A Submission on *Outdoor Walking Access: Consultation Document*

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A PDF copy of this submission is available from
http://homepages.paradise.net.nz/petemcd/wa/wa.htm

Page 27 needs printing in colour for the diagram to make sense.

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Walking Access Consultation Panel
PO Box 2526
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Dear Panel

Outdoor Walking Access: Consultation Document

Thank you for sending me a copy of the consultation document.

You have indicated that landholders and users largely agree on three needs: the mapping and signposting of existing access rights, an access agency to provide access leadership, and a code of access. If the government adopts the solutions that you have suggested, over the long term the measures will improve walkers' practical access to water margins and public roads.

The consultation document has a splendid photograph on its cover. Much of the area shown in the photograph is a modified landscape. It is no less attractive for being so. New Zealanders in years to come will enjoy increasingly certain and enduring access to the riversides in this picture. And probably to some of the hills in the distance. But the prognosis for walking access along the farmtracks and across the pasturelands in the foreground is much less optimistic. We are still building a lopsided national foot-track network, as we have been doing for a century.

Many of the questions led me back onto old ground. Other questions raised new aspects. This submission therefore mixes the old and the new.

Regards

Pete McDonald

Contents

Aim

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

On access to recreational resources, the aim neglects non-water margins, as it probably had to, given the Panel's terms of reference.

On property rights, the aim upholds the idea of 'having our very own piece of dirt' implicitly rather than explicitly. Part of the question asks whether this indirectness is sufficient. I cannot answer this question in the way you intend me to answer it because I do not subscribe to its premise, even if 'many New Zealanders' do. I do not hold dear the idea of rural landholders 'having [their] very own piece of dirt' if this means – as it presently seems to mean – that walkers are denied certain and enduring linear access across most of New Zealand's uncultivated farmland. I mean walking across pastoral countryside for the sake of it, not simply to attain public land. Any aim that captures this property-rights absolutism, whether explicitly or implicitly, would prolong the status quo.

Across extensive tracts of private New Zealand, our Queen's Chain fixation and our national obsession with the sanctity of private property rights is 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 will remain off limits, except where public roads happen to exist. Undistinguished coast and non-descript riverside will be accessible, while many exquisite corners of *Country Calendar* will remain in Forbidden New Zealand. The primary stock of potential walking access – the existing farmtracks – will stay private (unless they happen to follow public roads or parts of the Queen's Chain).

How could the aim be improved? It cannot, under the Panel's terms of reference. Were it not for the restricted terms of reference, the Panel could improve the aim by adding a recognition of the rights of all New Zealanders to enjoy the farmed countryside, and not just where there happen to be public roads or Queen's Chain reserves.

The limited aim reflects the slimmed-down terms of reference, which we have known about since October 2005 (*Agriculture, Forestry, Rural Affairs: Briefing for Incoming Ministers*). 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 some matters, therefore, the terms of reference were potentially

Aim for Walking Access to Land

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

From *Outdoor Walking Access: Consultation Document*, page 5.

constructive and productive. Yet 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 land-guards' anti-access campaign and the 2005 general election results, was the third of the three aims of the Ministerial 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 released its consultation document, we knew that about 11.7 million hectares of grazing, arable, fodder and fallow land, 44 per cent of our land area, would remain closed, except where there happened to be Queen's Chain reserves or public roads. (The figure of 11.7 million hectares will decrease only slightly as tenure reviews progress.) The pastoral landscape will 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, will remain a national blind-spot. Except, that is, in the minds of the entrepreneurs who are opening an ever-increasing number of private walking tracks.

Walking Access after 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 and Progressive parties, supported on matters of confidence and supply and other specific issues by New Zealand First and United Future.

The 2002 election had given Labour fifty-two seats and National twenty-seven. Labour's third term in government would be very different from its second. Having failed to achieve its walking-access ambitions in 2002–5, the Labour Party would have to prune them severely to keep them alive. United Future and New Zealand First, Labour's confidence-and-supply partners, both held conservative views on property rights. On public access, the confidence-and-supply agreements contained only sixteen words: 'non statutory proposals to negotiate improved public access along rivers lakes and foreshore will be progressed'. The Walking Access Consultation Panel would have little choice but to intensify New Zealand's preoccupation with water margins. On the other hand, had the National Party gained power, there might not have been a Panel.

Principles

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

Quality of access

Yes, subject to the proviso that the moral right of the public to enjoy the farmed landscape must gradually and eventually be given legal bedrock in the form of free, certain and enduring linear access over New Zealand's pasturelands, and not just along water margins. The access agency in particular and New Zealanders in general should come to view the three principles that underpin the quality of access as the ideal for *all* foot-tracks, whether across public or private land.

To apply these principles to the quality of foot-tracks along water margins and public roads but not to the quality of public foot-tracks across private land (such as those based on easements) would be highly illogical, although politically understandable.

If adopted, these principles underlying the quality of access will affect numerous decisions of policy-makers and officials, both in the short term, during the Panel's and government's remaining deliberations, and in the long term, during the later evolving and maturing of the access policies.

Respect for property and the environment

Yes. It is important to understand that a desire for free, certain and enduring walking tracks to enjoy private countryside does not imply any lack of respect for private property or any lack of understanding that farms are work places as well as part of New Zealand's outdoors. Equally importantly, it is about time that farmers acknowledged that sheet-metal workshops are not part of New Zealand's outdoors.

Information and maps

Yes. I agree that the public and landholders should be able to obtain information, including maps, about land that is open to recreational use by the public. As the consultation document points out, this land includes esplanade and other reserves administered by local authorities, Crown land from which the Crown has no reason to exclude the public, and unformed public roads. The Panel could improve the wording of this principle if the first sentence were to read 'land and foot-tracks that are' instead of 'land that is'. At present, some people may read this principle as referring only to information about access to Crown land, and not to information about linear access across private land, such as accessways and walkways based on easements.

Reinstating lost access

Yes. Any new Queen's Chain reserves established to reinstate those lost by erosion or accretion should in future automatically move with the wandering water margins.

New access

Yes, subject to the rider I've stated above: that walkers need new linear access across private farmland to enjoy pastoral countryside for its own sake.

Dunedin and the Otago Harbour, with Mount Cargill to the north of the harbour and the Otago Peninsula to the south.. The Otago Peninsula, on the right of this photograph, has a distinct ridge-line but this ridge has no foot-track along it.

Information about access rights

Questions 3 to 10 occur in a section titled 'Issues on which land-holders and users largely agree: Location and status of existing access rights *to water margin land*'. (My italics.) I expected information to be an area of agreement, but I thought that the agreement on the need for mapping and signposting of existing access would be far wider than merely about water margins. Does this narrow agreement imply that the landowners oppose the mapping and signposting of non-water-margin public roads? Does the focus on only water margins mean that the landowners do not agree that there is a need to map and waymark *all* foot-tracks open to the public? While the government might prefer to obtain the adjoining landowners' approval for the mapping and signposting of public roads, as I understand the law this mapping and signposting could proceed if necessary without the endorsement of the adjoining land-guards.

3 What information should be included in a mapping database?

This is a huge question. Firstly, there can be a big difference between the information you put into the mapping database and the information that cartographers decide to take out of that database. Secondly, New Zealand's foot-tracks have many different legal statuses.

The most basic requirement, before any consideration of access rights, is that a mapping database designed to generate maps that meet the needs of nonmotorised outdoor recreators should include accurate data on *all* physically evident foot-tracks and waymarked routes, whether those tracks and routes are public or private and whether or not they follow water margins or public roads. Inadequate field checking and an overreliance on aerial photography, perhaps for several decades, has caused the tracks record of the New Zealand Topographic Database (NZTopo) to become inaccurate, incomplete and out of date. We will need more surveyors on the ground, unless a service develops that allows the public to submit GPS data.

The next most basic consideration is to future-proof the database so that future cartographers can produce maps that differentiate between foot-tracks open to the public and foot-tracks not open to the public. Similarly, cartographers should be able to produce maps that differentiate between foot-only tracks and tracks open to both walkers and cyclists. To achieve this future proofing, we will need to draw up a list of track statuses covering all the different types of foot-tracks in New Zealand, so that data-enterers can allocate a status to each track or to each section of track. If doing this, in practice, proves too difficult, our maps may never acquire track symbols that differentiate between public and private tracks.

Regarding the multiple track statuses, we are still developing a track system from hell. Had the government successfully established water-margin footways, it would have added yet another legal track status. We should be going the other way. I haven't

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changed my opinion on this since submitting on the report of the Land Access Ministerial Reference Group: 'research is needed to look at the entire developing web and to identify statuses that could be unified and regularised'.[1] In the longer term, an access agency that shows real leadership would push for a whole new national track status, that of Public Foot-track, to be overlaid onto and replace the existing mess of legal standings.

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

There may be no balance that suits all users. Users' preferences and requirements may vary greatly.

There is a danger that the Panel might get bogged down in the details of this issue, admittedly important and tending to be absorbing, when the greater priority is to get surveyors/GPSers out there, plotting our tracks.

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

This is an interesting question. I have thought for some years that in some places in New Zealand, especially in urban areas and on urban fringes, 1:25,000 maps would show walking tracks more clearly than 1:50,000 maps. But I have always assumed that New Zealand cannot afford to produce 1:25,000 maps, especially not on paper. If, however, producing some 1:25,000 mapping is technically possible and affordable – even if the maps were to become available only online – doing so could radically improve the quality of track information available to New Zealanders (provided that the source data is accurate, up to date and complete).

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

A note on track databases.

The Cabinet paper of December 2004 envisaged that the access agency would 'build a central and regional database of existing and new walking access opportunities and actively disseminate that information to stakeholders'.[2] But your consultation document does not mention a track database, as distinct from a mapping database. I presume that this is because the Panel is no longer contemplating a central track database or regional track databases separate from the record of tracks that will exist in the mapping database. If this omission reflects a prioritising, I would agree that accurate maps – and the mapping database they come from – are by far the greater concern.

Yet some local authorities already have track databases and others may develop them. The more consistency, the better. Dunedin City Council, for example, is planning to make its track database available on the web.

Regarding consistency in a very general sense, I understand that the New Zealand E-government Strategy covers ways to achieve interoperability of public-sector data.

On consistency in a narrower sense, maybe the proposed access agency could consider formulating some guidelines to help the designers of track databases. Basic requirements of all track databases will include the track name, alternative names, the grid references of the start and finish (based on the planned NZTM map series), the categories of users allowed on each track, and the dates of any annual closures. The entries could include a map extract or the route itself in digital form.

Working out a standard approach to indicate user groups is more complicated than it appears at first sight. Dogs, for example. Dunedin City Council's *Otago Peninsula Tracks* leaflet works on an assumption that taking dogs is OK except when the description includes 'No dogs'. But the council's *Walking with Wheels* leaflet works on the opposite assumption, ie you can't take your dog except when the description includes a 'Dogs allowed (on leash)' symbol. Perhaps the least ambiguous approach would be to give every single track a dog-mention: either 'No dogs' or 'Dogs allowed (on leash)' or 'Dogs allowed'.

Listing the track classifications will be problematic. My preference would be to favour the approach and terminology of the Standards New Zealand specification HB 8630:2004. But some local authorities have not yet adopted this standard.

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 become so.

Linear 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 access is entry that is allowed to a defined space, with users being entitled to walk anywhere in that space. Typically we associate area access with public land such as national parks and recreation reserves. 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. The right to roam has been officially defined (in England and Wales) 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'. 'Open countryside' in this definition meant mountain, moor, heath, down and common land.

Area access is sometimes referred to as 'open access' or 'general access'. But the term 'area access' is intuitively clearer than these alternatives.

A specific instance of linear access or area access might be subject to restrictions, such as closure for lambing, depending 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 waymarked water margins is linear access. In referring to such riverside, lakeside and coastal access, some landholders and politicians have used emotive terms such as '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.

Signposting

The process will often be a dual one: first the locating of a public road or Queen's Chain reserve, and then the signposting. I will answer the following questions with this dual process in mind.

By 'signposting' I will assume you mean a hierarchy: actual written notices (signposts or boards), plus waymarking (yellow triangles, poles and ribbons).

7 Is signposting necessary at all?

Signposting and waymarking are essential parts of facilitating and controlling linear access. Most of the public, except those with GPS devices, will never be able to locate and follow unformed public roads unless those roads are waymarked. The question should not be whether signposting and waymarking is necessary but how much signposting and waymarking would be the ideal and can we afford it. Oh! That's your next question.

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

How extensive? Consider adopting the norms in the Standards New Zealand specification HB 8630:2004, unless there are good reasons not to. These specifications, for example, state how extensively tramping routes should be marked. Positive or negative? Both positive and negative signposting can be informative. Both types will continue to exist.

A few landholders deliberately or accidentally erect misleading notices that prevent the public enjoying their lawful rights of access. Accurate maps, together with a map-using public, will provide part of the answer to such pretence or misinformation. But the Panel might want to consider whether a failure of a landholder to remove or correct a deceiving notice, with no reasonable excuse and after a warning, should land that landholder in court.

There are probably a few people in New Zealand, some DOC staff for example, who've spent their whole lives in signposting and waymarking. I hope that some of these experts contribute their ideas to the Panel. Or perhaps the Panel has already consulted one or two such people?

There will be a finite amount of money for signposting and waymarking. So for every public road and Queen's Chain reserve whose signposting they are contemplating, officials will inevitably weigh up the potential practical usefulness. The Panel will need to consider the openness of this decision-making and the possible consequences of the value judgments. An access-agency decision not to locate and waymark a particular public road, because of the agency's limited resources, should not prejudice the legality and future use of that road.

9 Who should be responsible for signposting?

Numerous bodies and individuals will continue to signpost and waymark routes. I was out one day recently, following ten-year-old ribbons through dense undergrowth in regenerating bush. In Dunedin a small group of track enthusiasts works at weekends, re-marking and clearing such routes. But none of these members of the public have the legal knowledge and surveying skill to locate authoritatively unformed public roads or Queen's Chain reserves. If you cannot located these strips exactly, you cannot signpost and waymark them.

Some local-authority staff may have the expertise to do this locating or the power to arrange for someone to do it. But when you approach your local-authority official with such a suggestion, he or she sometimes makes a personal value judgment on its desirability. Irrespective of whether this judgment of worth is positive or negative, the answer will often be negative because there is no money to pay for either the locating or the signposting. The two contributing factors are very different. The lack of funding is understandable. But the value judgment – the opinion of a local-authority officer – can seem, for example, to defy one's right to pass and repass on a public road at any time. This can cause tension between a local authority and a member of the public, a strain that is not necessarily of the local authority's making.

So it seems that to make any progress in the locating, signposting and waymarking of public roads and Queen's Chain reserves, the access agency will have to lead the way, unless local authorities and the Department of Conservation become obliged and are funded to do this work. An obvious exception to this will be the marking of gates across public roads. As the gate-erecting landowner benefits from the goodwill of the state, I see no reason why he or she should not be obliged to mark the gate.

10 Who should bear the cost of signposting?

One way or another, the public purse will have to pay for much of the locating, signposting and waymarking of public roads and Queen's Chain reserves. On the other hand, some private bodies such as track trusts have already signposted and waymarked sections of public road and Queen's Chain. They may continue to do so. Many private individuals may be interested in helping to waymark tracks. When all that's required is orange plastic triangles or ribbons in the bush, the cost may be minimal.

Code of responsible conduct

I support the general concept of a code that includes, among other things, advice on conventions and responsibilities. But I oppose the name 'Code of Responsible Conduct'. Names are important. There can be more in a name than meets the eye. Many people seem to be already interpreting this name one-sidedly. The reason for this is that the name stresses conduct rather than access. The undertones of this proposed biased label are patronising and stereotyping.

My preference would be for the name 'Code of Access'. This code would dwell as much on rights of access as on sensible and informed behaviour.

The dominant attitude of New Zealand's farmers during the access debate of 2003–5 was anti-access, exaggerative, distrustful, dictatorial and contemptuous. We might half expect the imperfections in the rural behaviour of the general public to correlate roughly with socioeconomic position and level of education. In contrast, the farmers' aggressive negativity came as much from the nation's farming leaders as from the farming rank and file. Federated Farmers of New Zealand is a major lobby group whose national office reportedly has a staff of about sixty, twenty-five of whom concentrate on policy issues. It was not responsible or honest conduct for the federation to skew the public debate on access by deliberately and persistently misinforming the public on the government's plans.

Tom Lambie stepped down from the presidency of Federated Farmers on 26 July 2005 at the federation's sixtieth annual conference. 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.'[3] This 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 web page carrying the lie that the government was planning a right to roam. Responsible and ethical conduct?

A code of access needs to be phrased to influence gradually the attitudes of the whole farming community as well as to educate users. We seem to be heading for incremental improvements in access. Incremental change should occur in thinking as well as in physical access, and in landowners' attitudes as well as in users' attitudes.

Behaviour and attitudes are affected by many more influences than just a code of access. As long as our land law fails to match our moral right to enjoy the pastoral landscape, and as long as some landowners erect notices saying TRESPASSERS WILL BE SHOT, and as long as the access debate is regularly soured and polarised by belligerent farmer-talk, there will be a limit to how sophisticated and harmonious our outdoor mores can become. See also my answer to Question 18, on property rights.

'Incremental change should occur in thinking as well as in physical access, and in landowners' attitudes as well as in users' attitudes'

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

Unquestionably both.

At one level the code of access needs to be very simple. Take farm gates, for example. The farm-gates convention – leave gates as you find them – applies to gates on public land as well as on private land. Visitors will sometimes be unsure whether they are on public land or private land.

At a deeper level, for users who seek a detailed understanding of access rights, certain sections in the code of access will need to differentiate between public and private land. The code might contain sections that apply specifically to private land or specifically to public land.

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

Difficult to comment on this without seeing the list of aspects that would become legally enforceable. If the Panel decides yes, there could be no new legislation to improve the public's access rights and yet there might be a whole new list of statutory restrictions overlaid onto the present law of trespass and onto the public's already nonexistent legal rights to enjoy the farmed landscape. On the other hand, for example, I would approve of a regulatory stipulation that outlawed notices saying TRESPASSERS WILL BE SHOT.

My inclination is to answer no to this question, although I would have to read a proposed regulatory or statutory code before making up my mind.

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

A hesitant yes to non-regulatory. A definite yes to promoting customs and responsibilities and clarifying existing law.

What should the code include? Sorry, too busy to answer this question with the thoroughness it deserves. But compare, for example, the Scottish Outdoor Access Code, which is sixty-nine pages long[4], with England's new Countryside Code, which is a two-page leaflet[5] backed by a website and other publications. My inclination for New Zealand would be to produce both a leaflet and a booklet, backed by a website.

Farmers have suggested that many urban New Zealanders don't know about leaving gates as they find them. Many people don't realise that the Queen's Chain exists in some places but not in others. Some are unaware of the damage that an uncontrolled dog can do. Hence the need for a simple leaflet containing the most basic information. Even so, many adult townees may never read such a leaflet. But they might notice a twenty-second TV advert publicising the gates rule.

Perhaps the more effective place and time to get the basic messages across would be in primary schools and during school outings. Hence the need for a distillation of the code onto a simple leaflet. I must, however, confess to seeing some irony in the possibility of our teachers teaching our children about gates on walking tracks across farmland when in many places such public tracks do not yet exist.

The complete code, ie the booklet version, would include access rights, conventions, plain-English explanations of the main laws that are relevant to walking access, and sources of further information.

For example, I would expect to find in the booklet version a substantial factual section about public roads. Landowners frequently object to the bringing-into-use of previously unused unformed public roads. Sometimes these landowners complain that they were not aware of the existence of a public road bisecting their land. Sometimes a landowner argues that when he or she bought the land, the local authority did not warn them about the unformed public roads. Therefore – this argument goes – the road should be stopped. Typically the whole prosperity and happiness of the landowner is at stake, and the landowner is at the mercy of uncaring apparatchiks.

It is of course a land-buyer's responsibility to find out about the existence of any public roads that bisect the land being purchased. Enlightening the landowners and the public on these sorts of aspects will be just as important as telling people what to do about farm gates.

The Otago Central Rail Trail: Unrealised Fears

Commenting on the evolution of the Otago Central Rail Trail, a Wedderburn landowner Graeme Duncan reportedly said that there had been 'almost total opposition from the start' from the seventy farmers along the rail corridor, including himself, until the trail opened in 2000. 'All we could see were all the problems, all the negatives – which never happened,' he said. 'We were all amazed at its popularity. People were seeing Central Otago differently from the way we saw it. We never really appreciated what we had. The places that were on their way out would have gone if not for the rail trail.' (From a story by Stan Darling in *The Press*, 5 October 2005, page 12.)

Access agency

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

Leadership over access issues:

It is interesting that the Ministerial Reference Group's terms of reference and Jim Sutton's first press release (23 January 2003) did not specifically suggest that there might be a need for stronger leadership on the access matters. But the Group identified strengthened nationwide leadership as one of five key objectives of its proposed access strategy. The Group reached this recommendation after a great deal of consultation and consideration.

It was no surprise that Federated Farmers of New Zealand disputed the need for an access agency.[6] That PANZ raised some doubts was of more concern.[7] PANZ did make the valid point that all on-the-ground access issues are local. PANZ asked how a national agency could attend to thousands of local access issues. Maybe this comment was unjustified, as the Reference Group's report itself had pointed out the need for 'local systems and staff with sound technical skills'.

We do require strong national leadership on access. But somehow, that leadership needs to result in local avenues that members of the public can follow to raise access issues, without having the doors slammed shut in their faces. Does this mean that the access agency will need some regional offices? I don't know. The alternative would require changes that oblige and fund local authorities to support more assertively the interests of walkers. Many local authorities are already enthusiastically promoting walking tracks. But equally many, especially in some rural areas, are not.

Coordination and provision of information about access rights:

The primary source of information on foot-tracks ought to be the nation's topographic maps. New Zealand's state mapping organisation is Land Information New Zealand. It will forever remain to me one of life's deepest mysteries why a Labour-led government has not broadened LINZ's mandate to require LINZ to design and produce maps that meet the needs of the recreational map-user. For goodness sake, I thought that walking was the most basic part of our outdoor ethos, and yet we do not require our national mapping body to consider the special information needs of walkers.

How on earth did the Ministry for Rural Affairs end up with this job, a ministry that I presume serves primarily the needs of farmers and rural dwellers? Ah well. Perhaps what matters most is not the way we get there but the final result.

Dispute resolution over access rights:

For all parties to have confidence in nonbinding mediation, the mediator will need to be conspicuously impartial. Some landowners might question the neutrality of an access agency

charged with the job of promoting improvements in access. Furthermore, a mediating role could interfere with an access agency's primary task, that of being a force for access. See Questions 16, 17.

Negotiation and acquisition of new access rights:

The consultation document (page 54) points out that local authorities and community groups will continue to negotiate new access. So, what influence should an access agency have in this work, if any? And should an access agency negotiate access itself, or leave all this work to the existing bodies?

The answer regarding influence is simple. If the final walking-access strategy adopts the principles that access should be free, certain and enduring, the proposed access agency will have a major role in ensuring that those principles filter down to all local authorities and access trusts.

Regarding the extent to which the proposed access agency should itself negotiate new access, I need to answer at some length, because the progress being made nationally by local authorities and trusts varies hugely.

Te Araroa Trust, with the advantage of its uniquely iconic project, has successfully negotiated with many landowners to arrange access where sections of Te Araroa (the Long Pathway) cross private land. We regularly hear news of the opening of a new section of this national trail, which when completed will stretch for 2,924 kilometres from Cape Reinga to Bluff. On 26 February 2006 the prime minister Helen Clark opened Burtton's Track, a 16-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, will 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, is expected to cost $1.4 million.

A number of local authorities around New Zealand have made considerable progress establishing walkways. The Port Hills of Christchurch now benefit from many years of gradual growth of their track network, which includes foot-tracks on private hillsides, spurs and ridges as well as along publicly owned rivers and streams.

In 1998 the Otago Regional Council opened the Alexandra–Clyde 150th Anniversary Walk, thirteen kilometres of track designed to enhance public access to the Clutha River. This track is open to horse-riders and mountain-bikers as well as to walkers. It has become immensely popular. More recently the Central Otago District Council and the Clutha Fisheries Trust, in cooperation with other bodies and landowners, have 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.[8]) 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'.[9]

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 goes through open pastures.

Auckland City Council has developed a draft plan for Churchill Park that, if adopted, will retain the reserve's countryside-in-the-city character. The plan includes a new footpath network that accommodates grazing cattle.

In the Hawke's Bay area, the Napier City Council, Hastings District Council, Hawke's Bay Regional Council and the Rotary Pathways Trust are planning an extensive network of interconnected paths for walkers and cyclists.

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.[10]

In some places volunteers are building and maintaining walkways, just as people did in the 1970s and '80s.

On the other hand, the extensive grazing of the Otago Peninsula, close to Dunedin, still waits patiently for an unbroken coastal walkway and for public walking access to most of its high-points. The peninsula's present collection of foot-tracks is piecemeal and half-hearted. The easternmost third of the peninsula, renowned for its albatross colony, should be infamous for its unabundant public foot-tracks.

Many small country towns still await their first walkway. Kaikohe, when I lived there, had not a single walking track recognised as open to the public. 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.

One tends to lose perspective. The list of walkway developments being undertaken by local authorities, trusts and volunteers is impressive. It's great that residents and tourists in the Wakatipu basin and the upper-Clutha basin can easily access a variety of interlinked trails. Similarly, the people of Christchurch can enjoy an ever-growing web of walking and cycling tracks on the Port Hills. But if there is one trackless Kaikohe in New Zealand, there are hundreds. This will not change overnight.

So, I see the proposed access agency as an active and productive negotiator and funder of new access rights, complementing the progress that some local authorities and trusts are already making.

'if there is one trackless Kaikohe in New Zealand, there are hundreds'

New Zealand Walkways Act 1990:

The New Zealand Walkways Act 1975 recognised the importance of rural walkways for recreational access to the outdoors. A 1979 article, published in north America but written by Walkway Commission staff, 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.[11]

The title of the article from which I took the above quote was somewhat misleading. Or perhaps very hopeful: 'New Zealand's National Walkway Network'. Now, in 2006, we look back at this optimism with mixed feelings, for we can spot hardy clusters of progress pushing up from a throttling resistance to change. We 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.'

From 1990 onwards the minister of conservation could appoint a local authority as the controlling authority of a walkway. But many local-authority walking tracks, sometimes called walkways, are not gazetted walkways under the New Zealand Walkways Act. There are no national statistics on the number and length of these ungazetted walkways nor on their legal statuses. There are doubts about the permanence of some of these so-called walkways. Gazetted walkways can be closed without public involvement; ungazetted ones may be even more defenceless, subject to closure regardless of their public value. Local statistics are available for some areas; so we know, for example, that in 1998 in the area administered by Dunedin City Council, forty-eight of 167 tracks were based on half-baked agreements, vulnerable to changes in the landowner's attitude to public use.[12]

Even if we take 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 remains closed. Many areas of uncultivated land lack even linear access, never mind area access. We do not need statistics to evidence this. We can drive across the sheep-dotted countryside on roads, and we can step out of the car for a piss behind a tree, but that's about as far off the tarseal as we can go, unless there happens to be an unformed public road or a Queen's Chain reserve. The New Zealand Walkways Act 1975 and the New Zealand Walkways Act 1990 have, except in isolated scraps, fallen short of unlocking Forbidden New Zealand. Our rigorous trespass laws inhibit innocent outdoor recreation. Private-property rights remain paramount.

The only certainty, regarding the future of walkways across private land, is that easements are here to stay. Some access advocates argue for entry based totally on public ownership. PANZ has proposed dedicating new three-metre-wide public roads solely for pedestrians and bicycles, rather than using easements to create these routes.[13] Public ownership does offer many benefits, but a dual system has been developing for thirty years. Many new walking tracks will be based on public roads or Queen's Chain reserves. Others will be based on easements. The public should not have to own farms before being able to enjoy walking across them.

Public Access New Zealand has argued that easements are vulnerable and restrictive instruments compared to public ownership.[14] This begs the comment: easements may not be as watertight as public ownership, yet many landowners have declined to agree to them. A landowner is said to be burdened with the easement. The adoption of the principles that access should be free, certain and enduring will, if necessary, lead to a critical examination of the security and permanence of easements.

As the Panel has proposed the overriding guiding objectives that access should be free, certain and enduring, the Panel might want to first consider whether it makes sense for New Zealand to continue the present disorderly walkways philosophy, which accommodates both gazetted walkways and more-informal walkways. Do the more-informal walkways meet the principles of certainty and permanence? Do we need an overhauled and revitalised Walkways Act that all local authorities, as well as the access agency, will find an efficient and attractive tool with which to create permanent walking tracks across private land? If yes, would the access agency be a more logical body to promote and establish walkways than the Conservation Boards?

I have just checked the wording of the New Zealand Walkways Policy as it stands today, in May 2006:

> 2.1 Purpose of Walkways
> The primary purpose of establishing walkways is … 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.[15]

The Department of Conservation is patently the wrong body to be expected to promote walkways over private land. Some people said this in 1989.[16] So there seems a lot of sense in the idea of transferring the Walkways Act powers from the director-general of conservation and the minister of conservation to the chief of the access agency and his or her minister. Even so, it is difficult to predict the extent to which this transfer would revive legislation that relies totally on negotiation.

Administration of a contestable fund:

As I have indicated under 'Negotiation and Acquisition of New Access Rights', hardly a month seems to go by without our hearing of Te Araroa Trust receiving another six-figure grant or of the establishment of another exemplary track trust in some affluent area such as that of the Queenstown Lakes District Council. These developments are fantastic. On the other hand, Te Araroa will

miss Dunedin by three hundred kilometres, Queenstown is a four-hour drive away, and I can see no hope of Dunedin City Council ever having the spare cash to promote, negotiate and build the new tracks necessary to improve the Otago Peninsula's fragmented and sometimes nonexistent track network. For progress in many parts of New Zealand, a contestable fund will be essential. An access agency would be the obvious body to administer such a fund.

The holding of interests in land:

I don't know how important it would be for the access agency to have the ability to hold interests in land. Would this mean that the access agency would become a major track-manager, like DOC and local authorities?

At present, for example, many of the tracks on the Dunedin City Council track database are managed by either Dunedin City Council or DOC. Some are managed by city-council-owned companies, such as City Forests Ltd. Several are managed by DOC in collaboration with a private owner. Several are managed by Dunedin City Council in collaboration with a private owner. Just a few are managed by their private owners alone. Would it complicate things to have a third main national track-manager? I don't know.

On the other hand, could a situation arise where the access agency negotiates an easement but the local authority declines to take any responsibility for the management of the track? I don't know.

I have no strong feelings either way on this matter. My tentative idea is that, while the access agency should negotiate and build the new accessways or walkways, the local authorities and DOC should take charge of them.

Monitoring of and reporting on the activities of central and local government organisations that have an access-related role:

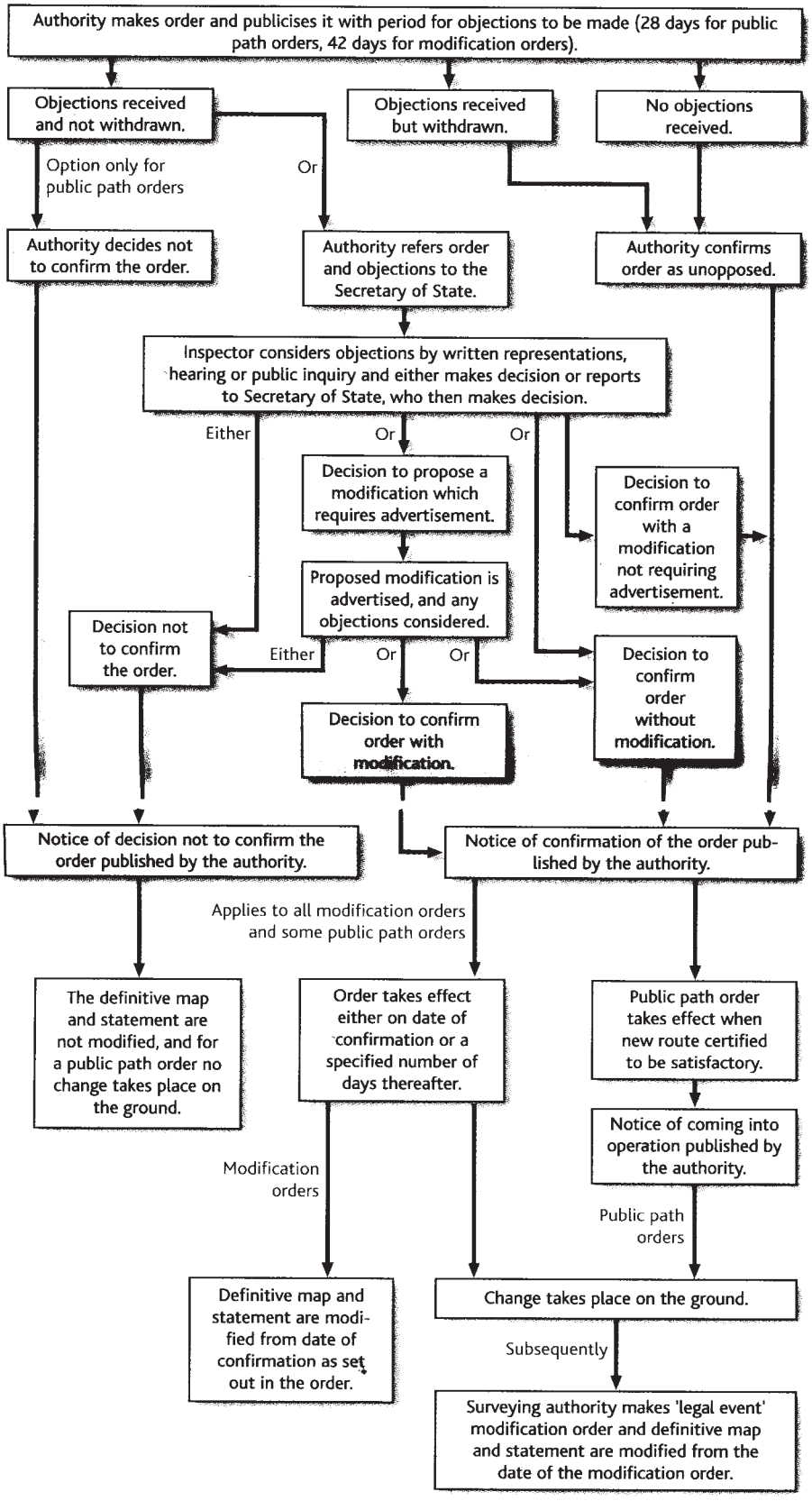
This sounds like a large task, a bit open ended. I have some ideas that seem relevant to this function. They concerns the administration of the unmaintained public roads owned by local authorities.

It is likely that some unformed or only partly formed public roads that are presently 'lost' will be located and waymarked. But there could also be an increasing number of proposals to divert or relocate or extinguish or otherwise modify some of these 'lost' roads. Processes already exist to inform the public about such proposals, but these processes were designed years ago. There may be scope for improving them. I have two suggestions.

Firstly, the government should consider amending the road-stopping procedures. The law should oblige the road-controlling authorities to automatically notify the access agency of any proposals to modify or stop unformed public roads. In England, there are prescribed organisations entitled by regulation to automatically receive copies of modification and public path orders and notices.[17] They are the Auto Cycle Union, British Driving Society, British Horse Society, Byways and Bridleways Trust, Cyclists Touring Club, Open Spaces Society, and the Ramblers' Association. I don't know if the equivalent NGOs in New Zealand would have the administrative resources to shoulder a similar monitoring role. The access agency could be the best equipped

'The law should oblige the road-controlling authorities to automatically notify the access agency of any proposals to modify or stop unformed public roads'

Flowchart: Procedure for modification and public path orders



THE COUNTRYSIDE AGENCY

A flow-chart explaining the procedure involved when a local authority in England makes an order to modify a public right of way. From *A Guide to Definitive Maps and Changes to Public Rights of Way* (The Countryside Agency, 2003).

body to take it on. If a proposed modification or stopping seemed prejudicial to the interests of walkers, the agency could consult with NGOs and if necessary act with them or on their behalf to object to the change.

Secondly, the proposed access code – or an associated publication – could include for the public's benefit an explanation of the modification and stopping procedures, including a flow-chart. On page 22 is a flow-chart that explains the English procedures.

Provision of advice to Ministers on access:

Walking access to land is an immensely complex area on which to advise ministers. The issues spread over the ministries of agriculture and forestry, rural affairs, sport and recreation, tourism, land information, and – for aspects such as marginal strips – conservation. The academic or professional disciplines involved in the issues of walking access include law, land-surveying, cartography, geographic information systems (GIS), recreation management, tourism, planning, and local government – not to mention history and political studies.

I do not know which organisational form could best meet this function. It is difficult to see an access trust providing all-round specialist advice to numerous ministers.

*

The following possible functions are ones that the discussion document did not list:

Promotion of research; recording of its own work

One function of the access agency ought to be the promotion of research into access matters. For example, investigation into foot-track statuses, regional variations in provision, and levels of demand. There is a pressing need for research into the attitudes of landowners towards proposals to create permanent walking tracks across their land. Related to this research function will be the need for the access agency to record its own work, such as successes and failures in negotiating access, so that authoritative facts on these sorts of issues are available in the future. Much of the national debate over access in 2003–5 was hampered by a lack of figures.

Publication of a newsletter

A potentially influential function could be the production of a sizeable newsletter, reporting both on the agency's own work and on any matters relevant to nonmotorised access to the outdoors. Such a publication would improve the public's and the landholders' knowledge of the facts. This in turn would increase the accuracy and objectivity of any future debate on walking access. Over a long period this newsletter would contribute to the incremental changes in attitude that I talked about under 'Code of Responsible Conduct'.

Providing regional presences

It is not clear to me from the range of possible functions (consultation document, pages 53–5) whether the Panel envisages the access agency having regional presences. Ie regional offices or at least regionally based officers to which or whom the public can take their access questions and issues. Or will people take all their enquiries to one central access agency, presumably in Wel-

lington? Or will we continue to take such questions to our local authorities and to our locally based Department of Conservation staff? These matters of function may fundamentally influence the form of the access agency.

Officials' Committee for Geospatial Information

In November 2004, the discussion document *Geospatial Information: The Future Role of Government* outlined the numerous uses and benefits of geospatial information.[18] For example, it told readers that 'farmers and contractors use geospatial information to plant, fertilise and harvest crops – from wheat and vineyards to orchards'. Similarly, 'MFish sources geospatial data from a variety of organisations and uses it [in eight different ways]'. But the document failed to point out that members of the public rely on the reliability of geospatial-information sources every time they use a map or a GPS to help them locate and follow a foot-track.

To help coordinate information-sharing and other geospatial initiatives, representatives from a wide range of government agencies serve on the Officials' Committee for Geospatial Information (OCGI). It seems likely that the proposed access agency will become a major user of LINZ's cadastral and topographic databases. It would be strange if the access agency had no input into the management and design of those databases. I assume therefore that the access agency will be represented on the Officials' Committee for Geospatial Information.

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

- **a branded unit within an existing government department;**
- **a trust, similar to the Queen Elizabeth II National Trust;**
- **a Crown entity;**
- **a Commissioner accountable to Parliament.**

I'm not sure that I can improve on the general remarks I made in my submission on the report of the Land Access Ministerial Reference Group.[19] Once the Panel has decided on the necessary functions, I am confident that it will identify and recommend the optimum organisational form. But to help it pick out this form, I will re-submit three particular Dunedin access issues, which the Panel could use to test the likely effectiveness of a hypothetical access agency.

The Cleghorn Street Track

The Cleghorn Street track is a permitted foot-track, based on an oral agreement. (I use the term 'permitted track' to mean a track that crosses private land and is open to the public but which rests on an informal, goodwill agreement.) The Cleghorn Street track crosses farmland on the edge of Dunedin. It is only three kilometres long but it forms an essential part of a classic skyline walk over Signal Hill and McGregors Hill, parallel to North East Valley and Otago Harbour. There are splendid views. Ten minutes'

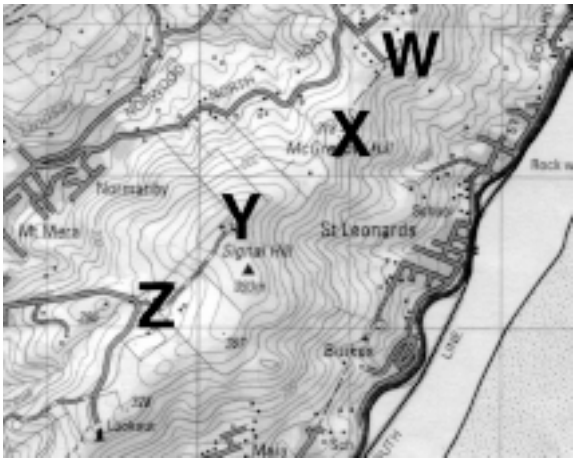
drive from the city, the area is quintessential urban-fringe open space. As early as 1914, a Dunedin guidebook was sending walkers this way: 'From the top [of the Government Scenic Reserve on Signal Hill] the visitor may … proceed along the range northwards and strike the Port Chalmers road close to the Upper Junction.'[20] According to a newspaper report, the farmer has allowed the public to use this track for the last twenty years.[21]

Some parts of the central section of the Cleghorn Street track are only faintly visible as a foot-track across paddocks, but the whole track is sufficiently waymarked with orange triangles and three stiles. Like many foot-tracks across pastureland, and unlike tracks in the bush, the Cleghorn Street track requires minimal maintenance. The 2002 edition of *Dunedin* Topographic Map 260-I44 & J44 does not show the central two kilometres of this track. Neither does NZTopo*Online* (April 2005).

In about April 2005, after an incident involving his cattle, the farmer threatened to close the track. Since then he has extended the annual summer closure from two months to four months, a depressing new precedent. Four months each year is a third of our lives.

Our having a Walkways Act for thirty-one years has not added any permanence to this foot-track. There are no water margins involved. As far as I know, there are no public roads involved. Will the proposed access agency, conceived to focus primarily on the Queen's Chain and public roads and armed only with a Walkways Act that relies on negotiation, be able to improve the permanence of this track and reduce the closure period? What could an access commissioner do to secure this route, when there is no legal obligation on the landowner to keep the track open to the public?

According to information I have received from Dunedin City Council, the farmer now wants to close this foot-track altogether. This wish or intention is, apparently, partly in response to the December 2005 Environment Court decision that declined consent for the subdivision of some land near Wanaka.



LINZ

An extract from 1:50,000 *Dunedin* Topographic Map 260-I44 & J44, 2002 edition.

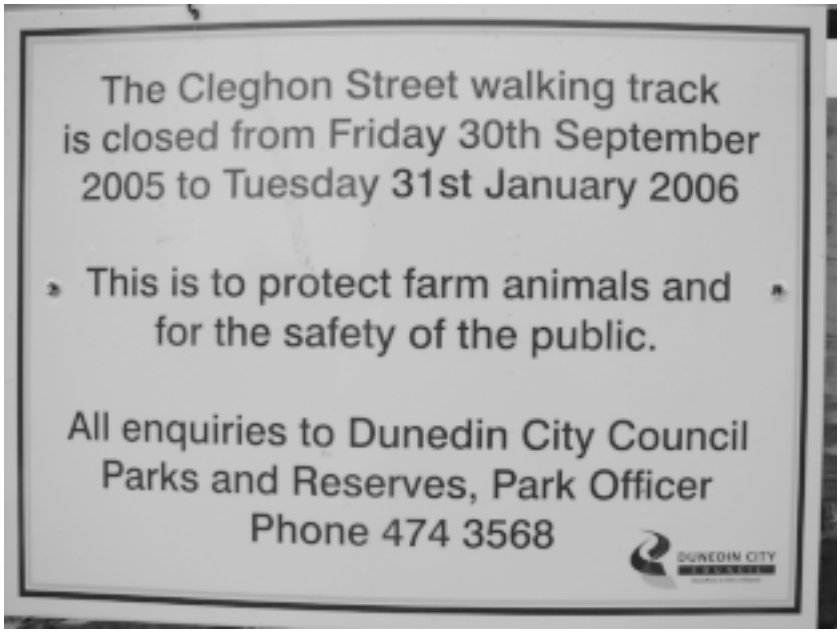
WXYZ marks the Cleghorn Street track. (The map does not show the middle section, XY.)

One of several gates on the Cleghorn Street track.

Part of the Cleghorn Street track.

A sign at the start of the Cleghorn Street walking track. Walkers are not permitted to take dogs.

'Our having a Walkways Act for thirty-one years has not added any permanence to this foot-track'



A new notice that appeared in 2005, extending the lambing closure from two months to four months. As dogs are never allowed on this track, one of the premises behind the closure seems to be that walkers alone can disturb lambing. This premise is highly questionable. According to information I have received from Dunedin City Council, the safety of the public, which had not previously been an issue on this track, has now become one because the farmer has bulls in the paddock.

Possible public roads in or near Heyward Point Scenic Reserve

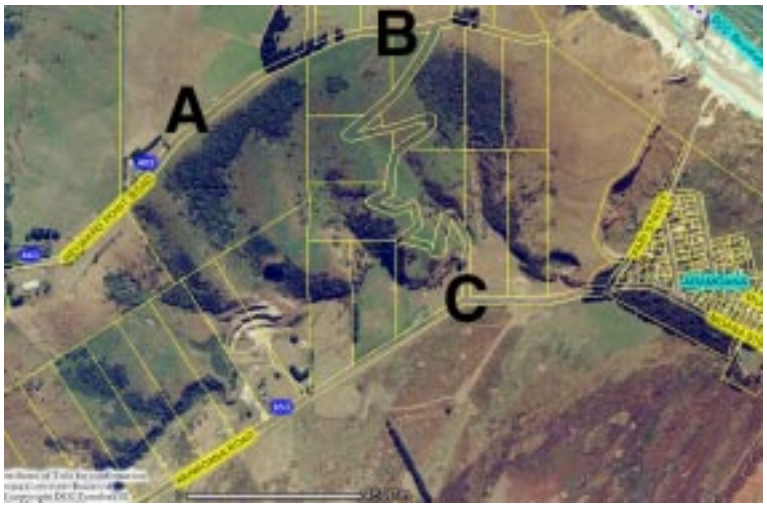
The Dunedin City Council WebMap offers a photographic mode with a cadastral overlay. If we judge from this WebMap (diagram, this page), the roads AB and BC may be public roads. At about point A there is an entrance gate to Heyward Point Scenic Reserve. (This may not be the actual boundary of the reserve.) In September each year, DOC fixes a notice to this gate, notifying visitors that the scenic reserve is closed for two months for lambing.

Firstly, regarding the information function of the access agency, the agency's mapping developments ought to enable me to confirm the statuses of AB and BC.

Secondly, if BC is a public road, I would like to exercise my right to pass and repass along it at any time, including during lambing. At present walkers and mountain-bikers would not be able to enjoy this right, if new mapping confirmed it to exist, because, although the hillside is smooth pastureland and very walkable or rideable, the road is completely unformed. Users would almost certainly stray from the correct route.

Thirdly, if AB is a public road, its annual closure for lambing would appear to elevate the perceived needs of the grazier above the public's right of passage. If this is the case, I would hope that the access agency would view the situation as unsatisfactory, would determine under what laws the Department of Conservation closes AB each year, and would question or oppose future lambing closures.

On the other hand, if AB and BC were once public roads but have been stopped, it could mean that walkers and mountain-bikers had a more-secure legal thoroughfare across this land before it became a scenic reserve. If this turned out to be the case, I would hope that the access agency would raise the matter with the Department of Conservation. The connection between the eastern end of Heyward Point Road and the harbour road is a crucial part of Dunedin's network of tracks. The link should be available all the year round.

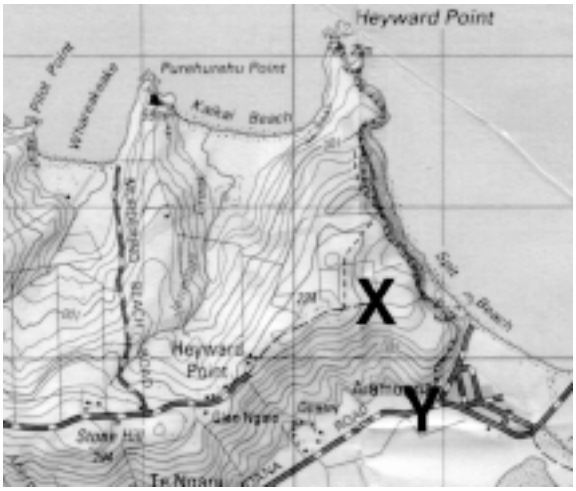


DUNEDIN CITY COUNCIL WEBMAP

The Dunedin City Council WebMap offers a photographic mode with a cadastral overlay. This diagram reproduces an extract from that mode. The yellow lines depict property boundaries.

The extract shows the southern part of Heyward Point Scenic Reserve, near Aramoana. There is an entrance gate to the reserve at about A on Heyward Point Road. (This may not be the actual boundary of the reserve.) The gate carries a closure notice for two months each year during lambing. Section AB of Heyward Point Road is fenced on both sides and is very obvious; I do not know whether AB is a public road.

The road BC is unformed, unwaymarked, unfenced and presently unused. I do not know whether BC is a public road.



An extract from 1:50,000 *Dunedin* Topographic Map 260-I44 & J44, 2002 edition.

The southern part of the Aramoana-Heyward Point walkway climbs the hillside from about Y to about X. This walkway is closed for two months each year during lambing. This map does not show the road BC (see WebMap diagram), which lies several hundred metres west of the walkway.

The High-points of the Otago Peninsula

The Otago Peninsula has about nineteen short foot-tracks that amount to a random collection of accessways rather than a coherent interconnected web. Some of these tracks are merely isolated fragments. There is no continuous and efficient oceanic coastal foot-track. Nor is there a continuous harbourside foot-track. But I want to concentrate here on the public walking access to the peninsula's high-points

The peninsula has a distinct ridge-line that possesses about nine high-points, very striking and picturesque when looked at from the high land to the north of the harbour. Yet there is no public walking access either along the ridge or to any of the hilltops, unless you include the War Memorial hillock. Mount Charles, the highest point of the peninsula, sits off the main ridge; to walk up it you must seek the landowner's permission.

Having a Walkways Act for thirty-one years has not created any public walking access to the grassy skyline of the Otago Peninsula. There are, obviously, no water margins involved. As far as I know, there are no unformed public roads that would provide walking access to or along the ridge-line. So a similar question arises to the one we asked about the Cleghorn Street track: will the proposed access agency, devised to focus mainly on the Queen's Chain and public roads and armed only with a Walkways Act that relies on negotiation, be able to achieve free, certain and permanent walking access to the ridge-line of the Otago Peninsula?

'Having a Walkways Act for thirty-one years has not created any public walking access to the grassy skyline of the Otago Peninsula'

The eastern half of the Otago Peninsula. There is no public walking access to any of the high-points of the peninsula shown in this photograph.

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

Signs at the gate on Tarewai Road, a private road that climbs around the easternmost hillock of the Otago Peninsula and then drops down to Penguin Beach. (Penguin Beach is on the oceanic coast, two kilometres south of Taiaroa Head.)

Dispute resolution

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

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

Nonbinding mediation might resolve some disputes more amicably and less expensively than proceedings in court. It might particularly suit some disputes over the reinstating of access lost by erosion or accretion. These reinstatement cases may sometimes involve two landowners and the Crown.

As to who would mediate, that's 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 should be on improving access. Also, landowners might not view them as impartial. I don't know what or who would be the ideal mediator. It's an important question. 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 was available.

As I understand it, the Trespass Act makes trespass a criminal offence, once a landowner has warned you to leave, even if you stray accidentally off an unformed and ill-defined public road. A warning can force you to return the way you had come, instead of continuing along the best approximation to the public road. The law is weighted against people who are merely trying responsibly to follow public roads. If the law of trespass remains unchanged, and if the government introduces mediation to solve disputes, some landowners might decline to enter mediation, as they have the law on their side and may have nothing to gain from mediation.

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

The most difficult access obstacles, complications and disputes may not be resolvable without political support for legislative changes.

Property rights

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

In New Zealand the mystical basis of property rights, which puts them beyond challenge, remains intact. We inhabit a frontier country. Our attitudes to private land reverberate with memories of land wars and colonial deception, stump-pulling toils and family histories. Our land law remains beyond the reach of sophisticated discussion. It lets landowners shut out New Zealanders from exquisite corners of their own birthright. It encourages uncompromisingly aggressive redneck landownership. It camouflages greed and self-interest. It allows autocratic ideas to masquerade as a defence of Western property rights. It prevents changes that would strengthen the interdependence of town and country. It permits our farmtracks – our greatest potential means of enjoying the rural landscape – to remain needlessly and wastefully private. It makes trespass a criminal offence, once a landowner has warned you to leave, even if you stray accidentally off an unformed and ill-defined public road. A warning can force you to return the way you had come, instead of continuing along the best approximation to the public road. In theory, our land law upholds 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 can often prevent us from doing so.

From our countryside, meat and wool and dairy products flow to hundreds of destinations around the world, generating – with horticultural exports – about 54 per cent of our export earnings (2004 figure).[22] Our farmers have overcome immense disadvantages in their distance from markets. Farming contributes about 17 per cent of our GDP (2003 figure, taking into account indirect contributions).[23] No other developed economy is as dependent on the export of primary products. The total primary farming area is, as we have seen, huge. The farmers are few in number compared to our total population. To adapt Winston Churchill's comment, never have so many owed so much to so few. But all these achievements of farmers and all this profound importance of agriculture is absolutely no reason why we should tolerate those few landholders unnecessarily excluding walkers from 44 per cent of the landmass of New Zealand.

At some time in the future, our farmers will have become used to the idea of their fellow-citizens walking across farmland, keeping to the tracks, without first knocking on the farmhouse door to ask subserviently for permission. Right now, we're a universe away from that normality. We adore *Country Calendar* but we tolerate a wholly 19th-century model of admission to the pastoral countryside. We enjoy little certain access to that landscape, except along water margins and public roads.

Realignment of displaced water margin access

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

Yes, but realigning Queen's Chain reserves by negotiation alone may often be impossible to achieve. Coastal erosion and river erosion and accretion do not follow any rules of natural justice. Some landowners gain land, others lose it. If Queen's Chain reserves are involved, the public may suffer a loss, with sections of the chain lost under water or becoming distant from the water margin.

Reinstating a 'lost' section of the Queen's Chain could require buying or exchanging a strip of land. By declining to sell or exchange, a landowner could not only prevent the replacement of the missing link but also could permanently limit the accessibility of adjoining intact Queen's Chain; the landowner could keep the whole water margin effectively private. In such situations the lawyers acting for the landowners might advise their clients not to sell unless offered a generous price for the land.

It is hugely difficult to predict the success of negotiatory approaches. I will be humbly surprised if much reinstatement of lost Queen's Chain occurs without new legislation to expedite the process.

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

As I understood them, the footways proposed in the December 2004 Cabinet paper, and subsequently dropped, would have created walking access along significant water margins that lacked Queen's Chain reserves. But not all outdoor recreators supported the footways mechanism as a means of extending or reinstating the Queen's Chain. Some people insist upon Crown ownership. Vehicular access is vital for some recreators in some circumstances. I myself would be happy if the missing links acquired foot-tracks created by easements in perpetuity, open 365 days of the year to nonmotorised recreators.

Gaps in water margin access

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

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

All these processes and mechanisms might have a place, provided that they produce walking access that is free, certain and enduring. As regards which methods will become the most productive and whether the gap-filling will proceed at an acceptable pace, the access agency will be in a position to comment after a few years in existence.

Intensely Political

The issues of recreational access to land will remain intensely political despite the present focus on nonlegislative solutions. In 2003–5 the government's efforts to remedy the gaps in the Queen's Chain were defeated mainly by a sustained campaign that wrongly accused the government of planning a right to roam. So the government ended up unable even to create linear access, which would merely have formalised New Zealanders' traditional access rights. The Labour Party should see this for what it was: a very comprehensive defeat by a powerful land-owners' group.

The public will gradually grasp the difference between linear access and area access. The same landowner lie will probably not work twice. The Labour Party ought not to rule out the possibility of legislation to remedy the most obstinate gaps in the Queen's Chain and to solve other intractable access issues.

Negotiated access

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

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

I do not know. This is a question best answered by the landowners. For three and a half years the dominant message issuing from the farmers has been that the status quo – access by permission – has worked well for 150 years and does not need changing. As recently as 6 May 2006, David Carter, a farmer and a Member of Parliament, reiterated this argument, having first misunderstood the work of the Panel:

> 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.[24]

What incentive would change the mindset and soften the rhetoric of farmers like David Carter? Who knows.

On a point of detail in the above quote, the potentially powerful voice of the Royal Forest and Bird Protection Society of New Zealand has been muted on the walking-access issues. The society's full in-tray of pressing conservational issues has left it little time to devote to walking access. Between January 2003 and June 2005 the society's newsletters, ten in total, did not mention the

government's work on walking access to the outdoors. (The matter gained a short mention in the August 2005 newsletter, just before the general election.)

One other thing, regarding methods of monetary payment: to be enduring, new access must not rely for its continued existence on future payments such as annual renting of the track. Any payments will need to be once-and-for-all.

'to be enduring, new access must not rely for its continued existence on future payments such as annual renting of the track'

Private Walking Tracks

The most telling evidence of the partial failure of the New Zealand Walkways Act is the rise of the private walking track. 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.

In January 2005 *North and South* featured 'Stepping Out: The Rise and Rise of the Private Walking Track', whose 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.

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.

In August 2003 the Ministry of Agriculture and Forestry published the report *Walking Access in the New Zealand Outdoors*. Perhaps the most categorical statement in this careful and circumspect document was: 'The public believes that access to New Zealand's outdoors should be free.' On the other hand, the Ministry of Tourism is reminding us that

> 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.
> (From www.tourism.govt.nz, 2006.)

Meanwhile, writing about exclusive capture, but he could equally have been writing about private walking tracks, Dave Witherow said: 'Time has caught up with New Zealand, and the freedoms that we have always enjoyed are now being touted on the global market'. (*Reel Life*, Vol. 2, Issue 9, March 2005.)

Resource Management Act

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

I do not know enough about the RMA to form a strong opinion on this. However, in 2004–5 the government tried to introduce a bill creating footways along significant water margins that lacked Queen's Chain reserves. I presume therefore that the government itself did not think that subdivision under the RMA would improve walking access to water margins speedily enough. Fish and Game New Zealand has described the process as glacially slow. My feeling is that in some specific cases, involving water margins of significant access value and irresolvable access problems, the landowners should not expect the public to wait for subdivision to provide the solutions.

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

Yes.

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

- **a review of how well local government has reflected the purpose in section 6 of the RMA in its decision making, especially in the creation of esplanade reserves;**
- **assistance to local authorities where lack of resources is a barrier either to the creation of esplanade reserves and strips and/or their maintenance (how could assistance be given?);**
- **removal of the requirement to compensate if taking reserve or strip on subdivision into lots over four hectares;**

- **assistance to local authorities to produce "access strategies" to guide applications for resource consent and in proposing road stopping (how could assistance be given?);**
- **provision of more central government guidance via the New Zealand Coastal Policy Statement or a National Policy Statement on access under the RMA;**
- **change to the local authority discretion to waive or reduce reserve and strip requirements?**

I don't know enough about the inner workings of local government to enable me to comment on the appropriateness of these possible measures. The question is one for local-authority professionals and other planners.

I have just one comment, on the New Zealand Coastal Policy Statement. It would be interesting to know whether this statement has led to the creation of any coastal walking tracks in the Dunedin area.

I was interested to hear last July that the final *Otago Regional Council Annual Plan 2005/06* included:

- investigating the possible extension of the proposed Ravensbourne walkway; and
- commencing construction (if feasible) of a Dunedin coastal walkway.

A couple of weeks ago the Otago Regional Council sent me the *Draft Policies and Long Term Council Community Plan 2006 – 2016*. As my main interest is the improvement of the track network, I searched through the plan to see what walkway developments were planned for the next ten years and to see whether there was anything I could comment upon. But the only references to walkways and walking tracks, in a very 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. I still do not know which section of the coast 'a Dunedin coastal walkway' refers to.

It may be that annual plans and long-term plans are not the appropriate places for describing the details of regional councils' walking-track developments. If this is the case, the councils ought to provide the information somewhere else. I am still enquiring into this matter. The walkways information is not on the Otago Regional Council website. My impression so far is that the development of walking tracks is a discretionary activity for the regional council and is a low priority.

Access to water margins and other public land

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

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

All these processes and mechanisms might have a place, provided that they produce walking access that is free, certain and enduring. As regards which methods will become the most productive and will carry the fewest restrictions (such as closures for lambing) and whether the provision of accessways will proceed at an acceptable pace, the access agency will be in a position to comment after a few years in existence.

Gazetted walkways could sometimes double as walking tracks for their own sake and as accessways to water margins and to other public land.

The Width of Foot-tracks

The old English measure of a chain – exactly 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 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. The government's proposed footways (since dropped) were to have been five metres wide, still a generous width for pedestrians. In many situations, both alongside rivers and across farmland, a track about three metres wide would be adequate for walkers. Public footpaths in Britain vary in width, depending on whatever width was dedicated for public use or whatever width may have arisen through usage. But when landowners plough up 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 bridleways the restored ways must be two metres wide (increased to three metres along field edges).

Priorities

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

This question deserves searching academic analysis backed up by research and by facts on participation and by a discussion of the pitfalls of trying to measure or forecast demand. In the absence of any such investigation, the only analytic starting-point we have seems to be the Cabinet paper of December 2004, which said that the government would base the prioritisation for the proposed footways on 'access value criteria'.[25] This paper listed five possible criteria, but just as samples. Officials were to report on the details of the measures of access value in March 2005. The government never released these details, but maybe that doesn't matter.

Access-value criteria for what?

Eighteen months ago, the Cabinet paper's access-value criteria applied to water margins only. In this respect, little has changed. In formulating the Panel's terms of reference, Jim Sutton made a basic value judgment compared to which all other value judgments in this context will be narrower and less significant. The Panel's question assumes that the reader agrees with the main focus of the Panel's terms of reference, a focus that concentrates primarily on water margins and somewhat timidly and limitedly on public roads, and which ignores the need for linear access across scenic farmland for its own sake.

Everything that has so far been said about the access-value criteria has premised a pre-eminence for access to water margins above all other features of the earth's surface. This is plainly wrong-headed, even if historically and politically understandable. We should extend the whole idea of a scale of access value to include access to areas other than water margins. The right time to do this is now, at an early stage in the development of the access-value criteria. Not to do so would perpetuate and entrench the existing cockeyed national track blueprint, which already glorifies water margins and undervalues pastoral hillsides and spurs and ridges.

I was once a senior instructor of kayaking as well as a walker, rock-climber, mountaineer and caver. I appreciate the recreational importance of rivers and foreshores.

'Everything that has so far been said about the access-value criteria has premised a pre-eminence for access to water margins above all other features of the earth's surface'

No water margins, no public roads, but close to home

On pages 24–9 I described three examples of Dunedin access issues. Two of them, the Cleghorn Street track and the high-points of the Otago Peninsula, do not involve the Queen's Chain

or public roads, yet are acute access problems. They deserve attention. They are essential parts of Dunedin's track network. They are long-standing issues that will not go away if ignored.

Furthermore, these two access problems are close to a city of 114,000 people, and they therefore fall into the category of walking opportunities near population centres, a category whose importance numerous researchers have stressed. As long ago as 1985, a national policy statement on outdoor recreation emphasised the high value of outdoor recreation opportunities near where people live:

> 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.[26]

Ten years later Kay Booth and Catherine Peebles repeated the message:

> It appears that a primary determinant of use [of recreational areas] is the proximity of the recreation resources to urban areas – most New Zealanders are city-dwellers. The importance of recreation close-to-home is evident from the recreation participation literature … and an inverse relationship between distance from home and amount of recreation undertaken is clear from the statistics.[27]

That was in 1995. There is no reason to think that walking opportunities close to home are any less important now, in 2006.

Regional Plans and Your Local Sheep Runs

New Zealand's planning practices already recognise the worth of pastoral landscapes. The word 'landscape' simply 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 even 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.

Landscape appraisal, in the context of professional planning and consultants' reports, has its own jargon. So the planners and academics 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.[28]

Are you still with me? For the purpose of this submission, that is all we need to know about the landscape lingo. The important thing to realise is that official landscape categories exist. The next important point is that not all the landscapes recognised as being particularly attractive or worthy of preservation are faraway DOC-managed wildernesses; some are close to towns and cities and are privately owned farmlands.

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 argued that the peninsula lacks a continuous public foot-track along the oceanic coast. It also lacks public walking access to nearly all its high-points. Much of the peninsula is private farmland. How does the Otago Peninsula measure up on the official landscape ratings?

In Dunedin City Council's *District Plan*, all the area between the grassy ridge of the peninsula and the oceanic coast is classed 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.[29]

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 outstanding 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. Dunedinites and tourists need a more interconnected and logical network of foot-tracks if they are 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 appears to pose insoluble problems.

Value judgments

Earlier (page 12) I mentioned the possibility, and possible unfairness, of local-authority officers making personal value judgments on the usefulness of unformed public roads. Yet now, in discussing priorities, we are striding knowingly into a huge national heap of value judgments by bureaucrats – and this heap is absolutely unavoidable. We have to go there, like it or not. Mistakes will be made. Tricky or impossible comparisons will crop up. Some people will be disappointed. We should recognise these difficulties at the outset. There will need to be open decision-making that does not compromise efficiency. Individual walkers, as well as NGO representatives, should feel listened to, even if the agency cannot always act immediately on their requests. An access agency's decision not to locate and waymark a particular

'An access agency's decision not to locate and waymark a particular public road or reserve ... should not prejudice the legality and future use of that public road or reserve'

public road or reserve, because of the agency's limited resources, should not prejudice the legality and future use of that public road or reserve. (I appreciate that there could be some situations involving the negotiated diverting or relocating of public roads, with outcomes acceptable to landowners and interest groups.)

Returning briefly to the subject of local authorities and value judgments about walking tracks. For decades, local authority officers and their consultants have been judging the potential worth of proposed tracks. Sometimes they have done this during planning that has included public submissions; sometimes they have done it less formally and more privately, as a routine part of their day-to-day decision-making. For example, Dunedin City Council's *Track Policy and Strategy* (1998) contained a potentially influential but worryingly shallow suggestion about the entire track network of the area administered by the city council. The *Strategy* quoted an American national standard of 50 miles of tracks for each 100,000 people. The Dunedin area, apparently, was well ahead of this standard with 313 miles of tracks for 118,000 people. The *Strategy* suggested that 'perhaps Dunedin does not need more tracks, but that better on- and off-site information is needed'.[30] I will discuss this suggestion, and the premises it was based on, in 'Provision of Public Walking Tracks: International Comparisons', at the end of this submission.

Access-value criteria in detail

I am reluctant to look closely at the five access factors exampled in the Cabinet paper. Nor do I want to add any more factors to the list, apart from closeness to populations and a recognition of pastoral landscapes. I feel that deciding the relevant factors, and especially the weighting of them, is a complex and probably controversial matter that calls for a separate paper rather than a couple of paragraphs in a submission.

That is not to deny that I am tempted to say that the Cleghorn Street track, one kilometre up Opoho Road from my house, is far more important to my life than, say, an accessway to reach the Rakaia River out Methven way. Yet the accessway to reach the Rakaia River could be crucial for many anglers. I have spent enough of my life driving hundreds of miles into the mountains to appreciate that outdoor recreators have very different needs. I don't envy the Panel its task of trying to quantify and prioritise these various requirements.

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

Funding for establishing new foot-tracks

I acknowledged earlier that the walkway developments being undertaken by local authorities, trusts and volunteers are impressive. Residents and tourists in the Wakatipu basin and the upper-Clutha basin can easily access an expanding network of interlinked trails. On the other hand, since 1998 Dunedin City Council's *Track Policy and Strategy* has listed the development of new tracks as a low priority.[31] This means, for example, that the council is unlikely to help in bringing unused unformed public roads into use. 'Any development or up-grade request not prioritised in the *Track Policy and Strategy* will not be a priority

for Council funding.' This policy is unlikely to change when the *Strategy* is revised. In a list of spending priorities identified by Dunedin's ratepayers, spending on sporting, cultural and leisure facilities, and museums and art galleries came at the bottom.[32] Finally, I also suggested earlier that if there is one trackless Kaikohe in New Zealand, there are hundreds.

In many situations, the access agency may find it difficult to persuade local authorities to prioritise and fund the building of foot-tracks. Perhaps there might be scope for fifty-fifty funding, half the cost of establishing new tracks to be borne by the access agency, half to come from the local authorities or trusts or other sources. An alternative approach would be for the access agency to pay the cost of negotiating and building a new track, provided that the local authority or DOC agreed beforehand to manage and maintain the track.

We are used to the idea of boardwalked and foot-bridged tracks through native bush, phenomenally expensive to build and very costly to maintain. Such tracks will always be a part of the national network of tracks. But what is seldom acknowledged is that many tracks can be relatively cheap to establish. Dunedin's Cleghorn Street track, for example, required three or four stiles, two sign-posts, a few plastic waymarkers and little else.

Funding for managing and maintaining new foot-tracks

Under 'The holding of interests in land' on page 21, I briefly and inconclusively discussed whether the access agency would become a track-manager, like DOC and local authorities. Without knowing the answer to this question, we cannot fully consider who will pay for presiding over and maintaining the new foot-tracks. If the access agency does take permanent charge of some tracks, the government will need to fund it accordingly. If, on the other hand, the local authorities and DOC take on the responsibility for running the new tracks, then maybe they will fund this administration and maintenance themselves.

A number of bodies maintain the walking tracks of the Dunedin area. They include DOC, the Dunedin City Council, city-council-owned companies (such as City Forests Ltd), the Otago Regional Council, private owners, and voluntary groups (such as the Green Hut Track Group, which has cleared tracks on the Silver Peaks).

Although some tracks demand regular and quite expensive maintenance, others do not. I have pointed out that Dunedin's Cleghorn Street track, which crosses regularly grazed pastures, requires minimal maintenance. In fact, this track might have been open for twenty years without requiring any maintenance at all.

Some unformed public roads, sometimes called green roads, will require zero or minimal maintenance once waymarked (provided that bylaws prevent motor vehicles from using them).

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

I will answer this question discursively. Perhaps it is a sign of the times that I don't belong to any clubs. I am an occasional walker and mountain-biker. My outdoor recreation takes place with a loose-knit group of friends whose only conforming to the traditional

club structure is an email newsletter. In the early 1990s, researchers into outdoor recreation in New Zealand identified a drift from the traditional tramping clubs:

> More recreation is now 'unstructured'. Activities are increasingly being pursued with family and friends rather than organised groups … This may be a result of the increasing influence of outdoor education in schools – people are now less reliant on clubs to learn about the outdoors. Concurrently, commercial operations are continuing to increase in number and have an important role to play as part of the tourism industry.[33]

I do not know whether this movement away from traditional clubs has halted or reversed. This raises another question: who are the walkers? And how many of them are there? At the risk of digressing even further from the Panel's question, perhaps we should address the last question to Reed Publishing (NZ) Ltd, which is busily producing a series of walking guides for the whole country: *Day Walks of Dunedin and Coastal Otago*, *Day Walks of Nelson*, *Day Walks of Canterbury and Kaikoura*, etc. I suspect that many of the buyers of these books do not belong to tramping clubs. Furthermore, and this is the point I've been leading to, their priorities may be very different from those of some traditional trampers.

In 2003 some Dunedin walkers and trampers considered forming a tracks trust. On 25 November representatives from ten clubs and organisations met to set track-development priorities. Each group presented one or two concepts, making sixteen projects in all. The meeting followed a careful voting procedure to rank the projects in order of priority. The top three projects were the Jubilee Hut refurbishment (Silver Peaks), Lake Whare tracks signage (Silver Peaks), and Yellow Hut shelter replacement (Silver Peaks) – in my opinion bizarre preferences when compared to the need to improve the Otago Peninsula's track network.[34]

At a meeting in March 2004, the tracks trust subcommittee rejected the results of the priority-setting, pointing out that the projects 'did nothing to promote and unify the current track system and tackle some of the wider issues'. The subcommittee felt that priority should be given to 'promoting and developing a long-distance track using the existing peninsula tracks and the skyline walkway'.[35]

What can we learn from this story? Firstly, the representatives of local clubs and organisations may disagree on priorities. Secondly, when they do reach a consensus or decide priorities by voting, their priorities might differ from those of the non-club public and from those of local-authority officials. All this underlines the importance of the access agency's measures of access value.

Unformed legal roads

In 2005 there were 93,148 kilometres of actively maintained formed public roads (being 60,080 kilometres of sealed and 33,068 of gravelled).[36] But no official total exists for the unmaintained public roads, typically unformed or only vaguely formed, that are owned by local authorities. One informed guesstimate has suggested that there may be 100,000 kilometres of unformed public roads; my research has so far failed to find any other estimates to support or challenge this figure.[37]

The public, landowners, politicians and the access agency will be discussing public roads for years to come. It might help people grasp the scale of the issue, and it would assist the accuracy of the debate, if some research-based estimates were available. Empirical studies of three or four areas would be a start. Maybe the Panel's final report could draw the minister's attention to this need. Or maybe the Panel already knows of some existing estimates that it can quote.

One other general point on public roads, before I answer the specific questions. 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.

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

- **for users**

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 suspect that the basic conflict would be between nonmotorised outdoor recreators and four-wheel-drive enthusiasts.

In 2004 Dunedin City Council was receiving 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.[38] The council has since installed gates across some public roads.

The Panel's terms of reference do not seem to provide for any discussion of this possible conflict between different users. The policies of local authorities on the use of public roads by four-wheel-drive vehicles may still be developing.

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Another user issue concerning unformed public roads is the closure of some of these roads during lambing. The possibility of walkers (without dogs) disturbing lambs is remote, but if a farmer wants to close a gazetted walkway during lambing, that's his or her prerogative, provided that the walkway is not based on a public road. Fish and Game New Zealand has 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.'[39]

The closing of public roads for lambing, however, is an entirely different matter from the closing of walkways based on easements. Public roads provide stronger access rights than any other form of linear access. The principle of free, unhindered passage along public roads at all times has been well established through the courts. Yet the dominant tale of recreational use of public roads in New Zealand is that 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 – has 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'.[40]

Think about this for a moment. 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 of the public. Our farmers have recently inspired an extraordinary ballyhoo about their right to exclude the public from their land. Meanwhile, Dunedin City Council is helping some of them to exclude *us* from *our* land.

If a single kilometre of Britain's public footpath network, based on the law of the king's highway, were to be closed for lambing, there would be a national outcry, not least about the doubtful necessity for such a closure. If necessary there would be a battle in the courts. Here in New Zealand – or at least in Dunedin – the

dubious reasoning behind such closures of public roads, roads that are based on the law of the king's highway, seems to go unchallenged. Walkers do not harm or disturb pregnant ewes or lambs; uncontrolled dogs do. The practice of closing a walking track at lambing time is a poorly targeted and clumsy way of excluding uncontrolled dogs.

- **for adjacent landholders**

This is a question for the landholders to answer. But some landholder groups, or their representative, have already answered. Several of these answers have contained landholders' value judgments on the purpose of public roads and on their relevance to outdoor recreation. So I will take this opportunity to examine a couple of these value judgments.

In November 2003 Federated Farmers submitted on the Acland report. The federation's submission belatedly accepted that a problem existed concerning public roads: '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.'[41] 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.[42]

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, pickled in right-wing property credos and unable to see the farm as anything more than a factory floor, the suggestion will have seemed sensible.

I have already in this submission dwelt upon value judgments. The farmers' suggestion that I have just examined was another biased value judgment, potentially highly injurious to the legal rights of the public. It is crucial that the access agency's access-value criteria recognise the worth and significance of unformed public roads as means for the public to enjoy the pastoral landscape for its own sake. We must not judge the usefulness of unformed public roads purely by whether they provide access to public land.

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 a land-access commission was an 'obvious clear concern'. She seemed to have reservations about providing the public with maps showing public land:

'The practice of closing a walking track at lambing time is a poorly targeted and clumsy way of excluding uncontrolled dogs'

'It is crucial that the access agency's access-value criteria recognise the worth and significance of unformed public roads as means for the public to enjoy the pastoral landscape for its own sake'

> 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.[43]

The shameless egocentrism of this statement was magnificent. That nobody knows where the public roads are is *not* an issue. But if people find out where they are, that *will* be an issue. Maybe that's in *The Good Lobbyist's Guide*: never voluntarily acknowledge the opposition's point of view.

Young also said that publicising the locations of such roads posed a potential public-health risk and a liability to farmers.[44] In other words, the less the public know about public roads, the better. And let's get on with producing more sheep. It seemed that Federated Farmers had acquired another leader without the faintest feeling for outdoor recreation but with a talent for obfuscation.

- **for local government?**

This is a question for local-government officers and councillors to answer. Yet Local Government New Zealand has already listed some issues that might arise in connection with the bringing-into-use of unformed public roads. I will look at these issues. First, though, a leap back six years.

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) requires landowners who erect gates across public roads to fix a notice to the gates clearly saying PUBLIC ROAD. Most landowners ignore 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.[45]

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 commented: '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?'[46]

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 Land Access 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.[47]

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.[48]

Firstly, a comment on 'geographical features and terrain that prohibit easy use'. Yesterday (14 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 and photographic maps with cadastral overlays. This enabled us to follow exactly two unformed public roads that nobody has ever used. The unformed public roads wandered inland from the foreshore, and so no water margins were involved except at each end of the walk. In several places 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 considered these earthy coastal hillsides very feasible.

These two unformed public roads provide crucial connections. They possess immense recreational worth. There are also, however, some 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, if necessary 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.

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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 last year 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 various 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 is three connected issues rolled into one. Earlier (page 47) I touched upon the issue of four-wheel-drive vehicles damaging unformed public roads. Under Questions 10 and 27 I discussed the costs of locating and signposting public roads. The access agency's access-value criteria will try to gauge the recreational benefits gained.

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Fourthly, Local Government New Zealand correctly points out that local authorities have a large number of unformed roads. LGNZ is very concerned at the potential cost of maintaining them, after the roads' locating and waymarking. This again is a complex issue, particularly regarding the use of public roads by motor vehicles. I remarked on maintenance costs under Question 27, 'Funding for managing and maintaining new foot-tracks'.

'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'

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

Public Access New Zealand (PANZ) answered this question in May 1994:

> There is now a generic problem of obstruction of public use of roads throughout New Zealand. PANZ receives more reports of obstruction of roads, often with official connivance, than any other category of public land in New Zealand … The problem is not a lack of public rights or a lack of official powers. The 'roads problem' is a lack of will by most district councils who administer roads, reinforced by a lack of a legal duty on them to assert and protect public rights of use. If such a duty existed, as it does in the UK, we predict that most problems would disappear overnight. Councils would know that if an obstruction was reported to them and they failed to act appropriately, they would be liable to end up in court. The message would be rapidly transmitted to their counterparts elsewhere. Our solution is a socially responsible response – it would remove most of the heat and conflict that

> is increasingly occurring between recreationists and adjoining private landowners. It would put the onus for settling problems where it must surely belong – with the public authorities charged with road administration.[49]

The Federated Mountain Clubs petition of March 2000 proposed an amendment to the Local Government Act 1974 that, had the government adopted it, would have achieved the changes that PANZ had suggested.

In July 2003 in its submission to the Land Access Ministerial Reference Group, PANZ included a section titled '3. Counter obstruction of roads'.[50] In summary, the actions necessary to prevent the obstruction of public roads were – and remain – to:

- introduce a legislative equivalent to that in the UK Highways Act creating a duty for authorities in control of roads to 'assert and protect public rights of passage';
- introduce offence provisions for failure to signpost gates across public roads as 'Public Road'; and
- introduce offence provisions for misleading signs or notices on or near roads and containing false or misleading content that is likely to deter public use.

I hope that the Panel will reconsider these suggestions and that it will also express its views on whether a letter from the minister of local government, reminding councils to enforce the law, will ever do the trick. It is two and a half years since Chris Carter wrote such a letter to local authorities (via Local Government New Zealand), and I haven't notices any changes on the unformed public roads of the Dunedin area.

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

This is two different questions.

First, weeds and pests. Nobody has suggested that livestock should cease to graze green roads. In most circumstances, bringing these unformed public roads into use for walkers should not change the way in which pests and weeds on them are managed or ignored. Occasionally, bringing an unformed road into pedestrian use might require its fencing or part fencing. Even so, it should still usually be possible to graze the road.

Second, environmental damage. I presume this refers mainly to the possibility of four-wheel-drive vehicles damaging unformed public roads. Under Question 29 I remarked briefly on this issue.

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

As with some of the other questions in the consultation document, this question deserves a separate paper in response. In summary, though, I cannot improve on the Panel's own words:

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

Given civilised and cordial discussions between the parties involved in the various situations, the possible permutations of realignments, diversions and relocations are endless. So in one sense my inclination as a walker is, Never say never. But this open-mindedness should operate within the overall principle that a local authority should never stop a public road in exchange for a new easement. Swapping must be like for like: a new, useful public road for an old, illogical one.

Once a Highway, Always a Highway

In the early 1950s, the county councils of England and Wales set about preparing definitive maps showing public footpaths and bridleways. Marion Shoard described one of the main principles that guided them in this work:

> The keystone of the 1949 [National Parks and Access to the Countryside] Act was the requirement that county councils should draw up maps of all paths in every county that were commonly agreed to be public rights of way as opposed to merely private tracks. But the idea of what constituted a right of way was by no means an invention of the post-war Labour Government: this was a fundamental concept that reached far back into British history. When the county councils which prepared the definitive maps established what were rights of way they made use of the age-old maxim of footpath law, 'once a highway, always a highway'. For a path to become a public right of way the test was whether it had already been used by the public without interference from the landowner for the proceeding twenty years.
>
> Six hundred years earlier, the test had been the same. In 1320, during the reign of Edward II, the authority responsible for maintaining a track running from the tiny settlement of Stodmarsh to Canterbury in Kent tried to close it to save the cost of maintenance. In protest, the riders and pedestrians who used the path (mainly monks at a local monastery) took the case to court. The result was that the sheriff ordered his men to re-open the path since it was clearly an 'ancient and allowed highway'. (*This Land is Our Land*, Marion Shoard, 1997.)

No directly equivalent public foot-tracks and public bridle tracks, granted legal status solely by long use, developed in 19th-century New Zealand. But since 1840 the subdivision and settlement of most Crown lands sold to private ownership has seen a generous provision of public roads. The axiom 'once a highway, always a highway' applies to all our public roads.

Possible health and safety liability of landholders

33 As a farmer, are you familiar with the Farm Bulletin published by the Department of Labour, “If visitors to my farm are injured, am I liable?”

I am not a farmer.

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

Fire risk

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

No comment.

Biosecurity

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

I know of no biosecurity risks posed by walkers other than the minimal risks outlined in 'Biosecurity Implications', the Ministry of Agriculture and Forestry's paper of July 2005, which analysed the farmers' biosecurity concerns.[51] I agree with the Panel's suggestion that the provision of better information and education about risks could prevent the arising of unwarranted anxiety.

Rural crime and security

36 How could the community help to combat rural crime?

By supporting the police in their work to prevent and solve crimes and in their efforts to use all the existing laws and measures designed for these purposes.

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

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.

Treaty of Waitangi concerns, access rights to Maori land, and wahi tapu and rahui.

38 The Panel would welcome comment on Treaty of Waitangi concerns, access rights to Maori land, and wahi tapu and rahui.

Regarding the recreational rights of the citizenry and the Treaty rights of Maori, New Zealanders face continuing dilemmas of justice and equity. In a handy overview in 2001, Nigel Curry cautiously probed the outer skin of these dilemmas. But he carefully pointed 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.[52]

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 a few paragraphs in a submission.

Provision of public walking 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. Certainly, statistics are to access what peel is to a banana; they 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 ahead 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'.[53] Ha! Welcome to the slippery world of access statistics.

How far away from Dunedin are its claimed 313 miles of tracks? What proportion of the 313 miles crosses the improved pastoral countryside, as opposed to native bush, regenerating bush and elevated tussock grasslands? What tracks are available ten minutes' walk away from where people live? What about the abjectly deficient so-called network of foot-tracks on the Otago Peninsula? What about the lack of continuous coastal foot-tracks in the Dunedin area? Are we happy with the permitted track over McGregors Hill, now closed for four months each summer and vulnerable to permanent closure? How does the American standard compare with the track provisions of Western Europe?

Access statistics are hugely complicated. By itself, a one-line American 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 London and the Southeast of England has 33,759 kilometres of rights of way (mainly footpaths and bridleways), a network density of 1.2 kilometres per square kilometre.[54] On the other hand, when scholars attempt rigorous quantitative analysis of recreational access to the countryside, the most reliable results are long 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.

As Dunedin City Council's consultants saw fit to quote one particular American example, it seems to me pertinent to look generally 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, commented 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.[55]

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 in North America than to that in Western Europe. So 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.

Endnotes

The first occurrence of a source gives the reference in full. Repeat occurrences use the author and title or author and shortened title.

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