

# **WALKING ACCESS**

## **SUBMISSION FROM MICK STRACK**

**Submission to            Walking Access Consultation Panel  
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                                 Wellington**

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### **Introduction**

There is now a very large proportion of our land area set aside in Crown ownership and by implication available for public access. This land includes National Parks, Conservation Parks, and many other categories of Reserves. The Crown has been active in the land market, adding to this conservation estate by direct purchase of land. In theory this should easily satisfy the current and future demands for available open space for New Zealanders to access, and certainly it is a fantastic resource and taonga contributing to our heritage. However the vast majority of this land (almost by definition) is remote and difficult to access.

A pressing current need for our increasingly urban population is a diverse, local and accessible network of tracks and open space set aside to provide that quick physical, psychological or spiritual revival of a walk in the countryside.

## **Riparian Access**

New Zealanders have been misinformed about the “Queen’s Chain” given that no such thing exists. The idea of the Queen’s Chain has led to a public expectation of access to rivers, and an assumed public right in rivers. Specific legislation has allowed for riparian reserves and strips to be established besides significant watercourses (or other water boundaries – e.g. lakes and the sea), but it has never been an automatic requirement that such strips exist.

The Resource Management Act 1991 (RMA) and the Conservation Law Reform Act 1990 (CLRA) are the 2 statutes dealing with the current mechanisms for the extension of riparian access (and conservation) lands. The triggers to set aside more land are a subdivision consent (under the RMA) and an alienation of Crown Land (under the CLRA). Given that access to the coastal marine area, lakes and rivers is a Matter of National Importance (S6 RMA), and that it is clear that large parts of the coastal marine area, lakes & rivers do not have any legal access provision, it is also clear that the current mechanisms are unable to adequately provide meaningful additional land. The limitations (3m wide rivers and 8ha lakes) and exceptions (4ha parcels), and the fact that so many parcels will never be subdivided or alienated, means that any addition to riparian lands will be piecemeal and sporadic. My understanding of the logic of the exceptions is that parcels over 4ha are not required to give up an Esplanade Reserve because of the costs of surveying and registering such parcels – i.e. a pragmatic solution that ignores the stated purpose of such reserves.

The process of taking land from a private title (General Land) is a ‘taking’, and as such, by any accepted interpretation of common law and statutory property rights, should be compensated. However it would appear that in recognition of the assumed public character of land adjoining water, there have not been any great demands for such compensation to be paid. However I think that any further attempts to extend such takings would result in significant property owner protest, and a compensation package for any future takings should be part of the negotiation process. This would also satisfy the requirement that the Crown must act in good faith towards property rights.

### **Recommendation:**

- 1) That the RMA (4ha lot area) exemptions for setting aside esplanade reserves be eliminated so that all sized lots being subdivided may be subject to an esplanade strip, subject to justification.
- 2) That the Local Authorities (under the RMA) and DoC (under the CLRA) are required to justify and make explicit the need for any new esplanade and marginal strips and reserves – specifically focussing on the purpose of such strips (– conservation, recreation or access), the physical characteristics of the water margin, and the local need for access.

## **Access Agency**

There is clearly a need to establish an Access Agency to respond to the public demand for the provision of better access to land and water. Lands available for public access come under the ownership, and / or management functions of a multitude of agencies at present. These include: The Crown, Territorial Local Authorities, Regional Authorities, the Department of Conservation, other government departments, individual National Park boards, Conservation Trusts (e.g. QEII Trust), forestry corporations, iwi authorities, and private land owners,

A dedicated Access Agency is needed to rationalise this diversity of interests, to prioritise access requirements, to which the public can make submissions for new access, which can negotiate with the appropriate land owners and other authorities, that is resourced with personnel to work at a local level and has a sufficient budget to compensate land owners, to establish walkways, and to identify and promote existing and new walkway access.

### **Recommendation:**

- 3) That an Access Agency should be established as a government department with Regional Offices (and officers) so that, at a local level, they can investigate existing access, identify new access demands, negotiate for new access, and promote access by constructing, mapping and signing new access tracks.
- 4) That the Access Agency can work in conjunction with DoC and LAs to identify public land usage and for all of these agencies to assist with identifying public land status with mapping, signage and promotion.

## **Conservation**

The multiple purposes of the esplanade and marginal reserve provisions are in conflict. Conservation lands should be specifically identified to allow for appropriate management plans for riparian margins, fragile ecosystems, significant landscapes etc. with a focus on sustainability. These management plans may quite properly explicitly exclude public access. Lands and strips that are required for public access should also be specifically identified. There is no logical justification for a strip to be set aside on and just because the land adjoins water or it is in some other way considered public land.

### **Recommendation:**

- 5) That the Access Agency and DoC establish a system of negotiating the relative merits and benefits of potential public lands in terms of a conservation requirement or an access requirement.

## **Walking access to Land**

There are various existing mechanisms whereby access to land can be enhanced:

**Paper roads** exist which already allow for full public rights of access, at least to the extent that such access does not cause hindrance or damage to anybody else's property or rights. Many roads have been surveyed and vested in local authorities or the Crown but for various reasons have never been formed. These reasons may include, lack of demand from users, they may have been provided to give legal frontage to some lots without the need to provide practical access, they may have been defined on a subdivision or partition plan without any reference to topography, so they may be practically inaccessible.

It is possible that some paper roads may usefully add to public access, but it is more likely that they will not provide suitable access to land or water.

Paper roads are usually incorporated into the lands of adjoining owners and therefore usually are not obviously recognisable to the lay person. They may follow some property boundaries, but it is not clear which side of an existing occupied fence line such road may exist. Or they may be totally incorporated within a private title and there is no indication from occupation, use or topography about where the road may run. In all of these situations it would require a professional surveyor to define on the ground the spatial extent of the public rights associated with the paper road.

### **Recommendation:**

- 6) That wherever there has been a specific identified need for more or better public access to land or water through or adjoining any property, and if there is an unused public road through or adjoining that property, then an Access Agency should negotiate the stopping of the public road and the setting aside of the access strip as an exchange of rights.

**Walkways** have been set up under the Walkways Act and provide (both in philosophy and in practice) for secure public access through any sort of land where such a need has been specifically identified. The Walkways Act is a very appropriate statute to deal with all concerns for more and better public access to land. The Walkways Act mechanisms and conditions provide a very satisfactory approach to access. It includes a process of identification of access requirements, identification of land and routes, a mechanism to negotiate for the land and for compensation for the land, and suitable conditions of use, including the banning of guns and dogs. It is unfortunate that the Walkways Commission was disbanded and the Act was brought under the jurisdiction of the Department of Conservation, because there has been no momentum of implementation retained, and DoC's agenda does not include the proactive identification of access needs and the seeking out of access lands.

### **Recommendation:**

- 7) That an Access Agency takes over the jurisdiction of the Walkways Act and uses it to provide additional access where there is an identified need.

- 8) That the Walkways Act be rejuvenated and promoted (and amended if necessary) to allow for more effective implementation.

### **Mapping**

LINZ, as the government agency for land information, should be given a public information mandate. Maps should be available in hard copy and online to clearly identify public lands, access provisions and conservation lands. These should clearly identify the physical state of any track formation or maintenance, the legal tenure status of land, and the rights attaching to such land (e.g. gun or dog restrictions, 4WD access, etc.).

One of the primary barriers to the public is the uncertainty of the location of lands available for public access. It is the lack of information rather than the lack of accessible lands which I see as the primary problem with existing access arrangements.

#### **Recommendation:**

- 9) That LINZ be instructed to provide a public service to the extent of mapping access and conservation lands

### **Conclusion**

I have attached another background paper to the submission (the first one listed below)

#### **Other research:**

**Strack Mick.** 2005. Back to the Land: Walking Access to the Outdoors. *New Zealand Surveyor*. No 295. 18-25

**Strack M.S.** 2004. Access, Navigation and Property Rights in the Foreshore and Seabed. *Survey Quarterly*. Issue 39. September 2004; 37-39

Delivered Paper: - FIG Working Week 2004 "The Olympic Spirit in Surveying" 22-27 May 2004. Athens. Greece. **Strack M.S.** Rethinking Property Rights in New Zealand. Published on CD: ISBN 87-90907-30-2. and online at <http://www.fig.net/pub/athens>

**Strack M.** 2005. Time to put public access issue on right track. *Otago Daily Times*: 15. August 3 2005.

**Strack M.S.** 2004. Time for negotiation with Maori over foreshore, seabed issue. *Otago Daily Times*: 13. May 19 2004.