Queen Charlotte Track: Origins and Issues

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On 23 March 2010 the *Marlborough Express* ran a story about a proposal by a number of landowners to charge for walking or cycling on the Queen Charlotte Track.[1] On the following day the Department of Conservation announced that it was discussing this proposal with the landowners and other interested parties.[2]

This paper looks briefly at the origins of the Queen Charlotte Track – but not as far back as Maori tracks or bridle tracks – and it describes the developments that led to the proposal to impose a user-access fee.

According to a 2007 newspaper article, the Queen Charlotte walking track in the Marlborough Sounds opened in 1979, some parts of it being 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 anticipated that the track would become a busy internationally known attraction.[3]

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.[4] The New Zealand Walkway Commission had established it as an approved walkway but had not gazetted any sections of it. At some point this walkway's name changed to the Queen Charlotte Track.

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 the mid-1990s DOC upgraded the Queen Charlotte Track. The department continued always to acknowledge the landowners' pivotal role but it never got around to negotiating easements under the New Zealand Walkways Act 1990.

2003 Acland Report

In January 2003 the minister for rural affairs, Jim Sutton, set up the Land Access Ministerial Reference Group to examine walking access to land.[5] Among numerous issues ripe for investigation were various walkway matters: 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 nongazettal 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.

In August 2003 the Ministry of Agriculture and Forestry published the 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 both public land and private land. But it did not examine any of the walkway questions in depth. The report merely remarked that the Department of Conservation's implementation of the New Zealand Walkways Act 1990 was highly deficient. The Reference Group considered that the Walkways Act and its administration needed a fundamental review. 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, however, the 2003 Acland report did reveal some crucial facts about DOC's derelict overseeing of the Act.

DOC's Stewardship of the New Zealand Walkways Act 1990

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'.[6] 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'.[7]

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 own *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'.[8]

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.[9]

DOC and the Queen Charlotte Track

A portion of the acclaimed Queen Charlotte Track illustrated DOC's failure to negotiate gazetted walkways over private countryside, although perhaps the rarity of progress was a defect of the New Zealand Walkways Act 1990 rather than a result of wilful departmental inaction. The seventy-one-kilometre track was managed by the Nelson-Marlborough Conservancy. In 2005, according to a newspaper report, about half of the section of track between Kenepuru Head and Portage was thought to be on private land.[10] Access across the private land existed on a goodwill basis, unprotected by any easements; there were no formal legal agreements with any of the landowners.[11] 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 both 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 became unsettled about commercial tourism operators profiting from the Queen Charlotte Track. DOC's area manager for the Marlborough Sounds, Roy Grose, commented that 'the backbone of the track wouldn't exist if landowners withdrew their support'.[12]

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.[13] 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.[14] 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 Marlborough landowners, could sometimes encourage more landowners to participate.

By late 2005, some of the 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'.[15]

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.'[16]

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 forbearing 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.[17] About 40 per cent of the track's seventy-one kilometres was reportedly 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.[18] 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.

The 2007 Acland Report and Paying for Walking Access

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[19], 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.[20]

The Department of Conservation, apparently, was 'attempting to secure an arrangement that gives some surety over the future of the [Queen Charlotte] 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.[21]

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.[22]

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.[23] The Department of Conservation was considering rerouteing part of the track away from private land.[24] The mayor of Marlborough District Council, Alistair Sowman, favoured this solution.

2010, a Reasonable Outcome?

By 2010 the Queen Charlotte Track access-related issues had been gathering momentum since about 2004. 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.[25]

According to the *Marlborough Express*, the fee was likely to be $15. A lightweight editorial in this newspaper failed to 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 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.[26]

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.[27]

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 five press reports on the proposed access fee, dated 23, 24 or 25 March. They all dressed up the situation as a reasonable outcome that illustrated the merits of negotiation. I didn't detect any immediate public response from the New Zealand Walking Access Commission. Recreational NGOs remained silent. 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.[28]

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),[29] 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 product 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. An almost unanimous Parliament had passed the Walking Access Bill 2008. 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 the Queen Charlotte Track would not be free. Parts of it 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 new arrangements informally, the day before DOC's announcement.[30]

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 that 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 likely in this case, a partial dud, which would probably prove to be successful in some aspects and defective in others. The negotiations, outside the Act, had not led to solutions that matched the axioms optimistically expressed in the Act: that walking access to

the outdoors should be free and enduring. 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.

Endnotes

1 Maike van der Heide, 'Mayor Fears Fee a Deterrent', *Marlborough Express,* 23 Mar 2010.

2 Department of Conservation, 'Media 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].

3 'Track under Threat', *Marlborough Express,* 11 July 2007.

4 Automobile Association (N.Z.), *AA Guide to Walkways, South Island, New Zealand* (Auckland, NZ: Lansdowne Press, 1987), pp. 14-22.

5 Jim Sutton, Hon, Minister for Rural Affairs, 'News Release: Minister Launches Land Access Reference Group' (23 Jan 2003) <http://www.beehive.govt.nz/ViewDocument.cfm?DocumentID=15902> [accessed 14 Nov 2004].

6 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.

7 New Zealand Conservation Authority, *New Zealand's Walkways* (Wellington, NZ: New Zealand Conservation Authority, 2003), p. 5.

8 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.

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. 75.

10 Tara Ross, 'Maori Bill DOC for Use of Track', *Sunday Star-Times,* 4 Sept 2005.

11 Roy Grose, Area Manager, Marlborough Sounds Area Office, DOC, Email to P McDonald, subject 'Research Query, Fact-checking', 21 Dec 2005 [Email].

12 Tara Ross, 'Maori Bill DOC for Use of Track', *Sunday Star-Times,* 4 Sept 2005.

13 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).

14 Adrian Griffiths, Nelson-Marlborough Conservancy, Email to P McDonald, subject 'Research Query, Fact-checking', 4 Jan 2006 [Email].

15 Roy Grose, Area Manager, Marlborough Sounds Area Office, DOC, Email to P McDonald, subject 'Queen Charlotte Track Access', 22 Dec 2005 [Email].

16 'Track under Threat', *Marlborough Express,* 11 July 2007.

17 Ibid.

18 Roy Grose, Area Manager, Marlborough Sounds Area Office, DOC, Email to P McDonald, subject 'Queen Charlotte Track - 21%', 29 Mar 2010 [Email].

19 Walking Access Consultation Panel, *Outdoor Walking Access: Report to the Minister for Rural Affairs* (Wellington, NZ: Ministry of Agriculture and Forestry, 2007), pp. 16-17.

20 Damien O'Connor, Hon, Minister for Rural Affairs, Letter to P McDonald, 24 Aug 2007 [Letter].

21 Chris Carter, Hon, Minister of Conservation, Letter to P McDonald, 31 Aug 2007 [Letter].

22 'Donations Sought', *Nelson Mail,* 9 Nov 2007, p. 2.

23 Rachel Young, 'Push to Redirect Track', *Marlborough Express,* 12 May 2009.

24 New Zealand Walking Access Commission, *Minutes: New Zealand Walking Access Commission Meeting: Monday 23 March 2009* (Wellington, NZ: NZWAC, 2009), p. 1.

25 Department of Conservation, 'Media 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].

26 'Editorial: Landowners' Charge Fair Enough', *Marlborough Express,* 24 Mar 2010.

27 Ibid.

28 'Should Trampers Pay to Use Tracks Featuring Privately-owned Land?' *New Zealand Herald,* 25 Mar 2010.

29 Maike van der Heide, 'Mayor Fears Fee a Deterrent', *Marlborough Express,* 23 Mar 2010.

30 Cathie Bell, New Zealand Walking Access Commission, Email to P McDonald, subject 'Queen Charlotte Track', 6 Apr 2010 [Email].

Corrections

Page 2, line 10. The full length of the Queen Charlotte Walkway became available when the walkway was officially opened in November 1983.
Page 5, lines 24, 25. Should read 1983 and twenty-four years.