNeill, 6th edn (Christchurch, NZ: Great Southern Lakes Press, 1995), p. 26.

6 For example, the legends on the NZMS 1 maps *Burnham* S83 (1949) and *Palmerston North* N149 (1949) did not use the term 'foot-track'. The track symbol on these maps represented any sort of track, including vehicle tracks. Then a change occurred. The track symbol on *Hutt* N160

(1952) and on *Nelson* S20 (1956) represented specifically foot-tracks and bridle tracks.

7 In my 2004 paper 'Walking Access across Private Land: Behind the Soundbites' I said that 'water margin' meant the edge of a river or lake. In this book I widen the meaning of 'water margin' to include the coast.

8 'Local and Mining', *West Coast Times,* 24 Aug 1865, p. 2.

9 Dianne Bardsley, 'Unravelling the Queen's Chain', *NZWords,* Apr 2005, p. 10. The words 'the Queen's Chain' occurred in Graham E Anderson, 'The Queen's Chain (Not a Limp Wrist Ornament)', *The Landscape*, no. 5 (Dec 1977), pp. 14–16 (p. 15).

10 Brian E Hayes, *Roading Law as It Applies to Unformed Roads* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), pp. 41–42.

11 Ibid., pp. 42, 62–64.

12 Entec UK and K Taylor, 'Appraisal of Options on Access to the Open Countryside of England and Wales', Department of the Environment, Transport and the Regions (8 Mar 1999) <http://www.defra.gov.uk/wildlife-countryside/access/appraise/index.htm> [accessed 30 Dec 2005], Definition of Terms.

13 Jonathan Law and Elizabeth A Martin, 'right to roam', in *A Dictionary of Law*, Oxford University Press, Oxford Reference Online (2009) <http://www.oxfordreference.com/views/ENTRY.html?subview=Main&entry=t49.e3462> [accessed 29 Dec 2010].

Sources and Acknowledgments

1 John Savage and A D McKinlay, *Savage's Account of New Zealand in 1805 together with Schemes of 1771 and 1824 for Commerce and Colonization* (Wellington, NZ: L T Watkins, 1939), p. iii.

2 *New Zealand Historical Atlas: Ko Papatuanuku e Takoto Nei,* ed. by Malcolm McKinnon, Barry Bradley and Russell Kirkpatrick (Auckland, NZ: David Bateman in association with Historical Branch, Dept. of Internal Affairs, 1997), plates 30–57.

3 Judith Binney, *Redemption Songs: A Life of Te Kooti Arikirangi Te Turuki* (Auckland, NZ: Auckland University Press; Bridget Williams Books, 1995), p. 5.

4 Kay L Booth, 'Rights of Public Access for Outdoor Recreation in New Zealand' (PhD thesis, University of Otago, 2006), pp. 36–38, 57–61.

5 A Atkins, surveyor, *Plan of the Matemateaonga Block Shewing Settled Lands in the Vicinity*, 1: 63,360. Map (Wanganui, NZ: A D Willis, 1881).

6 Brian Marshall, 'From Sextants to Satellites: A Cartographic Time Line for New Zealand', *New Zealand Map Society Journal*, no. 18 (2005), pp. 1–136.

7 Brian Marshall, 'A Guide to Finding New Zealand Historical Maps', *New Zealand Library & Information Management Journal,* 50, no. 1 (2006), pp. 33–42.

8 Brian Hooker, 'Early Cartography in New Zealand: A Guide: A List of Published References on the History of New Zealand Maps' (no date) <http://findingnz.co.nz/ae/nae4.htm> [accessed 4 Jan 2010].

Index

B

C

D

E

F

G

H

I

J

K

L

M

N

O

P

Q

R

S

T

U

V

W